REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EAGLE II HOLDCO, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9637

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
JAN 02 2020
1:40 p.m.

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AMENDED DECISION

MINDARO-GRULLA, J.:

Submitted before this Court are the following:

1. petitioner's **Motion for Partial Reconsideration (of the Decision dated 10 September 2019)**, filed on September 26, 2019, without respondent's comment as per Records Verification dated November 12, 2019; and,

2. respondent's **Motion for Reconsideration**, filed through registered mail on September 26, 2019, with petitioner's **Comment/Opposition (to Respondent's Motion for Reconsideration dated 26 September 2019)**, filed on November 8, 2019.

On September 10, 2019, this Court promulgated a Decision, partially granting petitioner's claim for refund by cancelling respondent's imposition of surcharge and interest in his deficiency documentary stamp tax (DST) assessments, the dispositive portion of which reads as follows:

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"**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the aggregate amount of **₱68,576,280.31**, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	**AMOUNT**
Surcharge 50%	₱ 19,724,463.50
Interest	48,851,816.81
TOTAL	**₱ 68,576,280.31**

SO ORDERED."

Undaunted, both parties filed their respective Motions seeking reconsideration of the above Decision.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner claims that while it generally agrees with the Decision dated September 10, 2019, it however reiterates that the case *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] (*"Filinvest case"* for brevity) cited by this Court, cannot be applied retroactively. Considering the *Filinvest case* was promulgated on July 19, 2011, the rationale therein cannot be made to apply on respondent's DST assessments covering the period 2008 to 2011. Petitioner explains that when its related companies secured the advances in 2008, the prevailing case law at the time was the *Filinvest case* which declared that inter-office memos are not loan agreements subject to DST. Therefore, claiming that it relied in good faith, petitioner prays that the DST assessments should also be cancelled just like the interests and surcharges thereon in accordance with the maxim *lex prospicit, non respicit*.

Nonetheless, petitioner points out that the DST assessments have already prescribed since respondent's Formal Assessment Notice (FAN) No. DS-ELA55300-12-14-1238[2] covering taxable years 2008, 2009, and 2010 was only received by petitioner on December 29, 2014.

[1] G.R. Nos. 163653 and 167689, July 19, 2011.
[2] Exhibit "P-2".

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Respondent's Motion for Reconsideration

While, in his Motion, respondent assails petitioner's claim of good faith in its honest belief that the inter-company advances are not subject to DST. He asserts that assuming petitioner believed that inter-office memos covering advances granted by it to its affiliates are not subject to DST, it could have, at the very least, filed the corresponding DST return without payment thereof instead of opting not to file anything at all. By doing so, it made petitioner liable for surcharge and interest under Sections 248 and 249 of the NIRC of 1997, as amended.

Lastly, respondent maintains that as refund cases filed before the Court are litigated *de novo*, party-litigants should prove every minute aspect of their cases.

Accordingly, after due consideration of the arguments raised by the parties, this Court resolves to grant petitioner's *Motion for Reconsideration* and, to deny respondent's *Motion for Partial Reconsideration*.

Settled is the rule that this Court is not precluded from tackling an issue not raised if it will result in the proper disposition of the case at hand. This is explicitly stated in the second paragraph of Section 1, Rule 14 of A.M. No. 05-11-07-CTA[3] otherwise known as the "Revised Rules of the Court of Tax Appeals", as amended, which provides that this Court may also pass upon related issues which are necessary to achieve an orderly disposition of any case at hand, *viz.*:

> "**SECTION 1.** *Rendition of judgment.* – x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. *(2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 41, sec. 2a)*"

This was affirmed in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[4] wherein the Supreme Court emphatically ruled that the Court of Tax Appeals can resolve an issue which was not raised by the parties, thus:

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[3] November 22, 2005.
[4] G.R. No. 183408, July 12, 2017.

"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

> 'SECTION 1. Rendition of judgment. - x xx
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> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.'

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

From the above, this Court is well within its authority to consider the question on whether the right of petitioner to procedural due process was violated by respondent in this case.

The relevant provisions of law regarding the taxpayer's right to due process in an assessment can be found in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3 of its implementing rules, Revenue Regulations (RR) No. 12-99, which respectively provides as follows:

> "**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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> x x x

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The taxpayers 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."

"**SECTION 3.** *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 *Mode of procedures in the issuance of a deficiency tax assessment:*

x x x

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 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.

x x x."

In the case *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,*[5] the Supreme Court held that the procedures provided in Section 228 of the NIRC, as amended, and Section 3 of RR No. 12-99 are mandatory and noncompliance therewith renders the assessment void. Further, in the similar case of *Commissioner of Internal Revenue vs. Metro Star Superama Inc.,*[6] the Supreme Court

[5] G.R. No. 197515, July 2, 2014.
[6] G.R. No. 185371, December 8, 2010.

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categorically ruled that failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of the same Tax Code, renders the assessments made by respondent void, *viz.*:

> "From the provision quoted above, it is clear that **the sending of a PAN to taxpayer to inform him of the assessment made is but part of the `due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities.** The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.
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> The case of *CIR v. Menguito* cited by the CIR in support of its argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of R.R. No. 12-85 which sought to interpret Section 229 of the old tax law. RA No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid. The regulation then, on the other hand, simply provided that a notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.
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> The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit." *(Emphasis Supplied)*

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In the present case, a review of the records would reveal that no Preliminary Assessment Notice (PAN) was issued to petitioner prior to respondent's issuance of the FAN dated December 29, 2014. Consequently, the subject assessment is void for violating petitioner's right to due process.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (*of the Decision dated 10 September 2019*) is **GRANTED**, while respondent's Motion for Reconsideration is **DENIED** for lack of merit. Accordingly, the dispositive portion of the Decision dated September 10, 2019, is amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱108,025,207.31**, inclusive of fifty (50%) surcharge and interest, representing erroneously or illegally collected deficiency documentary stamp tax.
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> **SO ORDERED**."

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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