REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BAC-MAN GEOTHERMAL, INC., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9728

Members:

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

Promulgated:

APR 29 2022; 9:30 a.m.

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RESOLUTION

DEL ROSARIO, P.J.:

At bar is respondent's **Motion for Reconsideration (Re: Decision promulgated 18 November 2021)**[1] filed on December 9, 2021, with petitioner's **Comment (Re: Motion for Reconsideration dated December 3, 2021)**[2] filed through registered mail on March 7, 2022, praying for the reversal of the assailed Decision dated November 18, 2021.[3]

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, Bac-Man Geothermal, Inc.'s Petition for Review filed on December 5, 2017 is hereby **GRANTED**. Formal Letter of Demand dated July 3, 2017 and Audit Result/Assessment Notice No. F-LA010001-IT-121-2013-06-17-0000001024 dated June 15, 2017 are **CANCELLED** and **WITHDRAWN** and the Final Decision on Disputed Assessment dated October 30, 2017 is **SET ASIDE**.

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[1] Docket – Vol. VIII, pp. 4206-4217.
[2] Docket – Vol. VIII, pp. 4221-4243.
[3] The Motion for Reconsideration was submitted for resolution on March 30, 2022. Docket – Vol. VIII, p. 4272.

> The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are **ENJOINED** from enforcing the collection of the deficiency income tax assessment against Bac-Man Geothermal, Inc. arising from the Formal Letter of Demand dated July 3, 2017 and Audit Result/Assessment Notice No. F-LA010001-IT-121-2013-06-17-0000001024 dated June 15, 2017 and Final Decision on Disputed Assessment dated October 30, 2017. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.
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> **SO ORDERED**."[4]

In his motion, respondent claims that the Court erred *(i)* when it cancelled the Formal Letter of Demand (FLD) on the ground that the same is void and without legal significance for respondent's wanton disregard of the due process requirements under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, Revenue Regulations (RR) No. 12-99, as amended, and *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* case;[5] and, *(ii)* in enjoining respondent from taking any further action against respondent. Allegedly:

1. The Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) (including the computation sheet) and FLD, however simple, would clearly show the factual and legal bases of the assessment. There is nowhere in the NIRC of 1997, as amended, as well as the implementing rules and jurisprudence, which requires respondent to provide a highly detailed assessment and to refute each and every issue raised by petitioner. The non-reference to petitioner's arguments/computation and submitted documents does not indicate that respondent did not consider them in arriving at the issuance of the FLD.

2. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of, citing *F/O Augustus Z. Ledesma vs. Court of Appeals et al.*,[6] and *Felicidad Sta. Maria Villaran et al. vs. Department of Agrarian Reform Adjudication Board and Lorenzo Mariano*.[7]

3. Petitioner was apprised of and was able to avail of the remedies provided by law to refute the tax assessment against it when it filed the protest to PAN and FLD. om

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[4] Docket – Vol. VIII, pp. 4204-4205.
[5] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[6] G.R. No. 166780, December 27, 2007.
[7] G.R. No. 160882, March 7, 2012.

4. Petitioner's dereliction to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of the assessment notices, citing *Commissioner of Internal Revenue vs. Bank of the Philippine Islands.*[8]

5. The power vested upon this Court is to issue suspension of collection of taxes and not to issue prohibition against respondent in the exercise of his police power, citing Section 11, Republic Act No. 1125 and a purported 1961 Supreme Court case. Thus, the Court may only issue a suspension of collection of an assessment and not an injunction prohibiting respondent in the exercise of his duty under Section 2, NIRC of 1997, as amended.

6. Assuming without conceding that the Court has the power to grant injunction or prohibition order against respondent in the exercise of his police power, petitioner is not entitled to the injunctive relief prayed for as it failed to satisfy the requisites for its issuance, citing *Marcela Gonzales Almeida vs. Court of Appeals and Robert P. Sy.*[9]

7. With petitioner's non-filing of a motion for suspension of collection of taxes, there is more reason that the Court cannot enjoin respondent from taking further action against petitioner with respect to the FLD and Audit Result/Assessment Notice and Final Decision on Disputed Assessment (FDDA).

Petitioner, on the other hand, submits that the motion should be denied as the Court did not err in finding that respondent violated petitioner's right to due process when the FLD and FDDA failed to state the reasons for the rejection of petitioner's arguments in its Reply to the PAN and Request for Reinvestigation of the FLD. Thus, the Court has ample basis to cancel the tax assessment and enjoin respondent from enforcing collection of the deficiency assessment.

Petitioner maintains that respondent violated its right to due process when he failed to state the legal and factual bases of the denial of its Reply to the PAN and Request for Reinvestigation of the FLD and when he issued the FLD and FDDA without taking into consideration the legal and factual issues raised and documents presented by petitioner in its Reply to the PAN.

Petitioner also argues that it overcame the presumption of regularity and correctness of the assessment by proving that respondent violated its right to due process.

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[8] G.R. No. 134062, April 17, 2007.
[9] G.R. No. 159124, January 17, 2005.

Petitioner explains that the order enjoining respondent from pursuing collection measures is a natural legal consequence of the cancellation of the assessment.

THE RULING OF THE COURT

After due consideration of respondent's arguments, the Court finds his Motion for Reconsideration (Re: Decision promulgated 18 November 2021) bereft of merit.

Violation of petitioner's right to due process

The Court sustains its ruling that respondent violated petitioner's right to due process for his failure to state in the FLD and the FDDA, the reasons for the rejection of petitioner's arguments in its Reply to the PAN and Request for Reinvestigation, respectively.

To emphasize, Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended, mandate that the assessments (PAN, FLD, and FDDA) should state the facts and the law on which such assessments are based; otherwise, they shall be void.

The statement "*[t]he records of this case disclosed that you have not introduced any evidence to overthrow the validity of the said finding*"[10] in the FLD does not satisfy the statutory requirement of stating the facts and the law on which the assessment is based. As noted in the assailed Decision, respondent did not even make reference to the Reply to the PAN or addressed petitioner's arguments therein.

Respondent's exercise of his power to decide tax cases involving disputed assessments is an exercise of his administrative adjudicatory power or quasi-judicial functions.[11] Although the BIR, a quasi-judicial agency, "may be said to be free from the rigidity of certain procedural requirements, it does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character".[12]

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[10] BIR Records, p. 333.

[11] *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*, G.R. No. 207843, July 15, 2015.

[12] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* and *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 and G.R. Nos. 201418-19, October 3, 2018.

The proceedings before the BIR, therefore, must be conducted in accordance with the tenets of administrative due process, *viz.*:

1. The party interested or affected must be able to present his or her own case and submit evidence in support of it;

2. The administrative tribunal or body must consider the evidence presented;

3. There must be evidence supporting the tribunal's decision;

4. The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion";

5. The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected;

6. The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case; and,

7. The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.[13]

Consequently, in deciding protests on deficiency tax assessments, the BIR must not only consider the taxpayers' submissions in making its decision on their protests but must also sufficiently inform them of the reasons - factual and legal - for such decision by communicating in writing such reasons or grounds especially in instances where the taxpayers' arguments in their protests are rejected or deemed unmeritorious. Failure of the BIR to apprise the taxpayers of the bases of the decision transgresses their right to due process.

It bears emphasis that the presumption of regularity in the performance of the BIR or respondent's official duties is a disputable presumption. It cannot stand in the face of positive evidence of irregularity or failure to perform a duty.[14] Here, both the FLD and FDDA did not squarely address petitioner's arguments in its Reply to the PAN

[13] *Id.*
[14] *Id.*

and Request for Reinvestigation. Both clearly demonstrate respondent's failure to render a decision in a manner that the parties may know the reasons for the decision by communicating in writing the factual and legal bases of the rejection of petitioner's arguments against the assessment contained in its Reply to the PAN and Request for Reinvestigation.

Notably, respondent did not offer any explanation why it failed to state the reasons for the rejection of petitioner's arguments in its Reply to the PAN and Request for Reinvestigation despite the existence of the Memoranda[15] thereon prepared by the revenue officers involved in the audit investigation of petitioner.

In *Commissioner of Internal Revenue vs. Asalus Corporation*,[16] the Supreme Court held that substantial compliance with the notice requirement as laid down under Section 228 of the NIRC of 1997, as amended, suffices, for what is important is that the taxpayer has been sufficiently informed of the factual and legal bases of the assessment so that it may file an effective protest against the assessment.

Considering, however, the Court's unrefuted finding in the assailed Decision that respondent failed to disclose the bases for the rejection of petitioner's arguments in its Reply to the PAN and Request for Reinvestigation, petitioner cannot be deemed to have been sufficiently informed of the factual and legal bases of the assessment. Thus, consistent with the ruling in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* and *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[17] cited in the assailed Decision, the Court cannot sustain respondent's plea of substantial compliance.

The fact that petitioner was nonetheless able to reply to the PAN, protest the FLD and appeal the FDDA, does not denigrate the truth that its right to due process was violated in the issuance of the FLD and FDDA.[18]

Further, *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation* and *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue*,[19] instructs that "[a]ny short-cuts to the prescribed content of the assessment or the process thereof should

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[15] BIR Records, pp. 323-325 and 444-447.
[16] G.R. No. 221590, February 22, 2017.
[17] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[18] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007.
[19] G.R. No. 215534 and 21557, April 18, 2016.

not be countenanced". For as between the power of the State to tax and a taxpayer's right to due process, the scale favors the right of the taxpayer to due process.[20]

Authority to enjoin collection of the nullified deficiency assessment

Respondent's contention that the Court cannot enjoin him from enforcing the collection of the deficiency income tax assessment against petitioner, despite the Decision declaring the assessment void, is untenable. For one, timely appeal of an assessment to this Court which it eventually nullified precludes such assessment from becoming final and enforceable. For another, even without the categorical prohibition, any action that tends to degrade the administration of justice including the imprudent collection of a tax, on the basis of an assessment which the Court declared as void in a judgment, is contemptuous, to say the least. Section 3, Rule 71 of the Rules of Court provides:

> Section 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself[/herself] or counsel, **a person guilty of any of the following acts may be punished for indirect contempt**;
>
> xxx xxx xxx
>
> (b) **Disobedience of** or resistance to a lawful writ, process, order, or **judgment of a court**, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; xxx" (*Boldfacing supplied*)

Trite is the rule that a void assessment, bears no fruit.[21] Thus, it cannot be the basis of collection of deficiency tax assessment.

All told, respondent failed to present cogent reason for the Court to modify, more so, reverse the assailed Decision. om

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[20] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

[21] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated 18 November 2021) filed on December 9, 2021 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice