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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **19 June 2019** which reads as follows:

"G.R. No. 227616 – COMMISSIONER OF INTERNAL REVENUE, petitioner, versus NIPPO METAL TECH PHILS., INC. (formerly GLOBAL METAL TECH CORPORATION), respondent.

X-----X

After a judicious review of the records and submission of the parties, the Court resolves to **DENY** the petition for review on *certiorari* for failure of the petitioner to show that the Court of Tax Appeals (CTA) *En Banc*¹ committed a reversible error in reversing and setting aside the Decision² dated September 23, 2014 and Resolution³ dated January 30, 2015 of the CTA First Division and accordingly cancel and withdraw the assessments issued against respondent.

In the present petition, the Commissioner of Internal Revenue (CIR) strongly insists that: (1) respondent was not deprived of its right to due process because it had the opportunity to protest the validity of the Final Letter of Demand/Final Assessment Notice (FLD/FAN), which is the essence of due process; and (2) the CTA had no jurisdiction to take cognizance of the case because the FLD/FAN became final and executory when respondent failed to seasonably protest the same.

The Court is not persuaded.

Section 228 of the National Internal Revenue Code of 1997, as amended, categorically states that "within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings."⁴

Relevantly, Section 3 of Revenue Regulations No. 12-99,⁵ provides:

¹ See Decision dated May 17, 2016 and Resolution dated October 18, 2016 in CTA EB No. 1273, both penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban concurring; Presiding Justice Roman G. Del Rosario with Dissenting Opinion and Associate Justice Cielito N. Mindaro-Grulla concurred in Presiding Justice Del Rosario's Dissenting Opinion; *rollo*, pp. 30-51.

² *Rollo*, pp. 52-71. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy concurring.

³ *Id.* at 72-75.

⁴ Emphasis and underscoring supplied.

⁵ 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 EXTRAJUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY, September 6, 1999.

msb
7/29

SECTION 3. Due process requirement in the issuance of a deficiency tax assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

x x x x

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.** (Emphasis supplied)

Succinctly put, if it was determined that there exists sufficient basis to assess the taxpayer for deficiency taxes, the CIR or her duly authorized representative shall issue to the taxpayer a Preliminary Assessment Notice (PAN), to which the taxpayer is required to respond. Upon receipt of the PAN, the taxpayer is granted fifteen (15) days, within which to file a reply. If he fails to do so within the prescribed period, he shall be considered in default and only then shall the CIR or her duly authorized representative issue an FLD/FAN, calling for the payment of the assessed deficiency tax liability, surcharges and penalties.

Clearly, due process demands that the taxpayer receives the PAN and that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*,⁶ the Court even went beyond “opportunity to be heard” as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*,⁷ held that “[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts **but the [CIR] must consider the evidence presented.**”⁸

In this case, the records show that respondent received the PAN on February 5, 2009. However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.

⁶ G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

⁷ 69 Phil. 635, 642 (1940).

⁸ *CIR v. Avon Products Manufacturing, Inc.*, supra note 6, at 24.


In *CIR v. Metro Star Superama, Inc.*,⁹ the Court emphasized that the PAN is part of due process. 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, as in this case, is a denial of the taxpayer's right to due process.¹⁰

Finally, the Court need not belabor to discuss the matter on respondent's timely or belated filing of its protest to the FLD/FAN. To be sure, whether respondent was able to timely file a protest to the FLD/FAN "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."¹¹ On the other hand, if respondent indeed failed to file a protest to the FAN/FLD within the prescribed period, is also of no moment; for settled is the rule that tax assessments issued in violation of the due process rights of a taxpayer are null and void¹² and bears no fruit.¹³

WHEREFORE, premises considered, the assailed Decision dated May 17, 2016 and Resolution dated October 18, 2016 of the CTA *en banc* in CTA EB No. 1273 are hereby **AFFIRMED**.

SO ORDERED. //

Very truly yours,


MARIA LOURDES C. PERFECTO
Division Clerk of Court *by 7/29*

31 JUL 2019

By:

TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

⁹ 652 Phil. 172 (2010).

¹⁰ *Id.* at 186.

¹¹ *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, 565 Phil. 613, 656 (2007).

¹² *CIR v. Avon Products Manufacturing, Inc.*, *supra* note 6, at 2.

¹³ *CIR v. Metro Star Superama, Inc.*, *supra* note 9, at 187.

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