REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NEUFTECH PHILIPPINES INC,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10442

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
SEP 20 2024 3:52 pm

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RESOLUTION

CUI-DAVID, J.:

Before this Court is respondent's ***Motion for Reconsideration (Re: Decision promulgated on 29 May 2024)*** filed on June 18, 2024, with petitioner's *Comment (To Motion for Reconsideration)* filed on July 22, 2024. Respondent seeks reconsideration of the *Decision* promulgated by the Court on May 29, 2024, with the following dispositive portion:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**.
>
> Accordingly, the FLD/FAN dated June 6, 2019, the FDDA dated March 9, 2020, and the WDL dated November 11, 2020, issued by respondent CIR against petitioner Neuftech Philippines Inc. for deficiency income taxes and improperly accumulated earnings taxes, including the compromise penalty, surcharges, and interests, covering the fiscal year ending March 31, 2016, are **CANCELLED** and **SET ASIDE**.
>
> Further, respondent is **ENJOINED and PROHIBITED** from enforcing the collection of the subject deficiency taxes against petitioner.
>
> **SO ORDERED.**

In his *Motion for Reconsideration*, respondent argues that his basic right to fair play and due process was violated when the Court considered an allegation that was never raised in petitioner's *Protest* and *Petition*, particularly the issue of due process.

Respondent also states that there is no violation of petitioner's right to due process as "petitioner has always been accorded due process from the commencement of the audit proceedings up to the eventual issuance of the [Preliminary Assessment Notice] (**PAN**), FLD and the Decision denying its *Protest.*" According to him, he is not obliged to accept petitioner's explanations when he finds the same inadequate and unsupported. Respondent argues that due process only abhors the absolute lack of notice or opportunity to be heard.

On the other hand, in its *Comment*, petitioner states that the Court could rule on the issue of due process. According to petitioner, "resolution regarding the violation of [its] right to due process would not require the presentation of additional evidence considering the same were already matters of record as its Protest to the [FLD was part of its exhibits.]" Lastly, petitioner states that there is a violation of due process considering the striking similarity between the PAN, FLD, and the Final Decision on Disputed Assessment (**FDDA**).

We resolve.

First, the question of whether the Court can tackle issues not raised by the parties before it is not novel. Under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), this Court, whether sitting in Division or *En Banc*, is not precluded from ruling on issues not raised that are necessary for an orderly disposition of the case.

The Supreme Court, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[1] affirmed the authority of this Court to rule on issues not raised by the parties under the mentioned section, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

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[1] G.R. No. 183408, July 12, 2017.

> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. ... ...
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter."

All told, We see no bar in discussing due process as We have done so in the assailed *Decision.*

Anent the issue of due process, We find no compelling reason to depart from our previous ruling. Respondent may have correctly argued that, *first*, he is not bound to accept petitioner's arguments, and *second*, mere identity of the PAN, FAN, and FDDA is insufficient to constitute a violation of due process. However, records reveal that respondent still violated petitioner's right to due process by failing to provide the *particular facts* supporting his conclusion,[2] and by not giving proper consideration to petitioner's explanations or arguments.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Re: Decision promulgated on 29 May 2024)* is hereby **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

(With Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[2] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021, citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

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SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague Associate Justice Lanee S. Cui-David in ruling that the subject deficiency tax assessment is invalid or void due to respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) violation of petitioner Neuftech Philippines Inc.'s (**petitioner**'s/**NPI**'s) right to due process.

The aforesaid due process violation occurred because respondent failed to consider the explanations or defenses raised in petitioner's Reply to the Preliminary Assessment Notice (**PAN**) when issuing the Formal Letter of Demand/Final Assessment Notice (**FLD/FAN**) and did not communicate the reasons for rejecting these explanations or defenses. Notably, the FLD/FAN is a mere substantial reiteration of the PAN.

As correctly pointed out in the *ponencia*, respondent's lone witness, Revenue Officer Benjamin Karlo L. Reyes (**RO Reyes**) admitted in open court that both the FLD/FAN and the Final Decision on Disputed Assessment (**FDDA**) did not mention any Certificate of Donation, historical analysis, and business expansion plan that were submitted by petitioner in support of its Reply to the PAN and Protest against the FLD/FAN, respectively. This lends credence to the fact that respondent failed to give due consideration to petitioner's defenses, explanations and supporting documents when he or she concluded in the FLD/FAN that petitioner had deficiency tax liabilities.

In the case of *Commissioner of Internal Revenue v. Maxicare Healthcare Corporation*[1], citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[2] (**Avon**), the Supreme Court emphasized that the CIR's issuance of essentially identical assessment notices that made no reference to or rebuttal of the taxpayer's submissions indicates that the CIR failed to consider or appreciate the evidence submitted by the taxpayer and this omission deprived the taxpayer of due process and necessarily rendered null and void the assessments against it.

In the recent case of *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*[3], also citing *Avon*, the Supreme Court underscored that the CIR must give due consideration to the taxpayer's evidence and explanation; otherwise, the right to be heard is rendered meaningless.

Here, while it is true that petitioner's three (3)-page Reply to the PAN contains hardly any explanation worth considering or appreciating, *i.e.*, a plain reading of petitioner's Reply to the PAN would reveal that it makes no reasonable effort to explain why it is not liable for deficiency IT and IAET, this does not change the fact that respondent violated petitioner's right to due process in failing to explain to petitioner the exact reasons why its arguments are unmeritorious.

Petitioner's lackadaisical attitude in preparing the Reply to the PAN and the Protest against the FLD/FAN, which is substantially identical to the Reply to the PAN, is evident. For instance, regarding the BIR's finding of "undeclared income", petitioner merely states, "[i]n a separate sheet, historical analysis presents [petitioner's] retained earnings accumulated since [its] operation in 1998, including other items that affected its balance." This statement barely qualifies as a rebuttal worthy of the BIR's consideration. Similarly, concerning the BIR's finding of "improperly accumulated earnings", petitioner simply states, "[a]ppropriated retained earnings for business expansion is well supported by current and updated logistics as presented in [its] business expansion plan." This statement also lacks the specificity

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1 G.R. No. 261065. 10 July 2023.
2 G.R. Nos. 201398-99 & 201418-19. 03 October 2018.
3 G.R. No. 249540. 28 February 2024.

needed to provide a compelling reason to reconsider the assessment for deficiency IAET.

Nonetheless, due process requires respondent to inform petitioner that its Reply to the PAN is defective and lacks merit, as it fails to present any substantial argument. Respondent cannot simply restate the contents of the PAN in the FLD/FAN without first explaining why petitioner's arguments are unpersuasive. At a minimum, respondent must acknowledge the submission of the Reply to the PAN and explicitly state that it contains no arguments worthy of consideration.

Thus, unlike in *Transnational Plans, Inc. v. Commissioner of Internal Revenue*[4] (**Transnational**), where I had a Dissenting Opinion, the totality of the circumstances in this case failed to demonstrate substantial compliance with the due process requirements under Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, as respondent clearly failed in its duty to give due consideration to petitioner's explanations or arguments, regardless of how unsubstantial they may appear.

It is worth noting that, in *Transnational*, the records sufficiently demonstrate that the CIR carefully evaluated and considered the taxpayer's arguments. The total deficiency tax assessment, initially covering various taxes, was reduced by 80%, leaving only the assessment for deficiency value-added tax (**VAT**), where CIR and the taxpayer disagreed on the taxability of certain items. This significant reduction in the assessment shows that respondent took into account the explanations and evidence provided by petitioner. This act of consideration by the CIR epitomizes the essence of administrative due process.

No such act of consideration is evident in this case, as respondent clearly failed to address or even acknowledge petitioner's arguments and defenses. Truth be told, respondent issued the FLD/FAN and the FDDA without taking into account petitioner's explanations in its Reply to the PAN and Protest against the FLD/FAN, respectively, treating them as if they were never submitted. This disregard constitutes a violation of due process, rendering the subject deficiency tax assessment invalid.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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4 CTA EB No. 2549 (CTA Case No. 9293).