REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

AIRGLOBE, INC., Petitioner,	**CTA CASE NO. 9466**
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 27 2020 2:58 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is respondent's **Motion for Reconsideration** filed through registered mail on March 13, 2020, and received by the Court on June 02, 2020, with petitioner's **Comment/Opposition** filed on June 10, 2020.

On February 19, 2020, a Decision was promulgated by this Court cancelling respondent's deficiency tax assessments against petitioner for having been issued without due process of law, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing, the instant Petition for Review is **GRANTED**. Accordingly, Respondent's Final Decision dated June 28, 2016 on the alleged deficiency income tax, VAT, EWT, WTC, and compromise penalty, plus penalties and interests, in the total amount of Php32,798,593.79 for fiscal year ending in June 2007 is hereby **WITHDRAWN** and **SET ASIDE**.
>
> **SO ORDERED**."

In his Motion, respondent argues that revenue officer (RO) Karen Joy D. Lutching, who examined petitioner's books of accounts for the year 2007, need not secure a new Letter of Authority (LOA) pursuant to Revenue Memorandum Order (RMO) No. 08-06[1]. Respondent continues that the said RMO allows a RO to continue the audit made by another RO through the issuance of a Re-Assignment Notice, which was served to petitioner on May 18, 2009. Thus, respondent claims that this Court erred in ruling that the subject tax assessments are void.

More so, respondent also asserts that there was no violation of petitioner's right to due process when he issued the Formal Assessment Notice (FAN) dated January 14, 2011. Respondent asseverates that the essence of due process, as applied to administrative proceedings, is to be given an opportunity to explain one's side, or an opportunity to see a reconsideration of the action complained of. In this case, respondent claims that petitioner was afforded due process because it was able to file its protest to the notices that were issued or sent to them, and therefore, was given notice and the opportunity to present its side.

On the other hand, in its Comment, petitioner claims that even though RMO No. 08-06 was issued at a more recent date, the same is not inconsistent with RMO No. 43-90[2] and, therefore, does not repeal the latter. In any case Sections 6(A) and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, specifically requires that a valid LOA must first be issued before a RO is authorized to examine a taxpayer's books of accounts and other accounting records. Lastly, petitioner contends that its right to due process was violated when respondent failed to observe the lapse of the full fifteen (15) day period before issuing the FAN.

After due consideration, this Court finds respondent's Motion for Reconsideration bereft of merit.

With regard to RMO No. 08-06, it does not matter whether or not it amended RMO No. 43-90. The fact still remains that respondent failed to present in evidence Revalidation/Reassignment Notice dated May 6, 2009. Without the same, this Court cannot verify if indeed said notice is a valid source of authority of RO Karen Joy D. Lutching to continue the examination of books of accounts and other accounting records of the petitioner for the taxable year 2007. If in the said notice, the authority given to the RO who was originally named in the LOA was transferred and reassigned to Karen Joy D. Lutching for continuance of audit.

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[1] "SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)", dated February 1, 2006.

[2] "SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit", dated September 20, 1990.

Consequently, the absence of such document will necessarily result to the invalidity of the assessment for lack of authority on the part of the reassigned RO to continue with the examination of the taxpayer's books of accounts and other accounting records.

As to respondent's other argument, this Court has already extensively discussed respondent's violation of petitioner's right to due process when he issued the FAN without waiting for the full fifteen (15) days to lapse. During trial, respondent's witness, RO Lutching, testified that she served the PAN dated December 29, 2010 to petitioner on December 30, 2010. Counting thirty (30) days therefrom, petitioner has until January 14, 2011, within which to file a reply to the Preliminary Assessment Notice (PAN). However, respondent issued the FAN on January 14, 2011, which is the last day of the said 15-day period. Accordingly, by issuing the FAN before expiration of the 15-day period within which petitioner may protest to the PAN, respondent deprived petitioner of its right to due process. Section 3.1.2 of Revenue Regulations (RR) No. 12-99 provides as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.–*
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> 3.1. Mode of procedure in the issuance of a deficiency tax assessment:
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> 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 respondent 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 issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." *(Emphasis supplied)*

Again, this Court reiterates that part of the due process is the issuance and service of the PAN. After its issuance, respondent or his duly authorized representative is duty bound to wait for the expiration of fifteen days from the date of receipt thereof. If during the said period, the taxpayer failed to respond to the PAN, it is only then that respondent can consider the taxpayer in default, and correspondingly cause the issuance of a formal letter of demand and assessment notice, which shall be subsequently served to the said taxpayer. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In view of the foregoing, the Court finds no cogent reason to reverse or modify the Decision assailed by respondent.

WHEREFORE, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice