REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

MERIAL PHILIPPINES, INC.,
Petitioner,

CTA Case No. 8370

- **versus** -

Members:

DEL ROSARIO, P.J.,
UY, and
MINDARO-GRULLA, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 26 2015 ; 1:30 p.m.

x - x

AMENDED DECISION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on June 2, 2015, without respondent's comment despite due notice, praying for reconsideration of this Court's Decision promulgated on May 13, 2015, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is hereby **ORDERED TO PAY** the assessments covering deficiency EWT, deficiency VAT and deficiency income tax for taxable year 2007 in the **MODIFIED** amount of ₱15,800,666.62, inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic	25% Surcharge	Total
EWT	₱ 869,222.20	₱ 217,305.55	₱ 1,086,527.75
VAT	185,013.58	46,253.40	231,266.98
Income Tax	11,586,297.51	2,896,574.38	14,482,871.89
Total	**₱ 12,640,533.29**	**₱ 3,160,133.33**	**₱ 15,800,666.62**

In addition, petitioner is hereby **ORDERED TO PAY**:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency EWT of ₱869,222.20, VAT of ₱185,013.58 and income tax of ₱11,586,297.51, or in the aggregate amount of ₱12,640,533.29, computed from January 15, 2008, January 25, 2008 and April 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% per annum on the total amount of ₱15,800,666.62 representing deficiency EWT, VAT and income tax and on the deficiency interest which have accrued as afore-stated in (a) computed from February 7, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

In its Motion, petitioner Merial Philippines, Inc. argues that the Formal Letter of Demand (FLD) and Assessment Notices are null and void for having been issued in violation of its right to due process. It invokes the ruling in the Supreme Court case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.* (hereinafter referred to as the "*Metro Star* case")[1] and certain rulings rendered by this Court.

Petitioner further asserts that it is not liable for deficiency income tax, deficiency value-added tax (VAT), deficiency expanded withholding tax (EWT), and surcharges in the total amount of ₱15,800,666.62, as well as deficiency and delinquency interests. It

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[1] G.R. No. 185371, December 8, 2010.

argues that the findings of the Court-commissioned Independent Certified Public Accountant should be given credence by this Court; and that assuming *arguendo* that there was any failure to submit any supporting documents, petitioner should not be unduly prejudice thereby.

THE COURT'S RULING

After taking a second hard look at the factual circumstances in the instant case and the pertinent legal provisions on substantial and procedural due process, We find merit in petitioner's Motion for Reconsideration.

Section 3.1.2 of Revenue Regulations (RR) No. 12-99[2] provides as follows:

> "**SECTION 3. Due process requirement in the issuance of a deficiency tax assessment.—**
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.2 **Preliminary Assessment Notice (PAN).** – If after review and evaluation by the Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). 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

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[2] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the code through payment of a Suggested Compromise Penalty.

> to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." *(Underscoring supplied)*

In the *Metro Star* case, the Supreme Court said:

> "Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes as substantive, not merely formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations – that taxpayers should be able to present their case and adduce supporting documents.
>
> xxx xxx xxx
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> From the provision quoted above, **it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,'** the absence of which renders nugatory any assessment made by the tax authorities. The use of the word '*shall*' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.** Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void." *(Emphases and underscoring supplied)*

It is clear from the foregoing ruling that 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.

As a corollary, the law does not create a presumption of the regularity of any administrative action which results in depriving a citizen or taxpayer of his property.[3]

Furthermore, it is a settled doctrine that due process is applicable to administrative proceedings.[4] In other words, administrative proceedings are not exempt from the operation of due process requirements.[5] Due process is usually violated where, *inter alia*, arbitrary or oppressive methods are used in assessing and collecting taxes.[6] Arbitrariness, in turn, presupposes inexcusable or obstinate disregard of legal provisions.[7]

In this case, there is inexcusable or obstinate disregard of the above-quoted Section 3.1.2 on the part of the Bureau of Internal Revenue (BIR), particularly, in not observing the fifteen (15)-day period prescribed therein. The observance of the said period is mandatory, since it is only after the lapse thereof that petitioner could be *"considered in default"*, and which would prompt the pertinent investigating office to cause the issuance of the formal letter of demand and assessment notices. In other words, the observance of the fifteen (15)-day period is critical because it is only the expiration thereof that would initiate the process of coming up with the pertinent formal letter of demand and assessment notices.

It is undisputed that the Preliminary Assessment Notice dated December 17, 2010 was received by petitioner on December 29, 2010;[8] and thus, the fifteen (15)-day period under the said Section 3.1.2 would end only on January 13, 2011. However, notwithstanding the mandate of said Section 3.1.2, the investigating office of the BIR had already come up with the FLD with attached Assessment Notices as early as January 7, 2011,[9] or nine (9) days after petitioner's receipt of the said PAN.

Clearly, there was a violation of petitioner's right to due process of law. Consequently, the said FLD and Assessment Notices must be declared void.

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[3] *Valencia vs. Jimenez, et al.*, G.R. No. 4406, October 23, 1908; *Camo vs. Boyco*, G.R. No. 8304, February 11, 1915.
[4] *Auyon Hian vs. Court of Tax Appeals, et al.*, G.R. No. L-28782, September 12, 1974.
[5] *Commissioner of Customs vs. Court of Tax Appeals, et al.*, G.R. No. 70648, July 31, 1987.
[6] *Pepsi-Cola Bottling Co. of the Philippines vs. Municipality of Tanuan, Leyte, et al.*, G.R. No. L-31156, February 27, 1976.
[7] *Victorias Milling Co., Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. L-24769 and L-24779, February 25, 1967.
[8] JSFI, Par. 3, Docket, p. 85.
[9] JSFI, Par. 5, Docket, p. 85.

Finding that there was a violation of due process, the other issues raised by petitioner in its Motion for Reconsideration need no longer be addressed by the Court.

WHEREFORE, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on May 13, 2015 is hereby **MODIFIED** to read as follows:

> "**WHEREFORE,** the instant Petition for Review is **GRANTED**, in view of respondent's violation of petitioner's right to due process before the subject assessments were issued. Accordingly, the Formal Letter of Demand dated January 7, 2011 and attached Assessment Notices issued by respondent against petitioner, demanding payment for deficiency EWT, deficiency VAT and deficiency income tax for taxable year 2007 are declared **VOID** and the same are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

I hereby certify that this Amended Decision was reached after due consultation among the members of this Division in accordance with the provision of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice