REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1677
(CTA Case No. 9070)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

- versus -

PACIFIC BAYVIEW PROPERTIES, INC.,
Respondent.

Promulgated:

OCT 08 2018
3:51 p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue (CIR) against Pacific Bayview Properties, Inc. on July 20, 2017,[1] praying for the reversal and setting aside of the Decision dated March 28, 2017[2] and Resolution dated June 9, 2017[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9070, entitled "*Pacific Bayview Properties, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read as follows:

---

[1] EB Docket, pp. 5 to 18.
[2] Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justices Juanito C. Castañeda, Jr. and Catherine T. Manahan, EB Docket, pp. 26 to 36.
[3] EB Docket, pp. 20 to 24.

<u>**Decision dated March 28, 2017**</u>**:**

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner for CY ended December 31, 2007 in the total amount of ₱3,006,445.49 are **CANCELLED** and **WITHDRAWN** for violation of petitioner's right to due process. Consequently, respondent's **Final Decision on Disputed Assessment** dated May 8, 2015 is **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED**."

<u>**Resolution dated June 9, 2017**</u>**:**

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated March 28, 2017)** is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Petitioner is the duly appointed CIR, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.

On the other hand, respondent Pacific Bayview Properties, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 5/F, New World Manila Bay Hotel, 1588 M.H. del Pilar corner Pedro Gil, Malate, City of Manila. Respondent was incorporated for the primary purpose of engaging in the business of investing, purchasing, or otherwise acquiring and owning, holding, leasing, using, managing, operating, selling, assigning, transferring, mortgaging, pledging, exchanging, or otherwise disposing of real and personal property of every kind and description. It is a registered taxpayer with the Bureau of Internal

mO

Revenue (BIR), Revenue District Office No. 33, with Certificate of Registration bearing Tax Identification Number 220-608-573-000.

On January 10, 2011, respondent received from petitioner the *Preliminary Assessment Notice* (PAN) dated January 5, 2011, finding respondent liable for deficiency income tax and value-added tax (VAT) for calendar year (CY) 2007. Consequently, on January 25, 2011, respondent filed with the BIR, Revenue Region No. 6 its *Position Paper/Reply* to the PAN.

On February 2, 2011, respondent received from petitioner, the *Final Assessment Notice* (FAN) and *Final Letter of Demand* (FLD), both dated January 24, 2011, which demanded payment of deficiency income tax and VAT for CY 2007 in the total amount of ₱20,349,808.28.

On February 8, 2011, respondent received petitioner's letter dated February 3, 2011 which apparently treated respondent's *Position Paper* as administrative protest against the FLD/FAN.

Subsequently, on February 28, 2011, respondent filed with the BIR, Revenue Region No. 6, the letter dated February 25, 2011, clarifying that it only received the FLD/FAN on February 2, 2011 and that, in addition to the *Position Paper* filed on January 25, 2011, respondent will file a separate administrative protest against the FLD/FAN not later than March 4, 2011, in accordance with Section 228 of the NIRC of 1997.

On March 3, 2011, respondent filed its administrative protest against the FLD/FAN.

Thereafter, on May 20, 2015, respondent received petitioner's *Final Decision on Disputed Assessment* (FDDA) dated May 8, 2015, which partially denied its administrative protest and ordered it to pay deficiency income tax and VAT for CY 2007 in the amount of ₱3,006,445.49, computed as follows:

Deficiency Income Tax	₱ 898,829.13
Deficiency VAT	2,107,616.36
Total Amount Due	**₱ 3,006,445.49**

Consequently, respondent filed a *Petition for Review* before the Court in Division on June 17, 2015 which was docketed as CTA Case

NT

No. 9070 entitled *"Pacific Bayview Properties, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*.

On July 10, 2015, petitioner filed his *Answer* in CTA Case No. 9070, interposing certain special and affirmative defenses, which include, among others, the following: that under Section 222 of the Tax Code of 1997, as amended, in case of false or fraudulent return, with intent to evade tax or of failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission. Allegedly, respondent's VAT returns were incorrect and intentionally done to reduce tax liability; and that the input taxes claimed by respondent was overstated. Petitioner claims that there was no violation of respondent's right to due process and that the assessment is allegedly valid and correct. For its part, respondent has the burden of proof to impugn its validity considering that tax assessments are presumed correct and made in good faith; and that taxes are the life blood of the government and should be collected without unnecessary hindrance.

After the Pre-Trial Conference on September 17, 2015, the parties submitted their *Joint Stipulation of Facts and Issues* on October 7, 2015, which was approved by the Court in Division on October 21, 2015.

During trial, respondent presented Genalin T. Variacion, respondent's Chief Accountant, as its witness. Respondent formally offered Exhibits "P-1" to "P-31", inclusive of sub-markings, which were all admitted in evidence. On the other hand, petitioner presented Revenue Officers Teresita P. Reyes, Eleuteria B. Sagun and Yzarina D. Braña. Petitioner formally offered Exhibits "R-1" to "R-28", inclusive of sub-markings. All of the said exhibits were later admitted in evidence, except Exhibit "R-24."

On August 31, 2015, CTA Case No.9070 was submitted for decision by the Court in Division.

In the assailed Decision dated March 28, 2017,[4] respondent's *Petition for Review* was granted. The Court in Division cancelled and withdrawn the deficiency income tax and VAT assessments issued against respondent for CY ended December 31, 2007 in the amount

---

[4] EB Docket, pp. 26 to 36; Division Docket – Vol. III (CTA Case No. 9070), pp. 913 to 923.

MD

of ₱3,006,445.49, inclusive of interest and compromise penalty, for violation of respondent's right to due process.

Petitioner then filed his *Motion for Reconsideration (Re*: Decision *dated March 28, 2017)* on April 17, 2017.[5] On May 15, 2017, respondent filed its *Comment (Re: Motion for Reconsideration dated April 17, 2017).*[6]

In the assailed Resolution dated June 9, 2017,[7] the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

On July 5, 2017, petitioner filed a *Motion for Extension of Time (To File Petition for Review)* with the Court *En Banc*, praying for an extension of fifteen (15) days from July 5, 2017, or until July 20, 2017, within which to file his *Petition for Review.*[8] In the Minute Resolution dated July 10, 2017, the Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from July 5, 2017, or until July 20, 2017, within which to file his *Petition for Review.*[9]

On July 20, 2017, petitioner filed the instant *Petition for Review* with the Court *En Banc.*[10]

In the Resolution dated August 4, 2017,[11] respondent was directed by the Court *En Banc* to file its comment to the instant *Petition for Review* within ten (10) days from receipt thereof. On September 25, 2017, respondent filed its *Comment (Re: Petition for Review dated July 18, 2017).*[12]

In the Resolution dated October 10, 2017,[13] the instant case was deemed submitted for decision.

Hence, this Decision.

---

[5] Division Docket – Vol. III (CTA Case No. 9070), pp. 924 to 931.
[6] Division Docket – Vol. III (CTA Case No. 9070), pp. 935 to 943.
[7] EB Docket, pp. 20 to 24; Division Docket – Vol. III (CTA Case No. 9070), pp. 952 to 956.
[8] EB Docket, pp. 1 to 3.
[9] EB Docket, p. 4.
[10] EB Docket, pp. 5 to 17.
[11] EB Docket, pp. 38 to 39.
[12] EB Docket, pp. 45 to 55.
[13] EB Docket, pp. 60 to 61.

THE ISSUE

Culled from the allegations in the Petition for Review and respondent's Comment thereto, the issue for the resolution of the Court *En Banc* is whether or not the assessments for deficiency income tax and VAT for CY 2007 is void for having been issued in violation of the due process requirement under the Tax Code and Revenue Regulations No. 12-99.

ASSIGNMENT OF ERROR

Petitioner assigns the following error supposedly committed by the Court in Division, to wit:

> "THE HONARABLE COURT OF TAX APPEALS-SECOND DIVISION ERRED IN GRANTING RESPONDENT'S PETITION FOR REVIEW, CANCELLING THE DEFICIENCY INCOME TAX AND VAT ASSESSMENTS FOR CY 2007 IN THE TOTAL AMOUNT OF ₱3,006,445.49 AND REVERSING AND SETTING ASIDE PETITIONER'S FINAL DECISION ON DISPUTED ASSESSMENT DATED MAY 8, 2015."[14]

Petitioner's arguments:

Petitioner argues that contrary to the ruling in the assailed Decision, the subject FLD, FAN and FDDA were validly issued to respondent. Allegedly, the issuance of the FAN and FLD a day before the expiration of the period to respond to the PAN shall not be deemed deprivation of respondent's right to procedural due process.

According to petitioner, under existing rules and regulations, a FAN shall be issued after the taxpayer filed or failed to file a reply to the preliminary assessment notice within fifteen (15) from receipt thereof. A perusal of the records allegedly shows that there was compliance with the foregoing requirement. Petitioner likewise claims that the validity of the FAN issued prior to the expiration of the fifteen (15)-day period to respond to the PAN has already been upheld by the Supreme Court in the case of *International Exchange Bank vs. Commissioner of Internal Revenue.*[15]

---

[14] *Petition for Review*, EB Docket, p. 10.
[15] G.R. No. 171266, April 4, 2007.

fo

In this case, petitioner maintains that while the FAN was issued a day before the period to respond to the PAN, respondent nevertheless received the PAN and FAN, was informed of the factual and legal basis of the assessments, and was able to intelligently respond to the PAN and FAN.

Further, petitioner argues that the assessment is valid and correct and the respondent has the burden of proof to impugn its validity; that tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise; and that assessments duly made by the BIR examiner and approved by superior officers will not be disturbed.

Finally, petitioner asserts that taxes are the lifeblood of the government and should be collected without necessary hindrance.

Respondent's counter-arguments:

Respondent counter-argues that petitioner violated its right to due process when the FAN and FLD were issued even before the lapse of the fifteen (15)-day period given to respondent to file its protest to the PAN.

According to respondent, the law requires petitioner to provide the taxpayer ample opportunity to respond to the PAN, before it issues the FAN and FLD; that the right of taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto; and that the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process.

Respondent claims that it was not afforded an opportunity to present its side on the subject tax assessment since petitioner has already made up his mind even before respondent could present its case and submit evidence in support thereof.

THE COURT *EN BANC*'S RULING

We find no merit in the instant *Petition for Review*.

The assessment is void for failure of the BIR to comply with the due process requirements in the issuance of the subject assessments.

Petitioner argues that there was no violation of the due process requirement when it issued the FAN and FLD before the expiration of the period to respond to the PAN.

We disagree.

Section 228 of the NIRC of 1997 lays down the procedures to be observed both by the CIR, or his duly authorized representative, and the taxpayer concerned, in protesting an assessment. The said section provides:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> xxx xxx xxx
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final." *(Emphasis supplied)*

Based on the foregoing, it is clear that the law mandates that the taxpayer respond to the PAN, "[w]*ithin a period to be prescribed by implementing rules and regulations*", and that in case such

mb

taxpayer fails to respond, the CIR or his duly authorized representative shall issue an assessment based on his findings.

Implementing the said provision is Section 3.1.2 of Revenue Regulations (RR) No. 12-99,[16] which provides as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.2 Preliminary Assessment Notice (PAN). - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). **If the taxpayer fails to respond <u>within fifteen (15) days from date of receipt of the PAN</u>, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." *(Emphasis and underscoring supplied)*

Thus, a taxpayer has fifteen (15) days from receipt of the PAN to file a protest thereto with the BIR. If during the said period, the taxpayer failed to file a protest to the PAN, it is only then that the CIR or his duly authorized representative can consider the taxpayer in default, and correspondingly cause the issuance of a FLD and assessment notice, which shall be subsequently served to the said

---

[16] SUBJECT: Implementing the Provision of the National Internal Revenue Code of 1997 Governing the Rules of Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

taxpayer. In other words, the CIR or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and FAN. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In the instant case, respondent received a copy of the PAN on January 10, 2011. Applying the above-quoted Section 228 of the NIRC of 1997 and Section 3.1.2 of RR No. 12-99, petitioner must give respondent a period of fifteen (15) days from date of receipt of the PAN or until January 25, 2011 to protest or respond to the PAN. It is only after the lapse of the said period that petitioner may issue the FLD and FAN. By prematurely issuing the FLD or FAN on January 24, 2011, without awaiting the lapse of the fifteen (15)-day period, petitioner wantonly disregarded the mandatory due process requirement laid down under the afore-stated law and rules. As a consequence, respondent was denied of its right to due process.

It must be emphasized that while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. Even as we concede to the inevitability and indispensability of taxation, **it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure**.[17]

Furthermore, the persuasiveness of the right to due process reaches both substantial and procedural rights and **<u>failure of the CIR to strictly comply</u> with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process**.[18]

In sum, We find no cogent reason to deviate from the Court in Division's findings that petitioner failed to comply with the mandatory requirements of Section 228 of the NIRC and Section 3 the RR No. 12-99, thereby denying respondent of its right to due process.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated March 28, 2017 and the Resolution dated June 9, 2017, both rendered by the Court in Division in CTA Case No. 9070, are **AFFIRMED *en toto***.

---

[17] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[18] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

My

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice