REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TRANSNATIONAL PLANS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2549
(CTA Case No. 9293)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

SEP 16 2024 3:45 p.m.

x - x

RESOLUTION

FERRER-FLORES, J.:

For this Court's resolution is the **Motion for Reconsideration (Re: Decision promulgated 26 March 2024)** *(Motion for Reconsideration)* filed by respondent **Commissioner of Internal Revenue (respondent/CIR)** on April 11, 2024, with **Comment/Opposition (Re: Motion for Reconsideration dated April 11, 2024)** *(Comment/Opposition)* filed by **petitioner Transnational Plans, Inc. (petitioner/TPI)** on April 26, 2024.

In the instant *Motion*, respondent prays for the Court *En Banc* to reverse and set aside its *Decision* dated March 26, 2024 (**assailed Decision**),[1] wherein the Court granted TPI's *Petition for Review* and ordered the cancellation of the CIR's assessment, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the *Petition for Review* is **GRANTED**. The assailed *Decision* dated January 20, 2021 and assailed *Resolution* dated October 19, 2021 rendered by the Second Division of this Court in CTA Case No. 9293 are **REVERSED** and **SET ASIDE**.
>
> Accordingly, the assessment against petitioner Transnational Plans, Inc. for the alleged deficiency value-added tax (VAT) and interest thereon for taxable year 2008, is **CANCELLED** and **WITHDRAWN**.
>
> Consequently, respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency VAT assessed against petitioner Transnational Plans, Inc. arising from *Formal Letter of Demand* dated March 12, 2014 and Audit Result/Assessment Notice No. VT-116-LOA-00033713-8-14-338 and *Final Decision on Disputed Assessment* dated September 22, 2014.
>
> **SO ORDERED.**

To recall, in the assailed Decision, this Court reversed and set aside the Court in Division's ruling and held that the subject assessment is void for violation of TPI's right to due process; hence, subject *Formal Letter of Demand* (FLD) and *Assessment Notices* are void for failure to comply with the due process requirements under existing rules and regulations.

In respondent's *Motion for Reconsideration*, he takes exception to the Court's ruling that petitioner's right to due process was violated.

Respondent insists that the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* (***Avon*** case)[2] is not on all fours with the present case. He alleges that, for the *Avon* case to apply, the Court should have also found that there is clear evidence of inaction on the part of respondent at every stage of the proceedings. According to respondent, upon issuance of the *Notice of Informal Conference* (NIC), petitioner was allegedly able to intelligently file a reply to the *NIC* refuting the assessments; however, it failed to sufficiently overthrow the assessment which led to the issuance of the *Preliminary Assessment Notice* (PAN). Likewise, while petitioner filed a reply to the *PAN*, the same was purportedly a mere reiteration of its reply to the *NIC*; hence, the reason for the reiteration of the assessment in the *FLD*.

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[1] *Rollo*, pp. 583 to 609.
[2] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

In support of his *Motion*, respondent also cites the discussion in the dissenting opinion of Associate Justice Jean Marie A. Bacorro-Villena that, notwithstanding the reiteration of the findings in the *PAN* in the *FLD*, petitioner's prior act of failing to raise meritorious grounds in its "mere rehash" *Reply to the PAN,* along with the alleged considerations of petitioner's explanations and evidence by the respondent, as indicated by the significant reduction in the total deficiency tax assessment (leaving only the deficiency VAT assessment), should warrant a finding of substantial compliance with the due process requirements under Section 228 of the NIRC of 1997, as amended. Respondent likewise points out that the *Final Decision on Disputed Assessment* (FDDA) dated September 22, 2014 reiterated the BIR's position on the taxable base of pre-need companies for VAT purposes pursuant to Revenue Memorandum Circular (RMC) No. 74-07. As such, petitioner's issues or concerns were allegedly considered by the respondent. Respondent adds that he is not under any obligation to give credence to petitioner's arguments specially if the arguments are unmeritorious and no new evidence is presented to refute the findings.

Ultimately, respondent maintains that the *PAN*, *FLD*, and *Assessment Notices* issued against the petitioner are compliant with the requirements laid down by the law and regulations; hence, the assessments are valid.

On the other hand, in its *Comment/Opposition*, petitioner echoes the ruling of this Court in the assailed Decision that petitioner's right to due process was violated and, as a result, the assessment is rendered void. According to the petitioner, its right to due process was violated because the *FLD* completely disregarded the arguments and substantiations made in the *Reply to PAN*.

After an evaluation of the respective arguments raised by the parties, this Court finds respondent's motion for reconsideration bereft of merit.

A cursory reading of the present motion would reveal that the arguments of the respondent are mere repetitions of the matters already considered and exhaustively discussed by the Court *En Banc* in the assailed Decision.

In *Department of Energy vs. Commissioner of Internal Revenue*,[3] the Supreme Court, citing *Shangri-la International Hotel Management, Ltd. vs. Developers Group of Companies, Inc.*,[4] held that, while a motion for reconsideration, by its nature, may tend to dwell on issues already resolved in

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[3] G.R. No. 260912 (Resolution), August 30, 2023.
[4] G.R. No. 159938 (Resolution), January 22, 2007.

the decision or resolution sought to be reconsidered, a circumstance which should not be an obstacle for a reconsideration, petitioners must still raise matters substantially plausible or compellingly persuasive to warrant a reversal of the Court's previous ruling.

Clearly, there are no new matters which warrant the Court's attention.

At any rate, the Court reiterates that petitioner's right to due process was violated. As such, the assessments are void.

Contrary to respondent's argument, the principles laid down in the *Avon* case are applicable to the case at bar. While it is true that in *Avon*, there was clear evidence of inaction on the part of respondent at <u>every stage of the proceedings</u>, such fact does not preclude this Court from applying the principle enshrined therein to the present case. Particularly, the Supreme Court therein ruled that the **taxpayer should be sufficiently informed of the reasons for the BIR's conclusions in arriving at the assessments.** Although the BIR is not obliged to accept the arguments or explanations of the taxpayer, what is mandated is that the BIR must inform the taxpayer of the reasons why the said arguments are not acceptable or meritorious.

The same principle in *Avon* is echoed in *Commissioner of Internal Revenue vs. Unioil Corp.*,[5] to wit:

> The CIR's ample powers under the tax code should be exercised with due regard to the taxpayer's constitutional rights.
>
> In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon Products)* the Court expounded on the contemplation of administrative due process as exemplified in jurisprudence:
>
> > Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it **demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.** (Citations omitted)
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> What we can refract from our ruling in *Avon Products* is that **the CIR, in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party**. *(Emphasis supplied)*

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[5] G.R. No. 204405, August 4, 2021.

Respondent claims that the fact that petitioner was able to intelligently file a reply/protest to the *PAN* and *FLD* indicates that petitioner was sufficiently informed of the basis for the assessments and, thus, the due process requirement was substantially complied with.

However, as pointed out in the assailed Decision, petitioner was not sufficiently informed for it was left unaware on how the respondent appreciated the explanations or defenses raised in connection with the assessments. In fact, when respondent assailed that the *Reply to PAN* was also infirm for being a rehash of the *Reply to NIC*, respondent failed to consider that petitioner maintained the same arguments because he has yet to address or reject the said arguments when he issued the *PAN*. The *FLD* likewise suffer the same defect of failing to address or reject the arguments in the *Reply to PAN*.

Glaringly, it was only in the *FDDA* that respondent explicitly addressed and rejected petitioner's arguments. By then, it was already too late as petitioner's right to due process had already been violated. Such belated acknowledgement did not cure the defect in the assessment procedure when respondent issued the *PAN* and *FLD*. Well settled is the rule that a void assessment bears no valid fruit.[6]

All told, the Court *En Banc* finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Re: Decision promulgated 26 March 2024)* is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

I reiterate my Dissenting Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice