REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

THE RESIDENCES AT GREENBELT CONDOMINIUM CORPORATION,
Respondent.

CTA EB NO. 2810
(CTA Case No. 9942)

Present:

Del Rosario, P.J.,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, and
Angeles, JJ.

Promulgated: AUG 05 2024 2:26 pm

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) via registered mail on October 27, 2023. The Petition for Review challenges the Decision dated May 26, 2023[2] (Assailed Decision) as well as the Resolution dated September 27, 2023[3] (Assailed Resolution) rendered by the First Division and the Special First Division, respectively, (collectively referred to as "Court in Division")[4] of this Court in CTA Case No. 9942.

[1] Court *En Banc's* Docket, pp. 14-25.
[2] *Id.*, pp. 32-50.
[3] *Id.*, pp. 60-63.
[4] Both the First Division and Special First Division were composed of Presiding Justice Roman G. Del Rosario, Associate Justice Catherine T. Manahan, and Associate Justice Marian Ivy F. Reyes-Fajardo *(ponente)*.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, the Petition for Review dated October 1, 2018, filed by The Residences at Greenbelt Condominium Corporation, is **GRANTED**. Accordingly, the Final Assessment Notice dated December 27, 2017, embodying the deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for taxable year 2014 in the total amount of ₱13,184,036.64, is **CANCELLED** and **WITHDRAWN**.
>
> Respondent, his representatives, agents, or other persons acting in his behalf are **ENJOINED** from implementing the collection of deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for taxable year 2014, in the total amount of ₱13,184,036.64 against petitioner.
>
> **SO ORDERED.**"

Assailed Resolution:

> "**WHEREFORE**, respondent's Motion for Reconsideration, filed on June 16, 2023, is **DENIED**, for lack of merit. The Decision dated May 26, 2023, is **AFFIRMED**.
>
> **SO ORDERED.**"

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:[5]

> "Petitioner The Residences at Greenbelt Condominium Corporation is a domestic corporation organized for the purpose of holding title to the land and the common areas of the condominium project named The Residences at Greenbelt, Esperanza Drive, Makati City. Its principal office is located at 2/F Bldg. Admin, Laguna Tower, Esperanza Drive, Makati City. It is registered with the Bureau of Internal Revenue (BIR).
>
> Respondent is the Commissioner of the BIR and holds office at the 5th Floor, BIR National Office Building, Agham Road, Quezon City, and is represented by the Legal Division of Revenue Region No. 8 (South Makati) which holds office at the 2/F BIR Regional Office

[5] Court *En Banc's* Docket, pp. 32-35 (Citations omitted).

Building, 313 Sen. Gil Puyat Avenue, Makati City. He is vested with the power to decide tax cases, including claims for refunds and/or tax credits pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended.

On December 5, 2017, petitioner received the BIR's Preliminary Assessment Notice (PAN) dated November 29, 2017, containing the proposed deficiency tax assessments in the total amount of P13,019,465.56, broken down as follows:

Tax Type	Basic Tax	Increments			TOTAL
		Interest	Surcharge	Compromise Penalty	
IT	₱6,034,243.97	₱3,263,451.40	-		₱9,297,695.37
VAT	511,152.31	298,849.05	-		810,001.36
EWT	1,665,976.71	983,154.47	-		2,649,131.18
DST	131,467.00	78,303.90	₱32,866.75	₱20,000.00	262,637.65
					₱13,019,465.56

On December 18, 2017, petitioner filed its protest letter dated December 15, 2017 against the PAN, discussing in detail its defenses on the proposed deficiency tax assessments. Petitioner then prayed that reinvestigation, and eventually, cancellation and withdrawal thereof be made in light of said defenses.

On January 4, 2018, petitioner received the BIR's FAN dated December 27, 2017, assessing it for deficiency IT, VAT, EWT, DST, covering TY 2014, in the total amount of P13,184,036.64, detailed below:

Tax Type	Basic Tax	Increments			TOTAL
		Interest	Surcharge	Compromise Penalty	
IT	₱6,034,243.97	₱3,382,483.06	-		₱9,416,727.03
VAT	511,152.31	308,932.05	-		820,084.36
EWT	1,665,976.71	1,016,017.57	-		2,681,994.28
DST	131,467.00	80,897.22	₱32,866.75	₱20,000.00	265,230.97
					₱13,184,036.64

On January 30, 2018, petitioner protested the FAN, through a letter dated January 23, 2018, followed by its submission of documentary evidence in support thereof, via its letter dated March 7, 2018, and filed with the BIR on March 9, 2018.

On March 14, 2018, petitioner received two (2) letters from BIR in response to the request for reinvestigation, *i.e.*, letter dated February 26, 2018 signed by Regional Director Glen A. Geraldino, and the letter dated March 5, 2018 signed by Revenue Officer (RO) Florante R. Aninag. Both letters stated that petitioner's request for reinvestigation was granted. Petitioner was also required to submit the additional documents within sixty (60) days from petitioner's filing of its protest.

On October 5, 2018, petitioner filed its Petition for Review with Motion to Suspend Collection of Taxes, docketed as CTA Case No. 9942, to which respondent filed his Answer on January 7, 2019.

In the Resolution dated June 4, 2019, petitioner's Motion to Suspend Collection of Taxes was denied, for lack of merit.

During the Pre-Trial Conference held on August 8, 2019, the Court: (1) adopted the issue to be resolved in this case, as agreed upon by the parties; (2) directed the parties to embody matters and the issue agreed upon in a Joint Stipulation of Facts and Issues; (3) set the schedules for the marking of the parties' exhibits, as well as for the presentation of their respective evidence; and (4) directed them to appear for mediation.

On August 28, 2019, the parties filed their Joint Statement of Facts and Issues (JSFI), which was approved in the Resolution dated September 10, 2019. On the basis thereof, the Court issued a Pre-Trial Order on November 6, 2019. Trial ensued."

On May 26, 2023, the Court in Division rendered the Assailed Decision.

Aggrieved, petitioner filed a Motion for Reconsideration[6] on June 16, 2023 which the Court in Division denied in the Assailed Resolution.

On October 27, 2023, petitioner filed the present Petition for Review via registered mail, within the extended period granted by this Court.[7]

In a Minute Resolution dated November 30, 2023, this Court directed the respondent to file its Comment to the Petition for Review.[8]

On December 14, 2023, respondent filed its Comment-Opposition [To the Petition for Review dated 16 October 2023].[9]

In a Minute Resolution dated January 24, 2024, this Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation.[10]

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[6] *Id.*, pp. 51-58.
[7] Minute Resolution dated November 3, 2023, Court *En Banc*'s Docket, p. 13.
[8] Court *En Banc*'s Docket, p. 66.
[9] *Id.*, pp. 68-76.
[10] *Id.*, p. 81.

In a Minute Resolution dated April 30, 2024, this Court noted that the parties have decided not have their case mediated by PMC-CTA and, accordingly, submitted the case for decision.[11]

THE ISSUE

Petitioner submitted the following issue for this Court's decision, to wit:[12]

> "Whether or not the tax findings in the PAN which was merely reiterated in the FAN due to the lack of supporting documents to the protest to PAN violated the taxpayer's right to due process."

THE ARGUMENTS OF THE PARTIES

Petitioner argues that:[13]

1. The Final Assessment Notice (FAN) dated December 27, 2017 was properly issued in compliance with Revenue Memorandum Order (RMO) No. 26-2016 and Section 228 of the NIRC, as amended, and Revenue Regulations (RR) No. 12-99, as amended. As such, there was no violation of due process in this case.

2. Under the National Internal Revenue Code (NIRC), the FAN is recognized as the assessment that must be protested by the taxpayer. Consequently, it is permissible for the BIR to take into account the taxpayer's protest against the PAN in subsequent assessment notices, such as the Final Decision on Disputed Assessment (FDDA).

3. CTA 1st Division committed reversible error when it applied the *Avon* case, in relation to the *Ang Tibay* case, to the present case considering that the same is not applicable due to the distinct set of facts presented in this case.

4. Reiteration of an assessment does not constitute a violation of due process; instead, it only signifies the denial of: (1) the protest; and/or (2) irrelevant documents.

On the other hand, respondent maintains that petitioner's arguments deserve scant consideration because in the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing*[14] it was held that the failure of the taxing authority to inform the taxpayer of the reasons for rejecting its arguments in protesting the Preliminary Assessment Notice (PAN) results to denial of due process thus

[11] *Id.*, p. 83.
[12] *Id.*, p. 17.
[13] *Id.*, pp. 18-24.
[14] G.R. Nos. 201398-99, October 03, 2018 ("*Avon*").

rendering the assessment null and void. Respondent asserts that petitioner's argument, *i.e.*, that the *Avon* case is inapplicable to the present case because what was filed was a protest to the PAN without additional supporting documents, is untenable. Respondent points out that the Supreme Court in *Avon* reminded the taxing authority to give due consideration to the arguments and evidence contained in the protest, as part of the requirements of due process. Respondent submits that *Avon* is on all fours to the present case because similar to *Avon*, the Bureau of Internal Revenue (BIR) in the present case merely rehashed the FAN and adjusted the interest on the deficiency taxes, ultimately ignoring respondent's arguments and evidence on its protest to the PAN.

As regards petitioner's argument that he issued a valid FAN in compliance with RMO No. 26-2016 and RMO 12-99, including Section 228 of the NIRC, respondent claims that the *Avon* case ultimately shed light on how the taxing authority should issue a valid FAN once a protest to the PAN was made. According to the aforecited case, the taxing authority must give the reason and facts upon which its conclusions were based which the BIR failed to do in this case. While revenue regulations and issuances of administrative agencies have the force and effect of law and presumed valid unless otherwise ruled by courts, in light of the *Avon* case, petitioner should have followed the guidelines in issuing a valid FAN once a protest to the PAN was made. Petitioner as the taxing authority is duty bound to apply the aforecited case in its issuance of the FAN to accord due process to the taxpayer.

On the merits, respondent argues that, as a condominium corporation, it is not subject to VAT as held in *First E-Bank Tower Condominium Corp. v. Bureau of Internal Revenue.*[15] In the same vein, it is also not subject to income tax as it claims that it is not formed for business purposes but only for holding title to the land and common areas on the condominium project.

THE COURT *EN BANC'S* RULING

The Petition for Review shall be denied.

Timeliness of the Petition

The Court *En Banc* shall first determine whether the present Petition for Review was timely filed. Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

"Rule 8 Procedure in Civil Cases

[15] G.R. No. 215801, January 15, 2020.

xxx xxx xxx

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

xxx xxx xxx

(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**. xxx" (Emphasis supplied)

The records show that petitioner received the Assailed Resolution on October 6, 2023. Counting fifteen (15) days therefrom, petitioner had until October 21, 2023 within which to file his Petition for Review before the Court *En Banc*.

On October 20, 2023, however, petitioner filed via private courier a Motion for Extension of Time to File Petition for Review,[16] which was granted in the Minute Resolution dated November 3, 2023.[17] The Court *En Banc* granted petitioner an additional period of fifteen (15) days from October 21, 2023 or until November 5, 2023 within which to file his Petition for Review before the Court *En Banc*. Accordingly, petitioner timely filed the present Petition for Review on October 27, 2023, well within the extended period.

The Court in Division did not err in cancelling the subject assessment for violation of the taxpayer's right to due process.

After careful scrutiny of the arguments of the parties and the relevant laws, rules, and jurisprudence on the matter vis-à-vis the facts as reflected in the case records, the Court *En Banc* finds no compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

If only to reinforce the succinct discussion of the Court in Division in the Assailed Decision, the Court *En Banc* will address below the arguments raised by the petitioner in his present Petition for Review.

Petitioner argues that in issuing the FAN, he was "guided by the pertinent provisions of Revenue Memorandum Order No. 26-2016, issued in line with Section 228 of the NIRC, as amended, and pursuant to RR No. 12-99, as amended" where it states that protest against PAN is optional/not mandatory and that the Formal Letter of Demand and Final Assessment

[16] Court *En Banc*'s Docket, pp. 1-3.
[17] *Id.*, p. 13

Notice (FLD/FAN) shall be issued within fifteen (15) days from date of receipt by the taxpayer of the PAN, whether the same was protested or not.[18] Petitioner boldly asserts that the "taxpayer's right to file protest against the PAN emanates not from substantial [sic] law such as the NIRC of 1997, as amended, but only from the administrative procedure of protesting assessment laid [down] by RR No. 12-99, as amended." Petitioner thus claims that this right can be modified by mere administrative issuance such as RMO No. 26-2016.[19]

Petitioner posits that the PAN is merely "preparatory and preliminary prior to the issuance of the FAN and not technically the 'assessment' that is contemplated by law that can warrant cancellation of an assessment."[20] Petitioner surmises that the protest against the PAN, unlike the protest against the FAN, is not indispensable. A PAN may or may not even be protested to by the taxpayer, and the non-protest thereof shall not make it final and non-appealable.[21]

Petitioner also submits that *Avon* is inapplicable to the present case due to variance in their respective factual milieu.[22]

Finally, petitioner insists that reiteration of an assessment does not constitute a violation of due process but instead, it only signifies the denial of the protest and/or irrelevant documents.[23]

Petitioner is grievously mistaken in all of his assertions.

First of all, the Court *En Banc* agrees with the Court in Division in applying *Avon* to the present case. Contrary to petitioner's assertion, the factual circumstances of the present case justify the application of *Avon* and the purported factual differences between these the two (2) cases as pointed out by the petitioner are more apparent than real.

As correctly held by the Court in Division, the CIR's mechanical reiteration of his findings as set forth in the PAN when it subsequently issued the FAN dated December 27, 2017 without giving the reasons for rejecting respondent's defenses as raised in its protest and without even acknowledging such letter-protest is tantamount to violation of the taxpayer's due process rights. *Avon* categorically held that while the CIR is not obliged to accept the taxpayer's explanations, he is nonetheless mandated to give his reasons for rejecting the same and must also give the particular facts upon which his conclusions are based and those facts must appear on record.

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[18] *Id.*, pp. 19-20.
[19] *Id.*
[20] *Id.*, pp. 20-21.
[21] *Id.*
[22] *Id.*, pp. 21-22.
[23] *Id.*, pp. 22-24.

It is not true that the taxpayer's right to file protest against the PAN does not emanate from a substantive law. Section 228 of the 1997 NIRC unequivocally grants the taxpayer the said right. The said statutory provision states:

> "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 preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **<u>Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice</u>.** If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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.

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." *(Emphasis and underscoring supplied)*

As may be gleaned from the above highlighted portion of the law, it not only requires the CIR to issue the PAN but also affords the taxpayer the right to respond thereto within the period to be set by the implementing rules. In *Commissioner of Internal Revenue v. Metro Star Superama*,[24] the Supreme Court had confirmed the mandatory nature of the service of the PAN and that the failure of the CIR to serve the same in the manner required by law is equivalent to a denial of the taxpayer's due process rights and invariably results to the invalidation of the assessment. The relevant part of the said decision states:

"**Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that 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.

x x x x x x x x x

From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and 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. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**" *(Emphasis supplied)*

Juxtaposing the above ruling with that set forth by *Avon*, it becomes clear that due process demands that the CIR shall serve the PAN to the taxpayer in the manner required by law and that the protest to be filed by the taxpayer in response thereto must be duly considered by the CIR. Failure by

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

the CIR to comply with either of these requirements shall render the assessment void.

While it may be true that RMO No. 26-2016 made the filing of protest to the PAN only optional on the part of the taxpayer and that the issuance of the FAN shall be made fifteen (15) days from the date of taxpayer's receipt of the PAN, these rules do not detract from, but actually reinforce the *Avon* doctrine mandating the CIR to duly consider the taxpayer's protest to the PAN and to explain its reasons for rejecting the arguments and defenses raised by the taxpayer in its protest. The purported optional nature of the filing of protest to the PAN is simply irrelevant to the present case. The fact remains that the taxpayer is given the right, albeit optional, to file a protest to the PAN. Once the taxpayer opted to file such protest, the CIR has no choice but to consider it and cannot just take it for granted without offending the taxpayer's due process rights and invalidating the assessment.

At any rate, even on the assumption that there was no violation of respondent's right to due process, the Court *En Banc* finds that petitioner erred in assessing respondent deficiency income tax and value-added tax (VAT) for the latter's collection of refundable deposits. As held by the Supreme Court in the case of *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations"*,[25] association dues, membership fees, and other assessments/charges collected by condominium corporations are not subject to income tax, VAT, and withholding tax.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[25] G.R. No. 215801, January 15, 2020.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in 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