REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MONZA SPV-AMC ("ASSET OF MANAGEMENT CO."), INC.,
Respondent.

CTA EB NO. 2125
(CTA Case No. 9153)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 22 2020

3:15 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) against respondent Monza SPV-AMC ("Asset of Management Co."), Inc. (Monza) within the extended period of time[2] granted by the Court[3], seeking to set aside the assailed Decision of this Court's Special Second Division, dated April 15, 2019,[4] which granted the Petition for Review of Monza and declared the formal assessment notice issued against it for deficiency taxes in the amount of ₱43,226,981.52 for taxable year (TY) 2011 void and the assailed Resolution dated July 26, 2019[5] which denied his motion for reconsideration.

[1] *Rollo*, pp. 11-23.
[2] *Id.*, pp. 1-9.
[3] *Id.*, p. 10.
[4] *Id.*, pp. 25-37.
[5] *Id.*, pp. 38-44.

The Parties

Petitioner CIR is the duly appointed Commissioner of Internal Revenue vested under the law with authority to carry out all functions, duties and responsibilities of the BIR.[6]

Respondent Monza is a domestic corporation duly organized and existing under the laws of the Philippines with principal place of business at 25/F Philamlife Tower, 8767 Paseo de Roxas, Makati City.[7] Petitioner is primarily engaged in the business of investing and acquiring non-performing assets of financial institutions.[8]

The Facts[9]

On August 9, 2012, a Letter of Authority (LOA) with numbers: eLA201000078252/LOA-050-2012-00000188[10] was issued, authorizing the examination of Monza's books of accounts and other accounting records for the period January 1, 2011 to December 31, 2011. The LOA was served to Monza on August 10, 2012.[11]

On January 8, 2015, Monza received a Preliminary Assessment Notice (PAN)[12] dated December 29, 2014, for deficiency internal revenue taxes for taxable year 2011.[13] Thus, Monza had fifteen (15) days from January 8, 2015, or until January 23, 2015, to file its reply to the PAN.[14]

On January 23, 2015, Monza filed its reply to the PAN.[15]

On January 14, 2015, the CIR issued the Formal Assessment Notice (FAN)[16]. The FAN assessed Monza for deficiency taxes in the following amounts: ₱37,693,037.65 for Income Tax, ₱5,103,198.27 for Percentage Tax, and ₱430,745.60 for Expanded Withholding Tax (EWT). This was received by Monza on February 4, 2015.[17]

On March 4, 2015, Monza filed a protest or request for reinvestigation

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[6] Docket, p. 1303.
[7] *Id.*, p. 1302.
[8] *Id.*, p. 1303.
[9] As found by the Special Second Division and as culled from the records of the case.
[10] *Id.* at Note 6, p. 3658, Exhibit "R-1".
[11] *Id.*, p. 3653, Exhibit "R-3".
[12] *Id.*, pp. 1146-1149, Exhibit "P-14".
[13] *Id.*, p. 1303.
[14] *Id.*, p. 1303.
[15] *Id.*, p. 1303.
[16] *Id.*, pp. 958-961, Exhibit "P-4".
[17] *Id.* at Note 1, p. 12.

against the FAN, accompanied with supporting documents.[18]

On September 30, 2015, Monza filed a Petition for Review with the CTA, docketed as CTA Case No. 9153, alleging the CIR's inaction on its protest and praying for the cancellation and invalidation of the assessments against it.

On November 26, 2015, the Court received the CIR's Answer,[19] which was posted on November 13, 2015.

Pre-Trial commenced and both parties filed their respective Pre-Trial Briefs[20] and their Joint Stipulation,[21] which was approved and adopted in the Pre-Trial Order (PTO)[22] dated March 7, 2016.

Trial ensued and Monza presented its witnesses: Ms. Jocelyn I. Cheng[23] and Mr. Maurita C. Tarobal[24].

On August 8, 2016, Monza filed its Formal Offer of Evidence (FOE), with Motion for Additional Marking.[25] On December 29, 2016, the Court in Division resolved Monza's FOE.[26] Monza then filed a Motion For Reconsideration and For Additional Setting of Commissioner's Hearing for Pre-Marking.[27] The Court in Division resolved the same by admitting all of Monza's exhibits.[28]

The CIR, on the other hand, presented his sole witness, Revenue Officer Raul Marie M. Aquino[29] on January 24, 2018.

The CIR filed his FOE[30] through registered mail on January 6, 2018 which the Court received on February 2, 2018. The Court in Division admitted all of the CIR's exhibits.[31]

Monza filed its Memorandum[32] on August 8, 2018 while the CIR failed to

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[18] *Id.*, p. 13.
[19] *Id.* at Note 6, pp. 582-584.
[20] The CIR filed his Respondent's Pre-Trial Brief on January 18, 2016, while Monza filed its Pre Trial Brief on January 29, 2016.
[21] *Id.* at Note 6, pp. 1302-1307; filed on February 19, 2016.
[22] *Id.*, pp. 1310-1313.
[23] *Id.*, pp. 926- 944, Exhibit "P-19"; testified on March 16, 2016.
[24] *Id.*, pp. 1345-1356, Exhibit "P-21"; testified on June 8, 2016.
[25] *Id.*, pp. 2574-2590.
[26] *Id.*, pp. 3350 -3351.
[27] *Id.*, pp. 3359-3365.
[28] *Id.*, pp. 3670-3671.
[29] *Id.*, pp. 3652-3657, Exhibit "R-3".
[30] *Id.*, pp. 3684-2686.
[31] *Id.*, pp. 3690-3691.
[32] *Id.*, pp. 3692-3715.

file his memorandum per Records Verification[33] dated August 15, 2018. Thus, the case was considered submitted for decision on August 20, 2018.[34]

On April 15, 2019, the Court in Division issued the assailed Decision[35], the dispositive portion of which reads as follows:

> "**WHEREFORE,** the instant Petition for Review is **GRANTED.** Accordingly, the formal assessment notice dated January 14, 2015 issued against Monza SPV-AMC (Asset Management Co.), Inc., for internal revenue taxes involving taxable year 2011 in the amount of Php43,226,981.52 is declared **VOID.**
>
> **SO ORDERED."**

On April 30, 2019, the CIR filed his Motion for Reconsideration thereof through registered mail which the Court *en banc* received on May 8, 2019. Monza responded by filing an Opposition (To: Respondent's Motion for Reconsideration dated 30 April 2019) on May 16, 2019, to which the CIR filed a Comment (To: Petitioner's Opposition to Respondent's Motion for Reconsideration) on May 27, 2019 via post which was received by the Court in Division on June 4, 2019.

On July 26, 2019, the Court in Division issued the assailed Resolution[36] which denied the CIR's motion for reconsideration for lack of merit.

Within an extended period of time[37] granted by the Court *en banc*,[38] the CIR timely filed his Petition for Review[39] with the CTA *en banc* on September 5, 2019.

On September 24, 2019, Monza was ordered to file its Comment thereto.[40]

On October 14, 2019, Monza timely filed its Comment.[41]

[33] *Id.*, p. 3716.
[34] *Id*, p. 3717.
[35] *Id.* at Note 1, pp. 25-36.
[36] *Id.* at Note 5.
[37] *Id.* at Note 1, pp. 1-3.
[38] *Id.*, p. 10.
[39] *Id.* at Note 4.
[40] *Id.*, pp. 46-47.
[41] *Id.*, pp. 48-57.

In a Resolution dated October 24, 2019, Monza's Comment was noted and the case was referred to mediation.[42] However, the parties decided not to have their case mediated by the Philippine Mediation Center Unit-CTA on November 19, 2019.[43]

On December 10, 2019, the case was submitted for decision.[44]

The Assignments of Errors

Petitioner CIR claims that the Special Second Division erred in granting the Petition for Review of Monza as the issuance of the FLD/FAN prior to the lapse of the 15-day period given to reply to the PAN was not a denial of the right to due process, as a protest against the PAN is not indispensable unlike the protest against the FAN.

The Arguments of the Parties

The CIR argues that the issuance of the FLD/FAN prior to the lapse of the 15-day period given to reply or protest against the PAN was not a denial of the right to due process. Citing *Commissioner of Internal Revenue vs. Dominador Menguito*[45], the CIR claims that the stringent requirement of due process must be construed to refer to the FAN alone. Since both the PAN and the FAN were received and protested by Monza, and considering that FAN was issued 16 days after the issuance of the PAN, there has been full compliance with the due process requirement.

On the other hand, Monza argues that the CIR's reliance on the *Menguito* case is misplaced as the more recent case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[46] declares that the PAN is an integral part of a process designed to observe due process. Moreover, the premature issuance of the FAN to Monza prior to the lapse of the 15-day period given to it to reply to the PAN violated its right to due process. It is the responsibility of the CIR to give Monza an opportunity to respond to the PAN as due process is a substantive right and not a mere technicality of procedure.

The Ruling of the Court

The Petition for Review is devoid of merit.

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[42] In accordance with A.M. No. 11-1-5-SC-PHILJA dated January 18, 2011 issued by the Supreme Court, "Interim Guidelines for Implementing Mediation in the Court of Tax Appeals".
[43] *Id.* at Note 1, p. 61.
[44] *Id.*, pp. 63-64.
[45] G.R. No. 167560, September 17, 2008.
[46] G.R. Nos. 201398-99, October 3, 2018.

Assessments Issued by the BIR that Fail to Comply with Due Process Requirements are Void

Section 228 of the Tax Code provides the due process requirements in the issuance of a deficiency tax assessment, as follows:

> **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: ...
>
> x x x x x x x x x
>
> The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.
>
> **Within a period to be prescribed by the 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. x x x *(Emphasis supplied)*

The "rules and regulations" referred to in the above-quoted provision refer to Section 3 of RR 12-99, as amended by RR 18 -2013[47] which provides:

> Sec. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. -
>
> 1.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 1.1.1 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 x x x.

[47] Amended 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.

> 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.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the finding of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> x x x x x x x x x
>
> 3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). - The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payments of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void. x x x *(Emphasis supplied)*

From the foregoing, it is clear that whenever there is a finding of any deficiency tax due from a taxpayer, the CIR or his duly authorized representative is required to issue a PAN. The taxpayer is given fifteen (15) days from receipt of the PAN to reply thereto, otherwise, the taxpayer shall be considered in default which shall lead to the issuance of the FLD/FAN.

The Doctrine in the *Menguito Case* Has Been Expanded by the *Avon Products Case*

The CIR cites the *Menguito Case* as authority in declaring that stringent due process requirements must be construed to refer to the FAN only.

We disagree.

As Monza has pointed out, the doctrine in the *Menguito Case* has been expanded in the *Avon Products Case* to include the PAN, among others, for being an integral part of the process to ensure the observance of due process requirements. As both cases have been promulgated by the Third Division of the Supreme Court, this Court takes guidance from the High Court's latest pronouncement as regards the treatment of the PAN.

In the *Avon Products* case, the Supreme Court had this to say:

> **"The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable.**
>
> x x x x x x x x x
>
> 'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' **This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.**
>
> On the other hand, <u>the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment.</u> Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.
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> x x x x x x x x x
>
> **The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice.** However, this purpose

is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations." *(Emphasis supplied; citations omitted)*

Prematurely Issued FAN Violates Due Process

The principles laid down in the *Avon Products Case* as regards the observance of due process in the issuance of assessments to taxpayers was reiterated in a more recent case, *Commissioner of Internal Revenue vs. Nippo Metal Tech Phils. Inc.*[48]

In *Nippo Metal*, similar to the present case, the CIR issued the FLD/FAN to Nippo Metal without waiting for the lapse of the 15-day period to respond to the PAN, and the Supreme Court held, as follows:

> "Clearly, due process demands that the taxpayer receives the PAN **and** that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond 'opportunity to be heard' as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*, held that '[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the [CIR] must consider the evidence presented.'***
>
> x x x x x x x x x
>
> **By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**" *(Emphasis supplied and in the original)*

Similar to *Nippo Metal*, in the case of Monza, records show that the CIR issued the FAN dated January 14, 2015 prior to the lapse of the fifteen (15) day period given to Monza to respond to the PAN which it received on January 8, 2015. As Monza timely filed its reply to the PAN **only on January 23, 2015**, it becomes apparent that such reply to the PAN could not have been considered by the CIR when it issued the FAN, in violation of due process.

We therefore uphold the following findings of the Court in Division:

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[48] G.R. No. 227616, June 19, 2019.

> "Thus, **the fifteen-day period granted to the taxpayer to reply to the PAN before a FAN can be issued is mandatory**. Time is essential in this entire procedure of administrative protest because any escalation in the levels of the protest, *i.e.,* FLD /FAN, leaves the taxpayer with fewer options, such as going to the Court of Tax Appeals on appeal or entering into a compromise settlement, among others, which all entail financial costs to the taxpayer. **Hence, the period granted to assail the PAN is integral to the right of due process granted by law to the taxpayer**." *(Emphasis supplied)*

The Court, therefore, sees no error committed by the Court in Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated April 15, 2019 and Resolution dated July 26, 2019 of the Special Second Division in CTA Case No. 9153 are **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO- SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice