REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2236** (CTA Case No. 8769)
	Present:
- versus –	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** and **CUI-DAVID,** *JJ.*
LANAO DEL NORTE ELECTRIC COOPERATIVE (LANECO), Respondent.	**Promulgated:** APR 26 2022 1:54 p.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION Re: Decision dated 09 June 2021"** filed on June 30, 2021, with respondent's **"COMMENT [To petitioner's *Motion for Reconsideration* dated 30 June 2021]"** filed on December 28, 2021.[1] In the said Motion, petitioner prays for the reversal and setting aside of the Court's Decision dated June 9, 2021, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated October 11, 2019 and the Resolution dated February 4, 2020,

[1] A copy of which was received by this Court on February 28, 2022.

rendered by the Second Division of this Court in CTA Case No. 8769 are hereby **AFFIRMED**.

SO ORDERED."

In support of his Motion, petitioner argues that:

1. The Court erred when it held that respondent was denied due process due to alleged premature issuance of the FLD by the petitioner.

2. Petitioner observed both procedural and substantial due process in issuing the assessment.

3. The assessment issued against respondent has factual and legal bases.

4. Tax assessments are presumed valid and respondent has the duty to prove the impropriety of the assessment, if there is any.

In its Comment, respondent counters that:

1. Petitioner's Motion for Reconsideration is but a mere rehash of its prior arguments, without clearly pointing out the errors in the findings of the lower court. Hence, the same must be denied.

2. There exists no valid ground to justify the re-examination of the Decision of the lower court.

THE COURT'S RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of the petitioner's Motion for Reconsideration, it is noted that the main arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, this Court stresses that respondent's right to due process was violated.

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To reiterate, Section 228 of the NIRC of 1997, as amended, in relation to Section 3.1.2 of Revenue Regulations (RR) No. 12-99, provides for the specific period within which the taxpayer is required to respond to the PAN.

Specifically, Section 3.1.2 of RR No. 12-99 states that a taxpayer is given a period of fifteen (15) days from receipt of the PAN, to file a protest with the BIR. If the taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in ***default.*** When a taxpayer is considered in ***default***, the petitioner, or his duly authorized representative, can validly issue the FLD and assessment notice, which shall be served to the taxpayer.

In other words, the petitioner, or his duly authorized representative, is duty bound to wait for the expiration of the fifteen (15) day period, **reckoned from the date of receipt of the PAN**, before it can issue the FLD and assessment notice.

In this case, respondent received[2] the PAN[3] on February 20, 2012. Ideally, it had until March 6, 2012, within which to file its protest. However, prior to the lapse of the fifteen (15) day period for the respondent to file its protest, as stated under Section 3.1.2 of RR No. 12-99, petitioner already issued the subject FLD[4] on February 29, 2012.

The date of respondent's receipt[5] of the FLD on March 9, 2012 is of no moment, as the date of issuance of the FLD already shows petitioner's non-observance of the 15-day period given to respondent to file a protest and be heard on its defenses, before the final assessment was issued against it. Petitioner's issuance of the FLD, prior to the lapse of the fifteen (15) day period is a clear violation of respondent's right to due process.

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[6] it was held that the strict compliance with the requirements laid down by law and its own rules is considered a denial of a taxpayer's right to due process, to wit:

"From the provision quoted above, it is clear that the

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[2] Petition for Review, Division Docket (CTA Case No. 8769) – Vol. I, p. 17; Answer *Ad Cautelam*, Division Docket (CTA Case No. 8769) – Vol. I, p. 177.
[3] Exhibit "R-8." BIR Records, pp. 209 to 211.
[4] Exhibit "R-7." BIR Records, pp. 212 to 214.
[5] Petition for Review, Division Docket (CTA Case No. 8769) – Vol. I, p. 17; Answer *Ad Cautelam*, Division Docket (CTA Case No. 8769) – Vol. I, p. 177.
[6] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

> 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**." *(Emphasis supplied)*

From the foregoing, it is clear that the CIR is mandated to strictly comply with the requirements laid down by law and its own rules. The CIR's failure to do so is equated with a denial of the taxpayer's right to due process. Pursuant to Section 3.1.2 of RR No. 12-99, the CIR needs to wait for the lapse of the 15-day period, before issuing the FLD.

Considering that respondent was not given the ***requisite*** opportunity to respond to the PAN and to explain its side, its right to due process was violated by petitioner. Consequently, the subject FLD and assessment notice are void, and bears no valid fruit.[7]

WHEREFORE, in light of the foregoing considerations, the instant **MOTION FOR RECONSIDERATION Re: Decision dated 09 June 2021** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[7] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue,* G.R. No. 193100, December 10, 2014.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice