



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated April 27, 2022, which reads as follows:*

“G.R. No. 232055 (COMMISSIONER OF INTERNAL REVENUE, *petitioner* v. NEXT MOBILE, INC., *respondent*.) – This resolves the Petition for Review on *Certiorari*<sup>1</sup> filed under Rule 45 of the Rules of Court seeking the reversal of the Decision<sup>2</sup> promulgated on November 21, 2016, and Resolution<sup>3</sup> promulgated on May 24, 2017, of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1419, which upheld the CTA Division’s Amended Decision<sup>4</sup> dated December 22, 2015, in CTA Case No. 8516, that cancelled the deficiency income tax assessment for the taxable year 2006 against Next Mobile, Inc.

ANTECEDENTS

On September 21, 2007, Next Mobile received a Letter of Authority and the First Request for Presentation of Records to examine its books of accounts and other accounting records for all internal revenue taxes for 2006. Thereafter, it received a Second Request and a Final Request for the presentation of records on October 9, 2007, and October 16, 2007, and Summons and/or *Subpoena Duces Tecum* on February 19, 2008. On May 4, 2009, Next Mobile received the Notice of Informal Conference.

On April 6, 2010, Next Mobile received from the Commissioner of Internal Revenue (CIR) the Preliminary Assessment Notice (PAN) dated March 25, 2010,<sup>5</sup> for deficiency income tax and compromise penalty allegedly due for 2006. Then, on April 15, 2010, before Next Mobile could respond to

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<sup>1</sup> *Rollo*, pp. 36–55.

<sup>2</sup> *Id.* at 67–83; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban.

<sup>3</sup> *Id.* at 85–88; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan.

<sup>4</sup> *Id.* at 323–329; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban.

<sup>5</sup> *Id.* at 155–157.

the PAN, it received the Formal Letter of Demand (FLD) with Final Assessment Notice (FAN) dated April 14, 2010,<sup>6</sup> assessing Next Mobile for deficiency income tax, interest, and compromise penalty in the aggregate amount of ₱79,298,554.30. Accordingly, Next Mobile filed a written protest to the FAN on May 14, 2010.<sup>7</sup>

Subsequently, on June 13, 2012, the Regional Director issued a letter dated June 8, 2012,<sup>8</sup> reiterating the assessment for deficiency income tax against Next Mobile; otherwise, the case will be forwarded to the Collection Division of the Bureau of Internal Revenue (BIR). Thus, on July 13, 2012, Next Mobile filed a petition with the CTA Division, assailing the deficiency tax assessment.

After hearing both parties, the CTA Division issued a Decision<sup>9</sup> on October 14, 2015, finding Next Mobile liable for deficiency income tax of ₱41,656,670.93, inclusive of the 25% surcharge. The CTA held that Next Mobile's right to due process was not violated when the CIR issued the FAN ahead of the 15-day period to reply to the PAN. The requirements for procedural due process in Revenue Regulations (RR) No. 12-99<sup>10</sup> were substantially complied with. Next Mobile was given ample opportunity to explain itself through its meetings with the BIR personnel and its protest to the FAN. Further, protest against the PAN is not indispensable, and the fact of non-protest will not make the assessment final and unappealable.

The CIR and Next Mobile separately filed Motions for Partial Reconsideration.

On December 22, 2015, the CTA Division issued an Amended Decision<sup>11</sup> cancelling the deficiency assessment against Next Mobile. It clarified that the right of the taxpayer to respond to the PAN within 15 days from receipt is part of the due process requirement in the issuance of a deficiency assessment that cannot be ignored. The failure of the CIR to strictly comply with the procedural requirements violates the taxpayer's right to due process and renders the FAN null and void. Given that Next Mobile received the PAN on April 6, 2010, it had 15 days to file its reply. However, before Next Mobile could even respond to the PAN, it had already received the FAN on April 15, 2010. The CIR issued and mailed the FAN before considering Next Mobile's protest to the previously issued PAN, depriving Next Mobile of its right to due process. Hence, the FAN is void. The CTA disposed:

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<sup>6</sup> Id. at 141–144.

<sup>7</sup> Id. at 145–154.

<sup>8</sup> Id. at 140.

<sup>9</sup> Id. at 245–293; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Esperanza R. Fabon-Victorino. Associate Justice Ma. Belen M. Ringpis-Liban dissented, see *id.*, at 294–298.

<sup>10</sup> Entitled "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," September 6, 1999.

<sup>11</sup> *Rollo*, pp. 323–329.

Hence, this recourse.

Through the Office of the Solicitor General, the CIR argues that, although he did not wait for the period of 15 days to lapse before issuing the FAN, the due process requirements in RR No. 12-99 were substantially complied with. A Notice of Informal Conference was issued wherein Next Mobile was given the opportunity to refute the findings of the BIR. Next Mobile was also served with the FAN and was able to file a protest within the period allowed. The CIR points out that a PAN is not indispensable, and the taxpayer is not even obliged to respond to it.

In its Comment,<sup>14</sup> Next Mobile counters that mere service of the PAN to the taxpayer is not sufficient to comply with the due process requirements of the law and existing rules and regulations. The issuance of the PAN and the right to respond to it within 15 days are two separate and independent requirements of due process. Further, the phrase ‘shall be required’ in Section 228<sup>15</sup> of the 1997 National Internal Revenue Code, as amended (Tax Code),<sup>16</sup> indicates the legislature’s intent to make the response to the PAN within the 15-day period from receipt necessary and essential. Therefore, Next Mobile’s subsequent protest to the FAN did not cure the infirmity in the issuance of the FAN before the lapse of the 15 days to respond. Finally, Next Mobile avers that even assuming that there was no violation of its right to due process, it could not be liable for deficiency income tax for the taxable year 2006 because it incurred a net operating loss.

The CIR filed a Reply,<sup>17</sup> reiterating the same arguments raised in his petition.

## RULING

The petition lacks merit.

Section 228 of the Tax Code and Section 3.1.2 of RR No. 12-99 provide the procedural and substantive rules on assessment of internal revenue taxes, viz.:

[Section 228, Tax Code]

SECTION 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes

<sup>14</sup> Id. at 395–407.

<sup>15</sup> Section 228. *Protesting of Assessment.* – x x x  
x x x x

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.

x x x. (Emphasis supplied.)

<sup>16</sup> Republic Act No. 8424, December 11, 1997.

<sup>17</sup> *Rollo*, pp. 420–427.

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## RULING

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Section 228 of the Tax Code and Section 3.1.2 of RR No. 12-99 provide the procedural and substantive rules on assessment of internal revenue taxes, viz.:

[Section 228, Tax Code]

SECTION 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,

<sup>14</sup> Id. at 395–407.

<sup>15</sup> Section 228. *Protesting of Assessment.* — x x x  
x x x x

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.

x x x x. (Emphasis supplied.)

<sup>16</sup> Republic Act No. 8424, December 11, 1997.

<sup>17</sup> *Rollo*, pp. 420–427.

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:

x x x x

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.

**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. (Emphasis supplied.)

[Section 3.1.2, RR No. 12-99]

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

**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)

In *Commissioner of Internal Revenue v. Yumex Philippines Corp.*,<sup>18</sup> the Court construed the necessity of giving the taxpayer fifteen (15) days from receipt of the PAN to respond. **Only after receiving the taxpayer's response or in case of default can the CIR issue the FAN.**<sup>19</sup> Thus, the PAN and FAN received by the taxpayer on the same day, even though posted on different dates, were nullified by this Court as the taxpayer was deprived of the opportunity to respond to the PAN before being given the FAN.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,<sup>20</sup> the Court stressed that the PAN is a substantive, and not merely a formal,

<sup>18</sup> G.R. No. 222476, May 5, 2021.

<sup>19</sup> See also *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc.*, G.R. No. 227616 (Notice), June 19, 2019.

<sup>20</sup> 652 Phil. 172-188 (2010).

conditions laid down by the law and its own rules is a denial of the taxpayer's right to due process.

Surely, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period is ignored. The Court, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,<sup>21</sup> reiterating *Ang Tibay v. Court of Industrial Relations*,<sup>22</sup> 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 **tribunal must consider the evidence presented.**”

Records show that Next Mobile received the PAN on **April 6, 2010**. Thus, the CIR should have given Next Mobile until **April 21, 2010** to respond. However, the FAN was served earlier on **April 15, 2010**, violating Next Mobile's right to due process of law. Consequently, the FAN is void.

Finally, that Next Mobile was able to timely file a protest to the FAN is of no moment. ‘Such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.’<sup>23</sup> It is a settled rule that tax assessments issued in violation of the right of the taxpayer to due process are null and void and bears no fruit.<sup>24</sup>

All told, the cancellation of the deficiency income tax assessment for the taxable year 2006 against Next Mobile is proper.

**FOR THE STATED REASONS**, the Petition for Review on *Certiorari* is **DENIED**.

**SO ORDERED.**” (J. Lazaro-Javier, on official business)

By authority of the Court:

  
**MISAEL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
GER 1718125

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<sup>21</sup> 841 Phil. 114 (2018).

<sup>22</sup> 69 Phil. 635–645 (1940).

<sup>23</sup> *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, 565 Phil. 613–657 (2007).

<sup>24</sup> *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172–188 (2010).

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ETA Case No. 8516)

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