REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BERONG NICKEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10319

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
OCT 03 2024 11:37 am

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RESOLUTION

RINGPIS-LIBAN, J.

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision dated 11 June 2024)** filed on July 5, 2024, with petitioner's **Comment (on Respondent's Motion for Reconsideration dated July 5, 2024)** filed on July 22, 2024.

On June 11, 2024, the Court promulgated a Decision cancelling respondent's deficiency final withholding tax (FWT) assessment against petitioner for violating petitioner's right to administrative due process of law, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the undated FLD and the FDDA dated July 1, 2020 assessing petitioner for deficiency Final Withholding Tax in the aggregate amount of **₱117,062,117.83**, inclusive of interest, for taxable year 2015, are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

In his Motion, respondent asserts that the Court erred in ruling that petitioner's right to due process of law was violated when respondent failed to issue a Notice of Informal Conference (NIC), and provide proper reasons for the rejection of the explanations submitted by petitioner in its protest letters in accordance with Revenue Regulations (RR) No. 12-99,[1] as amended by RR No. 07-18.[2]

Respondent argues that when he issued the Letter of Authority (LOA) No. AUDM35/011282/2017 on April 19, 2017 to examine petitioner's books of accounts, the requirement to issue a NIC was removed in RR No. 12-99 by RR No. 18-13.[3] He continues that notwithstanding that no NIC was issued prior to the issuance of the Preliminary Assessment Notice (PAN) on July 31, 2018, petitioner was nonetheless apprised of the proposed deficiency assessments as evidenced by the correspondence made between the handling revenue officers and petitioner's accounting officer and authorized representative, Ms. Marissa S. Nicdao.

Moreover, respondent stresses that Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, only requires that the taxpayers should be informed of the legal and factual bases of the assessment. He expounds that the assessment notices need not be a full narration of the facts and laws on which the assessment is based. It is enough that petitioner be substantially informed of the legal and factual bases on which the assessment for a tax liability was made. Thus, respondent maintains that so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process of law are satisfactorily complied with.

Lastly, respondent submits that the mere reiteration of the contents of the PAN to the Formal Letter of Demand (FLD) does not indicate that respondent did not consider petitioner's reply in its protests. Respondent likewise insists that while the FLD is a replica of the PAN, it was due to petitioner's failure to refute on meritorious ground respondent's findings as petitioner did not provide any supporting documents adequate enough to support its claim. On this basis, respondent contends that the determination of a violation of due process in the issuance of an assessment should not solely rest on the fact that the respondent restated the entire PAN in the FLD. He continues that the Court's focus should not be on nitpicking the contents of the FLD in isolation but rather on assessing whether, throughout the administrative process, the taxpayer was given a fair and reasonable opportunity to contest the assessment and present its case, taking into

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[1] "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 Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty", dated September 6, 1999.

[2] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment", dated January 22, 2018.

[3] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment", dated November 28, 2013.

account the totality of the circumstances, the nature of the issues raised, and, essentially, the merits of the taxpayer's arguments and evidence.

On the other hand, in its Comment, petitioner submits that respondent did not raise any new matter or arguments in his Motion for Reconsideration. Petitioner points out that the arguments raised therein are mere rehash of the same arguments raised in respondent's Memorandum dated July 25, 2023 which were already considered and passed upon in the Decision it assails.

Nonetheless, petitioner emphasizes that the assessment is void for respondent's violation of petitioner's right to due process of law because the NIC was not issued. While, admittedly, the requirement to issue the NIC was removed in RR No. 18-13, petitioner stresses that the issuance of the NIC was reinstated in RR No. 07-18, which took effect on February 16, 2018. As such, petitioner submits that at the time respondent issued the PAN on July 31, 2018, RR No. 07-18 already took effect and was at that time already in force.

Petitioner further contends that the assessment is also void for respondent's failure to give reasons for the denial of petitioner's defenses and arguments. Petitioner maintains that even assuming petitioner was apprised of the deficiency assessments through correspondence, that does not change the fact that respondent acted against their own rules and regulations, and against the tenets of due process, when he issued the PAN without first issuing the NIC as part of due process. Petitioner also asserts that there is nothing in law supporting respondent's premise that mere correspondence is enough to satiate the strict and stringent rules of procedural due process. Nor is there any issuance or regulation that expressly states that the issuance of the NIC can be dispensed with when there is already previous correspondence between respondent and the taxpayer. There being no NIC issued, petitioner posits that the Court was correct in ruling that there was a substantial violation of its due process rights.

Lastly, petitioner avers that respondent's act of repeatedly quoting the previous assessments *in verbatim*, from the time of issuing a Notice of Discrepancies all the way up to the issuance of FDDA, is a clear indication that the Bureau of Internal Revenue (BIR) did not consider petitioner's multiple defenses when issuing the PAN, FLD, and FDDA.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

Verily, one of the first requirements of Section 3 of RR No. 12-99, as amended by RR No. 07-18, the prevailing regulation on the due process requirement in the issuance of a deficiency tax assessment, is that the NIC be primary accorded to the taxpayer. The use of the word *"shall"* in subsection 3.1.1

describes the mandatory nature of the service of a NIC.[4] As with the other notices required under the regulation, the purpose of sending a NIC 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.[5]

At the risk of sounding repetitive, the Notice of Informal Conference is part of due process. It gives 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 (FAN). Failure of the Commissioner to issue the NIC as required by RR No. 12-99, as amended, deprives the taxpayer of its right to due process, and evidently, renders the assessment void.[6]

In this case, the LOA was issued on April 19, 2017, while the PAN was issued on July 31, 2018. Considering that RR No. 07-18, which reinstated the issuance of the NIC, took effect on February 16, 2018, the requirement to issue the NIC was already and effectively reinstated and should have been complied with by respondent prior to the issuance of the PAN on July 31, 2018. However, there is no showing that an NIC was issued to petitioner. Neither did respondent disputed the non-issuance of the NIC, nor did it presented evidence to prove its existence and service to petitioner. In fact, respondent's own witness, revenue officer (RO) Reynoso Bravo, even confirmed during his cross-examination that no NIC was indeed issued in this case.[7]

As already emphasized in the assailed Decision, the Commissioner and revenue officers must strictly comply with the requirements of the law, with the BIR's own rules, and with due regard to taxpayer's constitutional rights.[8] Having failed to issue the required NIC prior to the issuance of the PAN, then the subject

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[4] "*SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*
3.1 Mode of procedure in the issuance of a deficiency tax assessment:
3.1.1 Notice for Informal Conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer **shall** be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case.
The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case within seven (7) days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.
Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations."
[5] *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. The Court of Tax Appeals – First Division, et al.*, G.R. No. 213394, April 6, 2016.
[6] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[7] *See* Decision, pp. 9 to 11, Docket (Vol. III), pp. 838 to 840.
[8] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, supra.

assessment should be invalidated for being violative of petitioner's right to due process. *Apropos*, a void assessment bears no valid fruit.[9]

With regard to respondent's argument that petitioner was apprised of the proposed deficiency assessments as evidenced by the correspondence made between the handling revenue officers and petitioner's authorized representative, the Court is not swayed.

Again, it should be noted that the alleged correspondences between respondent's ROs and petitioner were not presented in evidence during trial. It is well-settled that the Court cannot consider evidence which has not been formally offered.[10] And, granting that these correspondences were presented in evidence, it cannot discount the fact that respondent failed to comply its own rule in issuing a deficiency assessment.

Furthermore, assuming *arguendo* that respondent did consider petitioner's argument and supporting documents in its *Reply to the PAN* and *Protest to the FLD*, the fact is, respondent never communicated to petitioner the reason for rejecting the latter's explanations and defenses. It bears stressing that respondent never communicated to petitioner the reason, as well as the facts and law upon which his conclusion were based, leaving petitioner unaware on how respondent appreciated the explanations and defenses it raised in connection with the deficiency assessment. Evidently, respondent has failed to observe such requirement in the issuance of the subject FLD and FDDA when the findings in the PAN,[11] were merely reiterated or copied *verbatim* in the FLD[12] and FDDA,[13] without even addressing any of the refutations made and evidence submitted by petitioner.

Albeit respondent is not obliged to accept the taxpayer's explanation, respondent must however in rejecting said explanation, give some reason/s for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must not be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.[14]

Indeed, due process requires respondent to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity. Thus, the

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[9] *Commissioner of Internal Revenue v. Azucena T. Reyes, et seq.*, G.R. Nos. 159694 and 163581, January 27, 2006.
[10] Section 34, Rule 132, Revised Rules on Evidence.
[11] Exhibit "P-6", Docket – Vol. II, p. 404; Exhibit "R-6", BIR Records, p. 748.
[12] Exhibit "P-8", Docket – Vol. II, p. 456; Exhibit "R-9", BIR Records, p. 767.
[13] Exhibit "P-4", Docket – Vol. I, pp. 389 to 393; Exhibit "R-12", BIR Records, pp. 822 to 824.
[14] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, supra.

inevitable conclusion is that petitioner's right to due process was violated by respondent –and as a consequence of such violation, the said deficiency tax assessment is rendered void.

Lastly, tax assessments issued in violation of the due process rights of a taxpayer are null and void. Since the subject assessment was already found void, the presumption of correctness of tax assessment cannot arise, consistent with the doctrine that a void assessment bears no valid fruit.[15]

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or modify the Decision promulgated on June 11, 2024.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 11 June 2024) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
CORAZON G. FERRER-FLORES
Associate Justice

[15] *Commissioner of Internal Revenue v. Reyes, et seq.*, supra.