REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PRIME STEEL MILL, INCORPORATED,
Petitioner,

CTA *EB* NO. 1678
(CTA Case No. 8818)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1680
(CTA Case No. 8818)

-versus-

PRIME STEEL MILL, INCORPORATED,
Respondent.

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and,*
MODESTO-SAN PEDRO, *J.J.*

Promulgated:

AUG 27 2019
1:06 pm.

x- -x

RESOLUTION

MANAHAN, J.:

For this Court's resolution are the following:

1. Petitioner Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration* filed on January 24, 2019 in CTA *EB* No. 1680 with respondent Prime Steel's *Comment (to Petitioner Commissioner of Internal Revenue's Motion for Reconsideration – in CTA EB Case No. 1680)* filed on April 5, 2019.
2. Petitioner Prime Steel Mills, Incorporated's (Prime Steel) *Motion for Partial Reconsideration (For Prime Steel Mill, Inc.)* filed on January 30, 2019 in CTA *EB* No. 1678 without respondent CIR's comment despite notice as per Records Verification dated May 2, 2019.

Both parties seek reconsideration of the Court's Decision (assailed Decision) promulgated on January 3, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Decision dated January 23, 2017 and the Resolution dated June 21, 2017, all promulgated by the Third Division of the Court of Tax Appeals are hereby **AFFIRMED.**"

CIR's Motion for Reconsideration

The CIR moves for the reconsideration of the assailed Decision on the following grounds:

1. Prime Steel has unaccounted source of cash in the amount of P25,587,799.58 for the year 2005;
2. Prime Steel is liable to pay deficiency income tax, value-added tax and compromise penalty in the aggregate amount of P37,675,379.58 for the year 2005;
3. The Final Assessment Notice (FAN) and the Formal Letter of Demand (FLD) issued for taxable year 2005 against respondent representing income and VAT deficiencies and the right of the government through the BIR to collect the deficiency taxes had not yet prescribed

pursuant to Sections 203 and 222 of the 1997 NIRC, as amended.

Prime Steel's Motion for Partial Reconsideration

Petitioner submits that the absence of a valid Letter of Authority (LOA) makes the instant assessment void and that records clearly show that both parties never presented an LOA, hence its absence is patent and requires no further proof. Petitioner argues that the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without basis.

Petitioner also reiterates its argument that the FLD/FAN was issued by the CIR prior to the lapse of the fifteen (15)-day period within which to respond to the Preliminary Assessment Notice (PAN), hence violating its right to due process. Petitioner directs the attention of the Court to the provisions of Revenue Regulation (RR) No. 12-99 as amended by RR 18-2013 which gives the taxpayer a 15-day period to respond to the PAN or file a protest against it.

Lastly, petitioner asserts that the FLD/FANs are defective for not fixing its exact tax liabilities rendering these legally infirm and void.

THE COURT EN BANC'S RULING

After a careful evaluation of the parties' arguments in their respective motions, the Court *En Banc* finds that there are no novel issues raised that would deserve a second look by this Court *a quo*.

In his Motion for Reconsideration, the CIR merely echoed the arguments he presented in his Petition for Review with the Court *En Banc* and we find no need to repeat our disquisitions made in the assailed Decision or belabor the same points raised therein. Even the issue of prescription of his right to assess deficiency income taxes of Prime Steel which was ruled in his favor in both the assailed Decision and by the decision of the Court in Division was raised as a ground for his Motion for Reconsideration. We do not see any reason why this should even be a point of contention on the part of the CIR. As to the prescription of the right to assess the deficiency value-added tax (VAT) of Prime Steel, we subscribe to the decision of the Court in Division that the right to assess the VAT liabilities of Prime Steel has partially prescribed, and we quote the Decision dated January 23, 2017:

> "Since the FLD was only received by petitioner on February 12, 2009, respondent's right to assess petitioner on February 12, 2009, respondent's right to assess petitioner for deficiency VAT for the first (1st) to third (3rd) quarters of taxable year 2005 had already prescribed and only the deficiency VAT assessment for the fourth (4th) quarter is valid."

We proceed to resolve Prime Steel's Motion for Partial Reconsideration.

Prime Steel contends that the lack of an LOA to conduct the audit investigation renders the whole assessment process void.

We find it *apropos* to reiterate our ruling that the burden of proving the lack of authority of the revenue examiners lies with the party asserting the same.

It is not the failure of the party to raise the issue during the trial stage that renders it futile to raise it on appeal but the lack of opportunity of the other party to rebut or present evidence to contravene the same during the trial of the case that makes it objectionable for a court to rule on this issue at this stage of appeal. The allegation of the lack of an LOA or invalidity thereof conjures up secondary issues and factual matters that need to be adjudicated upon based on evidence or lack thereof. In the case of *Multi-Realty Development Corporation vs. Makati Tuscany Condominium Corp.*[1], the Supreme Court provided the rationale in not entertaining similar issues for the first time on appeal, and we quote:

> Settled is the rule that no questions will be entertained on appeal unless they have been raised below. Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule."

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[1] G.R. No. 146726, June 16, 2006.

This is the reason why we cannot entertain such issue at this stage, especially so when it was raised for the first time in Prime Steel's *Supplemental Memorandum* at the *En Banc* level. In resolving this issue, we quote our position in the assailed Decision, thus:

> "While we acknowledge that it is within the authority of the Court to consider related issues even if not stipulated by the parties, such issues should be dealt with, based not only on substantive law but in light of the relevant rules of evidence."
> xxx xxx xxx

On petitioner's argument that its right to due process was violated when the FLD/FANs were issued prior to the lapse of the 15-day period to respond to the PAN, we maintain our ruling that this is without merit. We quote the assailed Decision to put this issue to rest, thus:

> "The evidence shows that Prime Steel received the PAN for its alleged tax deficiencies for taxable year 2005 on January 7,2009 which it protested on January 22, 2009. The FAN/FLD was received by Prime Steel on February 12, 2009.
>
> Based on the dates of receipt by Prime Steel of the PAN and the lapse of time before the FAN/FLD were received, it cannot be said that Prime Steel was not given an ample opportunity to respond to the PAN.
>
> It must be remembered that part of the essence of the due process clause enshrined in the 1987 Philippine Constitution is the right of a person to be given an opportunity to be heard and in tax cases, it is the right to dispute or present its arguments against a tax assessment. This is part of the procedural due process in the administrative level. In this case, Prime Steel was able to prepare and file its protest letter against the PAN, as can be seen from its well-prepared protest letter dated January 21, 2009 and received by the BIR on January 22, 2009."

It is well-settled that as long as the party is given the opportunity to defend his interests in due course, he would have no reason to complain for it is the opportunity to be heard that makes up the essence of due process. The essence of due process is found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[2]

Records clearly show that Prime Steel was given ample opportunity to dispute the findings against it and was able to timely file its administrative protest against the PAN before the issuance of the FANs/FLD hence there was substantial compliance with the due process requirements.

Lastly, the allegation of Prime Steel that failure to fix a definite amount of its tax liabilities renders the FANs/FLD void, deserve scant consideration as we maintain that what will vary are the increments, i.e, deficiency and delinquency interests, and not the amount of the tax. The amount of the increments will depend on the actual date of payment of the tax, hence consequent changes in said amounts is inevitable and would not render the FANs/FLD void.

WHEREFORE, premises considered, CIR's *Motion for Reconsideration* filed on January 24, 2019 in CTA *EB* No. 1680 and Prime Steel's *Motion for Partial Reconsideration (For Prime Steel Mill, Inc.)* filed on January 30, 2019 in CTA *EB* No. 1678 are hereby **DENIED** for lack of merit. Accordingly, the Decision promulgated on January 3, 2019 is **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

I maintain my Concurring & Dissenting Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

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

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[2] Estares, et.al., vs. Court of Appeals, et.al., G.R. No. 144755, June 8, 2005.

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice