Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PRIME STEEL MILL, INCORPORATED, Petitioner,	**G.R. No. 249153** Present:
- versus -	CAGUIOA, *Chairperson* INTING, GAERLAN, DIMAAMPAO, SINGH, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: September 12, 2022 MisPDCBath

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DECISION

DIMAAMPAO, *J.:*

This Petition for Review on *Certiorari*[1] impugns the *Decision*[2] dated 3 January 2019 and the *Resolution*[3] dated 27 August 2019 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Nos. 1678 and 1680, which affirmed petitioner's liability for deficiency income tax for taxable year 2005, and which denied petitioner's motion for partial reconsideration and respondent's motion for reconsideration, respectively.

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1 *Rollo,* pp. 7-26.

2 Id. at 27-46. Penned by Court of Tax Appeals Associate Justice Catherine T. Manahan, with Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban, concurring. Presiding Justice Roman G. Del Rosario issued a Concurring and Dissenting Opinion, id. at 47-51.

3 Id. at 52-58. Penned by Court of Tax Appeals Associate Justice Catherine T. Manahan, with Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, concurring. Presiding Justice Roman G. Del Rosario maintained his Concurring and Dissenting Opinion.

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The facts of this case are undisputed.

On 7 January 2009, petitioner Prime Steel Mill, Incorporated received a Preliminary Assessment Notice (PAN) dated 19 December 2008 from the Bureau of Internal Revenue (BIR), assessing it with deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) for taxable year 2005. On 22 January 2009, petitioner filed a letter protesting the PAN.[4]

On 12 February 2009, petitioner received a Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) dated 14 January 2009 from the BIR, which reiterated the findings contained in the PAN. Thereafter, petitioner sent another letter to the BIR to dispute the FAN and FLD.[5]

Subsequently, petitioner received the Final Decision on Disputed Assessment (FDDA) dated 14 April 2014, which maintained petitioner's liability for deficiency income tax and VAT in the aggregate amount of ₱37,675,379.58, inclusive of interest and compromise penalties.[6]

Petitioner then filed a Petition for Review before the CTA, before which it challenged the validity of the assessments.[7] Petitioner claimed, *inter alia,* that the BIR's right to assess had already prescribed in this case.[8]

Respondent Commissioner of Internal Revenue countered that the subject assessments were issued well within the three-year period under Section 203 of the National Internal Revenue Code (Tax Code).[9] Likewise, the income and VAT deficiencies had factual and legal bases. Respondent also cited the principle that all tax assessments are presumed correct and made in good faith.[10]

The case then proceeded to trial.[11]

In the Decision[12] dated 23 January 2017, the CTA Third Division partially granted the Petition, and cancelled the deficiency VAT assessment against petitioner while still upholding its deficiency income tax assessment. The CTA Third Division found that respondent's right to assess petitioner for

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4 Id. at 30.
5 Id.
6 Id.
7 Id.
8 Id. at 30-31.
9 Id. at 30.
10 Id. at 31.
11 Id.
12 *Note*: Not found in the *rollo,* but referenced in the CTA *En Banc*'s Decision dated 3 January 2019, (see id. at 28).

VAT had already prescribed.[13]

Both parties moved for partial reconsideration but their pleas were denied by the CTA Third Division in the Resolution[14] dated 21 June 2017.

Displeased, both parties filed their respective Petitions for Review before the CTA *En Banc,* which were docketed as CTA EB Nos. 1678 and 1680.[15] Thereupon, the cases were consolidated; the parties were directed to file their respective memoranda.[16] Notably, after the case was deemed submitted for decision, petitioner filed a Motion to Admit Supplemental Memorandum (with leave of Court), seeking to present additional arguments that purportedly deserved the CTA *En Banc*'s consideration.[17] The CTA *En Banc* admitted the same in the Resolution dated 6 November 2018.[18]

In its Supplemental Memorandum, petitioner raised, for the first time on appeal, the following arguments: (1) no Letter of Authority (LOA) was offered in evidence by the respondent, hence, the entire audit and the resulting assessment were all void; (2) the FAN was issued prior to the lapse of the fifteen (15)-day period given to a taxpayer to protest the PAN, hence petitioner's right to due process was violated; and (3) the FAN and FLD did not set and fix the tax liability contrary to the requirements of the Tax Code since the interest and total tax due was still subject to modification.[19]

In the challenged *Decision,* the CTA *En Banc* denied the parties' Petitions and affirmed the ruling of the CTA Third Division.[20] With regard to the matters raised by respondent, the CTA *En Banc* declared that these were mere reiterations of the same arguments which were already extensively discussed and disposed of by the CTA Third Division when it rendered its Decision.[21] On the other hand, the CTA *En Banc* noted that petitioner no longer questioned the timeliness of the issuance of the FAN and FLD but instead mainly argued that respondent's right to collect the alleged deficiency taxes had already prescribed.[22] Petitioner anchored its theory on the premise that its protest was a mere request for reconsideration, which did not toll the running of the prescriptive period for the collection of the assessed taxes. In rejecting this notion, the CTA *En Banc* held that the underlying premise was belied by the records. Although its protest contained the same arguments

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13 *Rollo,* p. 31.
14 *Note*: Not found in the *rollo,* but referenced in the CTA *En Banc*'s Decision dated 3 January 2019 (see id. at 31).
15 Id. at 31.
16 Id. at 32.
17 Id.
18 Id.
19 Id. at 34.
20 Id. at 45.
21 Id. at 42.
22 Id. at 36.

raised in its reply to the PAN, petitioner submitted additional documents to support its protest. The CTA *En Banc* observed that the submitted documents provided a new perspective to the examiners as to petitioner's tax liability and it even led to the reduction in the assessed amounts as seen in the FDDA; thus, it was in the nature of a request for reinvestigation which effectively tolled the running of the five-year period. Necessarily, respondent's right to collect had not yet prescribed.[23]

The CTA *En Banc* likewise found no merit in the three issues raised by petitioner in its Supplemental Memorandum. While the CTA *En Banc* acknowledged that it had the authority to pass upon related issues even if not stipulated by the parties, it stressed that the resolution of the same should still be in line with the relevant rules of evidence.[24] On the first issue, the CTA *En Banc* decreed that petitioner failed to discharge its burden to prove the supposed lack of authority of the revenue examiners to conduct the audit investigation.[25] On the second issue, the CTA *En Banc* adjudged that there was substantial compliance with the due process requirements in this case considering that petitioner was still able to submit a well-prepared protest letter.[26] Finally, on the third issue, the CTA *En Banc* explained that the modification or adjustments to be made as to the applicable interests will not make the FAN and FLD legally infirm because such amounts would necessarily depend on petitioner's actual date of payment of the assessed amounts.[27]

Aggrieved, both parties moved for reconsideration, but were denied by the CTA in the now-oppugned *Resolution.*[28]

With the denial of its motion for partial reconsideration, petitioner instituted the present Petition, raising only two grounds in support thereof: (1) the five-year period for respondent to collect the assessed taxes had already prescribed;[29] and (2) its right to due process was violated when the BIR issued the FAN without observing the 15-day period provided by revenue regulations to allow taxpayers to reply to the PAN.[30]

Issue

At its core, the main issue tendered for this Court's resolution is whether or not the CTA *En Banc* erred in upholding the deficiency income tax

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23 Id. at 36-41.
24 Id. at 42.
25 Id. at 43.
26 Id. at 43-44.
27 Id. at 44.
28 Supra note 3.
29 Id. at 12.
30 Id. at 17.

assessment against the petitioner for taxable year 2005.

THE COURT'S RULING

The Petition is meritorious.

At the outset, the Court shall delve into the propriety of the CTA *En Banc*'s action of entertaining petitioner's additional arguments, including the alleged violation of its right to due process when the BIR prematurely issued the FAN and FLD in this case, which were raised for the very first time on appeal, and only in its Supplemental Memorandum.

As correctly held by the CTA *En Banc,* in deciding a case, the tax court "may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."[31] However, this authority of passing upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues submitted during the pre-trial stage is not unbridled. As the CTA *En Banc* itself recognized, such issues "should be dealt with, based not only on substantive law but in light of the relevant rules of evidence."[32]

Certainly, the thrust of proscribing a change of argument on appeal rests on upholding the basic tenets of equity and fair play.[33] "When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party."[34]

This principle is also laid down in the Rules of Court which applies suppletorily to the Revised Rules of the CTA,[35] *viz:*

> Section 15. Questions that may be raised on appeal. — Whether or not the appellant has filed a motion for new trial in the court below he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.[36]

Hence, in other civil cases, this Court has allowed derogation from this principle only in exceptional cases and only if the factual bases of the new theory would not require presentation of further evidence:

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31 Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals.
32 *Rollo,* p. 42.
33 See *Pioneer Insurance & Surety Corp. v. Tan*, G.R. No. 239989, 13 July 2020.
34 Id., citing *Bote v. Spouses Veloso*, 700 Phil. 78, 88 (2012).
35 Section 3, Rule 1 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals.
36 Section 15, Rule 44 of the Rules of Court.

> In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[37]

For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.*[38] that "[t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case **matters of record** having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."[39]

Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.[40]

From the foregoing, the Court so holds that the CTA *En Banc,* or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: *one*, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and *two,* the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.

It bears stressing that the aforementioned parameters were employed by the CTA *En Banc* when it deigned to pass upon the issue on respondent's supposed lack of authority to conduct the audit investigation in this case. This Court quotes with approbation the following disquisition of the CTA *En Banc* in the assailed *Resolution*:

> It is not the failure of the party to raise the issue during the trial stage that renders it futile to raise it on appeal but the lack of opportunity of the other party to rebut or present evidence to contravene the same during the

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37 *Boston Equity Resources, Inc., et al. v. Del Rosario*, 821 Phil. 701, 716 (2017), citing *Philippine Geothermal, Inc. Employees Union v. Unocal Philippines, Inc. (now known as Chevron Geothermal Philippines Holdings, Inc.),* G.R. No. 190187, 28 September 2016, 804 SCRA 286, 302-303.

38 638 Phil. 334-352 (2010).

39 Id. at 349. Emphasis supplied.

40 See *Commissioner of Internal Revenue v. Lancaster Phils., Inc.,* 813 Phil. 622, 639 (2017).

> trial of the case that makes it objectionable for a court to rule on this issue at this stage of appeal. The allegation of the lack of an LOA or invalidity thereof conjures up secondary issues and factual matters that need to be adjudicated upon based on evidence or lack thereof. x x x
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> This is the reason why we cannot entertain such issue at this stage, especially so when it was raised for the first time in [petitioner's] *Supplemental Memorandum* at the *En Banc* level. x x x[41]

Conversely, the same procedural hindrance does not exist in resolving the issue on the violation of petitioner's right to due process.

First. The issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment. It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment.[42] This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit.[43] Moreover, a resolution on the apparent violation of petitioner's right to due process is indispensable for an orderly and comprehensive disposition of this case.

Second. Unlike the issue on the invalidity or non-existence of the LOA, the non-observance of the 15-day period to reply to PAN may be resolved by an examination of the evidence on record without requiring the presentation of additional proof. Thus, the CTA *En Banc* correctly took cognizance of this new issue.

Nevertheless, the Court disagrees with the tax court's conclusion.

There is no true disagreement that the FAN was issued well within the 15-day period for petitioner to reply to the PAN. As recounted above, the PAN was received by petitioner on 7 January 2009 and its reply thereto was filed on 22 January 2009.[44] Without waiting to receive petitioner's reply, the BIR apparently issued the FAN on 14 January 2009, albeit it was received by petitioner only on 12 February 2009.[45]

The CTA *En Banc* noted such discrepancy but brushed this aside by saying that the requirements of due process were already substantially complied with considering that petitioner was, in any event, given an opportunity to be heard on its grounds for disputing the assessment.[46]

The respondent, through the Office of the Solicitor General, does not

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41 *Rollo*, pp. 55-56.
42 See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, 835 Phil. 875, 904 (2018).
43 See *Commissioner of Internal Revenue v. Unioil Corp.*, G.R. No. 204405, 4 August 2021.
44 *Rollo*, p. 30.
45 Id.
46 Id. at 44.

deny that the 15-day period was not observed; it simply reverberates the declaration of the CTA *En Banc* that there was substantial compliance with the requirements of the due process.[47]

This line of reasoning does not stand judicial muster.

In several cases, this Court has enjoined strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayers' constitutional rights.[48]

In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,*[49] the Court held that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules.

The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.[50]

In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*,[51] the Court had occasion to state that the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that "[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN."[52]

While *Yumex* rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.

As the Court also held in *Yumex,* "[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment."[53] "Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from **receipt** of the PAN to file

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47 Id. at 81.

48 See *Commissioner of Internal Revenue v. Yumex Philippines Corp.,* G.R. No. 222476, 5 May 2021; *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391-420 (2016); and *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, 748 Phil. 760-773 (2014).

49 652 Phil. 172-188 (2010).

50 See *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, 821 Phil. 664, 679 (2017).

51 G.R. No. 222476, 5 May 2021.

52 Id.

53 Id.

a response."[54]

In the same vein, it is beside the point that petitioner was able to submit a "well-prepared protest letter." The fact remains that respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect.[55]

With the foregoing conclusion, the Court finds no compelling reason to resolve the other matters raised by the parties.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED**. The *Decision* dated 3 January 2019 and the *Resolution* dated 27 August 2019 of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1678 and 1680 are **REVERSED and SET ASIDE**. The deficiency tax assessments issued against petitioner Prime Steel Mill, Incorporated for taxable year 2005 are declared **NULL and VOID** and are **CANCELLED**.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

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54 Id.

55 See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, 3 October 2018, 881 SCRA 451.

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court.

ALEXANDER G. GESMUNDO
Chief Justice