REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2229** (CTA Case No. 8740)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
IBM PLAZA CONDOMINIUM ASSOCIATION, INC., Respondent.	Promulgated: MAR 27 2023

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RESOLUTION

RINGPIS-LIBAN, *J.:*

This resolves Petitioner's "Motion for Reconsideration" filed on November 10, 2022 *via* registered mail, with Respondent's "Comment/Opposition (to Petitioner's Motion for Reconsideration of the 14 October 2022 Decision)" ("Comment") filed on November 29, 2022.

Petitioner's "Motion for Reconsideration" prays for the reconsideration and setting aside of the Decision[1] promulgated on October 14, 2022 ("Assailed Decision"), and that a new one be rendered upholding the validity and finality of the subject deficiency tax assessments.

The dispositive portion of the Assailed Decision reads:

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[1] Rollo, pp. 152-174.

> "**WHEREFORE**, premises considered, the Petition for Review filed with the Court *En Banc* through registered mail on February 28, 2020 is **DENIED** for lack of merit. Accordingly, the September 02, 2019 Decision and January 24, 2020 Resolution in CTA Case No. 8740 are **AFFIRMED**.
>
> Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amount representing the assessed deficiency taxes which was set aside and cancelled by this Court.
>
> **SO ORDERED.**"[2]

In his "Motion for Reconsideration", Petitioner contends that there was no violation of due process in the issuance of the subject deficiency tax assessments; that the Court failed to consider that prior to the issuance of the Preliminary Assessment Notice ("PAN") on May 12, 2011, a Notice of Informal Conference ("NIC") as evidenced by a Post Reporting Notice ("PRN") was already issued to and received by Respondent.

Petitioner posits that inasmuch as the NIC and PRN served the same purpose of informing the taxpayer of the BIR's findings to give the latter the opportunity to refute the same even prior to the issuance of a PAN, the only logical conclusion is that the PRN issued to Respondent on December 16, 2009 is in essence the NIC, and Respondent was given the opportunity to refute the initial findings of the BIR through the issuance of the said PRN.

On the other hand, Respondent in its Comment avers that during the assessment period in the instant case, the governing Bureau of Internal Revenue ("BIR") issuance over the requirement and procedure of issuing a NIC was Revenue Regulations ("RR") No. 12-99, not RR No. 12-1985. Respondent maintains that the sole issuance by Petitioner of the PRN based on the superseded RR No. 12-1985 is not in accord with the requirement under RR No. 12-99 to issue a NIC, without which Respondent's right to due process was violated.

Respondent asserts as well that regardless of which Revenue Regulation is applicable, neither a NIC nor a PRN was validly issued. This is because both RR No. 12-99 and RR No. 12-1985 require that the BIR's findings relating to the assessment (*i.e.,* the factual and legal bases) must be stated in the NIC or the PRN, which Petitioner failed to comply in the case at bar.

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2 *Id.,* Decision dated October 14, 2022, pp. 162-163.

In closing, Respondent submits that there were other instances when Petitioner violated Respondent's right to due process – premature issuance of the Formal Letter of Demand and Assessment Notice ("FLD/FAN") when the period to Reply to the PAN had not yet expired, the failure of Petitioner to respond to the Protest to the FLD/FAN, and the issuance of a Warrant of Distraint and/or Levy (WDL) despite Petitioner's not ruling on the said Protest to the FLD/FAN.

We find for Respondent.

Time and again, this Court has emphasized the mandatory procedure and corresponding due process requirement in the issuance of a deficiency tax assessment.

The sending of a NIC as part of this due process requirement has been recognized as early as the Tax Code of 1977. Section 1 of Revenue Regulations ("RR") No. 12-1985[3] states:

> "SECTION 1. *Post-Reporting Notice.* – Upon receipt of the report of findings, the Division Chief, Revenue District Officer or Chief, Office Audit Section, as the case may be, **shall send to the taxpayer a notice for an informal conference** before forwarding the report to higher authorities for approval. The notice which is Annex 'A' hereof shall be accompanied by a summary of findings as basis for the informal conference."[4]

When the National Internal Revenue Code (NIRC) of 1977 was amended in 1997, the implementing regulation, RR No. 12-1999[5] retained the requirement. Section 3.1.1 provides:

> "3.1.1 *Notice for informal conference.* – The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing,** by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National

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[3] Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue, November 27, 1985.
[4] *Emphasis and underscoring supplied.*
[5] 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 Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 06, 1999.

> Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, <u>for the purpose of 'Informal Conference,'</u> in order to afford the taxpayer with an opportunity to present his side of the case.** If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted."[6]

Nevertheless, the requisite of sending the NIC was deleted when RR No. 12-99 was amended by RR No. 18-2013[7]. Thereafter, RR No. 7-2018 restored its issuance, to wit:

> "3.1.1 *Notice for informal conference.* – The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **<u>the taxpayer shall be informed, in writing,</u>** by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, <u>for the purpose of 'Informal Conference,'</u> in order to afford the taxpayer with an opportunity to present his side of the case.**
>
> The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, <u>shall endorse the case within seven (7) days from the conclusion of the Informal Conference</u> to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.

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[6] *Emphasis and underscoring supplied.*

[7] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations."[8]

At present, the BIR still issues the same notice though now it is already called a Notice of Discrepancy ("NOD") instead of a NIC. Section 3.1.1 of RR No. 22-20[9] states:

"3.1.1 *Notice of Discrepancy.* – If a taxpayer is found to be liable for deficiency tax or taxes in the course of an investigation conducted by a Revenue Officer, the taxpayer shall be informed through a Notice of Discrepancy (Annex A). The Notice of Discrepancy aims to fully afford the taxpayer with an opportunity to present and explain his side on the discrepancies found.

The Revenue officer who audited the taxpayer's records shall, among others, state in the initial report of investigation his findings of discrepancies.

Based on the said Officer's submitted initial report of investigation, **the taxpayer shall be informed, in writing,** by the Revenue District Office or by the Assessment Division/Regional Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of the 'Discussion of Discrepancy.'**

The Discussion of Discrepancy shall in no case extend beyond thirty (30) days from receipt of the Notice of Discrepancy. **It is during the Discussion of Discrepancy that the taxpayer is given the opportunity to present his side of the case and explain the discrepancy found during the investigation of the Revenue Officer assigned and submit documents to support the explanation or arguments.**

If the taxpayer disagrees with the discrepancy/discrepancies detected during the audit/investigation, the taxpayer must present an explanation and provide documents to support his explanation. The documents must be submitted during the discussion. Should

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8 *Emphasis and underscoring supplied.*

9 Amending Certain Sections of Revenue Regulations No. 12-1999, as Amended by Revenue Regulations No. 18-2013 and Revenue Regulations No. 7-2018, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, September 15, 2020.

the taxpayer need more time to present the documents, he may submit such documents after the discussion. The taxpayer must submit all necessary documents that supports his explanation within thirty (30) days after receipt of the Notice of Discrepancy.

If after being afforded the opportunity to present his side through the Discussion of Discrepancy, it is still found that the taxpayer is still liable for deficiency tax or taxes and the taxpayer does not address the discrepancy through payment of the deficiency taxes or the taxpayer does not agree with the findings, the investigating office, shall endorse the case to the reviewing office and approving official in the National Office or the Revenue Regional Office, for issuance of a deficiency tax assessment in the form of a Preliminary Assessment Notice within ten (10) days from the conclusion of the Discussion.

Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations."[10]

From the foregoing, a NIC, or NOD as it is being currently called, is a written notice issued by the BIR which serves two (2) purposes – one, it informs the taxpayer of the preliminary findings or discrepancies found during the investigation, and second, it contains an invitation to schedule a conference/discussion with the Revenue Officer assigned to give opportunity to the taxpayer to present his or her side of the case.

In the case at bar, the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment is RR No. 12-1999, not the other revenue regulations discussed above. Pursuant to RR No. 12-1999, the issuance of a NIC is required. However, there is no indication that the BIR issued a NIC to Respondent.

We are also not convinced of Petitioner's argument that the PRN issued in the instant case is the NIC required under RR No. 12-1999. A cursory reading of the PRN dated December 16, 2009[11] addressed to Respondent reveals that it did not contain any invitation to schedule a conference/discussion between the BIR and Respondent, *viz.*:

December 16, 2009

POST REPORTING NOTICE

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[10] *Emphasis and underscoring supplied.*
[11] Docket, p. 1384.

Mr. Rhemus D. Maramba
IBM Plaza Condominium Association, Inc.
8 Eastwood City Cyberpark E. Rodriguez Jr., Ave.
Brgy. Bagumbayan, Quezon City

Sir:

Pursuant to Section 228 of the National Internal Revenue Code, as amended by R.A. 8424, otherwise known as the National Internal Revenue Code of 1997, there is summarized in Annex H-2 hereof, the report of audit investigation under Letter of Authority No. 00038546 dated June 18, 2009, covering your all internal revenue tax liabilities for taxable year 2008.

If you are not agreeable to the findings, you or your authorized representative may submit documentary evidences [*sic*] to support any objections you may find against the proposed assessment. However, if we do not hear from you within fifteen (15) days from receipt hereof, we will presume that you are agreeable of the proposed assessment. Hence, the corresponding Letter of Demand will be sent to you upon approval of the report of investigation.

Your preferential attention on this matter is highly desired.

Very truly yours,

JOEL L. TAN-TORRES
Commissioner of Internal Revenue

By:

LUIS A. ALBERTO, JR.
OIC-Revenue District Officer

For the same reason that there is no invitation to schedule a conference/discussion, assuming without conceding that RR No. 12-1895 is the governing BIR issuance in the case at bar, the PRN issued by Petitioner was not the same as the PRN provided for in Annex A of RR No. 12-1985.

ANNEX "A"

Revenue Regulations No. 12-85

POST-REPORTING NOTICE

____
(Division, Revenue District Office No., or Office Audit Section)

Date _______________

Sir :

Please be informed that . . . . of the . . . . (indicate the office conducting the investigation) has submitted his audit report on your . . . . tax (kind of tax) liabilities for . . . . (period covered). He has recommended a deficiency tax in the amount of ₱ . . . . exclusive of interest computed as follows:

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If you are not agreeable to the examiner's findings, you or your authorized representative may arrange for an informal conference with the . . . . (head of . . . . investigating office) within ten (10) days from receipt hereof by contacting M/ . . . . at Tel. No. . . . .

You may submit at said conference documentary evidence to support any objections you may find against the proposed assessment. If you are sending your representative, please authorize him in writing to act in your behalf.

Very truly yours,

____
RUBEN B. ANCHETA
Acting Commissioner
(or Name of Regional Director
and Region No.)

In sum, the Court *En Banc* finds no cogent reason to overturn the Assailed Decision.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(With due respect I maintain my Dissenting Opinion and join the Concurring & Dissenting Opinion of Justice Lanee S. Cui-David)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

(With due respect I maintain my Concurring & Dissenting Opinion and join the Dissenting Opinion of Justice Catherine T. Manahan)
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice