REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MONZA SPV-AMC ("ASSET MANAGEMENT CO."), INC., *Petitioner,*	**CTA Case No. 9153**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson, and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 2 6 2019 10:08 AM

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RESOLUTION

MANAHAN, *J.*:

This resolves the *Motion for Reconsideration* filed by respondent Commissioner of Internal Revenue (CIR), through registered mail on April 30, 2019 and received by this Court on May 8, 2019.

Petitioner Monza SPV-AMC ("Asset Management Co."), Inc. filed its *Opposition (To: Respondent's Motion for Reconsideration dated 30 April 2019)* on May 16, 2019.

On May 27, 2019, respondent posted his *Comment (To: Petitioner's Opposition to Respondent's Motion for Reconsideration),* which was received by this Court on June 4, 2019.

Respondent CIR assails the Decision dated April 15, 2019, which disposed of the case, as follows:

> **WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the formal assessment notice dated January 14, 2015 issued against Monza SPV-AMC (Asset Management Co.), Inc., for internal revenue taxes involving taxable year 2011 in the amount of Php43,226,981.52 is declared **VOID**.

In his *Motion*, respondent states that issuance of the formal assessment notice (FAN) without waiting for the protest letter of the petitioner against the preliminary assessment notice (PAN) does not result in the deprivation of the petitioner's right to due process. Respondent posits that the CIR or his duly authorized representative is not strictly bound to observe the 15-day period counting from the date of receipt of PAN. Respondent states that the said period is for the taxpayer to observe in the filing of the protest letter against the PAN lest he be declared in default. Respondent also states that the taxpayer shall not be prejudiced if the FAN is issued before the lapse of the 15-day period to reply to the PAN, because a taxpayer still has 30 days from receipt of the FAN to file a protest to said FAN. Respondent then cites the Court of Tax Appeals decisions in *Global Metal Tech Corporation v. CIR (Global Metal)*[1] and *Medtex Corporation v. CIR (Medtex)*,[2] which both held that a protest against a PAN is not indispensable. Respondent states that in *Global Metal Tech*, it is reiterated that "the issuance of the FAN before the lapse of the 15-day period for the taxpayer to file its protest to the PAN, inflicts no prejudice on the taxpayer for as long as the latter is properly served a FAN and that it was able to intelligently contest the FAN by filing a protest letter within the period provided by law."

On the other hand, petitioner states in its *Opposition* that the citations by respondent of *Global Metal* and *Medtex* are erroneous and misleading. Petitioner points out that the case of *Global Metal* has already been overturned by the Court of Tax Appeals (CTA) *En Banc* on 17 May 2016, docketed as CTA EB No. 1273, wherein the CTA *En Banc* ruled that the issuance of the FLD/FAN prior to the lapse of the 15-day period to reply/protest the PAN was a denial of the right to due process. As to *Medtex*, petitioner points out that the ruling therein does not state that the FAN may be issued prior to the lapse of the 15-day period given to the taxpayer to reply to the PAN. Based on the foregoing, petitioner states that it is established that the right of the taxpayer to reply to PAN is an important part of the due process requirement and that the failure of the BIR to strictly comply with the requirements under the law and its own rules is a wanton violation of the taxpayer's due process.

In his *Comment (To: Petitioner's Opposition to Respondent's Motion for Reconsideration)*, respondent argues that the CTA *En Banc* decision in *Global Metal* may still be reversed by the

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[1] CTA Case No. 8329, September 23, 2014.
[2] CTA Case No. 8508, September 1, 2014.

Supreme Court. Respondent also states that in *Commissioner of Internal Revenue v. Dominador Menguito,*[3] the Supreme Court explained that the stringent requirement of due process must be construed to refer to the FAN as prescribed under Section 228 of the National Internal Revenue Code (NIRC). Thus, respondent maintains his position that the non-observance of the 15-day period in the issuance of the FLD/FAN counting from the date of receipt of the PAN by the taxpayer does not deprive the latter of the right to due process. Respondent also reiterates that the protest against the PAN is not indispensable. Finally, respondent states that justice would be served if the parties will be allowed to fully present their case and that the issues raised be decided on the merits rather than on mere technicality.

The motion has no merit.

The mandatory nature of the issuance of the PAN and compliance with the due process requirements has been settled in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,*[4] where the Supreme Court explained:

> 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 first be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not a merely formal, requirement...
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> xxx xxx xxx
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> ...it is clear that the sending of a PAN to [the] 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 [now, 3.1.1] 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... (Underscoring supplied)

[3] G.R. No. 167560, September 17, 2008.
[4] G.R. No. 185371, December 8, 2010.

Again, it is reiterated that in this case, the FAN was issued on January 14, 2015[5] or only six (6) days after petitioner received the PAN on January 8, 2015. Thus, there is already a failure of the CIR to strictly comply with the requirements laid down by law and its own rules and regulations, which is a denial of petitioner's right to due process, and thereby rendering the assessment void.

That petitioner received the FAN on February 4, 2015, or after it has filed its reply to the PAN, does not denigrate from the fact that it was deprived of due process. As stated in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*:[6]

> In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity 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. (Underscoring supplied)

Hence, the period granted to assail the PAN is integral to the right of due process granted by law to the taxpayer.

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

[5] Docket, Vol. III, JSFI, p. 1303.
[6] G.R. No. 172598, December 21, 2007.