18-000444-0087

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 9942

THE RESIDENCES AT GREENBELT CONDOMINIUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

COMMISSIONER OF INTERNAL REVENUE
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. PHILIP A. MAYO
ATTY. CARL FITRI A. HUSSIN
ATTY. AVELINO G. ALFELOR, JR.,
Bureau of Internal Revenue -Revenue Region 8A
36/F, Legal Division Export Bank Plaza Bldg.
Sen. Gil Puyat Avenue cor. Chino Roces Avenue
Makati City

GARCIA HABACON & HAN
Unit 1409, Corporate 145 Building
145 Mother Ignacia St.
Brgy South Triangle, Quezon City

GREETINGS:

You are hereby notified by these presents that on **May 26, 2023,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 31, 2022.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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THE RESIDENCES AT GREENBELT CONDOMINIUM CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9942

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

MAY 26 2023 1:48PM

x- -x

DECISION

REYES-FAJARDO, *J*.:

This Petition for Review dated October 1, 2018, filed by The Residences at Greenbelt Condominium Corporation seeks to reverse and nullify the Final Assessment Notice (FAN) on deficiency income tax, deficiency value added tax (VAT), deficiency expanded withholding tax (EWT), and deficiency documentary stamp tax (DST) for taxable year (TY) 2014, in the aggregate amount of ₱13,184,036.64.[1]

FACTS

Petitioner The Residences at Greenbelt Condominium Corporation is a domestic corporation organized for the purpose of holding title to the land and the common areas of the condominium project named The Residences at Greenbelt, Esperanza Drive, Makati

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1 See Statement of the Case, Pre-Trial Order dated November 6, 2019, Docket (Vol. II), p. 574.

City. Its principal office is located at 2/F Bldg. Admin, Laguna Tower, Esperanza Drive, Makati City. It is registered with the Bureau of Internal Revenue (BIR).[2]

Respondent is the Commissioner of the BIR and holds office at the 5th Floor, BIR National Office Building, Agham Road, Quezon City, and is represented by the Legal Division of Revenue Region No. 8 (South Makati) which holds office at the 2/F BIR Regional Office Building, 313 Sen. Gil Puyat Avenue, Makati City.[3] He is vested with the power to decide tax cases, including claims for refunds and/or tax credits pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended.[4]

On December 5, 2017, petitioner received[5] the BIR's Preliminary Assessment Notice (PAN) dated November 29, 2017,[6] containing the proposed deficiency tax assessments in the total amount of ₱13,019,465.56, broken down as follows:

Tax Type	Basic Tax	Increments			TOTAL
		Interest	Surcharge	Compromise Penalty	
IT	₱6,034,243.97	₱3,263,451.40	-		₱ 9,297,695.37
VAT	511,152.31	298,849.05	-		810,001.36
EWT	1,665,976.71	983,154.47	-		2,649,131.18
DST	131,467.00	78,303.90	₱32,866.75	₱20,000.00	262,637.65
					₱13,019,465.56

On December 18, 2017, petitioner filed its protest letter dated December 15, 2017 against the PAN, discussing in detail its defenses on the proposed deficiency tax assessments. Petitioner then prayed that reinvestigation, and eventually, cancellation and withdrawal thereof be made in light of said defenses.[7]

2 Par. 2.1, Summary of Admitted Facts and Proposed Stipulation of Facts, Joint Statement of Facts and Issues (JSFI). Docket (Vol. I), pp. 544-545.
3 Par. 2.2, Summary of Admitted Facts and Proposed Stipulation of Facts, JSFI. *Id.* at p. 545.
4 Par. 2.3, Summary of Admitted Facts and Proposed Stipulation of Facts, JSFI. *Ibid.*
5 Par. 6, Petition for Review, vis-à-vis Par. 8, Answer. *Id.* at pp. 12, and 244, respectively. Par. 2.6, Summary of Admitted Facts and Proposed Stipulation of Facts, JSFI, *id.* at p. 545.
6 Exhibit "R-2." BIR Records, pp. 312-317.
7 Exhibit "P-15." Docket (Vol. II), pp. 886-898.

On January 4, 2018, petitioner received[8] the BIR's FAN[9] dated December 27, 2017, assessing it for deficiency IT, VAT, EWT, DST, covering TY 2014, in the total amount of ₱13,184,036.64, detailed below:[10]

Tax Type	Basic Tax	Increments			Total
		Interest	Surcharge	Compromise Penalty	
IT	₱6,034,243.97	₱3,382,483.06	-	-	₱ 9,416,727.03
VAT	511,152.31	308,932.05	-	-	820,084.36
EWT	1,665,976.71	1,016,017.57	-	-	2,681,994.28
DST	131,467.00	80,897.22	₱32,866.75	₱20,000.00	265,230.97
					₱13,184,036.64

On January 30, 2018, petitioner protested the FAN, through a letter dated January 23, 2018,[11] followed by its submission of documentary evidence in support thereof, via its letter dated March 7, 2018, and filed with the BIR on March 9, 2018.[12]

On March 14, 2018, petitioner received two (2) letters from BIR in response to the request for reinvestigation, *i.e.*, letter dated February 26, 2018 signed by Regional Director Glen A. Geraldino, and the letter dated March 5, 2018 signed by Revenue Officer (RO) Florante R. Aninag. Both letters stated that petitioner's request for reinvestigation was granted. Petitioner was also required to submit the additional documents within sixty (60) days from petitioner's filing of its protest.[13]

On October 5, 2018, petitioner filed its Petition for Review with Motion to Suspend Collection of Taxes, docketed as CTA Case No. 9942,[14] to which respondent filed his Answer on January 7, 2019.[15]

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8 Par. 2.7, Summary of Admitted Facts and Proposed Stipulation of Facts, JSFI. Docket (Vol. I), p. 545.
9 Exhibit "P-16," Docket (Vol. II), pp. 912-924, and Exhibit "R-3," BIR Records, pp. 327- 328.
10 Par. 9, Petition for Review, vis-à-vis Par. 12, Answer, Docket (Vol. I), pp. 13 and 245, respectively.
11 Exhibit "P-2," Docket (Vol. I), pp. 351-364, and Exhibit "R-9," BIR Records, pp. 382-395.
12 Exhibit "P-17," Docket (Vol. II), pp. 925-930.
13 Par. 2.11, Summary of Admitted Facts and Proposed Stipulation of Facts, JSFI, Docket – Vol. 1, p. 546.
14 *Id.* at pp. 10-38.
15 *Id.* at pp. 243-249.

In the Resolution dated June 4, 2019, petitioner's Motion to Suspend Collection of Taxes was denied, for lack of merit.[16]

During the Pre-Trial Conference held on August 8, 2019,[17] the Court: (1) adopted the issue to be resolved in this case, as agreed upon by the parties; (2) directed the parties to embody matters and the issue agreed upon in a Joint Stipulation of Facts and Issues; (3) set the schedules for the marking of the parties' exhibits, as well as for the presentation of their respective evidence; and (4) directed them to appear for mediation.[18]

On August 28, 2019, the parties filed their Joint Statement of Facts and Issues (JSFI),[19] which was approved in the Resolution dated September 10, 2019.[20] On the basis thereof, the Court issued a Pre-Trial Order on November 6, 2019.[21] Trial ensued.

Petitioner presented: (1) Ms. Arianne V. Nicol,[22] Finance Manager of Ayala Property Management Corporation; and (2) Mr. Leandro M. Lontok,[23] the Court-commissioned Independent Certified Public Accountant (ICPA),[24] as its witnesses.

On December 1, 2020, petitioner filed its Formal Offer of Documentary Evidence,[25] to which respondent filed his comment on December 10, 2020.[26]

By Resolution dated January 28, 2021,[27] the Court admitted petitioner's offered exhibits, *except* for:

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16 *Id.* at pp. 420-424.
17 Order dated August 8, 2019. *Id.* at pp. 528-529.
18 The parties decided not to have this case be mediated by the Philippine Mediation Center - Court of Tax Appeals. See No Agreement to Mediate dated September 9, 2019. Docket (Vol. II), p. 556.
19 Docket (Vol. I), pp. 544-551.
20 Docket (Vol. II), pp. 554-555.
21 *Id.* at pp. 574-584.
22 Exhibit "P-30," Docket (Vol. I), pp. 514-521; Minutes of hearing held on, and Order dated, November 3, 2020, Docket (Vol. II), pp. 756-759, and 761-763, respectively.
23 Exhibit "P-31," Docket (Vol. II), pp. 745-753; Order dated November 19, 2020, *id.* at pp. 768-769.
24 Oath of Commission dated November 7, 2019, *id.* at p. 588; Minutes of hearing held on, and Order dated, November 7, 2019, *id.* at pp. 585-587, and 589-590, respectively.
25 *Id.* at pp. 774-787.
26 *Id.* at pp. 940-941.
27 *Id.* at pp. 948-951.

1. Exhibits "P-9-C," "P-20" to "P-20-A," "P-23-2240," "P-23-9769," "P-23-9827," "P-23-9828" and "P-23-9831," for not being found in the records of the case;

2. Exhibits "P-18" and "P-19," for failure to submit the duly marked exhibits;

3. Exhibits "P-21" and "P-22," for failure to submit the originals for comparison; and

4. Exhibits "P-23-10365" to "P-23-10504," "P-23-10808" to "P-23-11033," "P-23-11034" to "P-23-11073," "P-24-1," "P-24-2," "P-24-2A," "P-24-3" to "P-24-14," "P-24-15" to "P-24-164A," and "P-24-165," for not being accessible.

On February 24, 2021, petitioner filed a Motion for Partial Reconsideration and Manifestation,[28] *sans* comment from respondent.[29]

Under Resolution dated June 18, 2021,[30] the Court, among others, found merit on petitioner's Motion for Partial Reconsideration. In view thereof, Exhibits "P-18" and "P-19" were admitted as its evidence. Petitioner rested its case.

Respondent presented Revenue Officer Ragelyn RC. Dicta[31] as his witness.

On July 14, 2021, respondent filed through registered mail his Formal Offer of Evidence,[32] *sans* petitioner's comment thereon.[33]

By Resolution dated March 17, 2022,[34] the Court admitted all of respondent's offered exhibits as his evidence.

On April 28, 2022, the Memorandum for Respondent was posted.[35] On the other hand, petitioner filed a Manifestation on May

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28 *Id.* at pp. 952-954. This challenged the Resolution on petitioner's Formal Offer of Documentary Evidence.
29 Records Verification dated May 18, 2021. *Id.* at p. 974.
30 *Id.* at pp. 981-983.
31 Exhibit "R-11," Docket (Vol. I), pp. 431-438; Minutes of the hearing held on, and Order dated, March 2, 2021, Docket (Vol. II), pp. 958-963.
32 Docket (Vol. II), pp. 989-993.
33 Records Verification dated December 4, 2021. *Id.* at p. 995.
34 *Id.* at pp. 1000-1001.

19, 2022,[36] manifesting that: (1) its failure to file its Memorandum was due to inadvertence and without disrespect to the Court; and (2) the Court take note of *First E-Bank Tower Condominium v. Bureau of Internal Revenue* (G.R. No. 215801, January 15, 2020).

In the Resolution dated June 1, 2022, this case was submitted for decision.[37]

ISSUE

Are respondent's deficiency IT, VAT, EWT, and DST assessments issued against petitioner for TY 2014 valid?[38]

ARGUMENTS

Petitioner states that the deficiency IT assessment for CY 2014 originated from: *one,* undeclared income amounting to ₱14,616,710.80; *two,* disallowed expenses because of non-withholding of tax amounting to ₱5,168,835.29; *three,* unsupported expenses amounting to ₱125,023.80; *four,* unsupported creditable tax withheld amounting to ₱61,073.00; and *five,* excess Minimum Corporate Income Tax over the Normal Corporate Income Tax carried forward to succeeding period amounting to ₱226,144.00. However, it is *not* liable for said items based on the following reasons:

> For item *one,* a portion thereof amounting to ₱10,482,132 corresponds to recoveries of light and water expenses, which may not be considered as its realized actual income. Further, the supposed undeclared receipts[39] imputed against it amounting to ₱3,720,189.83 corresponds to refundable deposits collected from the residents of condominium, with the intention to return the same after a specified period; hence, said amount is its liability, rather than income. In addition, unreported receipts of ₱414,388.92 were duly recorded in its cash receipts book and have been declared in its VAT Returns.
>
> For item *two,* it need not withhold taxes on said expenses because: (1) payment to supplier of goods need not be subject to

35 *Id.* at pp. 1003-1015.
36 *Id.* at pp. 1017-1019.
37 *Id.* at p. 1021.
38 See Issues To Be Resolved, JSFI. Docket (Vol. I), p. 547.
39 Discrepancy between collections per Official Receipts against Receipts per VAT Return.

> withholding tax since it is not considered as a top 20,000 private corporation, as required in Section 2.57.2 (M) of Revenue Regulations No. 2-98, as amended; (2) the income payments it made on contractors or subcontractors, were subjected to withholding of tax; and (3) the income payments on professional fees by a general professional partnership is exempt from income, and consequently, withholding tax.
>
> For item *three,* the payments made to Marsh Philippines, Inc. are duly supported by ORs, which were submitted to the BIR.
>
> For item *four,* it submitted the pertinent BIR Form No. 2307, showing proof of withholding amounting to ₱61,073.00.
>
> For item *five,* it was able to controvert the BIR findings thereon.

Petitioner further states that the deficiency VAT assessment stemmed from: *one,* receipts which were not subjected to VAT amounting to ₱4,134,578.75; *two,* unsupported input tax amounting to ₱15,002.86; and *three,* input tax carried-over to the succeeding period amounting to ₱1,584,795.90. However, it is *not* liable for said items based on the following reasons:

> For item *one,* the supposed undeclared receipts imputed against it amounting to ₱3,720,189.83 correspond to refundable deposits collected from the residents of condominium, with the intention to return the same after a specified period; hence, said amount is not subject to VAT. In addition, unreported receipts of ₱414,388.92 were duly recorded in its cash receipts book and have been declared in its VAT Returns.
>
> For item *two,* the purchases it made to Marsh Philippines, Inc. are duly supported by ORs, which were submitted to the BIR.
>
> For item *three,* the disallowance is premised of its supposed VAT liability which is wanting in this case.

Petitioner also claims that it is not liable for deficiency EWT for CY 2014 because it was able to withhold and remit the taxes on its income payments. Also, the BIR erroneously used the 15% WT rate on its payments to APMC; instead, as a specialty contractor, 2% WT is the proper rate thereon.

Petitioner, too, asserts that the deficiency DST is flawed as the advance payments made to Ayala Land, Inc. pertains to Real Property Tax. Neither are said advance payments interest-bearing. Simply put, there is no transaction subject to DST.

On the other hand, respondent counters that the Court lacks jurisdiction over this case, considering that petitioner failed to submit its documents in support of its request for reinvestigation.

Assuming, the Court has jurisdiction over this case, respondent asserts that the deficiency IT, VAT, EWT, and DST assessments covering TY 2014 are supported by legal and factual basis embodied in the PAN, and FAN; hence, petitioner must be held liable for said deficiency taxes.

RULING

We grant the Petition.

First, do we have jurisdiction over this case?

Yes.

Section 7(a)(2) of Republic Act (RA) No. 1125,[40] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> ...[41]

40 An Act Creating the Court of Tax Appeals.

Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals [42] (RRCTA) clarified that the Court in Division has jurisdiction over petitioner's inaction involving disputed assessments, among others. [43] For the inaction of petitioner or his duly authorized representatives to be raised on appeal before the Court in Division, there must first be a disputed assessment.[44] To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended which states:

> Section 228. *Protesting of Assessment.* — ...
>
> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[45]

In turn, the validity of the administrative protest rests upon the confluence of two (2) conditions, namely: *first,* it must be filed within thirty (30) days from the receipt of the final assessment; and *second,* it must be in such form and manner as may be prescribed by

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[41] Boldfacing supplied.

[42] A.M. No. 05-11-07-CTA.

[43] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:

...

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws, administered by the Bureau of Internal Revenue ... (Boldfacing supplied)

[44] See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

[45] Boldfacing supplied.

implementing rules and regulations.[46] Concomitant to the *second* condition is Section 3.1.4 of Revenue Regulations (RR) No. 18-2013, prescribing the form and manner of an administrative protest:

> 3.1.4 Disputed Assessment. – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The **taxpayer shall state in his protest** (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) **the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.**
>
> ...

As it stands, the taxpayer has thirty (30) days from receipt of the final assessment to file a valid administrative protest, either by way of request for reconsideration or request for reinvestigation. If a request for reinvestigation was filed, the taxpayer has sixty (60) days from the filing of its request for reinvestigation to submit documents in support thereof. Respondent or his authorized representative has one hundred eighty (180) days from said date of submission of supporting documents to decide on the taxpayer's request for reinvestigation. Upon the lapse of such 180-day period and no decision was made by respondent or his authorized representative, the taxpayer's administrative protest is deemed denied; thus, the taxpayer has another thirty (30) days to appeal to the Court in Division.

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46 See *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper Incorporated*, G.R. No. 239464, May 10, 2021.

Petitioner received[47] respondent's FAN[48] on January 4, 2018. Counting thirty (30) days therefrom, petitioner had until February 3, 2018 to file an administrative protest thereto; thus, its letter-protest was timely[49] filed on January 30, 2018. Petitioner's letter-protest too, contained: (1) date of the FAN; (2) it is a request for reinvestigation; (3) the factual and legal basis of said protest; (4) statement regarding submission of reconciliation statements and documents pertinent to its protest.[50] By these observations, petitioner filed a valid request for reinvestigation against the FAN.

Petitioner has sixty (60) days from January 30, 2018, or until March 31, 2018, within which to submit the documents in support of its request for reinvestigation. Therefore, through its letter dated March 7, 2018, and filed with the BIR on March 9, 2018,[51] petitioner timely submitted supporting documents on its request for reinvestigation.

Respondent or his duly authorized representative has one hundred eighty (180) days from March 9, 2018, or until September 5, 2018, within which to rule on petitioner's request for reinvestigation. As respondent failed to render a decision thereon as of September 5, 2018, petitioner's administrative protest is deemed denied. Hence, it had another thirty (30) days from September 5, 2018, or until October 5, 2018, to file a Petition for Review before the Court in Division. Precisely, petitioner's Petition for Review was timely filed on October 5, 2018,[52] endowing us with jurisdiction over CTA Case No. 9942.

Wanting in cogency is respondent's argument that the Court lacks jurisdiction over this case, for petitioner's failure to submit supporting documents on its request for reinvestigation. Bear in mind:

First. The parties admitted that petitioner wrote the letter dated March 7, 2018 to respondent on March 9, 2018, providing documentary evidence in support of its request for reinvestigation.[53]

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47 *Supra* note 8.
48 *Supra* note 9.
49 *Supra* note 11.
50 *Supra* note 11.
51 *Supra* note 12.
52 *Supra* note 14.
53 Par. 2.10, Summary of Admitted Facts and Proposed Stipulation of Facts, JSFI, Docket (Vol. I), p. 546; and Exhibit "P-17," Docket (Vol. II), pp. 925-930.

So too was said admission supported by petitioner's letter dated March 7, 2018,[54] exhibiting transmittal of additional supporting documents, such as Official Receipts and Certificate of Creditable Tax Withheld at Source (BIR Form 2307). These circumstances militate against respondent's claim that petitioner failed to submit supporting documents relative to its request for reinvestigation.

Second. Granting, petitioner failed to submit documents in support of its request for reinvestigation within the 60-day period, such failure would not result in the finality of the assessment. Particularly, the word "final" in the paragraph "... Within sixty (60) days from filing of the protest, all relevant, supporting documents shall have been submitted; otherwise, the assessment shall become final." under Section 228 of the NIRC, as amended, is not meant as the assessment being final and unappealable. Rather, the word "final" means that the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence. This would result in the denial of the request for reinvestigation and consequently, the issuance of the Final Decision on Disputed Assessment (FDDA) against the taxpayer.[55]

Now, are respondent's deficiency IT, VAT, EWT, and DST assessments issued against petitioner for TY 2014 valid?

No.

Section 228 of the NIRC, as amended, provides in part:

> SEC. 228. *Protesting of Assessment.* — ...
>
> ...
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> ...

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54 Exhibit "P-17." Docket (Vol. II), p. 925.

55 See *Commissioner of Internal Revenue v. Max's Sta. Mesa, Inc.*, CTA EB No. 2036, November 18, 2020, citing Section 3.1.4 of RR No. 18-2013.

Ang Tibay v. Court of Industrial Relations (Ang Tibay)[56] explained that among the components for administrative due process are: *one,* the administrative tribunal or body must consider the evidence presented; and *two,* the administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

The two (2) components of administrative due process culled from *Ang Tibay* were applied in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon).*[57] There, Avon Products Manufacturing, Inc. (APMI) advanced before the BIR, its defenses on the initial findings of the examining revenue officers, informal conference, PAN, and FAN. However, the BIR failed to give explanation or discussion on AMPI's defenses in various segments of the assessment process. *Avon* decreed that the BIR flouted APMI's right to due process:

> The facts demonstrate that Avon was deprived of due process. It was not fully apprised 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 the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.
>
> **Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter** and supporting documents, and even met with revenue examiners to explain. **Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the**

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56 G.R. No. L-46496, February 27, 1940.
57 G.R. Nos. 201398-99, October 3, 2018.

Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give 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. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period." This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation No. 12-99.

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 conclusions are based, and those facts must appear in the record.

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present

evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.[58]

Here, the BIR's PAN dated November 29, 2017[59] contained the proposed deficiency tax assessments against petitioner in the total amount of ₱13,019,465.56, with the following breakdown:

Tax Type	Basic Tax	Increments			TOTAL
		Interest	Surcharge	Compromise Penalty	
IT	₱6,034,243.97	₱3,263,451.40	-		₱ 9,297,695.37
VAT	511,152.31	298,849.05	-		810,001.36
EWT	1,665,976.71	983,154.47	-		2,649,131.18
DST	131,467.00	78,303.90	₱32,866.75	₱20,000.00	262,637.65
					₱13,019,465.56

In response to said PAN, on December 18, 2017, petitioner sent its protest letter dated December 15, 2017 to the BIR, comprehensively ventilating its defenses on each item of deficiency tax imposed by the BIR.[60] Specifically, the arguments raised by petitioner in said protest letter are condensed as follows:

1. The findings of undeclared income of ₱10,482,132.05 pertains to recoveries of Light and Water expenses.

2. The alleged undeclared receipts of ₱3,720,189.83 pertain to refundable deposits collected from residents of the condominium with the intention to return it after a brief period of time.

3. The additional undeclared receipts of ₱414.388.92 found by the BIR were appropriately recorded in the Cash Receipts Books and have been declared on the VAT returns.

4. Assuming without agreeing that such amounts collected are considered "income" of petitioner, the same should not result to net taxable income of petitioner since the same was likewise offset by administrative expenses, utilities and maintenance of the common areas.

5. As to the disallowed expenses amounting to ₱1,005,554.40, petitioner states that it is not considered as a Top Twenty Thousand (20,000) private corporation, nor has been notified as

58 Boldfacing supplied.
59 *Supra* note 6.
60 *Supra* note 7.

such by the BIR under RR No. 2-98, as amended. As such, it is not required to withhold on all its income payments on goods and services.

6. The disallowed expenses amounting to ₱3,123,280.89 refers to payments to contractors/subcontractors that were allegedly not subject to EWT. However, petitioner was able to withhold and remit the same to the BIR.

7. As to the disallowed expenses amounting to ₱1,040,000, petitioner explains that the professional fees are payments to general professional partnerships, which are exempt from income tax and consequently withholding tax under Section 26 of the NIRC of 1997, as amended.

8. As to the alleged unsupported Expenses of ₱125,023.80, petitioner explains that payments made to Marsh Philippines, Inc., were initially supported by Provisional Receipt. Subsequently, Marsh Philippines, Inc. issued Official Receipt for the said payments.

9. As to the alleged unsupported Creditable Tax Withheld amounting to ₱61,073.00, petitioner states that it was still in the process of gathering the relative documents and information to properly address this issue and reserves its right to submit documents to properly address this issue.

10. With regard to the excess MCIT over NCIT carried forward over succeeding period amounting to ₱226,144.00, petitioner mentions that this assessment is premised on the fact there is an alleged deficiency income tax based on the computation of the BIR and that it was able to controvert such findings.

11. As to the findings of receipts not subjected to VAT amounting to ₱4,134,578.75, the ₱3,720,189.83 pertains to refundable deposits collected from residents of the condominium with the intention to return it after a brief period of time.

12. With regard to the unsupported input tax of ₱15,002.86, payments made to Marsh Philippines, Inc. were appropriately supported by official receipts.

13. As to the input tax carried over to succeeding period amounting to ₱1,584,795.90, petitioner states that this item of the assessment is premised on the fact that the input VAT was disallowed as carry-over because of the alleged findings of deficiency output VAT, and that it was able to controvert such findings.

14. Petitioner was able to withhold and remit the alleged EWT deficiency to the BIR as sufficiently provided in the discussion

of Income Tax. Petitioner added that it withheld the proper expanded withholding tax rate of 2% on its payments to Ayala Property Management Corporation based on the ruling dated February 5, 2009 issued by BIR specifically addressed to Ayala Property Management Corporation.

15. As to the assessed DST, petitioner explains that the transaction is trade in nature and as such, is not subject to DST under Section 179 of the NIRC, as amended.

Yet, without batting an eye, the BIR issued the FAN dated December 27, 2017, reiterating the findings in the PAN, save for modification in the amount of interest on the deficiency taxes:

Tax Type	Basic Tax	Increments			Total
		Interest	Surcharge	Compromise Penalty	
IT	₱6,034,243.97	₱3,382,483.06	-	-	₱ 9,416,727.03
VAT	511,152.31	308,932.05	-	-	820,084.36
EWT	1,665,976.71	1,016,017.57	-	-	2,681,994.28
DST	131,467.00	80,897.22	₱32,866.75	₱20,000.00	265,230.97
					₱13,184,036.64

Like the BIR's reiteration of the PAN's findings in the FAN dated December 27, 2017, the Details of Discrepancy[61] in the FAN, too, simply replicated the Details of Discrepancy [62] in the PAN. Conspicuously, the FAN dated December 27, 2017 and its corresponding Details of Discrepancy failed to echo the reasons for the rejection of petitioner's defenses exhaustively posed in its letter-protest on the PAN. In fact, said letter-protest was not even mentioned therein. Indeed, "... [respondent], in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party."[63] Respondent failed in this regard.

Consistent with *Ang Tibay* and *Avon*, the deficiency tax assessments issued by respondent against petitioner for TY 2014 must be struck down for violation of its right to due process on assessment.

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61 BIR Records, pp. 323-326.

62 *Id.* at 312-315.

63 See *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

WHEREFORE, the Petition for Review dated October 1, 2018, filed by The Residences at Greenbelt Condominium Corporation, is **GRANTED**. Accordingly, the Final Assessment Notice dated December 27, 2017, embodying the deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for taxable year 2014 in the total amount of ₱13,184,036.64, is **CANCELLED** and **WITHDRAWN**.

Respondent, his representatives, agents, or other persons acting in his behalf are **ENJOINED** from implementing the collection of deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for taxable year 2014, in the total amount of ₱13,184,036.64 against petitioner.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice