REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MORNING STAR MILLING CORPORATION,	**CTA CASE NO. 9294**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondents.	JAN 13 2021 8:17 AM

x - x

RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision dated 26 August 2020)** filed through registered mail on September 18, 2020 and received by the Court on September 29, 2020, with petitioner's **Comment and Opposition (to the Motion for Reconsideration dated 18 September 2020)**, filed on October 19, 2020.

On August 26, 2020, this Court promulgated a Decision cancelling respondent's deficiency tax assessment against petitioner for failing to observe due process of law in fully appraising the latter of the factual and legal basis of the said assessment, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Respondent's *Decision* dated January 7, 2016, affirming the deficiency withholding tax assessments for the period January 1, 2003 to December 31, 2003, in the aggregate amount of ₱25,076,377.60, inclusive of surcharge and legal interest, and ordering

> the payment thereof, is hereby **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED**."

In his Motion, respondent assails the above Decision by primarily arguing that the Court erred in ruling that the assessment issued against petitioner is in violation of the due process right rendering the assessment void. Respondent claims that petitioner was given every opportunity to refute the assessment and, in fact, the latter was able to file its protest intelligently which resulted to the reduction of the assessment. Unfortunately, however, respondent explains that petitioner failed to provide the necessary documents needed in the audit examination of its books of accounts thereby forcing him to uphold the findings with regard to the rest of the assessments.

Moreover, respondent likewise insists that petitioner was apprised of the results of the investigation through the Notice of Informal Conference. He also insists that he has no obligation under Section 228 of the National Internal Revenue Code (NIRC) to provide petitioner the documents it requested from him and, assuming for the sake of argument, that respondent failed to provide the documents asked for by petitioner, the same should not have resulted to the invalidity of the entire assessment. Lastly, respondent invokes the presumption of the correctness of assessments and that it is the taxpayer's duty to prove otherwise, for it has already long been settled that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

On the other hand, in its Comment, petitioner points out that respondent failed to understand that his violation of petitioner's right to due process was not due to lack of knowledge on the investigation conducted, but rather on the fact that the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) issued against it were devoid of the factual bases to support the findings contained therein. Petitioner continues that both the undated PAN and FAN contain arbitrary figures and are devoid of the facts required by law when the same did not show in detail as to how the deficiency assessment were arrived at.

Furthermore, petitioner also insists that its right to due process was violated when respondent did not even bother to comment or address the issues and defenses it raised in its protest letters. It asserts that there is no truth to respondent's statement that there was a reduction on the assessment made due to the filing of protest –in fact, petitioner explains that there was an increase in the amount assessed in the PAN vis-à-vis the FAN due to interest. More so, to belie the claim of respondent that it was not very much participative in submitting the needed documents for audit, petitioner enumerates the documents it forwarded with the Bureau of Internal Revenue (BIR) which, accordingly, were likewise confirmed by respondent's witness. Finally, petitioner avers that the presumption of regularity in the performance of respondent's official duties cannot stand in the face of positive evidence of irregularity or failure to perform a duty.

The Court finds respondent's Motion for Reconsideration bereft of merit.

With regard to respondent's claim that petitioner was duly apprised of the results of the investigation, the Court, again, reiterates that the BIR had never, at any point, explained or showed how the bases for the withholding tax assessments were arrived at. As exhaustively shown in the assailed Decision, respondent failed to provide the factual and legal bases for his deficiency assessments against petitioner thereby violating its right to due process of law, as recognized under Section 228 of the NIRC of 1997, as amended, as implemented by Sections 3.1.2 and 3.1.4 of Revenue Regulations No. 12-99, as amended. This is the precise reason why the Court declared the subject assessments null and void, and not due to petitioner's lack of knowledge on the investigation conducted by respondent or his failure to provide the documents requested by petitioner.

In the same vein, with regard to respondent's claim that there was a reduction on the assessment made against petitioner due to the latter's filing of a protest, the Court reiterates the ruling made in the Decision assailed that the respective basis of tax due in the subject PAN, Formal Letter of Demand (FLD) and FAN remains the same, to wit:

> "It is noteworthy that anent the deficiency withholding taxes, **the accompanying *Details of Discrepancies* to the said FLD and FANs dated May 31, 2007 substantially reiterated the above-quoted *Details of Discrepancies* in the undated PAN, without any**

explanation on how the conclusions therein were arrived at, and without due consideration of petitioner's requests for more information as embodied in its *Reply*, to wit:

"Assessment No. LTDO 122-WC-2003-0002

Deficiency Withholding tax Compensation — P4,051,013.66

Per evaluation of expenses subjected to withholding tax compensation resulted to a discrepancy of P14,997,755.97 which has a tax effect of P2,377,054.33. This is in violation against Sec. 80(A) of the NIRC in relation with Secs. 2.78 & 2.80 of Revenue Regulations No. 2-98.

Assessment No. LTDO 122-WE-2003-00004

Deficiency Expanded Withholding Tax (EWT) — P1,909,344.48

Various income payments were not subjected to withholding tax as per Revenue Regulations Nos. 2-98; 6-2001; 12-2001; 14-2002; 17-2003 and 30-2003, described as follows:

Nature of income Payments	***Tax Due***
Income payments no EWT at 1%	116,939.47
Income payments no EWT at 2%	16,078.51
Income payments no EWT at 5%	1,474.19
Professional fees no EWT at 10%	149,783.11
Purchases	55,621.86
Fumigants & repellants/oils & gasoline	62,894.88
Freight & handling	139,500.31
Promotion & advertising	12,529.70
Computer progress services	500
Other cost of wheat	427,061.78
Brokerage	1,420.15
Audit & legal fees	22,664.27
Increase in PPE	106,093.62
Total	**1,112,561.85**

Assessment No. LTDO 122-WF-2003-00002

Deficiency Final Tax — P18,831,129.77

Interest expense payable to Offshore Banking Units (OBU) are subject to final tax as per Section 2.57-1 (H)(1) of RR Nos. 2-98.

Assessment No. LTDO 122-WR-2003-00002

Deficiency Fringe Benefits tax — P284,889.99

Verification of various expenses, such as personal expenses, membership fees and other benefits are found to be subject Fringe Benefits tax in accordance with Sec. 33 of NIRC, in relation with Sec. 2.33(A)(c), (B)(3) and (6) of RR 3-98 and 2.57.1(J) of RR 3-98."

If at all, the only differences from the *Details of Discrepancies* in the undated PAN vis-à-vis the foregoing are: (1) there are now assessment numbers; and (b) the amounts were adjusted, but were brought about only by reason of the imposition of additional interests. It must be emphasized that the respective basic tax due remains the same."[1] *(Emphases supplied)*

Accordingly, there is no truth in respondent's claim that there was a reduction on the assessment made against petitioner due to the latter's filing of a protest.

Lastly, while this Court agrees with respondent contention that "tax assessments by tax examiners are presumed correct and made in good faith; and that the taxpayer has the duty of proving otherwise," the said presumption is however drawn from the premise that the assessment was based on sufficient evidence which, unfortunately, is not present in the instant case. As pointed out earlier, petitioner was not duly informed by respondent of the factual basis of the subject withholding tax assessments. Thus, the Court has no recourse but to render the subject assessments null and void.

[1] Decision, pp. 37 to 39.

In view of the foregoing discussion, this Court finds no cogent reason to disturb or modify the Decision assailed by respondent.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 26 August 2020), is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice