19-000412-0083

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10154

WILL TEAM PH INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Litigation Division, Room 703, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
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LMA LAW OFFICES
Unit 22, 2nd Floor, Zeta II Building
191 Salcedo St., Legazpi Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **February 22, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 23, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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WILL TEAM PH, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10154

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

FEB 22 2024; 2:30PM

x - x

RESOLUTION

MANAHAN, *J.*:

This resolves respondent's **Motion for Reconsideration (Re: Decision promulgated 5 October 2023)**[1] filed on October 23, 2023, praying for the reversal and setting aside of the Court's *Decision* dated October 5, 2023 (Assailed Decision),[2] the upholding of the findings as contained in the Final Decision on Disputed Assessment (FDDA), and ordering the petitioner to pay the alleged deficiency taxes.

Respondent contends that in the Formal Letter of Demand (FLD), there was a categorical statement stating that "the records of this case disclosed that you have not introduced any evidence to overthrow the validity of the said finding" which refers to petitioner's failure to submit documents to overcome the factual findings of the subject assessments.

Respondent also argues that he is not under any obligation to give credence to petitioner's arguments raised in its reply to the Preliminary Assessment Notice (PAN) because the arguments are unmeritorious and there are no new pieces of evidence presented to refute the factual findings subject of the assessment considering that petitioner requested for

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[1] Docket, CTA Case No. 10154, Vol. III, pp. 1406-1413.
[2] *Id.*, Vol. III, pp. 1383-1403.

reinvestigation. Hence, petitioner failed to overcome the presumption of regularity of said assessment.

On the other hand, petitioner, in its **Comment/Opposition (Re: Respondent's Motion for Reconsideration)**[3] filed on November 15, 2023, counter argues that it is a well-established principle and legal requirement in tax assessments that taxpayers should be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void. Hence, it agrees with the position of this Court that respondent and his representative are mandated to perform the assessment function in accordance with, and by strict adherence to law, and always in observance of the basic tenets of due process.

Petitioner further argues that respondent failed to address its counter-arguments raised in its Reply to the PAN.

The Ruling

This Court shall determine first whether the instant Motion was filed on time.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> "SECTION 1. *Who may and when to file motion.*- **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court**. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

The records of the instant case reveal that respondent received the copy of the Assailed Decision on October 11, 2023.[4] In accordance with the abovementioned provision of the RRCTA, respondent had fifteen (15) days from receipt of notice of said decision from October 11, 2023 or until October 26, 2023 within which to file his motion for reconsideration. Thus, the filing of respondent's *Motion for Reconsideration (Re: Decision promulgated 5 October 2023)* on October 23, 2023 was on time.

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[3] Docket, Vol. II, pp. 1416-1422.
[4] Docket, Vol. III, Notice of Decision, p. 1382.

A closer look at the PAN[5] and its Details of Discrepancies reveals that the assessment on deficiency value-added tax (VAT) is based on the following findings:

1. Undeclared Sales amounting to ₱493,325.28, after comparing the Income Tax Return (ITR) and the VAT Return (VATR);

2. Inconsistent entries in petitioner's books of accounts and lack of documents in the disposal of Property and Equipment designated as sale-leaseback agreement with a non-resident foreign corporation amounting to ₱32,526,511.00; and

3. Undeclared income or unaccounted source of cash due to undeclared purchases amounting to ₱4,585,876.00, after comparing the purchases based from the records of the Bureau of Customs (BOC) and the purchases from petitioner's financial statements (FS).

As to the deficiency expanded withholding tax (EWT) assessment, respondent assessed petitioner for failure to withhold on its expenses for rentals, professional fees, and subcontractors shown in its FS with an aggregate total of ₱4,585,876.00.

In petitioner's Letter dated August 28, 2018 or the reply letter to the PAN,[6] petitioner raised the following explanation or justification:

1. On the alleged undeclared sales amounting to ₱493,325.28, petitioner stated that such was part of the product of the amortization of deferred gain from sales-leaseback transaction where no actual sale has materialized, hence, not subject to VAT citing the case of *Sydenham Laboratories, Inc. v. Commissioner of Internal Revenue* (CTA Case No. 7416);

2. On the alleged disposal of the property and equipment, petitioner stated that such property was under a sales-leaseback arrangement where there is no true or actual sale and the lease payments nor the interest portion

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[5] BIR Records, Folder 2 of 3, Exhibit "R-6", pp. 324-327.
[6] *Id.*, Folder 2 of 3, pp. 330 to 337.

would not be subjected to VAT citing several International Tax Affairs Division (ITAD) rulings.

3. On the alleged undeclared income/unaccounted source of cash, petitioner asserted that that all purchases and importation costs had been paid and copy of all invoices were allegedly provided as Annex D on its letter; and

4. On EWT rental payments, petitioner stated that such payments were made to a Philippine Economic Zone Authority (PEZA) registered locator wherein one of its incentives is being exempt from withholding taxes.

Respondent, instead of countering said assertions with their own legal and factual basis to reject or deny these justifications, issued the FLD[7] and its Details of Discrepancies which were substantially similar to the PAN and its Details of Discrepancies except for the computation of interest.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* (*Avon* case),[8] the Supreme Court ruled that even if respondent is not "under any obligation to give credence to petitioner's arguments", the former must give reason for such denial, to wit:

> "It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**" (*Emphasis supplied*)

Hence, total disregard of such standard of due process rendered the substantially similar PAN and FLD null and void, and of no force and effect for failure on the part of respondent to inform petitioner of the law and the facts on which the assessment was made, which is in violation of Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended.[9]

It is true that herein ponente made a reservation as to the application of the *Avon* case in the case of *Commissioner of Internal Revenue v. First Philippine Industrial Corporation* (CTA

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[7] BIR Records, Folder 2 of 3, Exhibit "R-7", pp. 338-341.
[8] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[9] *Id.*

EB No. 2376). However, the instant case is one of those cases where the *Avon* case is applicable as petitioner cited legal and factual basis in its justification which necessitates a counter legal and factual justification to negate such justification but respondent failed to do so.

Respondent's statement in the FLD that "the records of this case disclosed that you have not introduced any evidence to overthrow the validity of the said finding" is of no moment as such is a general statement to petitioner's specific denial or justification which is replete with supporting evidence.

The Supreme Court is clear and categorical in the *Avon* case that compliance with strict procedural requirements must be followed in the collection of taxes. There must be specific counter arguments by respondent to petitioner's justification.

There being no new and substantial arguments propounded by respondent in its Motion, the Court finds no compelling reason to reverse the Assailed Decision.

WHEREFORE, respondent's *Motion for Reconsideration (Re: Decision promulgated 5 October 2023)* is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice