REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MONZA SPV-AMC ("ASSET 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:

JUN 0 8 2021
4:11 p.m.

x---x

RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves petitioner Commissioner of Internal Revenue's (CIR's) "Motion for Reconsideration"[1] filed by registered mail on October 16, 2020 seeking to set aside the Decision[2] promulgated on September 22, 2020 which denied the Petition for Review of MONZA SPV-AMC ("Asset Management Co."), Inc. (Monza) and affirmed the Court in Division's Decision and Resolution declaring the assessments void due to non-compliance with due process requirements.

On November 17, 2020, the Court issued a Resolution requiring Monza to comment on the CIR's "Motion for Reconsideration" within ten (10) days from notice.[3]

---

[1] *Rollo*, pp. 81-90.
[2] *Id.*, pp. 66-76.
[3] Unpaginated.

On November 3, 2020, Monza posted its "Motion for Extension of Time to File Comment/Opposition"[4] through registered mail which the Court received on November 18, 2020. This was granted by the Court in a Resolution dated December 17, 2020. Hence, Monza's "Opposition (To: Petitioner's Motion for Reconsideration dated 13 October 2020)" filed on November 11, 2020 was considered timely filed.

As grounds for reconsideration, the CIR argues the following:

a) The *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc.*[5] *(Nippo Metal)* case cannot be used as the law of the case considering that the Supreme Court made its position on this case only through a minute resolution;

b) The issuance of a Formal Letter of Demand (FLD)/Formal Assessment Notice (FAN) prior to the lapse of the 15-day period given to reply/protest the Preliminary Assessment Notice (PAN) was not a denial of the right to due process; and

c) There is no violation of Monza's right to due process because a protest against the PAN is not indispensable, unlike the protest against the FAN.

On the other hand, Monza opposes the CIR's motion on the following grounds:

a) The *Nippo Metal* case is binding jurisprudence and the ruling in the *Menguito* case has already been expanded;

b) The issuance of FAN prior to the lapse of 15 days from receipt of PAN is a violation of due process; and

c) The opportunity to reply to PAN and the CIR's consideration of the same is required for due process.

After a careful consideration, the Court finds that the issues and arguments raised in the CIR's motion had already been amply discussed, passed upon and considered by this Court in the Decision. The CIR's arguments constitute neither compelling nor cogent reason to modify, much less reverse our Decision dated September 22, 2020.

---

4 Unpaginated.

5 G.R. No. 227616, June 19, 2019.

However, on the ground raised by the CIR that *Nippo Metal* cannot be used as the law of the case since it was merely embodied in a minute resolution, the CIR is partly correct.

Indeed, only the decisions of the Supreme Court constitute binding precedents and form part of the Philippine legal system, as prescribed under Article 8 of the Civil Code.[6] Judgments of lower courts and other collegiate courts bind only the parties to specific cases, unlike decisions of the Supreme Court which are universal in their scope and application as well as mandatory in character.[7]

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue,*[8] the Supreme Court held:

> "It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final.
>
> When a minute resolution denies or dismisses a petition for failure to comply **with** formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> **With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata.* However, if other parties or another subject matter (even with the same parties and issues) is involved, <u>the minute resolution is not binding precedent</u>.** Thus, in CIR v. Baier-Nickel, the Court noted that a previous case, *CIR v. Baier-Nickel* involving the same parties and same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case 'ha(d) no bearing' on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years."

---

[6] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, 693 SCRA 456 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

[7] *The Philippine Veteron Affairs Office v. Segundo*, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.

[8] G.R. No. 167330, September 18, 2009 (Resolution), 600 SCRA 413, 446-447.

In *Philippine Health Care Providers,* the Supreme Court went on to discuss the distinctions between a decision and minute resolution, thus:

> "Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision.
>
> Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice."

Be that as it may, a reading of the Decision sought to be reconsidered would show that this Court did not rely on the *Nippo Metal* case alone, but that it principally relied on *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[9] in declaring that stringent due process requirements refer not only to the FAN but the PAN as well. It is to be noted that the *Avon Products* case is a decision by the Supreme Court which properly constitutes binding precedent.

We reiterate our finding that –

> "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**

---

[9] G.R. Nos. 201398-99, October 3, 2018.

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.

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)"

All told, the *Nippo Metal* case, albeit promulgated via Minute Resolution, merely emphasized the doctrine expanded by the *Avon Products* case, promulgated in a Decision. Hence, as a ground for reconsideration, the CIR's arguments remain unpersuasive.

WHEREFORE, the CIR's "Motion for Reconsideration" is **DENIED** for lack of merit.

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