REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MISSOURI SQUARE, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8707

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, JJ.

Promulgated:

SEP 08 2016

3:15 p.m.

x- x

AMENDED DECISION

COTANGCO-MANALASTAS, J.:

Petitioner filed its Motion for Reconsideration[1] (on the Decision of the Court dated 12 July 2016) on July 22, 2016. Despite notice, respondent failed to file its comment thereto.[2]

Petitioner prays for reconsideration of this Court's decision which denied the petition for lack of jurisdiction. The Court found that petitioner did not file a protest to the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD), and by failing to do so, the assessment became final, executory and demandable. As such, there was no disputed assessment that would confer jurisdiction upon the Court.

Petitioner further argues that respondent is barred from raising the issue of lack of jurisdiction and that the FAN did not attain finality since it was null and void for failure to comply with due process.

Petitioner's motion has merit.

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[1] Docket, pp. 945-959.
[2] Records Verification dated August 24, 2016.

After reconsideration of the facts of the case, the Court finds that respondent failed to follow the due process requirements in the issuance of the assessment against petitioner.

In the instant case, the Preliminary Assessment Notice (PAN)[3] dated January 8, 2013, was received by petitioner on January 14, 2013. Petitioner should have had 15 days from receipt of said PAN, or until January 29, 2013, to reply thereto.

However, on January 21, 2013, or a mere 7 days from receipt of the PAN, petitioner already received the FAN[4] dated January 25, 2013.

Section 228 of the National Internal Revenue Code of 1997 provides:

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> 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
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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.
>
> xxx xxx xxx."

In relation thereto, Section 3.1.2 of Revenue Regulations (RR) No. 12-99 28 reads:

> "3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx

[3] Exhibit "P-4", docket, pp. 369-372.
[4] Exhibit "P-5"and "P-5-a", docket, pp. 373-374.

> 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). <u>If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, 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</u>." (Underscoring supplied)

It is settled doctrine that the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[5] The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored.[6]

In this case, fairness was ignored by respondent when no opportunity to contest the issued PAN was granted to petitioner. For lack of said opportunity, there was a violation of petitioner's right to due process.

Considering that the FAN is void for violation of petitioner's right to due process, the absence of a protest does not render the FAN final and executory. A void FAN bears no fruit.

WHEREFORE, the instant Motion for Reconsideration is **GRANTED**. The Decision, dated July 12, 2016, is **REVERSED**.

Accordingly, the Final Assessment Notice and Formal Letter of Demand assessing petitioner for deficiency income tax and VAT, in the amount of P1,618,397.77 and

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[5] *Flores, et al. vs. Montemayor*, G.R. No. 170146, June 8, 2011.
[6] *Samalio vs. Court of Appeals, et al.*, G.R. No. 140079, March 31, 2005.

P247,281.58, respectively, inclusive of interest, for taxable year 2009 are **CANCELLED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice