Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PACIFIC BAYVIEW PROPERTIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9070

Members:
CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
MAR 2 8 2017
2:45 p.m.

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DECISION

CASANOVA, J.:

This case involves petitioner's judicial appeal of respondent's Final Decision on Disputed Assessment (FDDA) dated May 8, 2015, which partially denied petitioner's administrative protest against respondent's Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) dated January 24, 2011, and ordered petitioner to pay deficiency income tax and value-added tax (VAT) for calendar year (CY) ended December 31, 2007 in the total amount of ₱3,006,445.49.[1]

Petitioner 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 cor. Pedro Gil, Malate, City of Manila.[2]

Petitioner was incorporated for the primary purpose of engaging in the business of investing, purchasing, or otherwise acquiring and

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. II), p. 479.
[2] Par. 2, Stipulation of Facts, JSFI, Ibid.

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.[3] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue District Office No. 33, as shown by its Certificate of Registration bearing Tax Identification Number 220-608-573-000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue 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. He may be served with summons, pleadings and other processes of this Court at his office at the 5/F BIR National Office Building, BIR Road, Diliman, Quezon City.

On January 10, 2011, petitioner received a copy of respondent's Preliminary Assessment Notice (PAN)[5] dated January 5, 2011[6], finding petitioner liable for deficiency income tax and VAT for CY 2007.

Consequently, on January 25, 2011, petitioner filed with the BIR, Revenue Region No. 6 its Position Paper/Reply[7] to the PAN.[8]

On February 2, 2011, petitioner received copies of respondent's FAN and FLD[9] 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.[10]

On February 8, 2011, petitioner received a copy of respondent's letter[11] dated February 3, 2011 which apparently treated the petitioner's Position Paper as petitioner's administrative protest against the FLD/FAN.[12]

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[3] Par. 3, Stipulation of Facts, JSFI, Id., pp. 479-480; Exhibit "P-1".
[4] Par. 4, Stipulation of Facts, JSFI, Id., p. 480; Exhibit "P-2".
[5] Exhibit "P-3".
[6] Par. 6, Stipulation of Facts, JSFI, Id..
[7] Exhibit "P-4".
[8] Par. 7, Stipulation of Facts, JSFI, Docket (Vol. II), p. 480.
[9] Exhibits "P-5", "P-5-1" to "P-5-3".
[10] Par. 8, Stipulation of Facts, JSFI, Docket (Vol. II), p. 480.
[11] Exhibit "P-6".
[12] Par. 9, Stipulation of Facts, JSFI, Docket (Vol. II), p. 480.

On February 28, 2011, petitioner filed with the BIR, Revenue Region No. 6 a letter[13] dated February 25 2011 clarifying that the petitioner only received the FLD/FAN on February 2, 2011 and that, in addition to the Position Paper that it submitted on January 25, 2011, petitioner 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, as amended.[14]

On March 3, 2011, petitioner filed its administrative protest[15] against the FLD/FAN.

On May 20, 2015, petitioner received respondent's FDDA[16] dated May 8, 2015, which partially denied petitioner's administrative protest and ordered petitioner to pay deficiency income tax and VAT for CY 2007 in the total 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, petitioner filed the present Petition for Review before this Court on June 17, 2015.

In the Answer[17] filed on July 10, 2015, respondent raised the following special and affirmative defenses:

> "19. Under Section 222, 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. Petitioner's VAT returns filed were incorrect and intentionally done to reduce tax liability. The total amount of gross receipts appearing in petitioner's Annual Income Tax Return differs from that in its VAT

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13 Exhibit "P-7".
14 Par. 10, Stipulation of Facts, JSFI, Docket (Vol. II), p. 480-481.
15 Exhibit "P-8".
16 Exhibit "P-9".
17 Docket (Vol. I), pp. 81-84.

returns filed. Moreover, input taxes claimed by petitioner was overstated.

20. Petitioner filed protest letter/position paper to the Pre-Assessment Notice and protest letter to the Final Assessment Notice, and has exhaustively presented its position in opposition to the said assessments, negating its claim of violation of its right to due process.

21. Under Section 34(A)(1)(b) of the Tax Code of 1997, as amended, no deductions from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records the (1) amount of the expense being claimed, and (2) the direct connection or relation of the expense being deducted to the operation of taxpayer's business or profession.

22. The assessment is valid and correct and the petitioner has the burden of proof to impugn its validity (*Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647*), Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671*); and assessments duly made by the BIR examiner and approved by her superior officers will not be disturbed (*Gutierrez vs. Villegas, 8 SCRA 547*).

23. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals et al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co. 107 Phil. 967 [1960]*).

24. Taxes are the life blood of the government and should be collected without unnecessary hindrance (Marcos II vs. Court of Appeals, 273 SCRA 47). Public

> policy dictates that collection of taxes should be accorded paramount importance for the sustenance of government. Thus, for the interest of the government, the subject assessment must be paid by the respondent without unnecessary delay."

A Notice of Pre-Trial Conference[18] was issued by the Court on July 14, 2015, setting the case for pre-trial conference on August 6, 2015. However, upon petitioner's Motion to Defer Pre-Trial Conference[19], the pre-trial conference was reset to September 17, 2015.[20] Accordingly, Respondent's Pre-Trial Brief[21] was filed on August 3, 2015, while Petitioner's Pre-Trial Brief[22] was filed on September 14, 2015.

The parties submitted their Joint Stipulation of Facts and Issues[23] on October 7, 2015, which was approved by the Court on October 21, 2015.[24]

During trial, petitioner presented Ms. Genalin T. Variacion, petitioner's Chief Accountant, as its witness.[25] Petitioner formally offered Exhibits "P-1" to "P-31", inclusive of sub-markings,[26] which were all admitted in evidence.[27]

On the other hand, respondent presented Revenue Officers Teresita P. Reyes[28], Eleuteria B. Sagun[29] and Yzarina D. Braña[30]. Respondent formally offered Exhibits "R-1" to "R-28", inclusive of sub-markings.[31] All of the said exhibits were later admitted in evidence except Exhibit "R-24".[32]

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[18] Docket (Vol. I), pp. 85-86.
[19] Ibid, pp. 87-92.
[20] Order dated August 3, 2015, Id., p. 212.
[21] Id., pp. 207-211.
[22] Docket (Vol. II), pp. 456-474.
[23] Ibid, pp. 479-491.
[24] Pre-Trial Order, Id., pp. 501-509.
[25] Minutes of the Hearing dated November 23, 2015, Docket (Vol. II), p. 511; Exhibit "P-31".
[26] Formal Offer of Evidence filed on January 4, 2016; Ibid, pp. 523-539.
[27] Resolution dated February 2, 2016, Id., pp. 790-791.
[28] Minutes of the Hearing dated March 14, 2016, Id., p. 793; Exhibit "R-26".
[29] Minutes of the Hearing dated March 14, 2016, Id., p. 793; Exhibit "R-27".
[30] Minutes of the Hearing dated April 4, 2016, Id., p. 796; Exhibit "R-28".
[31] Respondent's Formal Offer of Evidence filed on April 20, 2016; Id., pp. 800-806.
[32] Resolution dated June 8, 2016, Docket (Vol. III), pp. 872-873.

The case was submitted for decision on August 31, 2016[33] considering petitioner's Memorandum[34] filed on August 22, 2016 and the Records Verification[35] dated August 24, 2016 issued by the Records Division stating that respondent failed to file his memorandum.

The parties submitted the following issues[36] for this Court's resolution:

A. Whether the deficiency income tax and VAT assessments against petitioner 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;

B. Whether respondent's right to assess petitioner's alleged deficiency VAT for the 1st, 2nd and 3rd quarters of CY 2007 has prescribed pursuant to Section 203, Tax Code;

C. Whether there is legal and/or factual basis for the disallowance of petitioner's deductible expenses in the amount of ₱1,097,421.74; and

D. Whether there is legal and/or factual basis for the disallowance of petitioner's input tax in the amount of ₱686,449.44.

The foregoing issues can be summarized into one main issue, to wit:

> Whether or not respondent's deficiency income tax and VAT assessments against petitioner for CY 2007 are valid.

Petitioner argues that the deficiency income tax and VAT assessments against petitioner for CY 2007 are null and void for having been issued in violation of the due process requirement

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[33] Resolution, Docket (Vol. III), p. 909.
[34] Ibid., pp. 884-907.
[35] Id., p. 908.
[36] Issue, JSFI, Docket (Vol. II), pp. 481-482.

under the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99.

Petitioner maintains that RR No. 12-99, implementing Section 228 of the NIRC of 1997, as amended, provides that a taxpayer shall have a period of 15 days from receipt of the PAN within which to respond. However, respondent issued the FAN and FLD without giving the petitioner an opportunity to respond to the PAN. Records show that petitioner received the PAN on January 10, 2011. Thus, petitioner had until January 25, 2011 within which to respond to the PAN.

In view thereof, petitioner avers that it submitted its position paper against the PAN on January 25, 2011. However, unknown to petitioner, respondent has already issued the FAN and FLD on January 24, 2011, one day before the lapse of the 15-day period for the filing of petitioner's reply to the PAN.

Based on the foregoing, petitioner contends that it was not yet in default at the time respondent issued the subject FAN/FLD. Furthermore, respondent did not consider the merits of petitioner's arguments and already pre-determined petitioner's liability at the time of the issuance of the PAN. Therefore, it is apparent that petitioner was not given an opportunity to be heard and/or to present its side of the case.

In his Answer, respondent maintains that petitioner filed its protest letter/position paper to the PAN and protest letter to the FAN, and has exhaustively presented its position in opposition to the said assessments, negating its claim of violation of its right to due process.

Section 228 of the NIRC of 1997, as amended, 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: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

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. (*Emphasis supplied*)

In relation thereto, Section 3.1.2 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, provides:

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:

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 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. (*Emphasis supplied*)

From the foregoing provisions, it is clear that the taxpayer is given 15 days from receipt of the PAN to respond thereto, and only after it fails to do so will it be considered in default and an assessment notice will be issued.

In this case, petitioner received the PAN on January 10, 2011.[37] Counting 15 days from January 10, 2011, petitioner had until January 25, 2011 within which to respond to the PAN. Hence, petitioner timely filed its Position Paper/Reply to the PAN on January 25, 2011.[38] However, without waiting for the reply of petitioner, respondent issued the FAN and FLD on January 24, 2011.

In *Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)* [Nippo] *vs. Commissioner of Internal Revenue*[39], a case involving a similar issue as the instant case, Nippo received the PAN on February 5, 2009. However, without waiting for Nippo's reply to the PAN, the BIR issued the FLD/FAN on February 17, 2009. The Court *En Banc* held that Nippo's right to due process was violated by the BIR when the FLD/FAN was issued on February 17, 2009 or prior to the lapse of the 15-day period given to Nippo to respond to the PAN mandated under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013.

Similarly in *Commissioner of Internal Revenue vs. Yumex Philippines Corporation* (Yumex)[40], the PAN dated December 16, 2010 and FLD dated January 10, 2011 were both received by Yumex on the same day, January 18, 2011. The Court *En Banc* held that fairness was ignored by the BIR when it did not provide an opportunity on the part of Yumex to contest the issued PAN. For lack of said opportunity, there was a violation of Yumex's right to due process.

In another case, *Commissioner of Internal Revenue vs. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences Institute), Inc.* (Hermano)[41], Hermano received a copy of the PAN on January 5, 2009 and filed its reply to the PAN on

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[37] Par. 6, Stipulation of Facts, JSFI, Docket (Vol. II), p. 480.
[38] Par. 7, Stipulation of Facts, Ibid.
[39] CTA EB No. 1273, May 17, 2016.
[40] CTA EB No. 1139, August 11, 2015.
[41] CTA EB No. 1151, February 17, 2015.

January 20, 2009. Barely a day after it filed its protest to the PAN or on January 21, 2009, Hermano received the FLD and FAN both dated January 9, 2009. The Court *En Banc* held that Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. It is well-settled that the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding Hermano's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated respondent's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto.

Applying all the foregoing to the instant case, it is clear that respondent failed to observe due process when he issued the FAN and FLD even before the lapse of the 15-day period given to petitioner to file its protest to the PAN.

Consequently, in view of the violation of petitioner's right to due process provided under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, the FLD and FAN and the FDDA are all considered void.

In light of the foregoing, the Court deems it unnecessary to discuss the other issues raised by the parties.

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.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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