REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

THE ARISTOCRAT FRANCHISE CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8731

Members:

CASTAÑEDA, JR., *Chairperson, and*
CASANOVA, *JJ.*

Promulgated:

DEC 1 3 2016

x- x
10:25 a.m.

RESOLUTION

CASTAÑEDA, JR., J.:

For resolution is petitioner's **Motion for Reconsideration**, filed through registered mail on August 15, 2016, and received by the Court on August 24, 2016, with respondent's **Comment/ Opposition to Motion for Reconsideration**, filed on September 15, 2016.

Petitioner seeks reconsideration of this Court's Decision (assailed Decision)[1] promulgated on July 28, 2016, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the present Petition for Review is **DENIED** for lack of merit. The assessment issued by respondent against petitioner covering deficiency income tax for taxable year 2006 is

[1] Docket, vol. I, pp. 442-471.

AFFIRMED. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **EIGHT MILLION FIVE HUNDRED SIXTY-SEVEN THOUSAND SIX HUNDRED FIVE PESOS AND 54/100 (₱8,567,605.54)** representing basic deficiency income tax and the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the 1997 NIRC, computed as follows:

Basic Deficiency Income Tax	₱ 6,854,084.43
Add: 25% Surcharge	1,713,521.11
Total Amount Due	**₱8,567,605.54**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax computed from April 15, 2007 until full payment thereof pursuant to Section 249(B) of the 1997 NIRC; and

(b) Delinquency interest at the rate of 20% per annum (1) on the total amount of ₱8,567,605.54, representing basic deficiency income tax and 25% surcharge; and (2) on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 21, 2011 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC.

Accordingly, the amount of ₱2,741,633.77 already paid by petitioner on October 26, 2011 shall be deducted from the total amount due.

SO ORDERED.

In its motion, petitioner insists that the disputed assessment is a jeopardy assessment, is arbitrary in nature and lacks legal and factual basis. Petitioner argues that from the admitted and undisputed facts of the case, it is clear that the assessment was made without the benefit of a complete or partial audit by the revenue examiner. Petitioner also contends that the issue on due process is not the non-receipt of notice of assessments but respondent's failure to respond to the specific defenses raised by petitioner in its protest. It avers that there was no effort on the part of respondent to reconcile petitioner's submitted documents against his initial tax findings, and that the Final Assessment Notice (FAN) just reiterated in toto the Preliminary Assessment Notice (PAN), without answering petitioner's explanations.

Moreover, petitioner posits that the testimony of respondent's lone witness, Mr. Gil C. Quintos, showed that there is indeed no factual or legal basis for the assessment. The witness failed to state, much less explain, the factual and legal bases of the disputed assessment he made.

Petitioner also avers that Revenue Regulations (RR) No. 18-13 amending Section 3 of RR No. 12-99 is not applicable in the instant case considering that the assessment was issued in 2010 and RR No. 18-13 cannot apply retroactively.

Thus, petitioner prays that another decision be rendered declaring respondent's Letter of Denial of petitioner's offer of compromise of its 2006 income tax liability as void; confirming the validity of the compromise payment of ₱2,741,633.77 representing 40% of the basic income tax deficiency of petitioner; and cancelling the 2006 deficiency income tax assessment issued by respondent against petitioner.

In his comment, respondent contends that petitioner was given due process since it was able to receive and contest the PAN and FAN. Further, petitioner did not contest or question the correctness of the assessment and present evidence to support its claim. Petitioner belatedly questioned the correctness of the assessment; a mere after-thought when it received the Decision. Nonetheless, the Court had squarely addressed and passed upon the issues surrounding the questioned assessment which should not be disturbed.

The Motion for Reconsideration is bereft of merit.

At the outset, the Court notes that the bulk of petitioner's contentions is a mere rehash of the arguments raised in its

Memorandum[2] which have been sufficiently passed upon and fully discussed in the assailed Decision. At any rate, the Court shall briefly discuss petitioner's arguments to reinforce its ruling.

As to the due process issue, the Court *En Banc* already addressed a similar issue in *Commissioner of Internal Revenue vs. Steelasia Manufacturing Corporation*[3], to wit:

> On the allegation that the CIR failed to observe the 15-day period for any taxpayer to contest the PAN before a FAN is issued mandated under RR No. 12-99 and Section 228 of the NIRC of 1997 in violation of its right to due process, suffice it to say that due process in our jurisdiction refers to the right of the taxpayer to be informed of the legal and factual findings of the BIR as regards its deficiency taxes, and the opportunity to be heard through protest.
>
> Note that a preliminary assessment notice preparatory to the issuance of a formal or final assessment notice is not, legally speaking, an assessment even if it contains a computation of the tax liabilities of a taxpayer and a demand for payment of the computed tax liabilities was made in such preliminary assessment notice. Section 228 of the NIRC of 1997 clearly refers to the Final Assessment Notice that should be formally protested to by SAMC; else, the same becomes final and executory.

Thus, the Court reiterates the pertinent portion of the assailed Decision finding that petitioner was not deprived of due process, to wit:

> Since petitioner was able to receive the PAN and FAN, and that it was even able to contest the PAN and FAN by filing a protest letter within the period provided by law, there is no doubt that petitioner was given due process. Moreover, there was no prejudice incurred in the procedure in protesting the assessments and petitioner's

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[2] Docket, vol. I, pp. 408-418.

[3] CTA EB Case Nos. 631 & 632, December 22, 2011.

> right to due process was adequately observed and protected. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[4]

As to petitioner's allegation that the disputed assessment is a jeopardy assessment as it was made without the benefit of a complete or partial audit, the Court likewise reiterates the pertinent portion of the assailed Decision addressing the same, to wit:

> Jeopardy tax assessment, as expressly defined in RR No. 30-2002, as amended, refers to a tax assessment which was assessed <u>without the benefit of complete or partial audit by an authorized revenue officer</u>, who has reason to believe that the assessment and collection of a deficiency tax will be jeopardized by delay because of the taxpayer's failure to comply with the audit and investigation requirements to present his books of accounts and/or pertinent records, or to substantiate all or any of the deductions, exemptions, or credits claimed in his return.
>
> As borne by the stipulated facts and the evidence presented, it is clear that the assessment was the result of the audit investigations conducted pursuant to LOA No. 2001-00061306. And as discussed earlier, it cannot be said that petitioner was denied of due process just because the BIR already issued the FAN two (2) days after its protest letter to the PAN was filed. Hence, contrary to petitioner's position, the income tax assessment involved in the present case cannot be considered as a jeopardy assessment.

Lastly, anent petitioner's position that RR No. 18-13 cannot be applied retroactively, We note that an examination of the quoted provisions of RR No. 18-13 in the assailed Decision are provisions that were not substantially changed from the provisions contained in RR No. 12-99, to wit: Je

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[4] Docket, vol. I, p. 463.

RR No. 18-13	RR No. 12-99
SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* — 3.1 Mode of procedure in the issuance of a deficiency tax assessment: 3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.	SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* — 3.1 Mode of procedures in the issuance of a deficiency tax assessment: 3.1.1 Notice for informal conference. — 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, 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). 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. xxx xxx xxx

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xxx xxx xxx 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* xxx. 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: xxx	3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* xxx. 3.1.5 *Disputed Assessment.* — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx

Hence, even if We are to apply the counterpart provisions in RR No. 12-99, the same conclusions will be arrived at.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CAESAR A. CASANOVA
Associate Justice