18-000213-0101

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 9832

RCBC SAVINGS BANK, INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF SOLICITOR GENERAL
134 Amorsolo St., Legaspi Village, Makati City

COMMISSIONER OF INTERNAL REVENUE
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
BIR Main, Diliman, Quezon City

ATTY. CRISANTO C. SORIANO
Unit 806, 8th Floor, One Global Place
5th Avenue corner 25th Street, Bonifacio Global City
The Fort Taguig City, Metro Manila

GREETINGS:

You are hereby notified by these presents that on **June 22, 2023,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 27, 2023.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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RCBC SAVINGS BANK, INC.
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9832

Members:

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

Promulgated:
JUN 22 2023 1:18 PM

x- -x

R E S O L U T I O N

MANAHAN, *J.:*

This resolves the *Motion for Reconsideration [re: Decision dated 22 November 2022]*[1] filed by respondent Commissioner of Internal Revenue (CIR) on December 16, 2022, assailing the Decision dated November 22, 2022 which disposed of the instant case, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the *Decision* dated April 2, 2018 of respondent is **WITHDRAWN** and **SET ASIDE**. Moreover, the FLD/FAN dated June 8, 2011, the FDDA issued by then OIC-ACIR Alfredo V. Misajon, and the undated WDL bearing Warrant No. 125-2018-010 issued by OIC-ACIR for LTS Teresita M. Dizon, are **CANCELLED** and **SET ASIDE**.
>
> The CIR, his/her representatives, agents or any person acting on his/her behalf are **ENJOINED** from collecting or taking any further action on the subject assessments.
>
> **SO ORDERED**.[2]

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[1] Docket, pp. 1200-1215.
[2] Docket, p. 1199.

Respondent states that his basic right to fair play and due process was violated when the Court of Tax Appeals (CTA) ruled on the matter of violation of petitioner's right to due process which was not raised as an issue, not joined by the parties, nor defined in the Pre-Trial Order. Respondent further states that the assessments are valid; that petitioner was accorded the opportunity to assail the assessment and was in fact able to intelligently protest the assessments issued against it. Hence, petitioner was fully apprised of the factual and legal bases of the assessments issued against it.

Respondent also states that the CTA cannot enjoin the collection of the assessed deficiency taxes.

On March 24, 2023, petitioner filed its *Comment & Opposition (Re: Respondent's "Motion for Reconsideration [from Decision dated 22 November 2022]" dated 15 December 2022).* Petitioner states that it had consistently raised as an issue the question of whether the subject assessments failed to state the facts and the law on which they are based. Petitioner also states that even assuming that the issue of "lack of factual and legal bases for the assessments" was not raised by the parties, questions relating thereto are cognizable by the Court because the said issued may be considered as covered by the term "other matters" under Section 7 of Republic Act (R.A.) No. 1125, as amended. Petitioner reiterates that the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

In addition, petitioner reiterated its factual arguments against respondent's assessments.

We deny the *Motion.*

It is settled that the Court is not limited to resolving the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[3]

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[3] Section 1, Rule 14, Revised Rules of the Court of Tax Appeals; *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017; and *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021.

Even though the issue on due process was not specifically raised, the consideration thereof was necessary in arriving at a just decision and complete resolution of the case. Relative thereto, it must be emphasized that tax assessments issued in violation of the due process rights of a taxpayer are null and void.[4]

Respondent failed to fully apprise petitioner of the factual and legal bases of the assessments. In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[5] the Supreme Court ruled:

> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
>
> xxx xxx xxx
>
> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. xxx

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[4] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,* G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[5] *Id.* cm

Here, the PAN and FAN failed to comply with the due process requirements, *to wit*:

> Attached to the said PAN is a "*SUMMARY OF FINDINGS*", which contains schedules on how the above figures were arrived at, coupled with the citation of the supposed legal bases. However, an examination of the said PAN and "*SUMMARY OF FINDINGS*" would reveal that the said schedules do not show the factual basis of the taxes due. The same schedules merely contain tabular summaries of the alleged disallowances in petitioner's Income Tax return, the amounts not subjected to the 5% and 7% percentage taxes, certain payments not subjected to withholding taxes, and transactions which should have been subjected to the DST. Notably, they have no other details for each of the said findings which state any other explanation that would enable petitioner to make an effective protest, contrary to Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013, which mandates that the PAN must "*show **in detail** the facts...on which the proposed assessment is based*".
>
> Moreover, it is glaringly noticeable that the PAN is not accompanied by a "*DETAILS OF DISCREPANCIES*", which should embody the factual and legal bases of the PAN, as required under Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013. It must be emphasized that the said provision refers to "*ANNEX A*" thereof, which obviously was not observed by respondent or the BIR.
>
> On this score alone, We can already find a violation of petitioner's due process right. However, there is more.
>
> In its *Reply* dated June 1, 2011 to the PAN, petitioner addressed each of the findings stated therein, thereby arguing against the same.
>
> However, in the FLD/FAN dated June 8, 2011, petitioner was still assessed for the following deficiency tax liabilities, to wit:
>
> xxx xxx xxx
>
> A comparison of the figures stated in the PAN dated May 3, 2011 and the foregoing figures would reveal that amounts of basic PT and DST due remain unchanged; but the amounts for the basic IT, EWT and FWT due, were significantly **increased**, without any explanation whatsoever of the reasons therefor. Neither is there any indication that

the arguments of petitioner, as stated in its *Reply* dated June 1, 2011, were addressed in the said FLD/FAN.

Similar to the PAN dated May 3, 2011, the FLD/FAN dated June 8, 2011 is not accompanied by a "*DETAILS OF DISCREPANCIES*", which is required under Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, in relation to "*ANNEX B*" thereof.

Furthermore, it is noted that petitioner filed its *Protest* dated July 21, 2011 against the said FLD/FAN on July 22, 2011, again arguing against the findings stated therein. Additionally, in the same *Protest*, petitioner argues that the assessment is barred by prescription; that the assessments are based on mere presumptions; that the assessments fail to state the facts and law on which they are based; and that the protest on the PAN is not considered in the determination of the FLD/FAN.

In response to petitioner's *Protest*, the subject FDDA was issued by then OIC-ACIR Alfredo V. Misajon. However, while the said FDDA shows that the BIR made certain adjustments in the basic taxes due, and has attached a "*DETAILS OF DISCREPANCIES*", it provided no explanation for the said adjustments, and still failed to address the arguments raised by petitioner in its *Protest*.

xxx xxx xxx

Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, and Sections 3.1.1, 3.1.3, and 3.1.5 of RR No. 12-99, as amended, was violated by respondent. As a consequence of such violation, the said deficiency tax assessments are rendered void.

Based on the foregoing, the subject assessments under the FLD/FAN dated June 8, 2011, the FDDA, and the Warrant of Distraint and/or Levy (WDL) No. 125-2018-010 are void, and properly cancelled and set aside.

As to respondent's argument that the Court cannot enjoin the collection of deficiency taxes, the Court finds the same untenable. In *Bac-Man Geothermal, Inc. v. Commissioner of Internal Revenue*,[6] this Division already ruled, as follows:

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[6] CTA Case No. 9728, Resolution dated April 29, 2022.

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. Thus, it cannot be the basis of collection of deficiency tax assessment. (*emphasis in the original*)

All told, the Court finds no compelling reason to modify nor reverse the assailed Decision dated November 22, 2022.

WHEREFORE, the *Motion for Reconsideration [re: Decision dated 22 November 2022]*, filed by respondent CIR on December 16, 2022, is **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