20-000076-0063

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10262

HEALTH PLAN PHILIPPINES, INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. LEONARDO B. USITA
Bureau of Internal Revenue - Revenue Region No. 7B
25th Floor, The Podium West Tower, ADB Avenue
Ortigas Center, Mandaluyong City

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Unit 203 Le Metropole Building
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Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **March 31, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 3, 2025.**

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

REPUBLIC OF THE PHILIPPINES
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HEALTH PLAN PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10262**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 3 1 2025; 11:10 a.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration (Decision dated 4 December 2024)"[1] (**MR**) filed *via* LBC on 18 December 2024[2], with petitioner Health Plan Philippines, Inc.'s (**petitioner**'s/**HPPI**'s) "Comment/Opposition [Re: Motion for Reconsideration dated 18 December 2024]"[3] (**Comment/Opposition**), filed *via* LBC on 02 January 2025.[4]

Respondent seeks the reversal of the First Division's Decision in the above-captioned case dated 04 December 2024[5] (**assailed Decision**). The dispositive portion of which reads:

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1 Division Docket, Volume II, pp. 571-575.
2 Received by the Court on 19 December 2024.
3 Division Docket, Volume II, pp. 578-584.
4 Received by the Court on 03 January 2025.
5 Id., pp. 544-570.

> ...
>
> **WHEREFORE**, with the foregoing premises, the Petition for Review filed by petitioner Health Plan Philippines, Inc. on 26 February 2020 is hereby **GRANTED**. Accordingly, the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Fringe Benefit Tax and Compromise Penalty for the fiscal year 2011, in the aggregate amount of ₱16,043,592.51, as found in the Final Assessment Notice/Formal Letter of Demand, are hereby **CANCELLED** and **SET ASIDE**.
>
> Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.
>
> **SO ORDERED.**
>
> ...

In the present MR, respondent insists that the First Division erred in ruling that the CIR violated petitioner's right to due process when the Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**) was issued before the lapse of the fifteen (15)-day period from petitioner's receipt of the Preliminary Assessment Notice[6] (**PAN**).[7]

Respondent further argues that he or she was able to comply with the fundamental requirements of due process as enumerated in the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[8] (**Avon**)where the Supreme Court, citing *Ang Tibay v. The Court of Industrial Relations*[9] (**Ang Tibay**), set forth the fundamental requirements of due process in administrative proceedings, to wit: (1) the party interested 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; (5) the administrative tribunal's decision must be rendered based 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; and, (7) the administrative tribunal's decision must be rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

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6 Exhibits "P-10", Division Docket, Volume I, pp. 418-420.
7 Dated 15 January 2014; Exhibits "P-11" and series, id., pp. 421-431.
8 G.R No. 201398-99, 03 October 2018.
9 G.R No. 46496, 27 February 1940.

Finally, respondent maintains that the date of issuance in the FAN/FLD is a slight infirmity that does not necessarily result in the violation of petitioner's right to due process. What is important is that petitioner was notified of the assessment and was given ample time and opportunity to protest.

Petitioner, in its Comment/Opposition[10], argues that the CIR's arguments contained in his or her MR have no basis in law and in established facts. It cited the case of *Commissioner of Internal Revenue v. Pacific Bayview Properties, Inc.,*[11] where the CTA *En Banc* ruled that the CIR is duty bound to wait for the expiration of the fifteen (15) days from the date of receipt of the PAN before issuing the FAN/FLD. Such a process is part and parcel of the due process requirement in the issuance of a deficiency tax assessment. The CIR's failure to strictly follow the requirement will result in the denial of the taxpayer's right to due process. Thus, pursuant to the said principle, since the CIR failed to observe the 15-day period to respond to a PAN, the issued FAN/FLD should be deemed void.

Further, petitioner citing the case of *Puratos Philippines, Inc. v. Commissioner of Internal Revenue,*[12] points out that a void assessment cannot give rise to an obligation to pay deficiency taxes, and it divests the taxing authority of the right to collect the same.

We rule below.

A plain cursory of the subject MR immediately reveals that respondent raised no new issues or arguments that this Court did not consider or resolve. Accordingly, there is no compelling reason for this Court to modify, much more, to reverse the assailed Decision.

Nonetheless, for emphasis, We shall briefly discuss and reiterate the reasons for the grant of petitioner's Petition for Review.[13] Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, is clear, to wit:

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[10] Supra at note 3.
[11] CTA EB Case No. 1677 (CTA Case No. 9070), 08 October 2018.
[12] CTA Case No. 6980, 04 October 2010.
[13] Filed on 26 February 2020, Division Docket, Volume I, pp. 7-28.

...

SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

...

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[14]

...

Indubitably, a taxpayer shall be required to respond to the Bureau of Internal Revenue's (**BIR**'s) notice. It is only when the latter fails to respond that the CIR or his or her duly authorized representative could proceed to issue an assessment based on his or her findings. Section 3.1.1 of Revenue Regulations (**RR**) No. 12-99[15], as amended by RR No. 18-2013[16], reads:

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14 Emphasis supplied and italics in the original text.

15 IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRAJUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY.

16 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> ...
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**[17]
>
> ...

By failing to allow the full 15-day period (to reply to the PAN) to expire, respondent denied petitioner due process. We cannot overlook the fact that the FAN/FLD[18] was issued prematurely, *i.e.*, prior to the lapse of the fifteen (15)-day period for respondent to file a protest against the PAN.

To reiterate, the issuance of the PAN, as well as giving the taxpayer 15 days from receipt of such PAN to respond thereto, is part of due process in the issuance of tax assessments. The CIR or his/her duly authorized representative is duty-bound to wait for the expiration of the 15-day period from receipt of the PAN before issuing the FAN. This cannot be considered as a slight infirmity that does not affect petitioner's right to due process.

In this case, records show that petitioner received the PAN on **07 January 2014**. Counting 15 days therefrom, petitioner had until **22 January 2014** within which to file its Protest to the PAN. However, petitioner received the FAN/FLD on **15 January 2014**. This clearly shows that respondent did not wait for the period allotted for petitioner to file its Protest/Reply to the PAN to expire before issuing and serving the subject FAN/FLD. Even as petitioner was able to file a protest against the FAN/FLD, the fact remains that petitioner was deprived of the opportunity to be heard on the PAN, in clear violation of the due process

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[17] Emphasis supplied and italics in the original text.

[18] Supra at note 7.

requirement in the issuance of tax assessments laid down under Section 3[19] of RR No. 12-99[20], as amended by RR No. 18-2013.[21]

As regards respondent's argument that he or she has duly satisfied the fundamental requirements of due process as laid down in the case of *Ang Tibay*[22], the contrary appears. There is failure in respondent's part to observe the requisites laid down in the said case which are: (1) the administrative tribunal's decision must be rendered based on the evidence presented, or at least contained in the record and disclosed to the parties affected; and, (2) the administrative tribunal's decision must be rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

Consequently, in deciding protests on deficiency tax assessments, the BIR cannot issue the FAN/FLD without waiting for the full 15-day period (to reply to the PAN) to expire. The BIR must sufficiently inform them of the reasons - factual and legal - for such decision by communicating in writing the 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.

Here, the FAN/FLD failed to even consider petitioner's arguments in its Reply to the PAN, thus, the BIR failed to inform petitioner of the reasons for respondent's apparent rejection of its arguments in the Reply to PAN. This clearly demonstrates 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 PAN.

To reiterate, respondent is required to evaluate and consider petitioner's explanations or arguments in its Reply to PAN and to provide reasons for rejecting the same. On this point, *Avon* is categorical that a violation of taxpayer's right to due process in the issuance of an assessment renders the assessment void.[23]

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19 **SEC. 3.** *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
20 Supra at note 15.
21 Supra at note 16.
22 Supra at note 9.
23 Supra at note 8.

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

WHEREFORE, with the foregoing, respondent's "Motion for Reconsideration (Decision dated 4 December 2024)", filed on 18 December 2024, is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice