REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MARINA SQUARE PROPERTIES, INC., Petitioner,	**CTA CASE NO. 10601**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 2 9 2025 9:31 Am

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion for Reconsideration (Re: Decision dated 13 December 2024)** filed on January 3, 2025, with petitioner's **Comment (Re: Respondent's Motion for Reconsideration)** filed on January 27, 2025.

On December 13, 2024, the Court promulgated a Decision cancelling respondent's deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefit tax (FBT), final withholding tax (FWT), creditable withholding tax VAT (CWTVAT), documentary stamp tax (DST) assessments and compromise penalty for taxable year 2015, due to violation of petitioner's right to administrative due process of law, the dispositive portion of which states as follows:

> "**WHEREFORE**, in the light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> Accordingly, the FLD and the attached *Assessment Notices*, all dated March 15, 2019, assessing petitioner for deficiency taxes for taxable year 2015, are **CANCELLED** and **WITHDRAWN**. Furthermore, the undated FDDA and the attached *Assessment Notices* dated October 9, 2020, assessing petitioner for deficiency income tax, VAT, EWT, FBT, FWT, CWVAT, DST, and compromise penalty, for taxable year 2015, in the total amount of **₱1,047,025,447.53**, inclusive of

surcharges and interest, are **REVERSED** and **SET ASIDE**. Respondent is then **ORDERED TO CEASE AND DESIST** from collecting the said amount.

Respondent is **FURTHER ORDERED TO REFUND** petitioner the amount of **₱426,252,961.16**, which represents the amount withdrawn/collected by respondent or the BIR during the pendency of this case.

SO ORDERED."

In his Motion, respondent assails the Court's conclusions that he violated petitioner's right to due process when he did not inform petitioner of the reasons for the denial of the its protest to the Preliminary Assessment Notice (PAN) dated January 10, 2019; and, that the Formal Letter of Demand (FLD) dated March 15, 2019 and the Final Decision on Disputed Assessment (FDDA) received by petitioner on June 29, 2021 basically reiterated the findings in the PAN.

Respondent asserts that petitioner was accorded real opportunity to refute his audit assessment. He argues that assessments are valid as long as they state the fact, the law, the rules and regulations or jurisprudence on which they were based, and in that particular condition, all of the requirements for a validly issued assessment as defined by law and jurisprudence has been deemed complied with. As such, respondent insists that the FLD and FDDA, together with the assessment notices, were all issued in accordance with the National Internal Revenue Code (NIRC) of 1997, as amended, and its pertinent rules and regulations.

Respondent also avers that perusal of the FLD with details of discrepancy and assessment notices, even the FDDA, clearly shows that respondent was able to address the issues raised by petitioner in its *Reply to Preliminary Assessment Notice for CY 2015* dated February 27, 2019. Respondent points out that no less than the Court itself observed that there were adjustments made to the assessment because respondent was able to consider petitioner's Reply to the PAN and the protest to the FLD dated May 3, 2019. However, respondent submits that the arguments raised by petitioner were not sufficient to overturn the assessment and the documents it presented were not enough to refute the same, thereby eventually leading to some items being reiterated and retained.

Respondent further claims that the revenue officer who examined the supporting documents attached in the Reply to the PAN found that petitioner failed to present credible evidence to refute all findings of inconsistency, thus merely reducing the amount of assessment indicated in the PAN. Respondent also maintains that he is not under any obligation to give credence to petitioner's arguments, when some of the arguments are unmeritorious and there was no new evidence presented to refute the assessments reflected in the FLD and assessment notices.

On the other hand, in its Comment, petitioner contends that while Section 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, explicitly provide that assessment notices shall state the fact, law, rules and regulations or jurisprudence on which the assessment is based, the mere restatement however of such legal and factual bases is insufficient. The right to administrative due process enshrined in the Constitution must necessarily be observed in tax investigations and assessments, as the Supreme Court has ruled in the *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq. ("Avon case").*[1]

Petitioner insists that it is evident from the face of the FLD and the FDDA that respondent did not consider the arguments and the supporting documents proffered in its Reply to the PAN and protest to the FLD. Petitioner continues that respondent was remiss in informing it of the reasons why its defenses and arguments were denied, especially since the FLD and the FDDA readily show that respondent failed to apprise the legal and factual bases for the denial of petitioner's defenses and explanations.

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

To reiterate, the Court's finding that the subject tax assessments are void for violation of petitioner's right to administrative due process, is supported by the pronouncement made by the Supreme Court in the *Avon* case. It must be emphasized that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy.[2]

Since the Supreme Court has already clearly declared in the *Avon* case that when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusions are based, and those facts must appear in the record, to wit:

> "The facts demonstrate that Avon was deprived of due process. **It was <u>not fully apprised</u> of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to** the Preliminary Assessment Notice, as well as **the Formal Letter of Demand with Final Assessment Notices, <u>did not even comment or address the defenses and documents submitted by Avon</u>. Thus, <u>Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or</u>**

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[1] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[2] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July, 15, 2003.

> **defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> x x x
>
> **It is true that the Commissioner is not obliged to accept the taxpayer's explanations**, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**
>
> x x x
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.**" *(Emphasis supplied)*

Having declared as such, this Court is guided by the pronouncement made therein since there is only one Supreme Court from whose decisions all other courts should take their bearings.[3]

Herein, petitioner raised legal and factual arguments in its Reply to the PAN dated February 27, 2019, citing pertinent provision of the law, jurisprudence, and even submitted supporting documents to bolster its arguments. However, while the FLD shows that respondent made certain adjustments in the basic income tax and fringe benefit tax due, **it provided no explanation for the said adjustments, and likewise failed to address the arguments raised by petitioner in its Reply**. In fact, save for the said adjustments in the basic income tax and fringe benefit tax due, the FLD and attached details of discrepancy merely reiterated or copied *verbatim* the PAN and attached details of discrepancy, without addressing any of the refutations made by petitioner in its Reply to the PAN. Thus, respondent obviously failed to observe the due process requirement in the issuance of the tax assessments, *i.e.*, to give reason/s for rejecting petitioner's explanations, and must give the particular facts upon which his conclusions are based, and those facts must appear on record. Consequently, respondent's deficiency tax assessments are rendered void.

Again, administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the

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[3] Ibid.

administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.[4]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse or modify the Decision promulgated on December 13, 2024.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 13 December 2024) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RIGPIS-LIBAN
Associate Justice

We Concur:

MARIA ROWENA MODESTO SAN-PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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4 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.