REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

INTERCREW PHILIPPINES AGENCY, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10509

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:
MAY 16 2025
4:22 p.m.

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RESOLUTION

MANAHAN, *J.*:

Before the Court is the *Motion for Partial Reconsideration (Re: Decision dated January 3, 2025)* filed by respondent Commissioner of Internal Revenue ("**CIR**") on January 30, 2025 ("***Motion***"),[1] with comment filed by petitioner Intercrew Philippines Agency, Inc. ("**Intercrew**") on February 26, 2025 ("***Comment***").[2]

The *Motion* seeks to modify the Court's *Decision* dated January 3, 2025 ("**assailed *Decision***"),[3] the dispositive portion of which reads:

> **ACCORDINGLY**, the present *Petition for Review* is **PARTIALLY GRANTED**. The FLD and *Assessment Notice* dated July 29, 2019, and the FDDA dated March 26, 2011, are **CANCELLED** and **SET ASIDE** insofar as the assessed income tax on the supposed undeclared revenues amounting to ₱38,582,622.00 and the alleged unaccounted rentals in the amount of ₱437,745.45 are concerned. The remaining

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[1] Docket – Vol. 2, pp. 569 to 578.
[2] *Comment (Re: Motion for Partial Reconsideration dated 28 January 2025), Id.*, pp. 586 to 595.
[3] *Id.*, pp. 553 to 568.

income tax and EWT assessments are **SUSTAINED**.

Petitioner is **ORDERED TO PAY** the amount of ₱111,888.88 representing deficiency taxes for the taxable year 2015, inclusive of 25% surcharge and 20%/12% deficiency interest pursuant to Sections 248(A)(3) and 249(B) of the Tax Code and RR No. 21-2018, computed until August 29, 2019 as follows:

Particulars	Income tax	EWT	TOTAL
Basic Tax Due	**₱41,249.50**	**₱20,625.00**	**₱61,874.50**
Add: 25% Surcharge	10,312.38	5,156.25	15,468.63
20% Deficiency Interest April 16, 2016 to December 31, 2017 *(₱41,249.50 x 20% x 625 / 365)*	14,126.54		14,126.54
20% Deficiency Interest January 16, 2016 to December 31, 2017 *(₱20,625.00 x 20% x 716 /365)*		8,091.78	8,091.78
Total Amount Due, December 31, 2017	₱65,688.42	₱ 33,873.03	₱99,561.45
Add: 12% Deficiency Interest January 1, 2018 to August 29, 2019			
(₱41,249.50 x 12% x 606/365)	8,218.26		8,218.26
(₱20,625.00 x 12% x 606/365)		4,109.18	4,109.18
Total Amount Due, August 29, 2019	**₱73,906.67**	**₱37,982.21**	**₱111,888.88**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% per annum on the total unpaid deficiency taxes due as of August 29, 2019 in the amount of ₱111,888.88, as determined above, or equivalent to ₱36.78 per day, computed from August 30, 2019 until full payment thereof pursuant to Section 249(C) of the Tax Code and RR No. 21-2018.

SO ORDERED.

In his *Motion*, the CIR prays that the Court: 1.) uphold the deficiency assessments for income tax on the alleged undeclared revenues and unaccounted rentals in the amounts of ₱38,582,622.00 and ₱437,745.45, respectively; and 2.) order Intercrew to pay the amount of ₱20,488,283.83 representing deficiency income and expanded withholding taxes for 2015, plus deficiency and delinquency interests. The CIR argues as follows:

First, the Court allegedly erred in cancelling the assessment on the ground that due process was violated when the CIR issued, without considering Intercrew's protest, a *Formal Letter of Demand* with *Assessment Notices* ("**FLD/FAN**") with exactly the same contents as the *Preliminary Assessment Notice* ("**PAN**"). According to the CIR, the documents submitted in support of the protest were already taken into account during the initial audit stage, prior to the issuance of the *Notice of Informal Conference*. The CIR notes that Intercrew failed to appear at the scheduled informal conference, resulting in the issuance of the PAN.

Second, the CIR points out that the protest to the PAN dated July 11, 2019 was filed through registered mail and was received only on August 30, 2019, after the FLD/FAN was already issued.

Lastly, the CIR insists that Intercrew was apprised of the legal bases of the assessment and invokes the doctrine that administrative decisions are accorded great respect and even conclusiveness by courts.

Meanwhile, in its *Comment*, Intercrew argues that the doctrine of conclusiveness of administrative decisions is applicable only when supported by substantial evidence. In this case, the CIR failed to provide any evidence at all on Intercrew's supposed income receipts for the dispatch of 2,337 seafarers. Intercrew maintains that it is paid a flat monthly fee of $15,000, regardless of the number of seafarers it dispatched, as shown in the Memorandum of Agreement it has with Dynacom Tankers Management, Ltd. Hence, the deficiency tax assessment against it is pure conjecture.

Upon careful consideration of the arguments raised by both parties, the Court rules in favor of Intercrew. The instant *Motion* is without merit.

Identity of the preliminary and final assessment notices

On the matter of the FLD/FAN being identical to the PAN, the Court stands by its ruling that the CIR failed to properly address Intercrew's defenses, resulting in a violation of the latter's right to administrative due process. As held in the assailed *Decision*:

> ...in issuing the PAN, FLD/FAN, and FDDA, the defenses and evidence submitted by the taxpayer must be considered. Jurisprudence recognizes that there are cardinal primary rights which must be respected in administrative proceedings, and these include ***not only the right to present evidence***, but also ***the right to have such evidence considered, the right to a decision rendered on such evidence, and the right to know the reasons for the decision rendered.***[4]

It is insufficient therefore for the CIR to just aver that it already previously considered the taxpayer's documentary evidence prior to the issuance of the PAN or FLD. Due process requires that the CIR also disclose *how* they were considered in drawing up with the conclusions stated in the PAN, FLD, and similar assessment notices.

Here, despite Intercrew's consistent justifications as to why it could not have received income from other contractors and why it had unaccounted rentals, the CIR maintained the finding of deficiency tax simply "based on information per contracts attached."[5] No other explanation was given. Patently, not only did the CIR fail to refute the taxpayer's justifications, he failed to provide any indication that the same were considered at all.

At the risk of being repetitive, the Court emphasizes that the CIR is not precluded from issuing an FLD/FAN which merely reiterates the PAN—provided that it clearly and sufficiently addresses the taxpayer's defenses. After all, the purpose of the PAN is to give both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time,

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[4] *Emphasis supplied.*
[5] Assailed *Decision*, Docket – Vol. 2, pp. 563 to 565.

without the need for the issuance of Final Assessment Notices.[6] There is no due process violation in the issuance of a similar FLD/FAN if, upon evaluation of and despite the justifications set forth by the taxpayer, the CIR determines that the findings and conclusions stated in the PAN remain warranted. Such is not the case here.

The Court finds that it is immaterial that the protest to the PAN was received after the issuance of the FLD, as records show that the subsequently issued *Final Decision on Disputed Assessment* ("**FDDA**") still ignored Intercrew's defenses.[7] More importantly, the Court cannot allow the CIR to use such circumstance as an excuse to defeat the taxpayer's due process rights, particularly the right to present evidence, the right to have such evidence considered, the right to a decision rendered on such evidence, and the right to know the reasons for the decision rendered. In observance of these due process rights, the CIR could have just issued an amended FLD/FAN upon receipt of the subject protest, or an FDDA which adequately explains why the taxpayer's protest lacks merit.

Factual and legal basis of the assessment

Assuming that there was nothing amiss in the issuance of the FLD/FAN and FDDA, the Court still finds the subject assessment void for lack of factual and legal bases. As earlier mentioned, the only basis cited for the finding of deficiency income tax on the supposed undeclared revenues was the "information per contracts attached." However, it was not established how such contracts demonstrated the existence of undeclared revenues. Glaringly, there were no details of such "information" relied upon to assess Intercrew, nor was there any breakdown of its alleged income receipts. This falls short of the statutory requirement that the taxpayer must be informed in writing of the law and the facts on which the assessment is made.[8]

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[6] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 04, 2021 [Per J. Hernando, Second Division].
[7] Assailed *Decision*, Docket – Vol. 2, p. 556.
[8] Tax Code, Sec. 228.

ACCORDINGLY, respondent's *Motion for Partial Reconsideration (Re: Decision dated January 3, 2025)* is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

HENRY S. ANGELES
Associate Justice