REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KARINA, INC., Petitioner,	**CTA CASE NO. 9204**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 13 2021 8:15 AM

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Decision dated 10 September 2020)** filed on September 30, 2020, with petitioner's **Comment (Re: Respondent's Motion for Reconsideration dated September 30, 2020)** filed on October 19, 2020.

On September 10, 2020, the Court promulgated a Decision cancelling respondent's deficiency tax assessments against petitioner for violating its right to due process of law, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**.
>
> Accordingly, the FLD, with the attached *Audit Result/Assessment Notices*, all dated January 23, 2015, assessing petitioner of deficiency income tax, VAT, IAET, and compromise penalty, in the aggregate amount of

₱4,127,445.92, inclusive of surcharges and interests, for taxable year 2011, are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In his Motion, respondent claims that contrary to the above Decision, petitioner's right to due process of law was not violated since petitioner was duly informed of the factual and legal bases of the assessments issued against it and was afforded opportunity to defend itself. Respondent continues that although the Preliminary Assessment Notice (PAN) was served and received by petitioner on January 8, 2015, and the Formal Letter of Demand with Assessment Notices (FLD-FAN) was subsequently issued and served to petitioner on January 23, 2015, this does not necessarily result to violation of petitioner's due process considering that petitioner was able to intelligently contest the assessments through its letters of protest dated January 21, 2015 and February 23, 2015, respectively. In any case, respondent also asserts that since taxes are the lifeblood of the Government, it is a long and firmly settled rule that the latter is not bound by the errors committed by its agents.

On the other hand, in its Comment, petitioner insists that its right to due process of law was violated by the immediate issuance of the FLD-FAN. By not complying by the mandatory fifteen-day period before he may issue the FLD-FAN, respondent effectively violated petitioner's fundamental right to due process of law. Petitioner continues that, in immediately issuing the FLD-FAN, respondent could not have considered any of the arguments and explanations offered in its Reply to the PAN since the FLD-FAN had already been decided and completed when the aforesaid Reply to the PAN was filed. As such, petitioner claims that its right to file a protest to the PAN was negated by respondent's blatant disregard of its right to answer the same thereby rendering the corresponding assessment void. Petitioner also insists that respondent should adhere to the provisions of the National Internal Revenue Code (NIRC), as well as to its implementing revenue regulations, in the same manner that it expects the taxpayers to do the same.

Lastly, petitioner avers that in a long list of jurisprudence, the Supreme Court invalidated assessment notices issued by the Bureau of Internal Revenue (BIR) on account of the mistake or negligent acts committed by its revenue officers.

The Court finds the instant Motion for Reconsideration bereft of merit.

At the onset, this Court points out that the arguments raised by respondent in his Motion are mere rehash of the same facts and issues which have already been discussed extensively in the Decision he assails.

Again, Section 228 of the NIRC of 1997, as amended, provides for the procedure in issuing tax assessments as follows:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> x x x
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **Within a period to be prescribed by implementing rules and regulations**, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of

> Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Notably, the above-quoted provision categorically states that *"**within a period to be prescribed by implementing rules and regulations**, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings."* For this reason, Section 3 of RR No. 12-99, as amended by RR No. 18-2013, was issued to implement Section 228 of the NIRC of 1997, as amended, laying down the due process requirement in the issuance of a deficiency tax assessment, to wit:

> *"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —*
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> x x x
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> 3.1.1 *Preliminary Assessment Notice (PAN).* If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based x x x.
>
> **If the taxpayer fails to respond 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
>
> **<u>If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it</u>** Je

<u>disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response</u>, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

x x x

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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 assessment shall be void xxx. *(Emphases and underscoring supplied)*

Notably, the use of the word "shall" in the above section underscores the mandatory character of the Rule. The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.[1]

Also, it is a cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[2]

From the foregoing, it is clear that whenever there is a finding of any deficiency tax due from a taxpayer, the Commissioner of Internal Revenue (CIR) or his duly authorized representative is required to issue a PAN. The taxpayer is given fifteen (15) days from receipt of the PAN to reply thereto, otherwise, the taxpayer shall be

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[1] *Cipriano Enriquez, et al. v. Maximo Enriquez, et al.*, G.R. No. 139303, August 25, 2005; citing *Alfonso Lacson v. Carmen San Jose-Lacson, et al.*, No. L-23482, August 30, 1968.

[2] *Cynthia S. Bolos v. Danio T. Bolos,* G.R. No. 186400, October 20, 2010.

considered in default which shall lead to the issuance of the FLD /FAN. 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.

Moreover, in the case of *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*,[3] the Supreme Court emphasized that the PAN is part of due process requirement to which the CIR must strictly comply, thus:

> "Succinctly put, if it was determined that there exists sufficient basis to assess the taxpayer for deficiency taxes, the CIR or her duly authorized representative shall issue to the taxpayer a Preliminary Assessment Notice (PAN), to which the taxpayer is required to respond. Upon **receipt** of the PAN, the taxpayer is granted fifteen (15) days, within which to file a reply. If he fails to do so within the prescribed period, he shall be considered in default and only then shall the CIR or her duly authorized representative issue an FLD/FAN, calling for the payment of the assessed deficiency tax liability, surcharges and penalties.
>
> Clearly, due process demands that the taxpayer receives the PAN **and** that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond 'opportunity to be heard' as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*, held that '[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the [CIR] must consider the evidence presented***.'"

Likewise, in the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[4] the Supreme Court accentuated the importance of complying with the requirement to send a PAN to the

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[3] G.R. No. 227616, June 19, 2019.
[4] G.R. No. 185371, December 8, 2010.

taxpayer as an integral part of due process in the issuance of a deficiency tax assessment, to wit:

> "Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.
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> x x x
>
> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.

More so, in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[5] the Supreme Court held that the non-compliance with statutory and procedural right to due process renders the formal letter of demand and assessment notice as null and void, *viz.*:

> "In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity

[5] G.R. No. 172598, December 21, 2007.

> to air its side. While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued. Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in *Roxas v. Court of Tax Appeals*:
>
> The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the 'hen that lays the golden egg.' And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

Evidently, the NIRC and its corresponding RRs, 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 BIR 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.[6]

In the present case, the PAN dated January 8, 2015 was received by petitioner on the same day. Respondent then had to wait fifteen (15) days from the said date or until January 23, 2015 for petitioner to file its protest to the PAN. It is only after the lapse of the said 15-day period that respondent may issue the FLD-FAN. By prematurely issuing the FLD- FANs on January 23, 2015, respondent wantonly disregarded the mandatory due process requirement laid down by law. Thus, considering the palpable violation of petitioner's right to procedural due process pursuant to Section 228 of the NIRC of 1997, as amended, and the provisions of RR No. 12-99, as amended, the FLD-FAN – being fatally infirm –should be considered void. For that reason, their cancellation and withdrawal is therefore warranted.

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[6] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 and G.R. Nos. 201418-19, October 3, 2018.

In view of the foregoing disquisition, the Court need not belabor on the other issues raised by petitioner for it is well-settled that a void assessment bears no valid fruit.[7]

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision dated 10 September 2020) is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[7] *Commissioner of Internal Revenue vs. Reyes and Reyes vs. Commissioner of Internal Revenue,* G.R. Nos. 159694 and 163581, January 27, 2006.