Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

THIRD DIVISION

AYALA HOTELS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8438

Members:

BAUSTISTA, Chairperson
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:
SEP 2 9 2015
11:32 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J*.:

For resolution is respondent's "Motion for Reconsideration (Re: Decision Promulgated 31 March 2015)" (respondent's "Motion for Reconsideration") filed on April 27, 2015, praying for this Court to reconsider its Decision dated March 31, 2015, and petitioner's Opposition thereto filed on June 11, 2015.

As found by this Court in its Decision, petitioner received a formal letter of demand and assessment notices from respondent on November 22, 2011 and thus it filed its protest against the same on December 20, 2011; however on February 6, 2012, within the sixty (60) day period provided for under the 1997 National Internal Revenue Code[1] ("Tax Code") for filing all relevant documents to support the protest, petitioner received from respondent a Final Decision on Disputed Assessment "(FDDA") dated an even earlier January 25, 2012.[2] The validity of the FDDA issued by respondent before is therefore made the summam quaestionis of the instant Motion.

Respondent in its Motion for Reconsideration reasons that due process of law simply means giving opportunity to be heard before judgment is rendered[3]; when a party has been given the opportunity to be heard and present its case,

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[1] Section 228
[2] Decision, pages 2 to 4.
[3] Respondent's Motion for Reconsideration, paragraph 1.

then the due process requirement under our law has already been satisfied[4]; and that it must be emphasized that not only the Final Decision on Disputed Assessment has stated, "with certainty", the facts, rules and regulations and jurisprudence on which it is based, in compliance with the requirements of Section 228 of the Tax Code and relevant issuances of the Bureau of Internal Revenue, but also the Final Assessment Notices and Preliminary Assessment Notice, which allegedly petitioner failed to refute.[5]

After considering the above, as well as the records of this case and respondent's averments in its Opposition, the Court finds respondents reasons unacceptable and is therefore not persuaded to reverse its Decision dated March 31, 2015, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** The Final Decision on Disputed Assessment issued by respondent on January 25, 2012 set aside and hereby declared null and void and of no legal effect precluding respondent from collecting the P15,959,747.90 assessed deficiency taxes for the CY-ending December 31, 2008."

Due process does not only require "simply an opportunity to be heard", it must be a **real** opportunity. The Supreme Court has held time and again that in administrative proceedings, due process must include ***a real opportunity to be heard***.[6] In this case, the Court finds that no real opportunity to be heard was given petitioner. The FDDA was issued by respondent prematurely in violation of petitioner's right to submit evidence in support of its arguments under Section 228 of the Tax Code, which provides that a taxpayer has sixty (60) days from the filing of its protest to submit all relevant documents to support it, to wit:

> "***SEC. 228. Protesting Assessment. -***
>
> xxx xxx xxx
>
> "Such Assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. ***Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.***" (Emphasis Ours.)

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[4] Respondent's Motion for Reconsideration, paragraph 2.
[5] Respondent's Motion for Reconsideration, paragraph 10.
[6] Montoya vs. Varilla, G.R. No. 180146 (2008); Fabella v. Court of Appeals, 346 Phil. 940, (1997); Air Manila, Inc. vs. Balatbat, 38 SCRA 489, 492, April 29, 1971, per Reyes, J. B. L., J.

We find that, by failing to observe the above statutory period, respondent has denied petitioner a real opportunity to be heard, hence the due process requirement under our law has not been satisfied. It is clear from the above provision of law that the period was granted to the taxpayer and is not for the taxing authority to waive.

It bears stressing that respondent admits the importance of petitioner's supporting documents to its protest through the statement of its own Revenue Officer, Ms. Neriza M. Manuel of the Large taxpayer's Division of the City of Makati, when she testified as follows:[7]

> ATTY. REYES
>
> Q Going back to the 3 tax types that you mentioned a while ago, do you agree with me that this assessment can be resolved through the submission of supporting documents, meaning the issues involved are factual?
>
> MS. MANUEL
>
> A Yes, sir.

It was not fair for respondent to cut short petitioner's period to submit its supporting documents, especially when it acknowledges itself the importance of said supporting documents to petitioner's protest. The Civil Code is explicit that every person must, in the exercise of his rights and in the observance of his duties, act with justice, give everyone his due, and observe honesty and good faith8; and mandates that every public officer or employee observe due process of law.[9] The Court expects nothing less.

Significantly, this Court is particularly bothered by the following statement in paragraph 10 of its Motion for Reconsideration:

> "10. Further, it must be emphasized that not only the Final Decision on Disputed Assessment has stated, with certainty, the facts, rules and regulations and jurisprudence on which it is based, in compliance with the requirements of Section 228 of the Tax Code and relevant issuances of the Bureau of Internal Revenue, but also the Final Assessment Notices and Preliminary Assessment Notice."

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[7] Transcript of Stenographic Notes dated October 24, 2013, pages 2-4.
[8] Section 19.
[9] Section 32.

The above statement suggests that respondent believes that it does not have to wait for a taxpayer to submit its evidence in the form of supporting documents before it proceeds to rule on the latter's protest, because the Final Assessment Notice and even the Preliminary Assessment Notice are already complete. This would reveal not only a misstep in due process, but a prejudgment of the protest altogether. Sadly, this philosophy is also apparent from the testimony of respondent's Ms. Neriza M. Manuel, when she testified as a Revenue Officer that the Bureau of Internal Revenue doesn't usually request for additional documents in writing because the assessment is already in final assessment, to wit:[10]

> ATTY. REYES
>
> Q And in question no. 26, you mentioned that after the receipt of the Protest letter, you requested on several occasions from the petitioner to submit the supporting documents in support of the protest?
>
> MS. MANUEL
>
> A Yes, sir.
>
> ATTY. REYES
>
> Q Do you have proof to show that you made such request from the petitioner?
>
> MS. MANUEL
>
> A Actually, the request is only through telephone and on various meetings with the accountant.
>
> ATTY. REYES
>
> Q So, you are saying that you do not have any written request from the petitioner?
>
> MS. MANUEL
>
> A None, sir.
>
> ATTY. REYES
>
> Q Do you have any follow up, do you have any proof that you made a follow up on this written request?
>
> MS. MANUEL

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[10] Transcript of Stenographic Notes dated October 24, 2013, *supra*.

A We don't usually request for additional documents in writing because the assessment is already in final assessment.

The Court admonishes respondent to observe taxpayers' procedural due process in their protest of assessments as provided in the Tax Code. It furthermore reminds respondent of the "cardinal primary requirements" of procedural due process in administrative proceedings as laid down in the landmark case of Ang Tibay *vs.* Court of Industrial Relations[11] : "(1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof; (2) The tribunal must consider the evidence presented; (3) The decision must have something to support itself; (4) The evidence must be substantial. Substantial evidence means such reasonable evidence as a reasonable mind accept as adequate to support a conclusion; (5) The decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) The tribunal or body or any of its judges must act on its own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; (7) The Board or body should, in all controversial questions, render its decision in such manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered." This is hornbook doctrine.

Verily, it is not enough that an opportunity to be heard be given. The tribunal must consider the evidence presented. Only then can there be a real opportunity to be heard.

In view of the foregoing, this Court confirms its finding that the FDDA issued by respondent to petitioner dated January 25, 2012 is null and void for having been issued in violation of petitioner's right to due process.

WHEREFORE, premises considered, respondent Commissioner of Internal Revenue's "Motion for Reconsideration (Re: Decision Promulgated 31 March 2015)" is hereby **DENIED** for lack of merit; the Final Decision on Disputed Assessment issued by respondent on January 25, 2012 remains null and void and of no legal effect.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[11] 69 Phil. 635 (1940)

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice