REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KARINA, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9204

Members:

Castañeda, Jr., *Chairperson,*
and
Bacorro-Villena, *JJ.*

Promulgated:
SEP 10 2020 1:40 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is a *Petition for Review* filed by petitioner Karina, Inc., against respondent Commissioner of Internal Revenue on November 20, 2015, praying that judgment be rendered declaring null and void the *Assessment Notices* issued against petitioner for deficiency income tax, value-added tax (VAT), improperly accumulated earnings tax (IAET) and compromise penalty, in the aggregate amount of ₱4,127,445.92, inclusive of surcharges and interests, for taxable year 2011.[1]

THE PARTIES

Petitioner is a domestic corporation that is duly organized and registered under the laws of the Philippines.[2]

[1] Statement of the Case, Pre-Trial Order dated February 28, 2017, Docket – Vol. II, p. 576.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 511.

Respondent is the duly appointed Commissioner of Internal Revenue empowered under the National Internal Revenue Code (NIRC) to authorize the examination of any taxpayer and the assessment of the correct amount of tax as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue (BIR). He holds office at the 5th Floor, BIR National Office Bldg., Agham Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 6, 2012, petitioner received the *Letter of Authority* (LOA) *No. 43A-2012-00001178/eLA201100027692* dated November 27, 2012, issued by OIC Regional Director Jonas DP Amora, authorizing Revenue Officer (RO) Rhea Domingo and Group Supervisor Maricar Favis of Revenue District No. 43A-East Pasig, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2011 to December 31, 2011.[4]

Subsequently, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated January 8, 2015 on even date, together with *Details of Discrepancies*, for taxable year 2011, signed by Regional Director Alfredo V. Misajon of Revenue Region No. 7, Quezon City.[5]

On January 23, 2015, petitioner filed its letter dated January 21, 2015, as a reply to the said PAN.[6]

On the same date, respondent issued the *Formal Letter of Demand* (FLD), together with the *Audit Result/Assessment Notices* and *Details of Discrepancies,* assessing petitioner of deficiency income tax, VAT, IAET and compromise penalty, inclusive of

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[3] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. II, p. 511.
[4] Par. 4(a), Stipulation of Facts, JSFI, Docket – Vol. II, p. 512; Exhibit "R-1", BIR Records – Folder 2, p. 2; Exhibits "P-4" and "P-4-1", Docket – Vol. I, p. 201; Q-9&A, Exhibit "R-12", Docket– Vol. I, p. 467; Q-18&A, Exhibit "P-93", Docket – Vol. II, p. 621.
[5] Par. 4(b), Stipulation of Facts, JSFI, Docket – Vol. II, p. 512; Exhibits "P-9" to "P-10", Docket – Vol II, pp. 881 to 884; Exhibit "R-7", BIR Records – Folder 2, pp. 224 to 227; Q-38&A, Exhibit "P-93", Docket – Vol. II, p. 624.
[6] Exhibit "P-11", Docket – Vol. I, pp. 210 to 216.

surcharges and interests, for taxable year 2011.[7] Thus, on February 23, 2015, petitioner filed its administrative protest by way of a request for reinvestigation.[8] Subsequently, on April 24, 2015, petitioner submitted certain documents relevant to and in support of the said protest.[9]

PROCEEDINGS BEFORE THIS COURT

Claiming inaction on the part of respondent, petitioner filed the instant *Petition for Review* on November 20, 2015.[10] The instant case was initially raffled to this Court's First Division.

Respondent filed his *Answer* and *Supplemental Answer* on January 25, 2016[11] and January 28, 2016,[12] respectively. In both *Answers*, respondent only raised negative defenses, but admitted the existence of the following documents, to wit: (1) the LOA dated November 27, 2011; (2) the PAN dated January 8, 2015; and (3) the FLD dated January 23, 2015.

The pre-trial conference was initially set on April 7, 2016.[13] However, after respondent's filing of three (3) *Motions for Resetting of Pre-Trial Conference*,[14] the pre-trial conference was finally reset to, and held on, October 6, 2016.[15] In the meantime, petitioner's *Pre-Trial Brief* was filed on April 4, 2016,[16] while *Respondent's Pre-Trial Brief* was submitted through registered mail on September 30, 2016.[17]

On October 24, 2016, the parties submitted their *Joint Stipulations of Facts and Issues*,[18] which was approved in the

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[7] Par. 4(c), Stipulation of Facts, JSFI, Docket – Vol. II, p. 512; Exhibits "R-8" and "R-9", BIR Records, pp. 248 to 256; Exhibits "P-15" to "P-18", Docket – Vol. II, pp. 885 to 888.
[8] Exhibit "P-86", Docket – Vol. I, pp. 362 to 378.
[9] Exhibit "P-89", Docket – Vol. I, pp. 414 to 416.
[10] Docket – Vol I, pp. 12 to 42.
[11] Docket – Vol I, pp. 140 to 143.
[12] Docket – Vol. I, pp. 146 to 149.
[13] *Notice of Pre-Trial Conference* dated January 27, 2016, Docket – Vol. I, pp. 144 to 145.
[14] Docket – Vol. I, pp. 155 to 157; Docket – Vol. I, pp. 439 to 442; Docket – Vol. I, pp. 445 to 448.
[15] Order dated August 4, 2016, Docket – Vol. I, p. 450; Order dated September 26, 2016, Docket – Vol. I, p. 456; Minutes of the hearing held on, and Order dated, October 6, 2016, Docket – Vol. I, pp. 491 to 495.
[16] Docket – Vol. I, pp. 417 to 432.
[17] Docket – Vol. I, pp. 458 to 462.
[18] Docket – Vol. II, p. 511 to 526.

Resolution dated November 9, 2016,[19] thereby terminating the Pre-Trial.

On December 1, 2016, petitioner filed a *Motion for the Issuance of an Order for the Bureau of Internal Revenue to Forward the BIR Dockets to the Honorable Court of Tax Appeals with Motion to Schedule Another Hearing for the Commissioner's Hearing.*[20] Thus, in the Order dated December 5, 2016,[21] the Court granted the said *Motion*; and directed respondent to forward the *BIR Records* within ten (10) days from notice. Respondent then submitted the same through registered mail on December 9, 2016.[22]

On February 28, 2017, the Court issued the Pre-Trial Order.[23]

Trial ensued.

On April 23, 2018, petitioner filed a *Motion to Cancel Final Assessment Notices.*[24] Respondent filed his *Opposition (Re: Motion to Cancel Final Assessment Notices)* through private courier on May 10, 2018.[25] In the Resolution dated August 7, 2018,[26] however, the Court denied the said *Motion to Cancel Final Assessment Notices.*

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Angela H. Japitana,[27] petitioner's Accountant; and (2) Ms. Myra Celeste O. Dabalos,[28] the Court-commissioned Independent Certified Public Accountant (ICPA).[29]

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[19] Docket – Vol. II, p. 529.
[20] Docket – Vol. II, pp. 544 to 545.
[21] Docket – Vol. II, pp. 546 to 547.
[22] *Compliance* dated December 2, 2016, Docket – Vol. II, pp. 548 to 549.
[23] Docket – Vol. II, pp. 576 to 593.
[24] Docket – Vol. II, pp. 744 to 749.
[25] Docket – Vol. II, pp. 758 to 764.
[26] Docket – Vol. II, pp. 853 to 856.
[27] Exhibit "P-92", Docket – Vol. I, pp. 161 to 194; Exhibit "P-93", Docket – Vol. II, pp. 617 to 650; Minutes of the hearing held on, and Order dated, May 9, 2017, Docket – Vol. II, pp. 677 to 680.
[28] Exhibit "P-114", Docket – Vol. II, pp. 903 to 929; Minutes of the hearing held on, and Order dated, April 10, 2019, Docket – Vol. II, pp. 930 to 931.
[29] *Oath of Commission* dated March 22, 2017, Docket – Vol. II, p. 657; Exhibit "P-91", Docket – Vol. II, pp. 608 to 612; Minutes of the hearing held on, and Order dated, March 22, 2017, Docket – Vol. II, pp. 653 to 656, and 658 to 659, respectively.

On September 12, 2018, petitioner filed its *Formal Offer of Documentary Evidence*.[30]

In the Order dated September 28, 2018,[31] the instant case was transferred to this Court's Second Division.

Petitioner filed an *Amended Formal Offer of Documentary Evidence* on April 15, 2019.[32] No comment was filed thereto by respondent.[33] In the Resolution dated May 23, 2019,[34] the Court admitted petitioner's Exhibits, *except* for the following:

1. Exhibits "P-99-70", "P-99-88", "P-103-53", and "P-105-15", for being blurred and unreadable; and
2. Exhibits "P-100-5" to "P-100-104", for not being found in the records of the case."

Respondent likewise presented his documentary and testimonial evidence. As for his testimonial evidence, respondent offered the testimonies of the following Revenue Officers of the BIR, namely: (1) Ms. Rhea Domingo;[35] (2) Ms. Lilibeth Nazario;[36] and (3) Mr. Joel Luces.[37]

The *Respondent's Formal Offer of Evidence* was filed on July 29, 2019.[38] Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on August 13, 2019.[39] In the Resolution dated September 3, 2019,[40] the Court admitted respondent's exhibits; and ordered both parties to submit their respective memorandum within thirty (30) days from notice. Jz

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[30] Docket – Vol. II, pp. 858 to 879.
[31] Docket – Vol. II, p. 890.
[32] Docket – Vol. II, pp. 932 to 963.
[33] Records Verification dated April 30, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 968.
[34] Docket – Vol. II, pp. 970 to 971.
[35] Exhibit "R-12", Docket – Vol. I, pp. 466 to 469; Minutes of the hearing held on, and Order dated, July 3, 2019, Docket – Vol. II, pp. 972 to 974.
[36] Exhibit "R-13", Docket – Vol. I, pp. 473 to 478; Minutes of the hearing held on, and Order dated, July 24, 2019, Docket – Vol. II, pp. 980 to 981.
[37] Exhibit "R-14", Docket – Vol. I, pp. 482 to 486; Minutes of the hearing held on, and Order dated, July 24, 2019, Docket – Vol. II, pp. 980 to 981.
[38] Docket – Vol. II, pp. 982 to 987.
[39] Docket – Vol. II, pp. 988 to 989.
[40] Docket – Vol. II, pp. 991 to 992.

Petitioner filed its *Memorandum* on October 24, 2019.[41] Respondent, however, failed to file his memorandum.[42]

The instant case was considered submitted for decision on November 4, 2019.[43]

THE ISSUES RAISED BY THE PARTIES

The parties submitted the following issues[44] for this Court's resolution, to wit:

> "1. Whether or not the Audit Results/Assessment Notices (FANs) all dated January 23, 2015 were issued within the prescriptive period.
>
> 2. Whether or not the right of respondent to assess petitioner for alleged deficiency internal revenue taxes had already lapsed.
>
> 3. Whether or not petitioner is liable to pay Deficiency Income Tax (IT), Value-Added Tax (VAT), Improperly Accumulated Earnings Tax (IAET), and Compromise Penalty (CP) assessments for taxable year 2011 in the aggregate amount of P4,127,445.92.
>
> 4. Whether or not the assessment notices were issued in violation of the NIRC of 1997, as amended[,] and petitioner's right to due process of law.
>
> 5. Whether or not the deficiency assessments against petitioner have factual or legal bases."

Petitioner's arguments:

Petitioner argues that the *Final Assessment Notices* were issued outside the prescriptive period; that petitioner is not liable to pay the deficiency assessments and compromise penalty for taxable year

[41] Docket – Vol. II, pp. 999 to 1025.
[42] Records Verification dated October 25, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 1026.
[43] Docket – Vol. II, p. 1027.
[44] Issues to be Tried and Resolved, JSFI, Docket – Vol. II, pp. 512 to 513.

2011; and that the assessments were issued in violation of the NIRC of 1997, and petitioner's right to due process.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

Section 228 of the NIRC of 1997 provides, in part, as follows:

> "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**: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **Within a period to be prescribed by 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.**
>
> xxx xxx xxx. *(Emphases added)*

To implement the foregoing provision, Section 3.1.1 of Revenue Regulations No. 12-99,[45] as amended by RR No. 18-2013,[46] provides as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** – *jk*

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[45] SUBJECT: 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.

[46] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

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 shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment**. It shall show in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof).

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 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 findings 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." *(Emphases ours)*

As earlier cited, Section 228 of the NIRC of 1997, states that the taxpayer shall be required to respond to the PAN within a period to be prescribed by implementing rules and regulations. In turn, Section 3.1.1 of RR No. 12-99, as amended, and **as part of due process in the issuance of tax assessments**, provides that a taxpayer has fifteen (15) days within which to reply to the PAN, before the said taxpayer can be considered in default. After the lapse of the said period, it is only then that the BIR shall issue an FLD/FAN. *gr*

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[47] the Supreme Court said:

> "**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void</u>. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**" *(Emphases and underscoring added)*

Based on the foregoing doctrinal pronouncements, respondent or the BIR is mandated to perform its assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. In case respondent or the BIR fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect.

In this case, the subject PAN dated January 8, 2015 was received by petitioner on even date.[48] By virtue of the aforequoted Section 3.1.1 of RR No. 12-99, as amended, petitioner had fifteen (15) days from such receipt of the said PAN, or until January 23, 2015, within which to respond thereto. However, respondent issued

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[47] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[48] Par. 4(b), Stipulation of Facts, JSFI, Docket – Vol. II, p. 512; Exhibits "P-9" to "P-10", Docket – Vol II, pp. 881 to 884; Exhibit "R-7", BIR Records – Folder 2, pp. 224 to 227; Q-38&A, Exhibit "P-93", Docket – Vol. I, p. 624.

the subject FLD on January 23, 2015,[49] which was the last day of the said 15-day period for petitioner to respond thereto. RO Nazario testified that the said FLD was sent to petitioner through registered mail on the same day that the said notice was issued,[50] while petitioner claims that it received the subject FLD on the day that it filed its position paper to the PAN on January 23, 2015.[51] Evidently, respondent did not wait for petitioner to reply to the PAN before issuing the subject FLD and the *Assessment Notices*. Thus, the said FLD and *Assessment Notices* were clearly issued prematurely, thereby depriving petitioner of the opportunity to be heard on the PAN, in violation of the due process requirement in the issuance of tax assessments.

In view of the respondent's violation of petitioner's right to due process, the subject assessments are thus considered null and void. As such, the said deficiency tax assessments bear no valid fruit,[52] and must not be given any effect. Such being the case, it becomes unnecessary to address the remaining issues raised by the parties.

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**.

Accordingly, the FLD, with the attached *Audit Result/Assessment Notices*, all dated January 23, 2015, assessing petitioner of deficiency income tax, VAT, IAET, and compromise penalty, in the aggregate amount of ₱4,127,445.92, inclusive of surcharges and interests, for taxable year 2011, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

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[49] Par. 4(c), Stipulation of Facts, JSFI, Docket – Vol. II, p. 512; Exhibits "R-8" and "R-9", BIR Records, pp. 248 to 256; Exhibits "P-15" to "P-18", Docket – Vol. II, pp. 885 to 888.
[50] Transcript of Stenographic Notes (TSN) at the hearing held on July 24, 2019, pp. 14 and 15.
[51] Q-47&A to Q-50&a, Exhibit "P-93", Docket – Vol. II, pp. 626 to 627; Exhibit "P-11-1", Docket – Vol. I, p. 210.
[52] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.,* G.R. Nos. 215534 and 215557, April 18, 2016.

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.
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.

ROMAN G. DEL ROSARIO
Presiding Justice