REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PACIFIC BAYVIEW PROPERTIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9070

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUN 09 2017 3:50 pm [signature]

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RESOLUTION

CASANOVA, *J.*:

For reasons cited by petitioner, its **Motion for Extension of Time to File Comment**, filed by registered mail on May 5, 2017 and received by the Court on May 22, 2017, is **GRANTED**. Accordingly, petitioner's **Comment (Re: Motion for Reconsideration dated April 17, 2017)**, filed by registered mail on May 15, 2017 and received by the Court on May 25, 2017, is **ADMITTED**.

Considering the foregoing, the Court shall proceed to resolve respondent's **Motion for Reconsideration (Re: Decision dated March 28, 2017)**, filed on April 17, 2017.

Respondent moves for the reconsideration of the Court's Decision promulgated on March 28, 2017 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the

deficiency income tax and VAT assessments issued against petitioner for CY ended December 31, 2007 in the total amount of ₱3,006,445.49 are **CANCELLED** and **WITHDRAWN** for violation of petitioner's right to due process. Consequently, respondent's **Final Decision on Disputed Assessment** dated May 8, 2015 is **REVERSED** and **SET ASIDE**.

SO ORDERED."

Respondent argues that petitioner's right to due process was not violated when respondent issued the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) on January 24, 2011. Respondent submits that the issuance of the FAN and FLD a day before the expiration to respond to the Preliminary Assessment Notice (PAN) should not be deemed as a deprivation of petitioner's right to procedural due process.

Respondent stresses that petitioner was given sufficient period of time to respond to the PAN as the same was mailed on January 5, 2011 and the subject FAN and FLD were issued on January 24, 2011. Clearly, respondent did not totally disregard petitioner's right to respond to the PAN as it waited for the lapse of nineteen (19) days before it issued the FAN. Respondent mentions that in fact, petitioner was not denied due process and no prejudice was inflicted against it because of the protest against the FAN which was timely filed.

On the other hand, petitioner maintains that respondent violated its right to due process when he issued the FAN and FLD even before the lapse of the 15-day period given to it to file its protest to the PAN. Petitioner does not deny the existence of the cases cited by respondent in support of his position that petitioner's right to due process was not violated as it was afforded the opportunity to protest the FAN. However, petitioner submits that majority of the Court of Tax Appeal's and Supreme Court's decisions emphatically rule that the issuance of a FAN and FLD prior to the lapse of the period to respond to a PAN is a clear violation of a taxpayer's right to due process.

After careful review of the parties' arguments and the related law, regulation and jurisprudence applicable to the case, the Court maintains its ruling that there was a violation of due process.

To reiterate, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that "Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said [preliminary assessment] notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings." In relation thereto, Section 3.1.2 of Revenue Regulations (RR) No. 12-99 provides that "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 assessment notice shall be caused to be issued by the said Office, xxx".

From the foregoing, it is clear that the taxpayer is given fifteen (15) days from receipt of the PAN to respond thereto, and only after it fails to do so will it be considered in default and a formal letter of demand and assessment notice will be issued.

Hence, respondent should have waited for petitioner's failure to respond to the PAN within fifteen (15) days after the *date of receipt* thereof before he issued the FAN and FLD since it is only after the lapse of said period when petitioner will be considered in default and a formal letter of demand and assessment notice will be issued. Respondent failed to observe the said period because he reckoned the counting of the 15-day period from the date of mailing of the PAN, not when the same was received by petitioner.

In this case, petitioner received the PAN on January 10, 2011.[1] Counting 15 days from January 10, 2011, petitioner had until January 25, 2011 within which to respond to the PAN. Hence, petitioner timely filed its Position Paper/Reply to the PAN on January 25, 2011.[2] However, without waiting for the reply of petitioner, respondent issued the FAN and FLD on January 24, 2011. Thus, it is clear that respondent violated petitioner's right to due process when he failed to strictly observe the due process requirement provided in RR No. 12-99.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its

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[1] Par. 6, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, (Vol. II), p. 480.

[2] Par. 7, Stipulation of Facts, JSFI, Docket, (Vol. II), p. 480.

inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the Commissioner of Internal Revenue to strictly comply with the requirements laid down by law and its own rules is a denial of a taxpayer's right to due process.[3]

Respondent cites the ruling in *International Exchange Bank vs. Commissioner of Internal Revenue*[4] and *Commissioner of Internal Revenue vs. Ajinomoto Philippines Corporation*[5] in support of his argument.

In *International Exchange Bank vs. Commissioner of Internal Revenue*[6], the PAN was served on January 6, 2000 while the FAN was received on January 12, 2000. Petitioner therein argued that the FAN for 1996 and 1997 were issued in violation of its right to due process, they having been issued even before it could respond to the PAN. However, the Supreme Court held that petitioner therein had been afforded the opportunity to protest the assessment notices as in fact it even requested for a re-investigation which is, given the nature of the present case, the essence of due process.

On the other hand, in *Commissioner of Internal Revenue vs. Ajinomoto Philippines Corporation*[7], the PAN was received on December 16, 2008 while the FAN was received on December 22, 2008. The Court *En Banc* held that there is no violation of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence. While the FAN was issued before the period to respond to PAN has expired, Ajinomoto nevertheless received the PAN and FAN, was informed of the factual and legal bases of the assessments, and was able to intelligently respond to the PAN and FAN in a Letter dated December 23, 2008.

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[3] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[4] G.R. No. 171266, April 4, 2007.
[5] CTA EB Nos. 1010 & 1015, November 3, 2014.
[6] G.R. No. 171266, April 4, 2007.
[7] CTA EB Nos. 1010 & 1015, November 3, 2014.

However, the Court cannot disregard the mandatory provision of Section 228 of the NIRC of 1997, as amended, and Section 3.1.2 of RR No. 2-98.

Moreover, in the recent case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[8], the Court *En Banc* again ruled that there is a violation of due process if the FAN was issued prior to the expiration of the period to reply to the PAN. The Court *En Banc* explained that after the issuance of the PAN, the Commissioner of Internal Revenue or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt thereof. If during the said period, the taxpayer failed to respond to the PAN, it is only then that the Commissioner of Internal Revenue or his duly authorized representative can consider the taxpayer in default, and correspondingly cause the issuance of a formal letter of demand and assessment notice, which shall be subsequently served to the said taxpayer. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In view of the foregoing, the Court finds no cogent reason to reverse or modify the Court's Decision dated March 28, 2017.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated March 28, 2017)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[8] CTA EB No. 1419, November 21, 2016.