

THIRD DIVISION

[G.R. Nos. 201398-99, October 03, 2018]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. AVON PRODUCTS
MANUFACTURING, INC., RESPONDENT.**

[G.R. Nos. 201418-19, October 3, 2018]

**AVON PRODUCTS MANUFACTURING, INC., PETITIONER, V. THE
COMMISSIONER OF THE INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

LEONEN, J.:

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

These consolidated cases assail the Court of Tax Appeals En Banc November 9, 2011 Decision^[1] and April 10, 2012 Resolution^[2] in CTA EB Case Nos. 661 and 663. The assailed Decision denied the respective Petitions for Review by the Commissioner of Internal Revenue (Commissioner)^[3] and of Avon Products Manufacturing, Inc. (Avon),^[4] and affirmed the Court of Tax Appeals Special First Division May 13, 2010 Decision.^[5] The assailed Resolution denied the Commissioner's Motion for Reconsideration^[6] and Avon's Motion for Partial Reconsideration.^[7]

Avon filed its Value Added Tax (VAT) Returns and Monthly Remittance Returns of Income Tax Withheld for the taxable year 1999 on the following dates:

Return	Date Filed
3 rd Quarter VAT Return	October 25, 1999
4 th Quarter VAT Return	January 25, 2000

Monthly Remittance Return of Income Taxes Withheld	Expanded	Compensation
January	February 25, 1999	February 25, 1999
February	March 25, 1999	March 25, 1999
March	April 26, 1999	April 26, 1999
April	May 25, 1999	May 25, 1999
May	June 25, 1999	June 25, 1999
June	July 26, 1999	July 26, 1999
July	August 25, 1999	August 25, 1999
August	September 27, 1999	September 27, 1999

September	October 25, 1999	October 25, 1999
October	November 25, 1999	November 25, 1999
November	December 27, 1999	December 27, 1999
December	January 25, 2000	January 25, 2000 ^[8]

Avon signed two (2) Waivers of the Defense of Prescription dated October 14, 2002 and December 27, 2002,^[9] which expired on January 14, 2003 and April 14, 2003, respectively.^[10]

On July 14, 2004, Avon was served a Collection Letter^[11] dated July 9, 2004. It was required to pay P80,246,459.15^[12] broken down as follows:

KIND OF TAX	YEAR	BASIC TAX	INTEREST	COMPROMISE	TOTAL AMOUNT
Income Tax	1999	22,012,984.19	13,207,790.51	25,000.00	35,245,774.70
Excise Tax	1999	913,514.87	658,675.57	73,200.00	1,645,390.44
VAT	1999	20,286,033.82	13,254,677.47	50,000.00	33,590,711.29
Withholding Tax on Compensation	1999	4,702,116.38	3,040,229.28	45,000.00	7,787,345.66
Expanded Withholding Tax	1999	1,187,610.88	764,626.18	25,000.00	1,977,237.06
TOTAL		P49,102,260.14	P30,925,999.01	P218,200.00	P80,246,459.15^[13]

These deficiency assessments were the same deficiency taxes covered by the Preliminary Assessment Notice^[14] dated November 29, 2002, received by Avon on December 23, 2002.^[15]

On February 14, 2003, Avon filed a letter dated February 13, 2003 protesting against the Preliminary Assessment Notice.^[16]

Without ruling on Avon's protest, the Commissioner prepared the Formal Letter of Demand^[17] and Final Assessment Notices,^[18] all dated February 28, 2003, received by Avon on April 11, 2003. Except for the amount of interest, the Final Assessment Notices were the same as the Preliminary Assessment Notice.^[19]

In a letter^[20] dated and filed on May 9, 2003, Avon protested the Final Assessment Notices. Avon resubmitted its protest to the Preliminary Assessment Notice and adopted the same as its protest to the Final Assessment Notices.^[21]

A conference was allegedly held on June 26, 2003 where Avon informed the revenue officers that all the documents necessary to support its defenses had already been submitted. Another meeting was held on August 4, 2003, where it showed the original General Ledger Book as previously directed by the revenue officers. During these meetings, the revenue officers allegedly expressed that they would cancel the assessments resulting from the alleged discrepancy in sales if Avon would pay part of the assessments.^[22]

Thus, on January 30, 2004, Avon paid the following portions of the Final Assessment Notices:

- a) Disallowed taxes and licenses/Fringe Benefit Tax adjustment P153,559.37; and
- b) Withholding Tax on Compensation - Late Remittance - P32,829.28^[23]

However, in a Memorandum dated May 27, 2004, the Bureau of Internal Revenue's officers recommended the enforcement and collection of the assessments on the sole justification that Avon failed to submit supporting documents within the 60-day period as required under Section 228 of the Tax Code.^[24]

The Large Taxpayers Collection and Enforcement Division thereafter served Avon with the Collection Letter dated July 9, 2004.^[25] Avon asserted that even the items already paid on January 30, 2004

were still included in the deficiency tax assessments covered by this Collection Letter.^[26]

In a letter^[27] to the Deputy Commissioner for Large Taxpayers Service dated and filed on July 27, 2004, Avon requested the reconsideration and withdrawal of the Collection Letter. It argued that it was devoid of legal and factual basis, and was premature as the Commissioner of Internal Revenue had not yet acted on its protest against the Final Assessment Notices.^[28]

The Commissioner did not act on Avon's request for reconsideration. Thus, Avon was constrained to treat the Collection Letter as denial of its protest.^[29]

On August 13, 2004, Avon filed a Petition for Review before the Court of Tax Appeals.^[30] On August 24, 2004, it filed an Urgent Motion for Suspension of Collection of Tax.^[31]

On May 13, 2010, the Court of Tax Appeals Special First Division rendered its Decision,^[32] partially granting Avon's Petition for Review insofar as it ordered the *cancellation of the Final Demand and Final Assessment Notices* for deficiency excise tax, VAT, withholding tax on compensation, and expanded withholding tax. However, it ordered Avon to *pay deficiency income tax in the amount of P357,345.88 including 20% deficiency interest* on the total amount due pursuant to Section 249, paragraphs (b) and (c)(3) of the Tax Code. The Court of Tax Appeals Special First Division also made the following pronouncements:^[33]

- a) There was no deprivation of due process in the issuance by the CIR of the assessment for deficiency income tax, deficiency excise tax, deficiency VAT, deficiency final withholding tax on compensation and deficiency expanded withholding tax against AVON for the latter was afforded an opportunity to explain and present its evidence;
- b) The Waivers of the Statute of Limitations executed by AVON are invalid and ineffective as the CIR failed to provide [AVON] a copy of the accepted Waivers, as required under Revenue Memorandum Order No. 20-90. Hence, the assessment of AVON's deficiency VAT, deficiency expanded withholding tax and deficiency withholding tax on compensation is considered to have prescribed;
- c) AVON's failure to submit the relevant documents in support of its protest did not make the assessment final and executory;
- d) As to assessment on AVON's deficiency Income Tax,
 - (1) there was no undeclared sales/income in the amount of P62,911,619.58 per ITR for the taxable year 1999;
 - (2) AVON's liability for disallowed taxes and licenses and December 1998 Fringe Benefit Tax payment adjustment in the amount of P152,632.10 and P927.27, respectively, or a total of P153,559.37 is extinguished in view of the payment made;
 - (3) The discrepancy between Ending Inventories reflected in Balance Sheet and Cost of Sales represents variance/adjustments on standard cost to actual cost allocated to ending inventories and not under-declaration as alleged by CIR;
 - (4) AVON's claimed tax credits in the amount of P203,645.89 was disallowed as the same was unsupported by withholding tax certificates as required under Section 2.58.3 (B) of Revenue Regulations No. 2-98. However, the amount of P140,505.28 was upheld as a proper deduction from its 1999 income tax due; and
- e) As to assessment on AVON's deficiency excise tax, the same is deemed cancelled and withdrawn in view of its Application for Abatement over its deficiency excise tax assessment for the year 1999 and its corresponding payment.^[34]

The dispositive portion of the Court of Tax Appeals Special First Division May 13, 2010 Decision read:

WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is ORDERED TO CANCEL/WITHDRAW the Final Demand and Final Assessment Notices: (1) Assessment No. LTAID-ET-99-00011 for deficiency Excise Tax, (2) Assessment No. LTAID-II-VAT-99-00017 for deficiency Value Added Tax, (3) Assessment No. LTAID-II-WTC-9900002 for deficiency Withholding Tax on Compensation Under Withholding and Later Remittance, and (4) Assessment No. LTAID-EWT-99-00010 for deficiency Expanded Withholding Tax.

However, petitioner is ORDERED TO PAY respondent the deficiency Income Tax under Assessment No. LTAID-II-IT-99-00018 in the amount of P357,345.88 for taxable year 1999.

In addition, petitioner is liable to pay: i) a deficiency interest on the deficiency basic income tax due of P100,761.01 at the rate of 20% per annum from January 31, 2004 until fully paid pursuant to Section 249(B) of the 1997 NIRC and ii) a delinquency interest on the total amount due (inclusive of the deficiency interest) at the rate of 20% per annum from July 24, 2004 until fully paid pursuant to Section 249(C)(3) of the 1997 NIRC.

SO ORDERED.^[35]

The parties' Motions for Partial Reconsideration were denied in the July 12, 2010 Resolution.^[36] Both parties filed their respective Petitions for Review before the Court of Tax Appeals En Banc.^[37]

In its assailed November 9, 2011 Decision,^[38] the Court of Tax Appeals En Banc denied the respective Petitions of the Commissioner and Avon, and affirmed the Court of Tax Appeals Special First Division May 13, 2010 Decision. It held that the Waivers of the Defense of Prescription were defective, thereby rendering the assessment of Avon's deficiency VAT, expanded withholding tax, and withholding tax on compensation to have prescribed.^[39] It further ruled that contrary to the Commissioner's argument, the requirement under Revenue Memorandum Order No. 20-90 to furnish the taxpayer with copies of the accepted waivers was not merely formal in nature, and non-compliance with it rendered the Waivers of the Defense of Prescription invalid and ineffective.^[40]

On the issue of jurisdiction, the Court of Tax Appeals En Banc held that under Section 228 of the Tax Code, the taxpayer has two (2) options in case of inaction of the Commissioner on disputed assessments. The first option is to file a petition with the Court of Tax Appeals within 30 days from the lapse of the 180-day period for the Commissioner to decide. The second option is to await the final decision of the Commissioner and appeal this decision within 30 days from its receipt. Here, Avon opted for the second remedy by filing its petition on July 14, 2004, within 30 days from receipt of the July 9, 2004 Collection Letter, which also served as the final decision denying its protest. Hence, the Court of Tax Appeals En Banc ruled that it had jurisdiction over the case.^[41]

The Court of Tax Appeals En Banc further affirmed the Court of Tax Appeals Special First Division's factual findings with regard to the cancellation of deficiency tax assessments^[42] and disallowance of Avon's claimed tax credits.^[43]

Finally, the Court of Tax Appeals En Banc rejected Avon's contention regarding denial of due process. It held that Avon was accorded by the Commissioner a reasonable opportunity to explain and present evidence.^[44] Moreover, the Commissioner's failure to appreciate Avon's supporting documents and arguments did not *ipso facto* amount to denial of due process absent any proof of irregularity in the performance of duties.^[45]

In its April 10, 2012 Resolution,^[46] the Court of Tax Appeals En Banc denied the Commissioner's Motion for Reconsideration and Avon's Motion for Partial Reconsideration. It held that the "RCBC case,"^[47] cited by the Commissioner, was not on all fours with, and therefore not applicable as *stare decisis* in this case. Instead, the ruling in *CIR v. Kudos Metal Corporation*,^[48] precluding the Bureau of Internal Revenue from invoking the doctrine of estoppel to cover its failure to comply with the procedures in the execution of a waiver, would apply.^[49]

Hence, the present Petitions via Rule 45 were filed before this Court.

In her Petition,^[50] docketed as G.R. Nos. 201398-99, the Commissioner asserts that Avon is estopped from assailing the validity of the Waivers of the Defense of Prescription as it has paid the other assessments that these waivers covered. It also avers that Avon's right to appeal its protest before the Court of Tax Appeals has prescribed and that the assessments have attained finality. Finally, it states that Avon is liable for the deficiency assessments.^[51]

Avon, in its separate Petition,^[52] docketed as G.R. Nos. 201418-19, argues that the assessments are void *ab initio* due to the failure of the Commissioner to observe due process.^[53] It maintains that from the start up to the end of the administrative process, the Commissioner ignored all of its protests and submissions.^[54]

The Petitions were consolidated on July 4, 2012.^[55] The Commissioner and Avon subsequently submitted their respective Memoranda^[56] in compliance with this Court's June 5, 2013 Resolution.^[57]

The issues for this Court's resolution are:

First, whether or not the Commissioner of Internal Revenue failed to observe administrative due process, and consequently, whether or not the assessments are void;

Second, whether or not Avon Products Manufacturing, Inc., by paying the other tax assessments covered by the Waivers of the Defense of Prescription, is estopped from assailing their validity;

Third, whether or not Avon Products Manufacturing, Inc.'s right to appeal its protest before the Court of Tax Appeals has already prescribed; and whether or not the assessments against it for deficiency income tax, excise tax, value-added tax, withholding tax on compensation, and expanded withholding tax have already attained finality; and

Finally, whether or not Avon Products Manufacturing, Inc. is liable for deficiency income tax, excise tax, value-added tax, withholding tax on compensation, and expanded withholding tax for the taxable year 1999.

I.A

Avon asserts that the deficiency tax assessments are void because they were made without due process^[58] and were not based on actual facts but on the erroneous presumptions of the Commissioner.^[59]

It submits that a fundamental part of administrative due process is the administrative body's due consideration and evaluation of all the evidence submitted by the affected party. With regard to tax assessment and collection, Section 228 of the Tax Code and Revenue Regulations No. 12-99 prescribe compliance with due process requirements through all the four (4) stages of the assessment process, from the preliminary findings up to the Commissioner's decision on the disputed assessment.^[60]

Avon claims that from the start up to the end of the administrative process, the Commissioner ignored all of its protests and submissions to contest the deficiency tax assessments.^[61] The Commissioner issued identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letters without considering Avon's submissions or its partial payment of the assessments. Avon asserts that it was not accorded a *real* opportunity to be heard, making all of the assessments null and void.^[62]

Avon's arguments are well-taken.

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code.^[63] To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts,^[64] to issue a subpoena,^[65] and to assess based on best evidence obtainable,^[66] among others. However, these powers must "be exercised reasonably and [under] the prescribed procedure."^[67] The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules,^[68] and with due regard to taxpayers' constitutional rights.

The Commissioner exercises administrative adjudicatory power or quasi-judicial function in adjudicating the rights and liabilities of persons under the Tax Code.