REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

JTKC LAND, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9508

Members:

RINGPIS-LIBAN, *Chairperson, and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

APR 04 2024 3:36 p.m.

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court's resolution is respondent's "Motion for Reconsideration (Decision dated 18 October 2023)" ("Motion"), filed on January 25, 2024, with petitioner's "Comment/Opposition (to Motion for Reconsideration dated 25 January 2024)," filed via licensed courier on February 26, 2024.

Respondent seeks the reversal and setting aside of this Court's Decision, dated October 18, 2023 ("assailed Decision"), which granted petitioner's Petition for Review in view of respondent's failure to properly serve the relevant Preliminary Assessment Notice ("PAN") to petitioner. Respondent argues that (a) the PAN was duly served to petitioner's business address; and (b) assuming that the PAN was not served to petitioner, respondent did not violate its right to due process as it was allowed to intelligently protest the assessment against it.

Petitioner, meanwhile, argues against the above by contenting that (a) respondent failed to identify specific errors in the assailed Decision; (b) the proper service of a PAN is necessary for complying with due process requirements; (c) respondent's right to assess petitioner had already prescribed; and (d) the assessment is null and void for respondent's failure to properly serve the related issuances.

The Motion lacks merit.

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[1] ("*Yumex*"), a case quoted at length in the assailed Decision, the Supreme Court emphasized the importance of *actual receipt* by a taxpayer of the PAN, stating that simply mailing the PAN is not enough to begin the prescriptive period for protesting said PAN. This Court thus cannot accept respondent's insistence that mailing the PAN to petitioner's "business address" was sufficient compliance with the requirement that the assessment notice actually be served to the taxpayer. This is especially so considering (a) the PAN was returned to respondent as petitioner had apparently moved out; and (b) respondent was already aware of other addresses at which petitioner could be contacted, two important points already raised in the assailed Decision but conveniently ignored by respondent in the present Motion.

Respondent is similarly mistaken in his further contention that petitioner's ability to intelligently protest the assessment shows that its right to due process was not violated. The service of a PAN to a taxpayer is a substantive requirement, not a merely formal one, and a failure to strictly comply with such requirement results in the voiding of the assessment, as declared in *Commissioner of Internal Revenue v. Reyes*,[2] *Commissioner of Internal Revenue v. Metro Star Superama*,[3] and *Commissioner of Internal Revenue v. Next Mobile, Inc.*,[4] to name a few relevant cases. The Supreme Court has even observed its consistency on this issue in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[5] a case cited in respondent's own Motion, noting that it has declared numerous assessments void when these "failed to strictly comply with the due process requirements set forth in *Section 228 of the Tax Code* and *Revenue Regulations No. 12-99*."

Furthermore, that petitioner was allowed to request the reinvestigation of its case and that respondent granted said request are of no moment. In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[6] the Supreme Court declared an assessment void for failure to serve a notice of informal conference and PAN to the taxpayer, even though the taxpayer therein protested the Formal Letter of Demand against it. This course of action was later reaffirmed by the High Court in *Yumex*. As such, the fact of a taxpayer protesting an assessment against it cannot cure a failure to *strictly* comply with the *substantive* due process requirements involved in such assessments.

Respondent's Motion thus fails to convince Us to set aside the assailed Decision or reverse Our finding that the subject assessment is void for violating petitioner's right to due process.

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1 G.R. No. 222476, May 5, 2021.
2 G.R. Nos. 159694 & 163581, January 27, 2006.
3 G.R. No. 185371, December 8, 2010.
4 G.R. No. 232055 (Notice), April 27, 2022.
5 G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
6 G.R. No. 172598, December 21, 2007.

FOR THESER REASONS, respondent's Motion for Reconsideration (Decision dated 18 October 2023) is hereby **DENIED** for lack of merit. The assailed Decision, dated October 18, 2023, is hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice