REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TITANIUM CORPORATION,
Respondent.

CTA *EB* NO. 2502
(CTA Case No. 9644)

Present:

DEL ROSARIO, *PJ*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUN 22 2023 11:47a.m.

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RESOLUTION

CUI-DAVID, J.:

Before the Court *En Banc* is the *Motion for Reconsideration (On the Decision promulgated on February 13, 2023)*[1] filed by petitioner through registered mail on March 2, 2023.

The dispositive portion of the Decision[2] promulgated on February 13, 2023 (*assailed Decision*) reads:

> **WHEREFORE**, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue on July 14, 2021, is **DENIED** for lack of merit. Accordingly, the Decision and Resolution promulgated on November 11, 2020, and June 1, 2021, respectively, by the Court's Third Division, are **AFFIRMED**.
>
> **SO ORDERED.**

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[1] *En Banc (EB)* docket, pp. 735-739.
[2] *EB* docket, pp. 706-731.

The *assailed Decision* sustained the ruling of the Court in Division ordering the cancellation and setting aside petitioner's deficiency tax assessments for having been issued in violation of respondent's right to due process of law.

In his bid to reconsider the adverse Decision, petitioner maintains that there is substantial compliance with the due process requirements in issuing the deficiency tax assessments under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. He added that the facts and laws on which the 2011 deficiency tax assessments were based were clearly shown in the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) and Formal Letter of Demand/Final Assessment Notice (FLD/FAN). Hence, petitioner asserts that he substantially complied with the prescribed requisites of informing the taxpayer of the factual and legal bases on which the said deficiency tax assessments were based.

Further, petitioner avers that respondent was able to protest the PAN and FLD/FAN. He emphasizes that the Bureau of Internal Revenue (BIR) acted on respondent's protest letters and, as a result thereof, the BIR reduced respondent's deficiency IT and EWT; cancelled the assessed deficiency WTC and DST but sustained the assessed VAT for the taxable year 2011 for failure to substantiate the same. All these findings were stated in the Final Decision on Disputed Assessment (FDDA) with Amended Notices, dated June 29, 2017. Hence, petitioner submits that the ruling in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[3] (*Avon case*) is not entirely applicable.

In closing, petitioner submits that the deficiency tax assessments issued against respondent are *prima facie* presumed correct and made in good faith. Respondent must prove otherwise, and in the absence of any irregularities in the performance of official duties, the said deficiency tax assessments should be upheld.

By way of Comment,[4] respondent counters that petitioner's claim that there was substantial compliance with the requirement that the taxpayer shall be informed of the facts and the law on which the assessment is based is misplaced. According to respondent, petitioner is barking at the wrong tree

[3] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[4] *EB* docket, pp. 745-754.

as there is nothing in the assailed Decision which states that petitioner's 2011 FLD/FAN is invalidated for failure to inform the taxpayer of the facts and the law on which the assessment is based. The deficiency tax assessments for 2011 against respondent were invalidated for the failure of the BIR to relate its deficiency finding in the 2011 FLD/FAN to the documents and arguments submitted by respondent in its *Reply* to the 2011 PAN. Hence, contrary to petitioner's claim, the *Avon case* finds direct application in this case.

Anent petitioner's argument that the BIR reduced the assessments under the 2011 FDDA and, as such, due process was accorded to it, respondent submits that this is a *non sequitur.* According to respondent, the tax audit process consists of distinct stages. The duty of the BIR to conduct a genuine tax investigation during the preliminary assessment notice stage is separate from its duty to do the same for the final assessment notice stage. Admittedly, as early as its *Memorandum* dated July 28, 2014, the investigating Revenue Officer already resolved to issue both the PAN and FLD/FAN, even though respondent's right to submit its *Reply* to the PAN has not lapsed.[5]

Finally, respondent submits that tax assessments are *prima facie* presumed correct and made in good faith is a disputable presumption, which can be set aside based on evidence. In the instant case, this presumption was rebutted when the Court found that the 2011 FLD/FAN issued against respondent was void due to the violation of the latter's right to due process for the failure of the BIR to give a genuine evaluation of respondent's Reply to the 2011 PAN.

Petitioner's *motion* must fail.

A careful perusal of the arguments raised by petitioner in his *Motion for Reconsideration* shows that the same had been thoroughly discussed and passed upon, first by the Court in Division and subsequently on appeal by the Court *En Banc* in the assailed Decision, to wit:

> ***The Court in Division did not err in voiding the FLD/FAN as a consequence of the violation of respondent's right to due process.***

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[5] *Transcript of Stenographic Notes* during the hearing on June 13, 2019, pp. 16-19.

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A party's fundamental right to due process includes the right to be informed of the various issues involved in a proceeding and the reasons for the decision rendered by the quasi-judicial agency.

It is well to note that the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. **In the *Avon* case, the Supreme Court stressed that the taxpayer must not only be allowed to present its defenses, explanations, and supporting documents, but the Commissioner and their subordinates must give due consideration to these, in making their conclusions on the taxpayers' liabilities, and sufficiently inform the taxpayer of the reasons for their conclusions**. In the same case, the Supreme Court declared the FLD/FAN null and void because of the BIR's total disregard of due process when it failed to fully apprise the taxpayer of the legal and factual bases of the assessment issued against it despite the latter's defenses and submission of supporting documents, *viz.*:

xxx xxx xxx

Like the *Avon* case, herein respondent was left unaware of how petitioner or his authorized representatives appreciated respondent's explanations or defenses in connection with the assessments.

Due process requires the BIR 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.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations; 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.

Here, a review of the breakdown of the deficiency IT, VAT, EWT, WTC, and DST, including the Details of Discrepancies in the PAN and FLD/FAN, shows that they are identical. Except for specific adjustments in the computation of interest, no substantial difference exists between the two notices.

> **Notably, petitioner failed to consider respondent's arguments in its Reply to the PAN without any explanation, as the Details of Discrepancies attached to the FLD/FAN is a replica of the Details of Discrepancies attached to the PAN. Petitioner's disregard of respondent's due process right rendered the subject tax assessments null and void.**
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> As regards petitioner's protestation that the due process requirement in the issuance of deficiency tax assessments was complied with since respondent was able to file its protest letters to both PAN and FLD/FAN, the Court *En Banc* is not convinced.
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> The fact that respondent was able to file its Reply to PAN and Protest to the FLD/FAN is of no moment and does not denigrate the fact that petitioner violated respondent's due process right.

Indeed, petitioner failed to advance any new or substantial reason that will merit a reconsideration or modification of the assailed Decision.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (On the Decision promulgated on February 13, 2023)* is **DENIED**, for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

x--x

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice