REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

THE ORCHARD GOLF AND COUNTRY CLUB, INC.,
Respondent.

CTA EB NO. 2335
(CTA Case No. 8986)

Present:

DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JAN 09 2023 3:00 PM

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RESOLUTION

MANAHAN, *J.*:

On April 25, 2022, the Court *En Banc* promulgated its Decision,[1] which denied the Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR), as follows:

> **WHEREFORE**, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the Court's 3rd Division, dated January 14, 2020 and September 1, 2020, respectively, are **AFFIRMED**.
>
> The CIR, his representatives, agents, or any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject deficiency taxes.
>
> **SO ORDERED**.[2]

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[1] EB Docket, pp. 221-231.
[2] EB Docket, p. 229.

On May 11, 2022, the CIR filed a *Motion for Reconsideration (Re: Decision dated 25 April 2022)*, stating that the Court erred in ruling that the assessments are void and that respondent The Orchard Golf and Country Club, Inc. (Orchard Golf) is not liable for deficiency taxes for taxable year 2010.

The CIR argues that Orchard Golf's protest to the Formal Letter of Demand (FLD) was merely a rehash of its protest to the Preliminary Assessment Notice (PAN). Assuming that the CIR was not able to consider the protest to the PAN, Orchard Golf's protest to the FLD was admitted and still failed to refute the assessments. The CIR also states that despite being given the opportunity to refute the findings, Orchard Golf still failed to do so. The request for reinvestigation was granted and Orchard Golf was given the opportunity to submit additional documents, however, Orchard Golf was still not able to produce the documents needed to prove its claim.

The CIR states that the essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. The lapses, if any, committed by the CIR should not be allowed to overshadow the fact the Orchard Golf failed to pay the correct taxes as indicated in the assessment.

In its *Comment*,[3] Orchard Golf states that the CIR merely rehashes the sole ground that he/she did not violate Orchard Golf's right to administrative due process and that Orchard Golf's protest was admitted but that it still failed to refute the assessments. Orchard Golf further states that the CIR should be the first and foremost advocate of compliance of the Bureau of Internal Revenue's own rules and procedures. Here, there is no denying that the CIR did not observe the fifteen (15)-day reglementary period to respond to the PAN, when barely two (2) days from receipt of the PAN, the CIR already issued the FLD/FAN.

The Court finds no merit in the *Motion*.

We reiterate that the issuance of the PAN, as well as giving the taxpayer fifteen (15) days from receipt of such PAN

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[3] Filed through registered mail on July 11, 2022, within the extended period granted, per Resolution dated October 19, 2022.

to respond thereto, are part of due process in the issuance of tax assessments.

In the instant case, the PAN dated February 17, 2014[4] was received by Orchard Golf on March 26, 2014.[5] However, the subject FLD/FAN was issued on March 28, 2014,[6] or barely two (2) days from Orchard Golf's receipt of the PAN. Clearly, the FLD/FAN was issued before the lapse of the 15-day period granted to the taxpayer to respond to the PAN.

That Orchard Golf was able to protest the PAN and the FLD/FAN, and that the reinvestigation was granted, do not denigrate the fact that Orchard Golf was deprived of statutory and procedural due process to contest the assessment before it was issued.[7]

We find that petitioner failed to present any compelling reason to modify or reverse the findings in the assailed Decision.

WHEREFORE, the *Motion for Reconsideration (Re: Decision dated 25 April 2022)* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] Division Docket, Vol. 6, Exhibit "P-2", pp. 3017-3020; BIR Records, Folder 1, pp. 169-172.
[5] Division Docket, Vol. 3, Joint Stipulation of Facts and Issues (JSFI), pars. 1.2 and 1.3, p. 1429.
[6] Division Docket, Vol. 3, JSFI, par. 1.5, p. 1430.
[7] *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice