REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

SERBIZ MULTI-PURPOSE COOPERATIVE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10369

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
NOV 27 2024 1:32 pm

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion for Reconsideration (Decision dated 15 July 2024)** filed on August 06, 2024, with petitioner's **Comment (To Respondent's Motion for Reconsideration)** posted on September 04, 2024 and received by the Court on September 09, 2024.

On July 15, 2024, the Court promulgated a Decision cancelling respondent's deficiency income tax and value-added tax ("VAT") assessments against petitioner for violating its right to due process of law, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject assessments for deficiency income tax in the amount of **Php9,617,720.91** and VAT in the amount of **Php4,102,491.56**, both inclusive of surcharges and interests, covering taxable year 2009, are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED**."

In his Motion, respondent primarily argues that the Court erred in ruling that the deficiency income tax and VAT assessments are void since the *Formal Letter of Demand/Final Assessment Notice ("FLD/FAN")* dated December 11, 2019 merely reiterated the same findings stated in the *Preliminary Assessment Notice ("PAN")* dated November 12, 2019. Respondent asserts that Section 3 of Revenue Regulations ("RR") No. 12-1999,[1] as amended by RR No. 18-2013,[2] states that it is not mandatory for him to respond or provide any reason for rejecting the refutations made by petitioner in its *Reply to Preliminary Assessment Notice* dated December 2, 2019. Respondent continues that assuming that he responded to petitioner's *Reply to the PAN*, the outcome and basis of the assessment would still be the same, adding that tax assessments by tax examiners are presumed correct and made in good faith.

Moreover, respondent also contends that it was only on April 23, 2012 when petitioner obtained its Certificate of Tax Exemption from the Cooperative Development Authority ("CDA"), which is three years later from the effectivity of Republic Act ("RA") No. 9520,[3] otherwise known as the *"Philippine Cooperative Code of 2008"*. As such, respondent submits that petitioner is not in any way exempt from income tax and VAT for taxable year 2009.

On the other hand, in its Comment, petitioner maintains that the Court did not err in ruling that the subject tax assessments are void for being issued in violation of petitioner's right to administrative due process of law. Petitioner points out that there is nothing in Section 3 of RR No. 12-1999, as amended by RR No. 18-2013, that expressly states that it is not mandatory for the Commissioner of Internal Revenue ("CIR") to respond to the taxpayer's reply to the PAN.

Petitioner also asserts that being a duly registered cooperative with the CDA, petitioner is granted exemption from payment of income tax and VAT for the taxable year 2009. Lastly, petitioner contends that the assessment notices are void for having been issued after the period of limitation for assessment under the National Internal Revenue Code ("NIRC") of 1997, as amended, had lapsed.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

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1 "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 Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty", dated September 6, 1999.

2 "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment", dated November 28, 2013.

3 Amended RA No. 6938 otherwise known as the "COOPERATIVE CODE OF THE PHILIPPINES", approved on February 17, 2009.

With regard to respondent's argument that it was not mandatory for him to respond to petitioner's *Reply to the PAN*, stating that he may opt to issue instead the FLD/FAN within fifteen (15) days from the filing of petitioner's *Reply to the PAN*, the Court finds the same untenable.

With emphasis, the CIR's ample powers under the tax code should be exercised with due regard to the taxpayer's constitutional rights. Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.[4] Simply put, when respondent rejects the taxpayer's explanations, he must give some reason for doing so, giving the particular facts upon which his conclusions are based, and those facts must appear in the record.[5]

In the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[6] the Supreme Court held that the Bureau of Internal Revenue ("BIR") violated its own procedures by refusing to answer or even acknowledge the submitted Reply and Protest made by the taxpayer, to wit:

> "**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.
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> 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 [Php]15,700,000.00 to [Php]62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

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4 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 04, 2021.
5 *Id.*
6 G.R. Nos. 201398-99 & 201418-19, October 03, 2018.

> **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 Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments**.
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> 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.**"[7]

To reiterate, it was undoubtedly shown that respondent is required to comment on the matters raised by petitioner and discuss the BIR's findings in a manner that petitioner may know the various issues involved and the reasons for the assessments. Clearly, the Commissioner, in exercising his 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.[8]

Herein, save for the closing paragraphs, the *Details of Discrepancies* attached to the FLD merely copied *verbatim* the *Details of Discrepancies* attached to the PAN. The FLD did not even address the defenses and/or even acknowledged the documents submitted by petitioner, leaving it unaware on how respondent appreciated the explanations or defenses raised in connection with the deficiency assessments. Consequently, petitioner was clearly deprived of due process of law as it was not fully apprised of the legal and factual bases of the assessment issued against it.

As to respondent's assertion that petitioner is not exempt from income tax and VAT for the taxable year 2009 since the CDA Certificate of Tax Exemption was only obtained on April 23, 2012, the Court does not agree.

Article 61 of the Republic Act No. 9520 explicitly provides that cooperatives with accumulated reserves and undivided net savings of not more than Ten Million Pesos ([Php]10,000,000) shall be exempt from all national taxes

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7 *Emphasis and underscoring supplied.*

8 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,* G.R. Nos. 201398-99 & 201418-19, October 03, 2018.

of whatever name and nature; that cooperatives with accumulated reserves and divided net savings of more than Php10 Million, regardless of classification, are exempt from income tax from the date of registration with the CDA; and, that cooperatives duly registered with the CDA are exempt from the payment of VAT, to wit:

> "ART. 61. *Tax and Other Exemptions.* Cooperatives transacting business with both members and non-members shall not be subjected to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:
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> (1) **Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos ([Php]10,000,000.00) shall be exempt** from all **national,** city, provincial, municipal or barangay **taxes of whatever name and nature**. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally a certified by the department of trade and industry (DTI). All tax free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and / or duties.
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> (2) **Cooperatives with accumulated reserves and divided net savings of more than Ten million pesos ([Php]10,000,000.00) shall pay the following taxes at the full rate:**
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> (a) Income Tax - On the amount allocated for interest on capitals: Provided, That the same tax is not consequently imposed on interest individually received by members: Provided, further, That **cooperatives** regardless of classification, **are exempt income tax from the date of registration with the Authority;**
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> (b) Value-Added Tax – On transactions with non-members: *Provided, however,* That **cooperatives duly registered with the Authority; are exempt from the**

> **payment of value-added tax**; subject to Section 109, sub-sections L, M and N of Republic Act No. 9337, the National Internal Revenue Code, as amended: *Provided*, That the exempt transaction under Section 109 (L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or process products for sale by the cooperative to its members and non-members: *Provided, further*, That any processed product or its derivative arising from the raw materials produced by its members, sold in their name and for the account of the cooperative: *Provided , finally*, That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds"[9]

Herein, records of the case show that petitioner is registered with the CDA under Registration Certificate No. 9520-16000670 dated October 15, 2009.[10] For that reason, petitioner is exempt from income tax and VAT under RA No. 9520.

Furthermore, Section 13[11] of the *"Joint Rules and Regulations and Regulations Implementing Articles 60, 61, and 62 of RA No. 9520, Otherwise known as the 'Philippine Cooperative Code of 2008' in relation to RA No. 8424 or the National Internal Revenue Code, as Amended"*,[12] explicitly states that "for the initial issuance of the Certificate

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[9] *Emphasis supplied.*

[10] Docket, Exhibit "P-10", p. 447.

[11] "*SECTION 13. Documents to be attached to the Letter – Application for the Issuance of a Certificate of Tax Exemption/Ruling* – xxx.

The application for exemption by a qualified cooperative is a pre-requisite for availment of tax exemption by said cooperative. The Certificate of Tax Exemption/Ruling shall be issued only after determination by the BIR that the cooperative has complied with all the necessary documentary requirements for entitlement under RA 9520, as enumerated above.

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All duly registered cooperatives under RA 9520 shall apply for a Certificate of Tax Exemption/Ruling within sixty (60) days counted from the date of issuance of certificate of registration.

Exemption from taxes herein stated shall apply to the duly-registered cooperatives on the year the certificate of tax exemption/ruling was issued. **However, for the initial issuance of the Certificate of Tax Exemption/Ruling under RA 9520, the effectivity of such Certificate of Tax Exemption/Ruling issued shall commence from the year RA 9520 took effect: Provided, that the cooperative has registered with the CDA as provided for under Article 144 of RA 9520.**

xxx.

[12] Approved by the Joint Congressional Oversight Committee on Cooperatives on January 25, 2010, and was adopted on February 21, 2010.

of Tax Exemption/Ruling under RA No. 9520, the effectivity of such Certificate of Tax Exemption/Ruling shall commence from the year RA No. 9520 took effect." Accordingly, the effectivity of petitioner's first Certificate of Tax Exemption dated April 23, 2012 under RA No. 9520 shall commence from the year 2009, the year RA No. 9520 took effect.

Perforce, while taxes are the lifeblood of government and should be collected without hindrance, the collection of taxes however should be exercised reasonably in accordance with law and with their own rules of procedure, and always with regard to the basic tenets of due process. Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[13]

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or amend the Decision promulgated on July 15, 2024.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision dated 15 July 2024) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RIGPIS-LIBAN
Associate Justice

We Concur:

MARIA ROWENA MODESTO SAN-PEDRO
Associate Justice

(On Leave)
CORAZON G. FERRER-FLORES
Associate Justice

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13 *See Commissioner of Internal Revenue v. Algue, Inc., et al.,* G.R. No. L-28896 February 17, 1988.