REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LANAO DEL NORTE ELECTRIC COOPERATIVE [LANECO], Petitioner,	**CTA CASE NO. 8769**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES, Respondent.	Promulgated: FEB 04 2020 1:38 pm

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RESOLUTION

MINDARO-GRULLA, J.:

Before this Court is respondent's **Motion for Reconsideration (Re: Decision dated 11 October 2019)**, filed on October 30, 2019, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration)**, filed through registered mail on November 28, 2019 and received by the Court on December 12, 2019.

In his Motion, respondent prays for the reconsideration of the Decision promulgated on October 11, 2019, in finding that he violated petitioner's right to due process of law, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Decision issued by respondent, denying petitioner's protest against the assessment of the alleged deficiency on Value Added Tax in the amount ₱18,469,356.21, inclusive of increments, for calendar year 2008, is **SET ASIDE** and the Formal Letter

of Demand dated February 29, 2012 for calendar year 2008 is **CANCELLED**.

SO ORDERED.

Respondent primarily argues that, contrary to the promulgated Decision, he properly observed both procedural and substantive due process in the issuance of the deficiency assessment. He maintains that the issuance of the Preliminary Assessment Notice (PAN) and the Formal Letter of Demand (FLD) did not overlap each other, and in fact, there was an interval of twenty-one (21) days between the issuance of PAN on February 8, 2012 and the FLD on February 29, 2012. Respondent also submits that there was an interval of seventeen (17) days between petitioner's receipt of the PAN on February 20, 2014 and the FLD on March 9, 2012. Thus, respondent asserts that petitioner was afforded due process, as mandated by Revenue Regulations (RR) No. 12-99.

Nonetheless, respondent contends that assuming the issuance of the PAN and FLD did overlap, the same would not still amount to denial of due process that would result in the nullity of the assessment since the assessment against petitioner has factual and legal bases. Also, respondent further claims that tax assessments are presumed valid and petitioner has the duty to prove the impropriety of the assessment, if there is any.

On the other hand, in its comment, petitioner claims that respondent's failure to properly observe any single step in the collection of taxes constitutes denial of its right to due process since taxes must be collected reasonably and in accordance with the prescribed procedure. It also alleges that the subject assessment is void for lack of factual and legal basis and hence, cannot attain finality.

After due consideration, respondent's Motion for Reconsideration is bereft of merit.

Apparently, no new issues are raised in the present Motion, and the arguments presented therein are mere rehash of what have been said and reiterated in his previous pleadings, which have already exhaustively passed upon, duly considered and resolved in the assailed Decision.

Again, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to RR No. 12-99, specifically Section 3.1.2 thereof, prescribes a fifteen (15)-day period from receipt of the PAN within which a taxpayer may respond thereto. The said fifteen (15)-day period is given to a taxpayer, to give it time to prepare and amply ventilate its defense for the consideration of the taxing authority.

Perforce, the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. Especially since procedural due process is not satisfied with the mere issuance of a PAN, without giving the taxpayer an opportunity to respond thereto.

Oppositely, the Commissioner of Internal Revenue (CIR) or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment. For after all, tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.

In the present case, petitioner received the PAN dated February 8, 2012 on February 20, 2012. Counting fifteen (15) days from the date of receipt of the PAN on February 20, 2012, petitioner had until March 6, 2012 to respond to the PAN. However, instead of awating petitioner's response, respondent prematurely issued the FLD on February 29, 2012. Clearly, this is a violation of petitioner's right to due process. Respondent rushed into the issuance of the FLD, without waiting for the lapse of the period, depriving petitioner an opportunity to respond to the PAN. Thus, the assessment is void for non-compliance with statutory and procedural due process.

Indeed, 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

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process.[1] Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[2] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[3]

In view of the foregoing, this Court finds no compelling reason to justify any modification or reversal of the Decision assailed.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 11 October 2019) is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[1] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, and *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 and G.R. Nos. 201418-19, October 3, 2018.
[2] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[3] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.