REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AIRGLOBE, INC.,
Respondent.

CTA EB NO. 2348
(CTA Case No. 9466)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
NOV 17 2022 4:17pm

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RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court *En Banc*'s resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration (RE: Decision Promulgated May 23, 2022)"[1] (**MR**) filed on 08 June 2022, with respondent Airglobe, Inc.'s (**respondent**'s/**Airglobe**'s) Comment[2] (**Comment**) filed on 28 July 2022.

The MR assails the Court *En Banc*'s Decision dated 23 May 2022[3] (**assailed Decision**). The dispositive portion of which reads:

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[1] *Rollo*, pp. 144-150.
[2] Id., pp. 156-161.
[3] Id., pp. 86-110, including Concurring and Dissenting Opinion of Associate Justice Ma. Belen M. Ringpis-Liban.

> ...
>
> **WHEREFORE**, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 22 October 2020 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 19 February 2020 and Resolution dated 27 July 2020, respectively, of the Third Division in CTA Case No. 9466, entitled *Airglobe, Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED** with modification *only* to correct the *error in the dispositive portion* of the Decision dated 19 February 2020 to read as follows:
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>> ...
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>> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, Respondent's Final Decision dated June 28, 2016 on the alleged deficiency income tax, [value-added tax, expanded withholding tax and withholding tax on compensation], and compromise penalty, plus penalties and interests, in the total amount of Php32,798,593.79 for calendar year 2007 is hereby **WITHDRAWN** and **SET ASIDE**.
>>
>> **SO ORDERED**.
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>> ...
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> Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes assessed against respondent as provided in the Final Decision in Disputed Assessment dated 28 July 2011 as affirmed in the Decision dated 28 June 2016 in the total amounts of ₱24,430,076.57, ₱8,135,862.73, ₱83,559.11 and ₱149,095.38, representing deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation, respectively, all for the calendar year 2007.
>
> **SO ORDERED.**
>
> ...

In the said MR, petitioner contends that the Court *En Banc* erred in ruling that the subject deficiency tax assessments are void for violating respondent's right to due process as a result of the immediate issuance of the Formal Assessment Notice (**FAN**) against it without waiting for its reply to the Preliminary Assessment Notice (**PAN**) or default.

Petitioner argues that the jurisprudence cited in the assailed Decision[4] should not have been applied to this case as the CIR totally disregarded the taxpayer's right to due process therein. Here, however, respondent had the opportunity to protest the assessment notices issued to it.

Petitioner further claims that the essence of due process as applied to administrative proceedings is to be given the opportunity to explain one's side, or an opportunity to seek a reconsideration of the action complained of. According to petitioner, records would show that not only did respondent receive the PAN but it even requested for an extension of time to file a protest thereto.

In addition, petitioner avers that respondent should be deemed to have waived its right to due process when, upon receipt of the denial of its request for extension to file protest to the PAN, it opted to just file a protest to the FAN.

Lastly, petitioner maintains that respondent's non-filing of a protest to the PAN did not jeopardize its right to due process.

On the other hand, in its Comment, respondent contends that petitioner's arguments have already been discussed at length in the assailed Decision. Nevertheless, respondent restates its position that the non-observance of the fifteen (15)-day period to protest the PAN violated its right to due process, which renders the assessment void.

We resolve.

Upon a careful consideration of the parties' respective arguments, We deny petitioner's MR for lack of merit.

In the case at bar, it is not disputed that the PAN was issued to respondent on 30 December 2010. Counting 15 days therefrom, respondent had until 14 January 2011 within which to file a reply thereto. However, the FAN was served on respondent on the same day

[4] Referring to *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*, G.R. No. 227616, 19 June 2019 (Resolution) and *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, 05 May 2021.

of 14 January 2011, thereby depriving it of its right to file a reply to the PAN. Consequently, respondent's right to due process was violated.

As the Supreme Court held in *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[5]:

> ...
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> In this case, the records show that respondent received the PAN on February 5, 2009. **However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**
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> In *CIR v. Metro Star Superama, Inc.*, **the Court emphasized that the PAN is part of due process. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to <u>strictly comply</u> with the requirements laid down by law and its own rules, as in this case, is a denial of the taxpayer's right to due process.**
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> ...

This was further reinforced in the more recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[6] where the Supreme Court also ruled:

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> **Clearly from the aforequoted provisions, the taxpayer has fifteen (15) days from date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.**
>
> ...
>
> In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon case)*, **the Court enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights.** It is mandatory that the BIR not only inform the taxpayer through the PAN, FLD, and FAN of the facts, law and

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5 G.R. No. 227616, 19 June 2019 (Resolution); Citations omitted, emphasis supplied and underscoring in the original text.

6 G.R. No. 222476, 05 May 2021; Citation omitted, italics in the original text and emphasis supplied.

> regulations, and jurisprudence on which the assessment against it is based, but **it must also accord the taxpayer the opportunity to be heard through the entire process, *i.e.*, from tax investigation until tax assessment**. ...
>
> ...

Thus, as petitioner violated respondent's right to due process by issuing the FAN within the 15-day period for it to file a reply to the PAN, the deficiency tax assessments against it are necessarily void.

In sum, the Court *En Banc* finds no cogent reason to modify or disturb the assailed Decision.

WHEREFORE, petitioner Commissioner of Internal Revenue's "Motion for Reconsideration (RE: Decision Promulgated May 23, 2022)" filed on 08 June 2022 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

I reiterate my concurring & dissenting opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(*With due respect, I join the CDO of J. Liban*)
CATHERINE T. MANAHAN
Associate Justice

ON LEAVE

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice