REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MONZA SPV-AMC ("ASSET MANAGEMENT CO."), INC., *Petitioner,*	**CTA Case No. 9153** Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson, and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 15 2019 1:00 p.m.

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D E C I S I O N

MANAHAN, *J.*:

This involves a Petition for Review[1] pursuant to Section 3(a)(2), Rule 4[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking to cancel, invalidate, and annul the Final Assessment Notice dated January 14, 2015 issued by the Bureau of Internal Revenue against petitioner for internal revenue taxes for taxable year 2011 in the amount of Php43,226,981.52.

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[1] Docket, Vol. I, pp. 10-37.

[2] Rule 4 Jurisdiction of the Court
Section 3. Cases within the jurisdiction of the Court in Divisions. –
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
xxx xxx xxx
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, xxx xxx xxx *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to away the final decision of the Commissioner of Internal Revenue on the disputed assessment beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; xxx xxx xxx.

FACTS

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal place of business at 25/F Philamlife Tower, 8767 Paseo de Roxas, Makati City.[3] Petitioner is primarily engaged in the business of investing and acquiring non-performing assets of financial institutions.[4]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the law with authority to carry out all functions, duties and responsibilities of the BIR.[5]

On August 9, 2012, a Letter of Authority (LOA) with numbers: eLA201000078252/LOA-050-2012-00000188[6] was issued, authorizing the examination of petitioner's books of accounts and other accounting records for the period January 1, 2011 to December 31, 2011. The same was served on petitioner on August 10, 2012.[7]

On January 8, 2015, petitioner received a Preliminary Assessment Notice (PAN)[8] dated December 29, 2014, for deficiency internal revenue taxes for taxable year 2011.[9] Thus, petitioner had fifteen (15) days from January 8, 2015, or until January 23, 2015, to file its reply to the PAN.[10]

On January 23, 2015, petitioner filed its reply to the PAN.[11]

Respondent's issuance of the Formal Assessment Notice (FAN)[12] was made on January 14, 2015,[13] containing the following assessments:

Income Tax		
Taxable Income per ITR		-
Add: Adjustments		
Disallowed cost	P 63,047,629.00	

[3] Docket, Vol. III, Joint Stipulation (JSFI), p. 1302.
[4] Docket, Vol. III, JSFI, p. 1303.
[5] Docket, Vol. III, JSFI, p. 1303.
[6] Docket, Vol. VII, Exhibit "R-1", p. 3658.
[7] Docket, Vol. VII, Exhibit "R-3", Judicial Affidavit of Revenue Officer Raul Marie M. Aquino, p. 3653.
[8] Docket, Vol. III, Exhibit "P-14", pp. 1146-1149.
[9] Docket, Vol. III, JSFI, p. 1303.
[10] Docket, Vol. III, JSFI, p. 1303.
[11] Docket, Vol. III, JSFI, p. 1303.
[12] Docket, Vol. III, Exhibit "P-4", pp. 958-961.
[13] Docket, Vol. III, JSFI, p. 1303.

Expenses not subjected to withholding tax		3,153,134.00	
Disallowed interest expense		13,833,901.00	80,034,664.00
Taxable Income as Adjusted			P 80,034,664.00
Income Tax Due			P 24,010,399.20
Less: Tax Credits/Payments			
Prior year's excess credits		P 2,592,356.00	
Creditable tax withheld		95,100.00	
Total		2,687,456.00	
Less: Excess credit carried forward to succeeding period	P 2,580,883.00		
Excess minimum corporate income tax	106,573.00	2,687,456.00	-
Basic Deficiency Income Tax			24,010,399.20
Add: Interest (04.16.12 to 02.20.15)			13,682,638.45
Total Amount Due			P 37,693,037.65
Percentage Tax			
Receipts per returns			P 8,206,178.80
Add: Gross receipts not subjected to percentage tax			63,226,998.20
Total receipts subject to percentage tax			P71,433,177.00
Percentage tax due			P 3,571,658.85
Less: Payments per returns			410,308.94
Basic Deficiency Tax			P 3,161,349.91
Add: Interest (01.26.12 to 02.20.15)			1,941,848.36
Total Amount Due			P 5,103,198.27
Expanded Withholding Tax			
Basic Deficiency Tax			P 265,937.32
Add: Interest (01.16.12 to 02.20.15)			164,808.28
Total Amount Due			P 430,745.60

Petitioner received the FAN on February 4, 2015.[14]

On March 4, 2015, petitioner filed its protest or request for reinvestigation against the FAN, together with all the documents in support of the request for reinvestigation.[15]

On September 30, 2015, petitioner filed the instant Petition for Review, alleging the CIR's inaction on its protest and praying for the cancellation and invalidation of the assessments against it.

On November 26, 2015, the Court received respondent's Answer,[16] which was posted on November 13, 2015.

Respondent filed his Respondent's Pre-Trial Brief[17] on January 18, 2016, while petitioner filed its Pre Trial Brief[18] on January 29, 2016.

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[14] Docket, Vol. I, PFR, p. 12.
[15] Docket, Vol. I, PFR, p. 13.
[16] Docket, Vol. II, pp. 582-584.
[17] Docket, Vol. II, pp. 588-590.
[18] Docket, Vol. II, pp. 591-605.

On February 19, 2016, the parties filed their Joint Stipulation,[19] which was approved and adopted in the Pre-Trial Order (PTO)[20] dated March 7, 2016.

The case proceeded to trial. Petitioner presented its witnesses: Ms. Jocelyn I. Cheng[21] on March 16, 2016, and Mr. Maurito C. Tarobal[22] on June 8, 2016.

On August 8, 2016, petitioner filed its Formal Offer of Evidence (FOE), with Motion for Additional Marking.[23] On December 29, 2016, the Court resolved petitioner's FOE.[24] Thus, petitioner filed its Motion For Reconsideration and For Additional Setting of Commissioner's Hearing for Pre-Marking.[25] The Court resolved petitioner's Motion for Reconsideration, thereby admitting all of petitioner's exhibits.[26]

On the other hand, respondent presented his sole witness, Revenue Officer Raul Marie M. Aquino[27] on January 24, 2018.

Respondent filed his FOE[28] through registered mail on January 26, 2018, and received by the Court on February 2, 2018. The Court admitted all of respondent's exhibits.[29]

On August 8, 2018, petitioner filed its Memorandum,[30] on the other hand, respondent failed to file his memorandum per Records Verification[31] dated August 15, 2018. Thus, the case was considered submitted for decision on August 20, 2018.[32]

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[19] Docket, Vol. III, pp. 1302-1307.
[20] Docket, Vol. III, pp. 1310-1313.
[21] Docket, Vol. III, Exhibit "P-19" Amended Judicial Affidavit of Jocelyn I. Cheng, pp. 926-944.
[22] Docket, Vol. IV, Exhibit "P-21" Judicial Affidavit of Maurito C. Tarobal, pp. 1345-1356.
[23] Docket, Vol. VI, pp. 2574-2590.
[24] Docket, Vol. VII, pp. 3350-3351.
[25] Docket, Vol. VII, pp. 3359-3365.
[26] Docket, Vol. VII, Resolution dated September 18, 2017, pp. 3670-3671.
[27] Docket, Vol. VII, Exhibit "R-3" Judicial Affidavit of Revenue Officer Raul Marie M. Aquino, pp. 3652-3657.
[28] Docket, Vol. VII, pp. 3684-2686.
[29] Docket, Vol. VII, Resolution dated June 28, 2018, pp. 3690-3691.
[30] Docket, Vol. VII, pp. 3692-3715.
[31] Docket, Vol. VII, p. 3716.
[32] Docket, Vol. VII, p. 3717.

ISSUES

The parties submit the following issues for the Court's decision:

> 1. Whether or not the Final Assessment Notice issued by the BIR on January 14, 2015 is valid;
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> 2. Whether or not the period of limitation for the BIR to assess petitioner for alleged deficiency percentage taxes and withholding taxes has prescribed; and
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> 3. Whether or not the assessment against petitioner for deficiency internal revenue taxes for the taxable year 2011 in the amount of Php43,226,981.52 has basis in facts and in law and whether or not petitioner is liable for deficiency income tax, deficiency percentage tax and deficiency expanded withholding tax in the aggregate amount of Php43,226,981.52 for taxable year 2011.[33]

Petitioner's Arguments

Petitioner states that the PAN was received on January 8, 2015. The FAN was issued on January 14, 2015, or prior to the lapse of the fifteen (15) day period granted by law to petitioner to respond to the PAN. Thus, petitioner argues that the FAN was issued in violation of the due process requirement, thereby rendering the FAN void. Petitioner further states that notwithstanding that the FAN was received on February 4, 2015, the fact that the Bureau of Internal Revenue (BIR) already prepared, finalized and issued the FAN on January 14, 2015 proves that the BIR could not have considered petitioner's reply to the PAN when it issued the FAN. Petitioner's reply to the PAN was rendered moot by the premature issuance of the FAN, depriving petitioner of the due process mandated by law.

Petitioner also argues that the assessment for deficiency percentage tax and expanded withholding tax for the year 2011 has already prescribed when the FAN was issued on January 14, 2015. Petitioner further states that while Section 223 of the

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[33] Docket, Vol. III, JSFI, p. 1305.

1997 National Internal Revenue Code (Tax Code), as amended, provides that a request for reinvestigation suspends the running of the prescriptive period, the same is not applicable to the instant situation. Considering that the period to assess deficiency percentage tax and deficiency expanded withholding tax have already prescribed, the period to assess can no longer be extended or suspended.

Finally, petitioner argues that the assessments against it have no basis in fact and law.

Respondent's Counter-Arguments

Respondent states that the issuance of the FAN within the period granted by law to petitioner to file its protest against the PAN does not violate petitioner's right to due process, neither does it invalidate the FAN.

While there may be a deviation from the requirements under Revenue Regulations No. (RR) 12-99,[34] the same cannot detract from the fact that the PAN was actually received by petitioner and that they were able to file their protest letter against it. Respondent has substantially complied with the requirements under RR 12-99 when it issued the FAN on January 14, 2015 or sixteen (16) days after issuance of the PAN to the petitioner.

Respondent also argues that a protest against the PAN is not indispensable, and the fact of non-protest of the PAN will not render the PAN final and executory. Thus, petitioner's contention that it was denied due process has no merit.

As to the issue on prescription, respondent states that the ten-year prescriptive period shall apply to percentage tax and expanded withholding tax pursuant to Section 222 of the Tax Code which provides that in cases of false or fraudulent return with intent to evade tax or of failure to file a return, an assessment may be made at any time within ten (10) years from the discovery of the falsity, fraud, or omission.

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[34] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

Finally, respondent argues that assessments are *prima facie* presumed correct and made in good faith and it is the taxpayer who has the duty of proving otherwise.

RULING OF THE COURT

The petition has merit.

The Petition for Review was timely filed.

In the instant case, petitioner received the FAN on February 4, 2015. On March 4, 2015, petitioner filed its protest together with all the supporting documents.[35] Counting 180 days from March 4, 2015, respondent had until August 31, 2015 to resolve petitioner's protest. However, petitioner did not receive any decision on its protest.

Under the RRCTA, an appeal may be availed of by filing a petition for review with the CTA within thirty (30) days after the expiration of the period fixed by law for the CIR to act on the disputed assessments.[36]

Thus, counting thirty (30) days from August 31, 2015, petitioner had until September 30, 2015 within which to file its petition for review.

The assessments should be cancelled for violation of petitioner's right to due process.

The due process requirements in the issuance of a deficiency tax assessment are provided in Section 228 of the Tax Code, as follows:

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[35] Docket, Vol. I, PFR, p. 13.

[36] Rule 8 Procedure in Civil Cases

Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx

> 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: ...
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> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by the 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.
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> xxx xxx xxx

Corollary thereto, Section 3 of RR 12-99, as amended by RR 18-2013,[37] provides:

> Sec. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> 3.1.1 Preliminary Assessment Notice (PAN). – If after review and evaluation 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 <u>shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment</u>. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx.
>
> <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</u>

[37] Amended Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

> Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the finding of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payments of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void.
>
> xxx xxx xxx (Underscoring supplied)

Under the law and the rules, the CIR or his duly authorized representative is required to issue a PAN against the taxpayer whenever there is a finding of any deficiency tax due. The taxpayer shall be required to respond to the PAN within fifteen (15) days from receipt thereof. The taxpayer's failure to respond within the period prescribed results to the taxpayer being considered in default, and shall lead to the issuance of the FLD/FAN.

The mandatory nature of the issuance of the PAN and compliance with the due process requirements has been settled in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[38] where the Supreme Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must first be informed of the facts and the law upon

[38] G.R. No. 185371, December 8, 2010.

> which the assessment is made. The law imposes a substantive, not a merely formal, requirement...
>
> xxx xxx xxx
>
> ...it is clear that the sending of a PAN to [the] 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 [now, 3.1.1] 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... (Underscoring supplied)

In the case at bar, petitioner received the PAN dated December 29, 2014 on January 8, 2015. Thus, it had fifteen (15) days from January 8, 2015, or until January 23, 2015 to file its response to the PAN.

However, as stipulated by the parties, the FAN was issued on January 14, 2015[39] or only six (6) days after petitioner received the PAN. Thus, there is already a failure of the CIR to strictly comply with the requirements laid down by law and its own rules and regulations, which is a denial of petitioner's right to due process, and thereby rendering the assessment void.

That petitioner received the FAN on February 4, 2015, or after it has filed its reply to the PAN, does not denigrate from the fact that it was deprived of due process. As stated in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*:[40]

> In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued. (Underscoring supplied)

[39] Docket, Vol. III, JSFI, p. 1303.
[40] G.R. No. 172598, December 21, 2007.

Thus, the fifteen-day period granted to the taxpayer to reply to the PAN before a FAN can be issued is mandatory. Time is essential in this entire procedure of administrative protest because any escalation in the levels of the protest, *i.e.*, FLD/FAN, leaves the taxpayer with fewer options, such as going to the Court of Tax Appeals on appeal or entering into a compromise settlement, among others, which all entail financial costs to the taxpayer. Hence, the period granted to assail the PAN is integral to the right of due process granted by law to the taxpayer.

Based on the foregoing, the Court will no longer discuss the remaining issues.

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, the formal assessment notice dated January 14, 2015 issued against Monza SPV-AMC (Asset Management Co.), Inc., for internal revenue taxes involving taxable year 2011 in the amount of Php43,226,981.52 is declared **VOID**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice