REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ROCA SECURITY AND INVESTIGATION AGENCY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1523
(CTA Case No. 8718)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ*.

Promulgated:

AUG 15 2018
8:39 a.m.

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RESOLUTION

Fabon-Victorino, J.:

Challenged in respondent's *Motion for Reconsideration* is the Decision of March 7, 2018, the decretal portion of which reads as follows:

> **WHEREFORE**, the Petition for Review dated October 19, 2016 filed by Roca Security and Investigation Agency, Inc. is hereby **GRANTED**. The Decision dated July 21, 2016, and the Resolution dated September 16, 2016, both rendered by the Court in Division are **REVERSED** and **SET ASIDE**.

Consequently, the assessment in the Formal Letter of Demand and Assessment Notices for deficiency income tax (IT) and improperly accumulated earnings tax (IAET) for the year 2009 is **CANCELLED and WITHDRAWN**.

SO ORDERED.[1]

Respondent claims that he has faithfully complied with the requirements of due process on assessment enshrined under Section 228 of the NIRC, as amended, as implemented by RR No. 12-99. He theorizes that issuance of FAN/FLD before the lapse of the fifteen (15) day period within which the taxpayer may file an answer to the PAN is not detrimental to a taxpayer's right to due process as long as the assessment has been received by the taxpayer who is able to file an intelligent protest thereto within the period prescribed by the Tax Code, citing a Decision[2] of this Tribunal as his authority. The fact that petitioner received the PAN and subsequently the FAN and that it was able to contest the said assessment notices within the period prescribed by law negates the impression that he violated petitioner's right to due process.

Respondent further contends that the FAN/FLD he issued is not a jeopardy assessment contemplated under RR No. 30-2002, on the ground that it was a product of an actual audit/examination of petitioner's record and books of account pursuant to electronic LOA (eLOA) No. 20100001373.

Moreover, petitioner failed to overcome by formidable proof the presumption of correctness of assessment, for which reason, the deficiency taxes and increments contained in the FAN/FLD should be upheld in its entirety. The assessment being valid, petitioner must pay the deficiency income tax and improperly accumulated earnings tax, totalling ₱2,082,763.36, exclusive of deficiency and delinquency interest as contained the FAN/FLD.

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[1] *Rollo,* pp. 141-142.
[2] *The Aristocrat Franchise Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8731, July 28, 2016.

By way of *Comment/Opposition,*[3] petitioner counters that the *Aristocrat*[4] case cited by respondent as authority is not applicable to the present controversy given that the two cases have different factual milieu. Petitioner explains that in the *Aristocrat* case, the FAN/FLD was issued *after* a reply to the PAN was filed by the taxpayer, whereas in the present case, the FAN/FLD was issued *prior* to the filing of its response to the PAN. Since respondent's FAN/FLD was prematurely issued before its protest to the PAN could be considered and acted upon, he undoubtedly violated its right to due process on assessment under Section 228 of the NIRC, as amended, as implemented by RR No. 12-99. On account thereof, respondent's FAN/FLD deserves an outright nullification.

THE RULING OF THE COURT

After an assiduous review of the allegations in respondent's Motion for Reconsideration, the Court finds no cogent reason to warrant a reconsideration of the assailed Decision of March 7, 2018. The *motion* has not raised any novel or substantial ground that will justify a departure from the previous conclusion and finding of the Court.

Even assuming in *gratia argumenti* that respondent properly observed due process in the issuance of the assessment under Section 228 of the NIRC, as amended, as implemented by RR No. 12-99, the subject FAN/FLD must be struck down for it is not an assessment envisaged by the Tax Code and settled case law on the matter.

Section 6(A)[5] of the NIRC, as amended, decrees *inter alia*, that a taxpayer shall be held accountable for a valid assessment only upon notice and demand from respondent or his authorized representative. Jurisprudence defines an assessment as a written notice and demand made by the

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[3] *Rollo,* pp. 161-164.
[4] See note 2.
[5] **SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –

(A) Examination of Return and Determination of Tax Due. - xxx

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. xxx

BIR on the taxpayer for the settlement of a due tax liability that is there *definitely set and fixed*.[6] Its primary purpose is to determine the amount that a taxpayer is liable to pay.[7] Clearly, any FAN/FLD which is still subject to modification or adjustment is not an assessment contemplated by the Tax Code and settled case-law on the matter.

While the FAN/FLD of April 12, 2013 indicates the computation of petitioner's purported tax liabilities, the amount stated therein remains indefinite as the tax due and interest thereon are still subject to adjustment depending on actual date of payment by petitioner, thus:

> **NOTE**: Interest and total amount due *shall be adjusted* up to the actual date of payment.[8]

It is therefore plain that the amount of tax liability of petitioner depends on its date of payment. In other words, the FLD dated April 12, 2013 does not contain a fixed and definite amount of tax to be paid, rendering it legally infirm. As a result, the Court is left with no other recourse but to invalidate the same.

On a final note, taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.[9] But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[10]

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[6] See *Adamson vs. Court of Appeals,* G.R. No. 120935, May 21, 2009.
[7] See *Tupaz vs. Hon. Ulep,* G.R. No. 127777, October 1, 1999.
[8] Exhibit P-8, division docket, p. 306, emphasis supplied.
[9] *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue,* G.R. No. 171251, March 5, 2012.
[10] See *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.,* G.R. No. 198677, November 26, 2014, citing *Commissioner of Internal Revenue vs. Algue, Inc.,* G.R. No. L-28896, February 17, 1988.

WHEREFORE, respondent's *Motion for Reconsideration* dated April 3, 2018 is **DENIED**. The challenged Decision of March 7, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 15 2018 8:39 a.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of respondent's Motion for Reconsideration of the Decision dated March 7, 2018 *solely* on the ground that respondent's issuance of the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN), six (6) days before the lapse of the fifteen (15)-day period within which petitioner may file a protest to the Preliminary Assessment Notice (PAN), violated petitioner's right to due process and rendered the FLD and FAN void and without legal effect.

All told, I CONCUR in the *result.*

ROMAN G. DEL ROSARIO
Presiding Justice