REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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MERIAL PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8370

Members:

DEL ROSARIO, P.J.,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

DEC 01 2015 ; 9:05 a.m.

x - x

RESOLUTION

UY, J.:

For resolution is respondent's **"MOTION FOR RECONSIDERATION (Amended Decision of 26 August 2015)"** filed on September 16, 2015,[1] with petitioner's **"COMMENT/ OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION"** filed October 5, 2015,[2] praying that the Decision dated May 13, 2015 be reinstated, and the Amended Decision dated August 26, 2015 be reversed. The dispositive portion of the said Amended Decision reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on May 13, 2015 is hereby **MODIFIED** to read as follows:

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[1] Docket, pp. 590 to 595.
[2] Docket, pp. 599 to 602.

> '**WHEREFORE,** the instant Petition for Review is **GRANTED**, in view of respondent's violation of petitioner's right to due process before the subject assessments were issued. Accordingly, the Formal Letter of Demand dated January 7, 2011 and attached Assessment Notices issued by respondent against petitioner, demanding payment for deficiency EWT, deficiency VAT and deficiency income tax for taxable year 2007 are declared **VOID** and the same are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**'
>
> **SO ORDERED.**"

In the Motion, respondent points out that the essence of due process in administrative proceedings is the opportunity to explain one' side or seek a reconsideration of the action or ruling complained of, pursuant to the case of *Flores, et al. vs. Montemayor*[3] (hereinafter referred to as the "*Flores* case").

According to respondent, in this case, it is a fact that the Preliminary Assessment Notice (PAN) dated December 17, 2010 was received by petitioner on December 29, 2010, while the Formal Letter of Demand (FLD) with attached Final Assessment Notices (FAN) were issued on January 7, 2011, or nine (9) days after petitioner's receipt of the said PAN, instead of the fifteen (15) days. Respondent also emphasizes that it is also a fact that petitioner was able to file a protest on both PAN and FLD with attached FAN on January 13, 2011 and February 14, 2011, respectively; and that they were able to submit certain documents in support of their protest to the FAN on April 13, 2011. Respondent then concludes that it is clear that petitioner was given opportunities to explain its side or to contest the subject PAN and FAN.

On the other hand, petitioner argues that the *Flores* case does not involve a deficiency tax assessment by the Bureau of Internal Revenue, but a violation of Section 7 of the Anti-Graft and Corrupt Practices Act in relation to Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees, and thus, it is clearly not applicable in the instant case.

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[3] G.R. No. 170146, June 8, 2011.

Furthermore, petitioner contends that this Court did not err in issuing its Amended Decision dated August 26, 2015 and declaring that the failure of the Commissioner of Internal Revenue to strictly comply with the requirements laid down by law and its own rules is a denial of a taxpayer's right to due process, in accordance with the Supreme Court's ruling in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[4] (hereinafter referred to as the "*Metro Star* case") and other relevant jurisprudence. In other words, petitioner is of the opinion that this Court did not err in ruling that there was a violation of petitioner's right to due process of law and declaring that the respondent's FLD dated January 7, 2011 and attached Assessment Notices are void.

THE COURT'S RULING

The instant Motion for Reconsideration lacks merit.

While this Court does not dispute the ruling of the Supreme Court in the *Flores* case that *"(t)he essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained"* and *"(a)s long as the parties are given the opportunity to be heard before judgment is rendered, demands of due process are sufficiently met"*, it cannot ignore the provisions of Section 3.1.2 of Revenue Regulations (RR) No. 12-99,[5] which provides as follows:

> "**SECTION 3.** **<u>Due process requirement in the issuance of a deficiency tax assessment.</u>**—
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.2 **Preliminary Assessment Notice (PAN).** – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be,

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[4] G.R. No. 185371, December 8, 2010.

[5] 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 Extrajudicial Settlement of a Taxpayer's Criminal Violation of the code through payment of a Suggested Compromise Penalty.

> it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). <u>If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.</u>" *(Underscoring supplied)*

This must be so because Revenue Regulations or administrative issuances have the force of law and are entitled to great weight.[6] They benefit from the same presumption of validity and constitutionality enjoyed by statutes.[7] In addition, administrative rules and regulations ordinarily deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.[8]

In other words, while We adhere to the pronouncements in the *Flores* case, the above-quoted provisions of RR No. 12-99 must likewise be observed.

This is in fact the essence of the ruling in the *Metro Star* case, when it declared that:

> "xxx **The persuasiveness of the right to due process reaches both substantial and procedural rights and <u>the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process</u>.** xxx." *(Emphases and underscoring supplied)*

Due process is usually violated where, *inter alia*, arbitrary or

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[6] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* G.R. No. 159490, February 18, 2008.

[7] *Chevron Phils., Inc. vs. Bases Conversion and Development Authority, et al.*, G.R. No. 173863, September 15, 2010.

[8] *Chamber of Real Estate and Builders' Association vs. Romulo, et al.*, G.R. No. 160756, March 9, 2010.

oppressive methods are used in assessing and collecting taxes.[9] Arbitrariness, in turn, presupposes inexcusable or obstinate disregard of legal provisions.[10]

To reiterate, there is inexcusable or obstinate disregard of the above-quoted Section 3.1.2, in this case, on the part of the Bureau of Internal Revenue (BIR), particularly, in not observing the fifteen (15)-day period prescribed therein.

Respondent does not deny that the PAN dated December 17, 2010 was received by petitioner on December 29, 2010;[11] and thus, the fifteen (15)-day period under the said Section 3.1.2 would end only on January 13, 2011. However, notwithstanding the mandate of said Section 3.1.2, the investigating office of the BIR had already come up with the FLD with attached Assessment Notices as early as January 7, 2011,[12] or nine (9) days after petitioner's receipt of the said PAN.

Clearly, there was a violation of petitioner's right to due process of law. Consequently, the said FLD and FAN must perforce be declared void.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[9] *Pepsi-Cola Bottling Co. of the Philippines vs. Municipality of Tanuan, Leyte, et al.*, G.R. No. L-31156, February 27, 1976.

[10] *Victorias Milling Co., Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. L-24769 and L-24779, February 25, 1967.

[11] JSFI, Par. 3, Docket, p. 85.

[12] JSFI, Par. 5, Docket, p. 85.