REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

STRADCOM CORPORATION,
Respondent.

CTA EB NO. 1949
(CTA Case No. 9125)

Present:

DEL ROSARIO, ***P.J.,***
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, ***JJ.***

Promulgated:
JUL 23 2020
8:45 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**), filed by petitioner Commissioner of Internal Revenue

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[1] *Rollo*, pp. 7-25.

[2] **SEC. 3.** *Who may appeal; period to file petition.* –

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

(petitioner/CIR). Petitioner seeks the reversal of the Decision[3] dated 29 May 2018 and Resolution[4] dated 24 September 2018, respectively, of the Court's First Division in CTA Case No. 9125, entitled *Stradcom Corporation v. Commissioner of Internal Revenue.*

The dispositive portion of the assailed Decision reads:

> ...
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **THREE HUNDRED TWENTY[-] FIVE MILLION THREE HUNDRED EIGHTY[-]ONE THOUSAND FOUR HUNDRED TWELVE PESOS AND EIGHTY[-]ONE CENTAVOS (₱325,381,412.81)**, representing illegally collected income tax for taxable year 2011.
>
> **SO ORDERED.**
> ...

While the Resolution dated 24 September 2018 states:

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

<u>THE PARTIES</u>

Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to carry out the functions, duties and responsibilities of said office including the duty to approve claims for refund or tax credit pursuant to the provisions of the 1997 National Internal Revenue Code (**NIRC**), as amended, and other tax laws, rules and regulations.

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3 Division Docket, Volume III, pp. 1397-1429.
4 Id., p. 1466.

Respondent Stradcom Corporation (**respondent/Stradcom**) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

FACTS OF THE CASE

On 26 March 1998, the National Government, through the Department of Transportation and Communications (**DOTC**), entered into a Build-Own-Operate Agreement[5] (**BOOA**) with respondent for the construction and operation of an Information Technology (**IT**) infrastructure for the Land Transportation Office-Information Technology Project (**LTO-IT Project**). According to BOOA, the DOTC shall pay respondent within thirty (30) calendar days from receipt of billing based on services actually rendered, while the DOTC shall collect all fees from end-users of the IT-based services. To facilitate payment, the DOTC and respondent executed an Escrow Agreement[6] wherein the Landbank of the Philippines (**LBP**) was designated as the escrow agent.

On 10 February 2011, the Republic of the Philippines (**Republic**), through the LTO, filed a Complaint for Interpleader[7] before the Regional Trial Court, Branch 222 of Quezon City (**RTC-Branch 222**) docketed as Special Civil Action No. Q-11-68723 (**SCA No. Q-11-68723**) due to internal conflicts within respondent's management. On 21 June 2011[8], RTC-Branch 222 issued an Order directing the defendants in SCA No. Q-11-68723 to interplead with each other and directed the Republic to deposit with it the subject amount it was obliged to pay to respondent.

On 06 July 2011[9], respondent filed a Petition for *Certiorari* and Prohibition (with application for issuance of a temporary restraining order and/or writ of preliminary injunction) with the Supreme Court, docketed as G.R. No. 197311 (*Stradcom Corporation, represented by its President, Cezar T. Quiambao v. Hon. Edgar Dalmacio Santos, et al.*). This petition prayed that the RTC's 21 June 2011 Order be annulled and

5 Exhibit "P-1", Division Docket, Volume II, pp. 871-897.
6 Exhibit "P-2", id., pp. 898-903.
7 Exhibit "P-4", id., pp. 910-925.
8 Exhibit "P-5", id., pp. 926-932.
9 Exhibit "P-6", id., pp. 933-992.

set aside, alleging that the same was tainted with grave abuse of discretion.

On 23 August 2011[10], the Supreme Court *En Banc* directed the RTC-Branch 222 to forward the entire records of SCA No. Q-11-68723 to the Office of the RTC Executive Judge of Quezon City for re-raffle to the designated Special Commercial Court therein. On 12 September 2011, respondent filed a Motion for Reconsideration[11] (**MR**) but the Supreme Court denied it.[12]

Meanwhile, on 16 April 2012, respondent filed its Annual Income Tax Return[13] (**ITR**) with the Bureau of Internal Revenue (**BIR**) for taxable year (**TY**) 2011.

On 08 January 2013, then Secretary of the DOTC, Joseph Emilio A. Abaya, issued a Memorandum[14] addressed to Virginia Torres of the LTO; ordering her to immediately pay respondent of the following:

a. Php317,000,000 for the BIR;
b. Php183,000,000 for working capital and other trade payables; and,
c. Php500,000,000.00 to banks/creditors of respondent for overdue accounts and interest payments.

On 19 July 2013, respondent received a letter[15] dated 05 July 2013 from Assistant CIR Alfredo V. Misajon (**ACIR Misajon**), demanding payment of income tax in the amount of ₱488,377,342.81, inclusive of interest for alleged deficiency income taxes for TY 2011.

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10 Exhibit "P-11", id., pp. 1109-1117.
11 Exhibit "P-12", id., pp. 1118-1140.
12 See Resolution dated 24 January 2012, Exhibit "P-13", id., pp. 1142-1145.
13 Exhibit "P-14", id., pp. 1146-1150.
14 Exhibit "P-23", BIR Records, p. 123.
15 Exhibit "P-17", id., pp. 121-122.

Subsequently, on 31 July 2013, petitioner issued a Warrant of Distraint and/or Levy[16] (**WDL**) against respondent and a Warrant of Garnishment[17] (**WOG**) over respondent's LBP bank account.

On 08 August 2013, respondent sent BIR a letter[18] requesting for the cancellation of the WDL and WOG on the ground that the issuance thereof was against its right to due process; the aforesaid warrants were issued absent a Preliminary Assessment Notice (**PAN**) and/or a Final Assessment Notice (**FAN**) for the corporation's supposed tax liabilities for TY 2011.

Upon ACIR Misajon's advice, respondent also sent the CIR a letter[19] dated 13 August 2013 proposing to settle (in an effort to convince ACIR Misajon to lift the WDL and WOG). The CIR, however, rejected the proposal[20] on the ground that respondent's income tax liabilities were already due and demandable.

On 29 August 2013, respondent paid in cash ₱488,377,342.81 (BIR Payment Form No. 0605) in order to lift and cancel petitioner's WDL and WOG, which consisted of the actual income tax liability of ₱385,672,285.00 and interest in the amount of ₱102,705,057.8l, for TY 2011.

As a result of the collection of the afore-stated amounts on 15 May 2015, respondent filed an administrative claim for refund or issuance of a Tax Credit Certificate[21] (**TCC**) with the BIR's Large Taxpayer's Audit Division II (**LTAD II**) for alleged erroneously collected basic tax and interest which petitioner garnished on 29 August 2013 in the total amount of ₱325,381,413.00.

Due to petitioner's inaction on the administrative claim for refund, respondent filed a Petition for Review with this Court on 25 August 2015.

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16 Exhibit "P-18", id., p. 120.
17 Exhibit "P-19", id., p. 118.
18 Exhibit "P-20", Division Docket, Volume II, pp. 1207-1210.
19 Exhibit "P-21", id., pp. 1214-1217.
20 See Letter dated 14 August 2013, Exhibit "P-22", id., pp. 1218-1219.
21 Exhibit "P-15", BIR Records, pp. 228-253.

After trial, the First Division promulgated the now assailed 29 May 2018 and granted the Petition for Review. It ordered the CIR to refund petitioner the amount of ₱325,381,412.81, representing erroneously collected income tax for TY 2011. Aggrieved, the CIR filed his MR which the Court denied in a Resolution dated 24 September 2018.[22]

On 26 October 2018, the CIR elevated his case with the Court *En Banc via* the present Petition for Review.[23]

On 22 November 2018, the Court issued a Resolution[24] ordering respondent to file its Comment on the Petition for Review within ten (10) days from receipt thereof; after which, the parties were directed to submit their respective memoranda.

Later or on 17 December 2018, respondent filed a Motion for Extension to File Comment which the Court granted.[25] However, respondent again filed a Second Motion for Extension of Time to File a Comment followed by a Motion for Leave of Court to Admit Attached Comment and Comment (Re: Petition for Review dated 26 October 2018)[26] on 03 January 2019. The Court denied the same[27] since the previous grant of extension of time was non-extendible. Accordingly, respondent's Comment to the Petition for Review was disallowed; instead, the Court ordered the parties to submit their respective memoranda which respondent and petitioner filed on 11 March 2019[28] and 13 March 2019[29], respectively.

On 04 April 2019, the Court *En Banc* submitted the case for decision.[30]

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22 Supra at note 4.
23 *Rollo*, pp. 7-25.
24 Id., pp. 68-69.
25 See Resolution dated 29 January 2019, id., pp. 113-115.
26 Id., pp. 79-110.
27 See Resolution dated 29 January 2019, supra.
28 Id., pp. 116-147.
29 Id., pp. 150-165.
30 See Resolution, id., pp. 169-170.

ISSUES

I.
THE COURT ERRED GRAVELY IN RULING THAT THE TWO-YEAR PRESCRIPTIVE PERIOD FOR A CLAIM FOR REFUND SHOULD BE RECKONED FROM THE DATE OF GARNISHMENT ON 29 AUGUST 2013;

II.
THE COURT ERRED GRAVELY IN ASSUMING THAT RESPONDENT HAS BEEN DENIED DUE PROCESS;

III.
THE COURT ERRED GRAVELY IN RULING THAT RESPONDENT IS ENTITLED TO A REFUND OR A TAX CREDIT CERTIFICATE IN THE TOTAL AMOUNT OF PHP325,381,413.00 REPRESENTING BASIC TAX AND INTEREST WHICH WAS GARNISHED BY PETITIONER ON 29 AUGUST 2013; AND,

IV.
THE COURT ERRED GRAVELY WHEN IT COMPLETELY DISREGARDED THE ADMISSION OF RESPONDENT OF ITS TAX LIABILITIES AS EVIDENCED BY RESPONDENT'S INCOME TAX RETURN AND AUDITED FINANCIAL STATEMENTS FILED ON 16 APRIL 2012.

ARGUMENTS

In support of the present petition, petitioner centers its argument on the Court's supposed lack of jurisdiction to take cognizance of respondent's Petition for Review by reason of prescription.

The CIR points out that respondent's filing of its administrative claim for refund with the BIR on 15 May 2015 and its judicial claim with this Court on 25 August 2015 had already prescribed. Petitioner posits that respondent only had two (2) years from 16 April 2012, the due date for respondent's filing of its ITR for TY 2011 (15 April 2014 falling on a Sunday) or until 16 April 2014, to file its claim. He adds that, since respondent filed its administrative claim for refund only on 15 May

2015, this Court no longer has any jurisdiction over respondent's judicial claim filed on 25 August 2015.

He further argues that there was no violation of respondent's due process rights when it demanded immediate payment of deficiency income taxes on the service fees. As per petitioner, the same became due and demandable *ipso facto* upon the DOTC's order to release ₱1,000,000.00 in respondent's favor on 24 January 2013 (pursuant to its 08 January 2013 Memorandum). Under such circumstances, he claims that an assessment is no longer necessary. Petitioner also holds that respondent could not have been denied due process as the filing of its ITR for TY 2011 is in itself an admission of the due and demandable nature of its income tax deficiency on the service fees.

In addition, respondent reasons in the alternative that if 16 April 2012 cannot be considered as the date from which the two-year prescription period for filing a refund should be counted then, the period should begin to run from the DOTC's order of release of funds to respondent on 24 January 2013.

Sans respondent's comment (which the Court disallowed previously), the statements embodied in its Memorandum will be our sole reference for its counter-arguments against petitioner's claims.

For its part, respondent argues that the Court has jurisdiction to take cognizance of its prior Petition for Review filed with the Court in Division and contravenes petitioner's contention that the reckoning of the two-year period commenced on the due date of the filing of its ITR for TY 2011 or on 16 April 2012. Respondent maintains that there is nothing in the law that supports petitioner's theory. Neither does respondent agree that the reckoning period should commence on 24 January 2013 when the respondent's alleged tax liability was deemed to be "due and payable".

Respondent also contends that petitioner violated its right to due process by not issuing an assessment notice to inform it of the former of the amount and the reasons for the alleged tax liabilities.

As to the issue raised by petitioner on the income tax liability of ₱385,672,285 for TY 2011 (which was allegedly due and demandable on 16 April 2012), respondent implores the court to look carefully into the facts of the case to confirm the actual events that transpired; some of which, it claims, petitioner has conveniently omitted to contravene its claim for refund.

Respondent claims further that, despite the services it provided to the LTO, the latter did not comply with the duty to pay for such services. The LTO's defense for its non-payment was the absence of a judicial declaration on the intra-corporate dispute concerning the management of respondent as well as the conflicting claims between two contending groups. As a result of the conflicting claims, these contending groups made separate demands for payment of the end user fees. Respondent asserts that its income tax liability for TY 2011 became due and demandable only upon the LTO's release of the end user fees.

Respondent likewise insists that the taxability of its receivables on the end user fees cannot be considered income prior to its release from the escrow account (since the peculiar circumstances rendered it impossible from exercising "unfettered command" over the end user fees deposited with the LBP).

<u>RULING OF THE COURT *EN BANC*</u>

THE COURT HAS JURISDICTION OVER RESPONDENT'S CLAIM FOR REFUND.

After an assiduous review of the records, the Court *En Banc* could not find cogent reason to not side with the Court in Division. We are in agreement with its exhaustive discussion of why the Court has jurisdiction and why respondent's refund claim falls within the two (2) year prescription period provided under Sections 204[31] and 229[32] of the NIRC of 1997, as amended, to wit:

[31] Section 204, National Internal Revenue Code of 1997, as amended.
[32] Section 229, id.

> ...
>
> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund <u>within two 2 years after the payment of the tax or penalty</u>: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ...
>
> **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner, but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the <u>date of payment of the tax</u> or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[33]
>
> ...

It is undisputed that respondent paid the amount of ₱488,377,342.81, which supposedly includes part of the amount being refunded in this case, on <u>29 August 2013</u>. Given the cited provisions of the NIRC of 1997, as amended, the two (2) year prescriptive period should be reckoned from said date. Counting from 29 August 2013,

[33] Underscoring supplied.

respondent had until 29 August 2015 to file both its administrative and judicial claims with the BIR and this Court, respectively.

As can be readily culled from the facts of the case, respondent filed its administrative claim for refund with the BIR on 15 May 2015, and its judicial claim with the Court on 25 August 2015 thus, complying with the jurisdictional requirements for the Court to take cognizance of its petition.

Respondent's view that the two-year prescription period should be tacked from the due date for petitioner's filing of its ITR for TY 2011, which in this case is 16 April 2012, is untenable. As the First Division explained in the assailed Decision, relying on the principle laid down in *Metropolitan Bank and Trust Company v. The Commissioner of Internal Revenue*[34], "tax refunds are based on the general premise that taxes have either been erroneously or excessively paid". Granting that payment of the alleged unwarranted taxes were made only on 29 August 2013, the same should be considered as the reckoning date from which respondent's right to the refund arose.

Moreover, if petitioner's contention were to be sustained, it would result to an absurd scenario wherein a taxpayer's right to a refund would accrue *prior* to the actual collection or payment of the taxes.

PETITIONER DENIED RESPONDENT DUE PROCESS

The NIRC of 1997, as amended, and its implementing rules provide for certain due process requirements to be observed in order for assessments to be valid. Particularly, Section 10(c), in relation to Section 13 of the NIRC[35] of 1997, as amended, clearly states:

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[34] G.R. No. 182582, 17 April 2017.
[35] Section 10(c) in rel. to Sec. 13, National Internal Revenue Code of 1997 as amended.

...
SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
...

(c) Issue Letters of Authority for the examination of taxpayers within the region;

...
SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director,** examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[36]
...

Moreover, Section 228 of the NIRC of 1997, as amended, provides for a general outline on the proper procedure to be followed in tax assessments, to wit:

...
SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
...

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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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36 Emphasis supplied.

> 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.
>
> ...

The Supreme Court explained the BIR's obligation to comply with the procedure laid down in Section 228 of the NIRC of 1997, as amended, in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[37], to wit:

> ...
>
> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. **To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations 'that taxpayers should be able to present their case and adduce supporting evidence.**
>
> ...
>
> **Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection.** Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.
>
> ...

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[38], the Supreme Court, in no uncertain terms, likewise ruled:

37 G.R. No. 215957, 09 November 2016; Emphasis supplied.
38 G.R. No. 178697, 17 November 2010; Emphasis supplied.

> ...
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**
> ...

While, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[39], the Supreme Court also held:

> ...
> Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
> ...

Records show indubitably that petitioner did not issue a Letter of Authority (**LOA**), Notice of Informal Conference (**NIC**), PAN and FAN *prior* to the issuance of the WDL and WOG against respondent.

With the laws and jurisprudence unequivocal in the view that an assessment without observance of the due process requirements is a patent nullity, the cancellation of the WDL and WOG against respondent is proper. Resultantly, absent any valid assessment justifying the collection of the taxes deemed illegally collected, the Court is constrained to grant respondent's claim for refund.

Although petitioner is of the opinion that due to respondent's previous filing of its ITR for TY 2011, a formal assessment can be dispensed given the circumstances surrounding the present case, the Court, however, remains unconvinced. Section 6 of the NIRC of 1997, as amended, states:

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[39] G.R. Nos. 201398-99 and 201418-19, 03 October 2018.

> ...
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) ***Examination of Returns and Determination of Tax Due.*** – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.[40]
> ...

Taking the above-quoted provision with the mandate of the CIR to inform the taxpayer in accordance with Section 228 clearly shows that a formal assessment is still necessary despite a taxpayer's previous filing of an ITR. Therefore, petitioner's claim of exemption from compliance with the process outlined in Section 228 of the NIRC of 1997, as amended, is unfounded.

On this note, the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Algue, Inc., et al.*[41] must be emphasized:

> ...
> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
> ...

Given the foregoing disquisition on the nullity of petitioner's assessment and collection of taxes from respondent, the Court *En Banc*

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40 Underscoring supplied.
41 G.R. No. L-28896, 17 February 1988.

finds it superfluous, if not unnecessary, to delve further into petitioner's other issues; obviously, their resolution could no longer reverse or change the outcome of this decision.

WHEREFORE, the foregoing considered, the Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision of the First Division dated 29 May 2018 and its Resolution dated 24 September 2018, respectively, are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With all due respect, please see my Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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-versus-

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UY,
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RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 23 2020 8:05 a.m.

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I submit that respondent's right to due process was violated when petitioner issued the Warrant of Distraint and/or Levy (WDL) and the Warrant of Garnishment (WG), both dated July 31, 2013, *sans* any prior assessment notice or without complying with the procedure laid down in the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing regulations.

The NIRC of 1997, as amended, its implementing regulations and prevailing jurisprudence prescribe the due process requirement to be observed in the issuance of deficiency tax assessments and the collection thereof. Strict compliance with these requirements is necessary to make the assessment and collection valid.

Record shows, however, that there was no Letter of Authority ("LOA"), or any other document for that matter, that preceded the issuance of the aforesaid WDL and WG, bestowing revenue officers with authority to examine respondent's pertinent tax records. **Moreover, no Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) were issued prior to the issuance of the aforesaid WDL and WG.**

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[1] *and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue,*[2] the Supreme Court elucidated on the utmost importance of observing due process in issuing deficiency tax assessments and in the collection of taxes, *viz.*:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue 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.
>
> x x x
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.**
>
> In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:
>
>> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that

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[1] G.R. Nos. 201398-99, October 3, 2018.
[2] G.R. Nos. 201418-19, October 3, 2018.

> he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer was **deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice** as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

<u>Compliance with strict procedural requirements must be followed in the collection of taxes</u> as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself**. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> x x x x
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that

> it is an arbitrary method of exaction by those in the seat of power.
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed.** (Emphasis supplied)

> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. Xxx" *(Additional boldfacing and underscoring supplied)*

While there is a view that the outright issuance of the WDL and WG was justified by the fact that it was respondent who declared the amount of income tax liability in its own Annual ITR, **it fails to point to any specific provision in the NIRC and its implementing regulations as well as in any jurisprudence which dispenses with the mandatory requirements of the issuance of an assessment under the present situation.**

Truth to tell, Section 228 of the NIRC of 1997, as amended and Section 3.1.3 of Revenue Regulations (RR) No. 12-99 do not provide any exception to the issuance of a FAN, albeit they have provided for certain exceptions to the issuance of a PAN.

Commissioner of Internal Revenue vs. Fitness by Design, Inc.[3] is clear and categorical that tax collection should be premised on a valid assessment, *viz.*:

> "A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. **To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations** 'that taxpayers should be able to present their case and adduce supporting evidence.'

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[3] G.R. No. 215957, November 9, 2016.

xxx

> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. **Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation. *(Boldfacing supplied)*

I am not unaware of *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue,*[4] which states that:

> "Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment."

There is, however, nothing in *SMI-ED* which holds that the government need not make an assessment if the taxpayer failed to voluntarily pay its tax liability. What is clear and categorical is that if the tax payments are correct, no assessment from the Bureau of Internal Revenue (BIR) is necessary. It follows therefore that if the taxpayer fails to pay the correct amount of tax or fails to pay, a valid BIR assessment is required before proceeding with the tax collection. **To immediately proceed with tax collection, without a valid assessment, is a wanton disregard of the taxpayer's right to due process.**

In view of petitioner's failure to comply with the due process requirement of issuing an LOA, conducting an audit and issuing an assessment prior to the issuance of the WDL and WG, the cancellation of the WDL and WG is warranted. Respondent is therefore entitled to the refund of the amount of ₱325,381,412.81 representing the illegally collected basic tax and interest for the taxable year 2011.

All told, I VOTE to DENY the Petition for Review and AFFIRM the assailed Decision and Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] G.R. No. 175410, November 12, 2014.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

STRADCOM CORPORATION,
Respondent.

CTA *EB* NO. 1949
(CTA Case No. 9125)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 23 2020
8:05 a.m.

x- x

CONCURRING AND DISSENTING OPINION

Manahan, J.:

I concur with the majority opinion as clearly enunciated in the *ponencia* of our esteemed colleague, Justice Jean Marie A. Bacorro-Villena, on the matter of acquiring jurisdiction over the Petition for Review on the ground that both the administrative and judicial claims for refund were filed within the two-year prescriptive period.

Petitioner assails the decision of the Court in Division for having assumed jurisdiction over the Petition for Review filed by Stradcom Corporation (respondent in the *En Banc* level) because it filed its administrative claim for refund with the BIR on May 15, 2015 and then filed its judicial claim for refund on

August 25, 2015. Hence counting from April 16, 2012 which is the *due date* for filing its annual income tax return (ITR) for the year 2011 (April 15, 2015 falling on a Sunday), the administrative claim for refund (filed on May 15, 2015) was allegedly filed beyond the two-year prescriptive period provided by law.

The majority opinion contravened the theory of petitioner and reckoned the counting of the two-year prescriptive period from August 29, 2013 which is the date respondent paid the amount of Php488,377.342.81 in compliance with the directive of then Commissioner of Internal Revenue (CIR), Kim Jacinto-Henares in a letter dated August 14, 2013. Counted from August 29, 2013, the administrative claim for refund filed on May 14, 2015 and the judicial appeal with the Court filed on August 25, 2015 were well within the two-year period provided under Section 204 (c) and Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended.

I respectfully assent to the position of the majority as to the issue of jurisdiction. Nonetheless, I take a different view on their conclusion that respondent is entitled to the claim for refund of Php325,381,412.81 representing alleged illegally collected income tax for taxable year 2011.

It is well-settled that in cases involving violation of administrative rules of procedure, it is essential to determine whether such violations disregard the tenets of administrative due process, hence if the gravity of the violation of the rules is such that due process is breached, the rules of procedure should be strictly applied, otherwise, these rules are liberally construed.[1]

The majority dismissed the Petition for Review filed by the CIR based on the undisputed fact that no assessment was issued by the latter thereby violating respondent's right to due process. The undersigned does not disregard the clear provisions of Section 228 of the 1997 NIRC, as amended, its implementing rules and the myriad of cases that emphasize the need to inform the taxpayers of the facts and the law of their alleged tax deficiencies in order to give them a reasonable opportunity to respond or file a protest. This is the essence of due process from the perspective of a tax investigation and a

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[1] *Emilie L. Besaga vs. Spouses Felipe Acosta and Digna Matalang Coching*, G.R. No. 194061, April 20, 2015.

breach thereof results to an invalid tax collection, i.e., tax collection cannot ensue without a valid assessment. But the two questions that primarily come to my mind are as follows: given the peculiar circumstances of the instant case, is a deficiency assessment required and more importantly, is respondent entitled to the refund of the amount it allegedly claims to have been illegally collected?

I cannot help but rule in the negative to both questions.

Respondent narrates that for the services it rendered to the Department of Transportation and Communication (DOTC) and the Land Transportation Office (LTO), it was entitled to transaction fees from the end-users and/or beneficiaries of the Information Technology (IT)-based services which the DOTC and LTO shall be obliged to collect and then pay to respondent. Under the terms of the agreement with DOTC and LTO, the latter will open a Trust Fund with the National Treasury and/or any authorized government depository bank and deposit the fees collected and due to respondent, into said Fund. Pursuant to the Build -Own-Operate (BOO) Agreement, the DOTC and LTO along with Landbank entered into an Escrow Agreement to facilitate the transmittal of payments due to respondent. The Escrow Agreement was later on modified by the parties. According to respondent, despite the services it provided to the LTO, the latter did not comply with the duty to pay for such services. The defense of LTO for its non-payment was because it was waiting for a judicial declaration on the intra-corporate dispute concerning the management of respondent as well as the conflicting claims between two contending groups. As a result of the conflicting claims, these contending groups made separate demands for payment of the end user fees.

Due to this controversy, respondent asserts that its *income tax liability for taxable year 2011* became due and demandable only upon the release of the end user fees by the LTO. Respondent then insists that the taxability of its receivables on the end user fees representing payment for services rendered, cannot be considered income prior to its release from the escrow account since it did not exercise dominion and control over the fees held in escrow. Respondent states that the peculiar circumstances attendant in the case at bar prevented it from exercising "unfettered command" over the end user fees.

In summary, respondent posits the theory that income tax on the end-user fees would only be due upon its actual receipt and that no income tax liability can be imposed against it prior to the release of the end-user fees from the escrow account.

The records of this case show and in fact remain undisputed, that on January 8, 2013, then Secretary of the DOTC, Joseph Emilio A. Abaya, issued a *Memorandum* addressed to Virginia Torres of the LTO, enjoining her to immediately effect payment of the following obligations to respondent:

a. Php317,000,000 for the BIR;
b. Php183,000,000 for working capital and other trade payables; and
c. Php500,000,000.00 to banks/creditors of respondent for overdue accounts and interest payments.

The amounts listed above if received by respondent constitute income on its part. The records would also show that respondent duly received such amounts and recorded it in its books.

A close examination of respondent's Annual Income Tax Return (ITR) with attached ITR Reconciliation and audited financial statements for taxable year 2011 [2] reveals that respondent recognized the income from the LTO transactions in its net income per books which is why it already deducted the same to arrive at the net income tax payable. The Reconciliation contains an explanation why no income tax was paid on said income and we quote:

> "The Company is the subject of an interpleader case filed by the LTO with the Quezon City Regional Trial Court (RTC) to determine the ownership rights between two parties claiming to be the owners and management of the Company."

The conflicting claims of two groups as to the same income earned by respondent is internal to the taxpayer (respondent) and does not (and should not) affect the fact that income was already earned.

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[2] Exhibits "P-14","P-15" and "P-16-1" to "P-16-51, original Court Docket, Volume I, pp. 305-361.

The Supreme Court, in the case of *CIR vs. CA, CTA and A. Soriano Corp.*[3] defined income and its taxability as follows:

> "Income in tax law is an amount of money coming to a person within a specified time as **payment for services,** interest or profits from investment.
>
> xxx xxx xxx
>
> **The determining factor for the imposition of income tax is whether gain or profit was derived from a transaction."** (emphasis supplied)

In Note 2 of respondent's audited financial statements, it was disclosed that respondent used the "accrual method" of accounting as seen from the following statement:

> **"Revenue is recognized when it is probable that the economic benefits associated with the transactions will flow to the Company and the amount of revenue can be reliably measured.** xxx xxx xxx
>
> **Information processing services fees are recognized by the Company once IT Services have been rendered and the corresponding DOTC/LTO District Office and service providers had collected the corresponding fees from customer** pursuant to the BOO agreement and other agreements entered into by the Company pertaining to interconnectivity projects." (emphasis supplied)

Based on the foregoing pronouncements in its own audited financial statements, respondent had no basis to "defer" the payment of income tax on income it already recognized. It had no valid excuse not to pay income tax when it fell due on April 16, 2012 pursuant to the categorical provisions of Section 43 of the 1997 NIRC, as amended, and we quote in part as follows:

> "Section 43. *General Rule.* – The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance **with the method of accounting regularly employed in keeping the books of such taxpayer**, xxx xxx" (emphasis supplied)

The revenue from the BOO agreement relative to the IT services it performed for LTO was already recognized in respondent's books of accounts based on its method of accounting, therefore it should have paid the income tax due

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[3] G.R. No. 108576, January 20, 1999.

on such revenue in accord with such method, which in this case is the accrual method.

In the instant case, no income tax was paid by respondent on said income for no justifiable reason. The necessity of issuing an assessment and the processes accompanying it are not applicable in a case where the taxpayer himself admits the realization of an income but fails to pay taxes therefor. Our National Internal Revenue Code (NIRC), as amended, recognizes several instances when a pre-assessment notice can be dispensed with. Thus, the maxim that no tax collection without a valid tax assessment is a rule not cast in stone.[4]

The undersigned humbly opines that given the circumstances described above, the respondent's right to due process was not breached. On the contrary, it was in fact the respondent that breached its clear obligation to pay income taxes on the income it received from LTO. In the face of such a clear obligation to pay the income taxes, the question is - whose right was violated, the respondent taxpayer's or the government's right to the taxes on the income respondent earned? To even grant respondent the refund on the taxes it should have paid to the government is to condone its tax liability and negate the basic principle against unjust enrichment and ignore the doctrine that taxes are the lifeblood of the government and their prompt and certain availability is an imperious need.[5]

As held in the case of *SMI-ED Philippines Technology, Inc. vs. CIR,*[6] and we quote:

> "Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment."

It for these reasons, that I express my dissent to the majority opinion.

Accordingly, I vote to **PARTIALLY GRANT** the Petition for Review filed by the CIR and **DENY** respondent's claim for refund

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[4] Section 228, 1997 NIRC, as amended.
[5] *Camp John Hay Development Corp. vs. CBAA,* G.R. No. 169234, October 2, 2013.
[6] G.R. No. 175410, November 12, 2014.

of its alleged illegally collected income taxes in the amount of Php325,381,412.81.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice