REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

IZONE TECHNOLOGIES PHILIPPINES, Petitioner,	**CTA CASE NO. 8696**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 1 8 2019 9:43am

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AMENDED DECISION

MINDARO-GRULLA, *J.*:

For this Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Decision dated 29 April 2019)**, filed on May 22, 2019, with petitioner's **Comments/Opposition to Motion for Partial Reconsideration of Respondent**, filed through registered mail on June 21, 2019 and received by this Court on July 3, 2019; and

2. petitioner's **Motion for Reconsideration**, filed through registered mail on May 24, 2019 and received by this Court on May 30, 2019, without respondent's comment despite notice as per Records Verification dated July 11, 2019, pursuant to the Resolution dated July 16, 2019.

The parties seek reconsideration of the Court's Decision (assailed Decision)[1] promulgated on April 29, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for TY 2008 covering deficiency FBT in the amount of ₱195,199.14 is **CANCELLED and SET ASIDE** while the deficiency EWT and DST assessments are **UPHELD.**
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> Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWO MILLION FIVE HUNDRED THIRTY-FOUR THOUSAND TWO HUNDRED EIGHTY-FOUR PESOS AND NINETY-TWO CENTAVOS (₱2,534,284.92)** representing basic deficiency EWT and DST for TY 2008, inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as shown below:

	EWT	**DST**	**Total**
Basic Tax	₱ 408,807.88	₱ 74,756.00	₱ 483,563.88
25% Surcharge	102,201.97	18,689.00	120,890.97
20% Deficiency Interest:			
01/16/2009 to 02/13/2012 (₱408,807.88 x 20% x 1,124/365 days)	251,780.85		251,780.85
01/06/2009 to 02/13/2012 (₱74,756.00 x 20% x 1,134/365 days)		46,451.13	46,451.13
Total Amount Due, February 13, 2012	**₱ 762,790.70**	**₱139,896.13**	**₱ 902,686.83**
Deficiency interest (02/14/2012 to 12/31/2017):			
(₱408,807.88 x 20% x 2,148/365 days)	481,161.27		481,161.27
(₱74,756.00 x 20% x 2,148/365 days)		87,986.79	87,986.79
Delinquency interest (02/14/2012 to 12/31/2017):			
(₱762,790.70 x 20% x 2,148/365 days)	897,794.20		897,794.20
(₱139,896.13 x 20% x 2,148/365 days)		164,655.83	164,655.83
Total Amount Due, December 31, 2017	**₱2,141,746.17**	**₱392,538.75**	**₱2,534,284.92**

> In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) per annum on the unpaid EWT and DST of ₱762,790.70 and ₱139,896.13, respectively, totaling ₱902,686.83 as of February 13, 2012, as determined above, computed from January 1, 2018 until full payment thereof pursuant to

[1] Docket vol. II, pp. 1187-1214.

Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) Law, and as implemented by RR No. 21-2018.

SO ORDERED."[2]

Respondent's Motion for Partial Reconsideration

In assailing the aforesaid Decision, respondent argues that the Court erred in cancelling the Fringe Benefits Tax (FBT) deficiency assessment in the amount of ₱195,199.14. He contends that even though the FBT assessment was already beyond the three-year period, this does not mean that the government is barred in collecting the tax deficiencies of petitioner. Respondent alleges that the Government cannot and must not be estopped particularly in matters involving taxes. Moreover, respondent submits that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.

On the other hand, petitioner contends that the Court did not err in deciding that the FBT assessment should be cancelled and withdrawn as it was issued by respondent beyond the three (3)-year prescriptive period. According to petitioner, since there was no agreement in writing entered into by respondent and petitioner as to the assessment of the FBT after the 3-year prescriptive period, the deficiency FBT assessment made by respondent against petitioner for taxable year 2008 is clearly void.

Petitioner argues that respondent cannot enforce a void tax assessment in the guise of the principle of no estoppel against the government for the errors or neglect of its agents. It contends that to allow the collection of a void tax assessment is like taking property without due process of law and violates the basic sense of justice.

The Court finds respondent's arguments bereft of merit.

In the assailed Decision, the Court cancelled and withdrew the deficiency FBT assessment for being made beyond the 3-year prescriptive period to assess, to wit:

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[2] Docket vol. II, pp. 1212-1213.

> "As to the deficiency FBT assessment, the Details of Discrepancy attached to the FLD shows that the deficiency FBT assessment only pertains to the first (1^{st}) quarter of TY 2008. The last day for the filing of petitioner's FBT return for the 1st quarter of TY 2008 was on April 10, 2008. However, the records show that it was actually filed and the corresponding FBT was paid by petitioner on April 9, 2008. Hence, respondent only had until April 10, 2011 to assess petitioner with deficiency FBT for the 1st quarter of 2008. Clearly, respondent's deficiency FBT assessment, which was received by petitioner on April 10, 2012, is already way beyond the three-year prescriptive period, and must then be cancelled and withdrawn."

It is clear that the right of respondent to assess petitioner for deficiency FBT has already prescribed and petitioner is not liable to pay the deficiency tax assessment.

It must be remembered that the law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.[3] Although taxes are the lifeblood of the government, their assessment and collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.[4]

Considering the foregoing, the Court finds no merit in respondent's Motion for Partial Reconsideration.

In its Comments/Opposition to Motion for Partial Reconsideration of Respondent, petitioner avers that its collaborating counsel had to get a copy of respondent's Motion for Partial Reconsideration from the Court so that she can prepare its comments/opposition thereto as she was not furnished by respondent of the same despite her entry of appearance in this case with notice to respondent's counsel. Hence, petitioner prays that respondent's counsel be directed to furnish the collaborating counsel

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[3] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

[4] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

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of petitioner with copies of all pleadings that they filed in court for due process.

However, the rule is that when a party is represented by two (2) or more lawyers, notice to one (1) suffices as a notice to the party represented by him.[5] Records show that respondent served a copy of his Motion for Partial Reconsideration by registered mail[6] to Atty. Norlando B. Javier, who is also petitioner's counsel in this case. Without formally withdrawing his appearance, Atty. Javier continues to be the counsel of petitioner. Courts may not presume that the counsel of record has been substituted by a second counsel merely from the filing of a formal appearance by the latter. In the absence of compliance with the essential requirements for valid substitution of counsel of record, the court can safely presume that he continuously and actively represents his client.[7]

Hence, respondent was not in error when he only served a copy of the motion to Atty. Javier who is still the counsel of record of petitioner and the Court cannot direct respondent to likewise furnish petitioner's collaborating counsel with copies of all pleadings respondent filed with the Court.

Petitioner's Motion for Reconsideration

Petitioner moves for reconsideration of the assailed Decision based on the following grounds:

1. The Honorable Court erred in not finding that the subject tax assessments on petitioner are null and void for having been issued by the respondent in violation of the right of petitioner to due process;

2. The Honorable Court erred in finding petitioner liable for the assessed taxes when respondent was not able to prove their validity;

3. The Honorable Court erred in not considering the billing statements presented by petitioner which showed that the accounting firms and law firms it paid

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[5] *Sublay vs. National Labor Relations Commission, et al.*, G.R. No. 130104, January 31, 2000.
[6] Docket vol. II, p. 1222.
[7] *Sublay vs. National Labor Relations Commission, et al.*, G.R. No. 130104, January 31, 2000.

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are general professional partnerships and therefore not subject to expanded withholding tax;

4. The Honorable Court erred in finding petitioner liable for expanded withholding tax on rentals when the same was not in issue as it has already been paid by petitioner;

5. The Honorable Court erred in finding petitioner liable for documentary stamp taxes on advances due to an affiliate when the same was taken from comparative figures of the 2007 audited financial statements of petitioner which is not the one being audited by the Bureau of Internal Revenue (BIR) and was not a loan;

6. The Honorable Court erred in not awarding a refund to petitioner when it cancelled the fringe benefits tax which petitioner already paid;

7. The Honorable Court erred in not considering that the verified allegation of petitioner, except for its income tax return, its tax returns were all filed in 2008 and thus the final assessment notice issued on 13 January 2012 has prescribed; and

8. The Honorable Court erred in not awarding damages to petitioner for the wrongful garnishment of its bank accounts by respondent.

Petitioner contends that it was denied due process by respondent as the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), Final Assessment Notices (FAN), letters and actions of respondent show that respondent already made a decision in the tax liability of petitioner even before it can reply to the PAN. It contends that although it was given time to protest after it received the FLD and FAN, petitioner's protest was not considered at all.

Petitioner's Motion for Reconsideration is meritorious.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides the procedures to be observed both by the Commissioner of Internal Revenue (CIR), or his duly authorized

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representative, and the taxpayer concerned, in protesting an assessment. The said provision reads 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: xxx
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> xxx xxx xxx
>
> **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.
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> 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 supplied*)

In relation thereto, Section 3 of Revenue Regulation (RR) No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, provides:

> "SECTION 3.1.2 ***Due Process Requirement in the Issuance of Deficiency Tax Assessment.*** –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or 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

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> taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing 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 <u>within fifteen (15) days from date of receipt of the PAN</u>, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." (*Emphasis and underscoring supplied*)

Based on the foregoing, a taxpayer has fifteen (15) days from receipt of the PAN to respond thereto with the BIR. If during the said period, the taxpayer failed to respond to the PAN, it is only then that the CIR or his duly authorized representative can consider the taxpayer in default, and correspondingly cause the issuance of a FLD and assessment notice, which shall be subsequently served to the said taxpayer. In other words, the CIR or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and FAN. Such procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In the instant case, petitioner received a copy of the PAN dated December 26, 2011 on January 9, 2012.[8] Applying the above-quoted Section 228 of the NIRC of 1997, as amended, and Section 3.1.2 of RR No. 12-99, respondent must give petitioner a period of fifteen (15) days from date of receipt of the PAN or until January 24, 2012 to respond to the PAN. It is only after the lapse of the said period that respondent may issue the FLD and FAN. By prematurely issuing the FLD[9] on January 5, 2012 and the FAN[10] on January 13, 2012, without awaiting the lapse of the fifteen (15)-day period, respondent wantonly disregarded the mandatory due process requirement laid down under the afore-stated law and rules. What is worse is that the FLD was issued before the PAN was even received by petitioner. As a consequence, petitioner was denied of its right to due process.

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[8] Par. 4, Facts, Amended Pre-Trial Order, Docket vol. II, p. 1088.
[9] Exhibits "P-7" to "P-8", Docket vol. I, pp. 414-416.
[10] Exhibits "P-3" to "P-6", Docket vol. I, pp. 410-413.

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In the case of *Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation) [Nippo] vs. Commissioner of Internal Revenue*[11], which involves a similar issue as the instant case, Nippo received the PAN on February 5, 2009. However, without waiting for Nippo's reply to the PAN, the BIR issued the FLD/FAN on February 17, 2009. The Court *En Banc* held that Nippo's right to due process was violated by the BIR when the FLD/FAN was issued on February 17, 2009 or prior to the lapse of the 15-day period given to Nippo to respond to the PAN mandated under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013.

Similarly, in the case of *Commissioner of Internal Revenue vs. Pacific Bayview Properties, Inc.*[12], the Court *En Banc* held that the BIR denied Pacific Bayview its right to due process when the BIR issued the FLD/FAN on January 24, 2011, which is before the lapse of the 15-day period given to the taxpayer to reply to the PAN, which Pacific Bayview received on January 10, 2011.

Applying all the foregoing to the instant case, it is clear that respondent failed to observe due process when he issued the FAN and FLD even before the lapse of the 15-day period given to petitioner to file its reply to the PAN.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its 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.[13]

It must be emphasized that while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. Even as we concede to the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[14]

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[11] CTA EB No. 1273, May 17, 2016.
[12] CTA EB No. 1677, October 8, 2018.
[13] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.,* G.R. Nos. 201398-99, October 3, 2018 and *Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue,* G.R. No. 201418-19, October 3, 2018.
[14] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014.

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As to petitioner's argument that the Court erred in not awarding a refund to petitioner when it cancelled the FBT assessment which petitioner already paid, suffice it to say that petitioner failed to comply with the requisites to be entitled to a refund of erroneously or illegally collected tax provided under Sections 204(C) and 229 of the NIRC of 1997, as amended, to wit:

1. The tax has been erroneously or illegally collected, or the penalty has been collected without authority, or any sum has been excessively or in any manner wrongfully collected; and

2. The claim for refund must be filed within two (2) years from the date of payment of tax or penalty, regardless of any supervening cause that may arise after payment.

In this case, aside from the fact that there was no administrative and judicial claim for refund filed within two years from the date of payment, there was likewise no erroneously or illegally paid tax. It should be noted that that FBT return for the 1st quarter of TY 2008 was filed and the corresponding FBT was paid on April 9, 2008[15] while the FBT assessment was issued on January 5, 2012 as seen in the FLD with attached Details of Discrepancy[16]. Clearly, the FBT payment made earlier than the issuance of the deficiency FBT assessment was not in payment of the deficiency FBT assessment, which was cancelled by the Court, but was pursuant to a self-assessment of petitioner.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[17], the Supreme Court explained the assessment process as follows:

> "An assessment 'refers to the determination of amounts due from a person obligated to make payments.' 'In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997.'

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[15] Exhibits "P-14" to "P-15", Docket vol. I, pp. 423-424.
[16] Exhibits "P-7" to "P-8", Docket vol. I, pp. 415-416.
[17] G.R. No. 215957, November 9, 2016.

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> **The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government.** If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.
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> After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability. The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability." (*Emphasis supplied*)

Moreover, in the petition for review, petitioner addressed the BIR's deficiency FBT assessment as follows:

> "48. The Bureau committed grave abuse of discretion because the Petitioner has already paid all that is due the government for fringe benefits tax.
>
> Attached herewith and made an integral part of this Pleading is the original of the tax return for the payment of the fringe benefits tax as Annex H, the deposit slip for the fringe benefits tax as Annex I and the explanatory notes for the fringe benefits attached to the return as Annex J.
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> 49. Clearly from the attached return it can be seen that the Petitioner has already paid whatever is due from it for the government"[18]

From the foregoing, petitioner confirmed that it correctly paid the FBT. Clearly, there was no erroneously or illegally paid FBT.

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[18] Docket vol. I, p. 23.

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Hence, it was erroneous for petitioner to claim for a refund of the FBT payment.

In light of the foregoing, the Court deems it unnecessary to discuss the other issues raised by petitioner.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Decision dated 29 April 2019)** is **DENIED**, while petitioner's **Motion for Reconsideration** is **GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated April 29, 2019, is amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments issued by respondent against petitioner for deficiency expanded withholding tax, deficiency documentary stamp tax, fringe benefits tax and compromise penalty for taxable year 2008 are **CANCELLED** and **WITHDRAWN** for violation of petitioner's right to due process.
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> **SO ORDERED**."

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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
Chairperson, Special First Division