REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ALTIMAX BROADCASTING CO., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10044

Members:

CASTAÑEDA, JR. *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
APR 2 1 2022 8:12 Am

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Decision dated 06 October 2021)** filed, through registered mail, on November 8, 2021 and received by the Court on November 19, 2021, with petitioner's **Comment (Re: Motion for Reconsideration dated November 8, 2021)** filed, through registered mail, on February 18, 2022 and received by the Court on March 7, 2022.

On October 6, 2021, the Court promulgated a Decision cancelling respondent's deficiency tax assessments against petitioner for failing to present sufficient evidence to prove that the Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Formal Assessment Notice (FLD/FAN) were properly served and received by petitioner, in violation of its right to due process of law, the dispositive portion of which states as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the Warrant of Distraint and/or

Levy dated January 31, 2019 issued against petitioner is **WITHDRAWN** and **SET ASIDE**.

Moreover, the PAN dated October 6, 2016 and FLD/FAN dated October 27, 2016 issued against petitioner for taxable year 2013, are **CANCELLED** and **SET ASIDE**, for being void.

SO ORDERED."

In his Motion, respondent primarily argues that petitioner's right to due process was not violated since the due process requirement is deemed satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. Respondent cites the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.,*[1] wherein the Supreme Court enumerated the fundamental requirements of due process in administrative proceedings. Respondent continues that it was undisputed that the said assessment notices were mailed to petitioner as proven by the registry receipts – as the said assessment notices were duly served and received by petitioner, respondent asserts that petitioner was notified of the assessment and was given ample time and opportunity to protest the findings therein. By failing to do so, respondent therefore avers that petitioner is liable to pay the assessed deficiency taxes due.

On the other hand, in its comment, petitioner maintains that its rights to due process was violated because it did not receive any PAN or FAN/FLD in relation to respondent's deficiency tax assessments for the taxable year 2013. Correspondingly, petitioner was not able to dispute the findings of respondent's revenue officers by timely filing a protest thereto. As such, petitioner submits that the Court correctly held that the fact of service to, or receipt of, the subject PAN and FAN/FLD was never established by respondent. Petitioner further argues that since the assessment on which the assailed Warrant of Distraint and/or Levy (WDL) was based is null and void, it also follows that the WDL is likewise null and void.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit. *gc*

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[1] G.R. Nos. 201398-99, October 03, 2018.

Notably, the arguments raised by respondent in the present Motion are mere rehash of the same facts and issues which have already been thoroughly discussed in the assailed Decision.

To reiterate, part of the due process requirements in the issuance of tax assessments under Section 228 of the National internal Revenue Code of 1997,[2] as implemented by Revenue Regulations (RR) No. 12-99,[3] and amended by RR No. 18-2013,[4] is that the concerned taxpayer **must** be informed in writing of the law and the facts upon which the assessment was made, and that the taxpayer be given the opportunity to respond to and contest the PAN and the FLD/FAN.

In the present case, respondent not only failed to prove that petitioner actually received the PAN and FLD/FAN, but equally neglected to show compliance with the requirements laid down under its own rules and regulations on proper service of assessment notices. Again, respondent's presentation of registry receipts alone is not sufficient to prove the fact of service of the subject assessment notices to petitioner. As such, for his failure to amply prove that he properly served the subject assessment notices to petitioner, respondent's deficiency assessments are considered null and void for violation of petitioner's right to due process of law. Ultimately, the

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[2] "**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:

x x x

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.

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.

x x x." *(Emphasis supplied)*

[3] "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," dated September 12, 1999.

[4] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment," dated November 28, 2013.

withdrawal and setting aside of the WDL based on the said void assessments, is likewise proper.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on October 6, 2021.

WHEREFORE, in light of the foregoing considerations, respondent's Motion for Reconsideration (Decision dated 06 October 2021) is **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice