REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

THE RESIDENCES AT GREENBELT CONDOMINIUM CORPORATION, *Petitioner,*	**CTA Case No. 9942**
	Members:
	DEL ROSARIO, *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 27 2023 ; 2:30PM

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RESOLUTION

REYES-FAJARDO, ***J.***:

In the Decision dated May 26, 2023, the deficiency tax assessments issued by the Bureau of Internal Revenue against petitioner for Taxable Year (TY) 2017 were nullified because the former failed to address in its Final Assessment Notice and Formal Letter of Demand (FLD/FAN), the defenses articulated by the latter in its reply or response on the Preliminary Assessment Notice (PAN). We decreed:

> **WHEREFORE**, the Petition for Review dated October 1, 2018, filed by The Residences at Greenbelt Condominium Corporation, is **GRANTED**. Accordingly, the Final Assessment Notice dated December 27, 2017, embodying the deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for taxable year 2014 in the total amount of ₱13,184,036.64, is **CANCELLED** and **WITHDRAWN**.

> Respondent, his representatives, agents, or other persons acting in his behalf are **ENJOINED** from implementing the collection of deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for taxable year 2014, in the total amount of ₱13,184,036.64 against petitioner.
>
> **SO ORDERED.**

In his Motion for Reconsideration filed on June 16, 2023,[1] respondent argues: (1) Revenue Memorandum Order (RMO) No. 26-2016[2] permits the issuance of the FLD/FAN within fifteen (15) days from date of receipt of the PAN; and (2) the BIR may still address the taxpayer's defenses raised in the PAN, in the Final Decision on Disputed Assessment (FDDA). On these accounts, respondent concludes that the BIR did *not* offend petitioner's right to due process on assessment, for failure to consider petitioner's defenses in its reply to the PAN, in the FLD/FAN.

By way of Comment-Opposition [To the Motion for Reconsideration dated 13 June 2023],[3] filed on July 11, 2023, petitioner ripostes that the BIR's failure to answer in the Formal Letter of Demand and Final Assessment Notice (FLD/FAN), the defenses embodied in its reply to the PAN, equates to violation of petitioner's right to due process, following *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon)*.[4] Additionally, it is allowed by law to appeal before the Court, respondent's inaction on disputed assessment.

The Motion lacks merit.

First. True, item II (3)[5] of RMO No. 26-2016 allows the BIR to issue the FLD/FAN against the taxpayer, irrespective of whether the latter replied on the PAN. However, when the taxpayer puts forward

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1 Docket, pp. 1042-1047.

2 SUBJECT: Policies and Guidelines in Handling Disputed Assessments.

3 Docket, unpaginated.

4 G.R. Nos. 201398-99, October 3, 2018.

5 II. Policies and Guidelines

...

3. Formal Letter of Demand and Final Assessment Notice (FLD)/(FAN) shall be issued fifteen (15) days from date of receipt by the taxpayer of the PAN, whether the same was protested or not.

its defenses, through a reply or response on the PAN, *Avon*[6] commands that the BIR must give reason why said defenses are lacking in merit. The BIR's FLD/FAN issued against petitioner failed to satisfy said dictum laid down in *Avon,* resulting in transgression of the latter's right to due process.

Second. The defenses posed by petitioner in its reply or response on the PAN, must be answered by the BIR in the FLD/FAN, and *not* in the FDDA. *For one,* the FDDA[7] is issued by the BIR in ruling on the taxpayer's administrative protest on the *FLD/FAN.*[8] The FDDA is *not* meant as the answer to the taxpayer's reply or response on the PAN. *For another,* should the BIR find the taxpayer's explanation in its reply or response on the PAN unsatisfactory, the BIR would issue the FLD/FAN.[9] Necessarily, the duty to give reason as to why the taxpayer's defenses against the PAN, must be immediately explained in the FLD/FAN. *Besides,* to subscribe with respondent's reasoning that the taxpayer's defenses in its response or reply on the PAN, may still be belatedly addressed in the FDDA would defeat the very purpose for which the mechanism on the PAN and the chance to respond thereto were made—an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of the FAN,[10] much more, the FDDA.

WHEREFORE, respondent's Motion for Reconsideration, filed on June 16, 2023, is **DENIED**, for lack of merit. The Decision dated May 26, 2023, is **AFFIRMED**.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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6 *Supra* note 4.

7 Subsection 3.1.6. of Revenue Regulations No. 18-2013 describes FDDA as follows: "3.1.6 *Administrative Decision on a Disputed Assessment.* — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision."

8 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

9 See last paragraph, Section 3.1.1. of RR No. 18-2013.

10 See *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue,* G.R. No. 249153, September 12, 2022.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice