

FIRST DIVISION

[G.R. No. 166387, January 19, 2009]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
ENRON SUBIC POWER CORPORATION, RESPONDENT.**

DECISION

CORONA, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Commissioner of Internal Revenue (CIR) assails the November 24, 2004 decision^[1] of the Court of Appeals (CA) annulling the formal assessment notice issued by the CIR against respondent Enron Subic Power Corporation (Enron) for failure to state the legal and factual bases for such assessment.

Enron, a domestic corporation registered with the Subic Bay Metropolitan Authority as a freeport enterprise,^[2] filed its annual income tax return for the year 1996 on April 12, 1997. It indicated a net loss of P7,684,948. Subsequently, the Bureau of Internal Revenue, through a preliminary five-day letter,^[3] informed it of a proposed assessment of an alleged P2,880,817.25 deficiency income tax.^[4] Enron disputed the proposed deficiency assessment in its first protest letter.^[5]

On May 26, 1999, Enron received from the CIR a formal assessment notice ^[6] requiring it to pay the alleged deficiency income tax of P2,880,817.25 for the taxable year 1996. Enron protested this deficiency tax assessment.^[7]

Due to the non-resolution of its protest within the 180-day period, Enron filed a petition for review in the Court of Tax Appeals (CTA). It argued that the deficiency tax assessment disregarded the provisions of Section 228 of the National Internal Revenue Code (NIRC), as amended,^[8] and Section 3.1.4 of Revenue Regulations (RR) No. 12-99 ^[9] by not providing the legal and factual bases of the assessment. Enron likewise questioned the substantive validity of the assessment.^[10]

In a decision dated September 12, 2001, the CTA granted Enron's petition and ordered the cancellation of its deficiency tax assessment for the year 1996. The CTA reasoned that the assessment notice sent to Enron failed to comply with the requirements of a valid written notice under Section 228 of the NIRC and RR No. 12-99. The CIR's motion for reconsideration of the CTA decision was denied in a resolution dated November 12, 2001.

The CIR appealed the CTA decision to the CA but the CA affirmed it. The CA held that the audit working papers did not substantially comply with Section 228 of the NIRC and RR No. 12-99 because they failed to show the applicability of the cited law to the facts of the assessment. The CIR filed a motion for reconsideration but this

was deemed abandoned when he filed a motion for extension to file a petition for review in this Court.

The CIR now argues that respondent was informed of the legal and factual bases of the deficiency assessment against it.

We adopt *in toto* the findings of fact of the CTA, as affirmed by the CA. In *Compagnie Financiere Sucres et Denrees v. CIR*, ^[11] we held:

We reiterate the well-established doctrine that as a matter of practice and principle, [we] will not set aside the conclusion reached by an agency, like the CTA, especially if affirmed by the [CA]. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which is not present here.

The CIR errs in insisting that the notice of assessment in question complied with the requirements of the NIRC and RR No. 12-99.

A notice of assessment is:

[A] declaration of deficiency taxes issued to a [t]axpayer who fails to respond to a Pre-Assessment Notice (PAN) within the prescribed period of time, or whose reply to the PAN was found to be without merit. The Notice of Assessment shall inform the [t]axpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course.

The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall **state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void.** (emphasis supplied)^[12]

Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the provisions of Section 228 of the NIRC, RR No. 12-99 was enacted. Section 3.1.4 of the revenue regulation reads:

3.1.4. *Formal Letter of Demand and Assessment Notice.* - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.** The same shall be sent to the taxpayer only by registered mail or by personal delivery. xxx (emphasis supplied)

It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the