REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

APEX CHEMICAL CORPORATION,
Respondent.

CTA EB NO. 1382
(CTA Case No. 8698)

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APEX CHEMICAL CORPORATION
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1387
(CTA Case No. 8698)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

FEB 21 2017 3:12 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is the Commissioner of Internal Revenue's (CIR) **Motion for Reconsideration (Decision promulgated on October 14, 2016)** filed on October 26, 2016, with Apex Chemical Corporation's (Apex) **Opposition to Motion for Reconsideration** filed on January 9, 2017.

For easy reference, the dispositive portion of the assailed Decision states:

> "**WHEREFORE**, petitioner Apex Chemical Corporation's Petition for Review in CTA EB No. 1387 is **GRANTED**. On the other hand, petitioner Commissioner of Internal Revenue's Petition for Review in CTA EB No. 1382 is **DENIED**, for lack of merit. Accordingly, the Decision dated August 26, 2015 is modified as follows:
>
> '**WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, Assessment Notices with Demand No. 043B-B060-07 are **CANCELLED**.'
>
> **SO ORDERED.**"[1]

In the instant motion, the CIR asserts that it observed the right to due process of Apex. Meanwhile, assuming that the CIR committed lapses, these lapses were already cured when it accommodated Apex' request for reinvestigation.

On the other hand, Apex asserts that it was denied of its right to due process. Apex further asserts that it did not request for reinvestigation. Instead, it requested for the termination of the tax examination.

The core issue to be resolved by the Court *En Banc* is whether Apex' right to due process was observed.

The Court *En Banc* denies the instant motion.

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[1] Court *En Banc* Docket, p. 119.

Apex did not request for re-investigation

The CIR would like to impress upon the Court *En Banc* that assuming he committed lapses *vis-à-vis* the observance of Apex' right to due process, the same is cured when it accommodated Apex' request for reinvestigation.

A review of the records shows, however, that Apex did not file a request for reinvestigation. Instead, Apex merely reiterated that it already complied with the CIR's requirement. Apex' subject letter dated March 21, 2012[2] states:

> "We acknowledge receipt of your letter last March 8, 2012. It requests us to file within 15 days from receipt thereof a protest letter to the Final Assessment Notice you issued our company last January 7, 2011. In this regard, we would like to bring to your attention the fact that we already complied with the requirement."

The fact that Apex did not request for reinvestigation was further clarified in its letter dated July 23, 2012,[3] *viz*:

> "In connection therewith, please be informed that nowhere in our letter of March 21, 2012 (copy attached), did we request for re-investigation. xxx"

In light of the foregoing, the Court *En Banc* gives no consideration to the CIR's assertion because there is no request for reinvestigation filed by Apex.

There is no reason for the Court *En Banc* to deviate from its previous ruling

In this regard, the Court *En Banc* sees no error when it ruled in the assailed Decision that:

> "In the more recent ruling of this Court, *We* ruled that the 15-day period afforded to a taxpayer to protest a PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment.

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[2] Exhibit "P-6", Court in Division Docket, Vol. 1, p. 433.
[3] Exhibit "P-9", Court in Division Docket, Vol. 1, p. 436.

xxx xxx xxx

> Moreover, this Court notes that not only did the CIR fail to observe Apex'15-day period to file a protest against the PAN, the CIR likewise issued the FANs as early as January 7, 2011, or even before Apex received the PAN on January 13, 2011. In other words, the CIR already prejudged that Apex is liable to pay the subject deficiency taxes, which further violates Apex' right to due process."

Thus, aside from non-observance of Apex' 15-day period to protest the PAN, the CIR issued the FAN ahead of Apex' receipt of the PAN. These circumstances constitute prejudgment on the part of the CIR which violate Apex' right to due process.

WHEREFORE, in view thereof, the Commissioner of Internal Revenue's Motion for Reconsideration (Decision promulgated on October 14, 2016) is **DENIED**, for lack of merit. Accordingly, the assailed Decision dated October 14, 2016 is **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice