REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

IZONE TECHNOLOGIES PHILIPPINES,	**CTA CASE NO. 8696**
Petitioner,	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	MAY 13 2020 10:00 am

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Decision dated 18 October 2019)**, filed on November 14, 2019, with petitioner's **Comments/Opposition to Motion for Reconsideration (Decision dated 18 October 2019) of Respondent**, filed through registered mail on December 23, 2019 and received by this Court on January 8, 2020.

In his Motion, respondent seeks reconsideration of the Amended Decision promulgated on October 18, 2019, wherein this Court cancelled his deficiency assessments for violation petitioner's right to due process of law, the dispositive portion of which reads as follows:

> **WHEREFORE,** premises considered, respondent's **Motion for Partial Reconsideration (Decision dated 29 April 2019)** is **DENIED**, while petitioner's **Motion for Reconsideration** is **GRANTED.** Accordingly, the dispositive portion of this Court's Decision dated April 29, 2019, is amended to read as follows:

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> '**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED.** Accordingly, the assessments issued by respondent against petitioner for deficiency expanded withholding tax, deficiency documentary stamp tax, fringe benefits tax and compromise penalty for taxable year 2008 are **CANCELLED** and **WITHDRAWN** for violation of petitioner's right to due process.
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> **SO ORDERED.**'
>
> **SO ORDERED.**

In the Amended Decision, this Court found that respondent failed to observe due process when he issued the Formal Letter of Demand with Final Assessment Notices (FLD/FAN) before the lapse of the 15-day period given to petitioner within which to file its reply to the Preliminary Assessment Notice (PAN). This Court explained respondent's violation in this wise, *viz.*:

> "In the instant case, petitioner received a copy of the PAN dated December 26, 2011 on January 9, 2012. Applying the above-quoted Section 228 of the NIRC of 1997, as amended, and Section 3.1.2 of RR No. 12-99, respondent must give petitioner a period of fifteen (15) days from date of receipt of the PAN or until January 24, 2012 to respond to the PAN. It is only after the lapse of the said period that respondent may issue the FLD and FAN. By prematurely issuing the FLD on January 5, 2012 and the FAN on January 13, 2012, without awaiting the lapse of the fifteen (15)-day period, respondent wantonly disregarded the mandatory due process requirement laid down under the afore-stated law and rules. What is worse is that the FLD was issued before the PAN was even received by petitioner. As a consequence, petitioner was denied of its right to due process."[1]

In assailing the above ruling, respondent primarily claims that did not violate petitioner's right to due process in issuing his deficiency assessments. He explains that, while it is undisputed that the PAN was received by petitioner on January 9, 2012 and the

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[1] Page 8 of the Amended Decision.

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latter's Protest thereof was filed on February 17, 2012, petitioner was however given a period of more than fifteen (15) days within which to file its protest considering that the end of the 15-day period falls on January 24, 2012. In fact, what is worthy to note is that petitioner's protest to the FAN was only filed on April 12, 2013 or almost a year after receipt of the FAN on April 10, 2012. As such, the administrative and judicial remedy of petitioner has already prescribed.

Moreover, respondent also argues that this Court erred in cancelling the fringe benefit tax (FBT) deficiency assessment in the amount of ₱195,199.14. While he admits that his FBT assessment was already issued beyond the three year period, this does not mean that the government is already barred from collecting the tax deficiencies of petitioner and that the Government cannot and must not be estopped particularly in matters involving taxes.

On the other hand, in its comment/opposition to the above motion, petitioner contends that its actual receipt of the FLD/FAN, even after 15 days from the receipt of PAN, is immaterial because Section 3.1.2 of Revenue Regulations (RR) No. 12-99 mandates that respondent must give a 15-day period to the taxpayers within which to respond to the PAN, before issuance of the FAN and FLD. Otherwise, the taxpayers have no assurance of being heard on their protest to the PAN before respondent makes his decision in the FAN and FLD.

More so, petitioner further disputes respondent's claim that its protest to the FLD/FAN was made more than one year. The records of the case will readily show, particularly Exhibits "P-9" to "P-11", that there was only a mistake in the Pre-Trial Order pertaining to the date of receipt of the protest letters which is April 12, 2013 instead of April 12, 2012. Accordingly, petitioner tried to correct the said mistake in its Manifestation and Motion to Correct Pre-Trial Order dated August 10, 2016.

Lastly, petitioner maintains that the Court did not err in cancelling the FBT assessment as it was issued beyond the three year prescriptive period.

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

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Again, this Court maintains its finding in the Amended Decision that petitioner's right to due process was violated by respondent when the FLD/FAN was issued prior to the lapse of the 15-day period within which to respond to the PAN, as mandated under Section 228 of the NIRC of 1997, as amended, in relation to RR No. 12-99, as amended by RR No. 18-2013.

In fact, perusal of the records show that although petitioner filed its protest to the PAN on February 17, 2012, which should have been filed on or before January 24, 2012 being the end of the 15-day period from receipt of the PAN, the FAN and FLD, however, were issued on January 5 and 13, 2012, respectively. Clearly, the issuance of both notices were made way before the lapse of the 15-day period given to petitioner to file its protest to the PAN.

Jurisprudence dictates that due process requires respondent to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. This was manifestly ignored in the present case based on the above circumstances.

As held in the case of *Hon. Waldo Q. Flores, et al. v. Atty. Antonio F. Montemayor*[2], the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.

Stated otherwise, the standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In the present case, even though given a degree of latitude, fairness was nonetheless still ignored when respondent failed to give petitioner opportunity to contest the issued PAN. Hence, for lack of said opportunity, there was a violation of petitioner's right to due process.

With regard to the issue of cancellation of the FBT assessment, respondent reiterated his arguments which have already been duly considered and adequately discussed in the Decision and subsequent Amended Decision. Thus, this Court finds it unnecessary to again discuss the same.

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[2] G.R. No. 170146, June 8, 2011.

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Based on the foregoing, this Court finds no compelling reason to reverse or modify the assailed Amended Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision 18 October 2019) is **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice