REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MONTALBAN METHANE POWER CORPORATION, Petitioner,	**CTA CASE NO. 10334**
	Members:
- versus –	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 18 2025 4:05 pm

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RESOLUTION

FERRER-FLORES, J.:

For resolution is respondent's **Motion for Reconsideration Re: Decision dated 13 August 2024** filed on August 30, 2024, with petitioner's **Opposition (Re: Motion for Reconsideration [Re: Decision dated 13 August 2024] dated 30 August 2024)** filed via electronic mail on September 16, 2024.

The instant *Motion* assails the Decision dated August 13, 2024 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> Accordingly, the *Final Decision on Disputed Assessment* dated July 1, 2020 of respondent is **REVERSED** and **SET ASIDE**. Moreover, the *Formal Letter of Demand* and *Final Assessment Notices* dated September 27, 2018, issued against petitioner, for taxable year 2015, are

CANCELLED and **SET ASIDE**. Respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.

In his *Motion*, respondent contends that there was no denial of petitioner's right to due process as it failed to timely file its letter reply to the Preliminary Assessment Notice (PAN), thus, the reiteration of the findings of the handling examiner from PAN to Formal Letter of Demand (FLD). According to respondent, the PAN was issued and served on petitioner on September 7, 2018, and petitioner was able to file its reply to PAN only on September 25, 2018. He claims that the Details of Discrepancies attached to the Final Decision on Disputed Assessment (FDDA) would show that the reinvestigation resulted in a change of the total amount of the assessed deficiency taxes. He maintains that respondent is not obliged to accept petitioner's explanation when he finds the same as inadequate.

Respondent also argues that the fact that petitioner did not raise any issue involving violation of due process to its Protest and even in the *Petition for Review* to this Court only shows that it was apprised of the assessment and was able to avail of the remedies provided by law to refute the tax assessment against it. He claims that by doing so, the Court is blindsiding the litigant and not for an "orderly" disposition of a case.

Petitioner, on the other hand, maintains that the Court correctly found that respondent violated its right to due process. It alleges that respondent never found any defect in the timeliness of petitioner's reply, instead, his arguments in the instant *Motion* were his last-ditch attempt to blame petitioner for his own shortcomings. Petitioner asserts that the failure of respondent to raise this matter in the FLD reinforces the findings of this Court that he merely copied verbatim his previous findings without regard to the arguments raised in petitioner's reply. If there was indeed a defect in petitioner's recourse, petitioner avers that such should have been pointed out in the FLD so petitioner would have had the opportunity to show that the reply was timely filed. Finally, petitioner avers that respondent was not denied due process when it ruled on the issues that were not raised by the parties in the *Petition for Review*.

The Court denies the *Motion for Reconsideration*.

A careful perusal of the instant *Motion* shows that the arguments raised herein have been determined and passed upon by this Court in the assailed Decision.

Respondent's contention that the Court should not have granted a relief which was not prayed for by petitioner is utterly baseless.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), reads as follows:

> RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** (Boldfacing supplied)

The Supreme Court confirmed this authority in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[1] *viz*:

> **On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > **SECTION 1. *Rendition of judgment.* – xxx**
> >
> > **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**
>
> **The above section is clearly worded.** xxx (Boldfacing and underlining supplied)

Clearly, as discussed in the assailed Decision, the Court has the power to review a related issue even if not raised by the parties necessary to achieve an orderly disposition of the case.[2]

As regards the issue involving the denial of petitioner's right to due process, respondent claims that because the reply to PAN was filed beyond the 15-day period, he is allowed to merely reiterate the findings in the PAN in the FLD. Petitioner, on the other hand, counters his allegation by

1 G.R. No. 183408, July 12, 2017.
2 *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

invoking respondent's failure to raise the matter in the FLD so it would have had the opportunity to show that the reply was timely filed, or that its alleged belated filing was justified. In belatedly raising the issue on the timeliness of the reply, petitioner was deprived of the actual opportunity to address the same.

The Court finds respondent's arguments bereft of merit.

It is clear from Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended,[3] that a taxpayer must be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[4] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[5] Clearly, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[6]

In relation thereto, Paragraph 2 of Section 3.1.1 of Revenue Regulations (RR) No. 18-13 provides:

> 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.

Based on the foregoing, the consequence of failure to timely file a reply is that the taxpayer shall be considered in default and the immediate issuance of the FLD.

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3 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:

xxx xxx xxx

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.

xxx xxx xxx. (Emphasis added).

4 *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

5 *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

6 *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

Here, the PAN was issued and received by petitioner on September 7, 2018. The alleged tax liabilities of petitioner under the PAN were as follows:[7]

Tax Type	Basic	20% / 12% Interest	Compromise Penalty	TOTAL
Income tax	₱11,475,907.91	₱ 4,950,046.41		₱16,425,954.32
WTC	350,643.48	168,731.56		519,375.04
EWT	836,915.20	236,810.78		1,073,725.98
FBT	1,849,457.13	889,968.91		2,739,426.04
Final tax	15,540,298.97	7,478,077.01		23,018,375.98
Final VAT	2,307,721.91	1,110,488.43		3,418,210.34
DST	2,298,586.45	1,118,687.39		3,417,273.84
Compromise penalty			₱210,000.00	210,000.00
TOTAL	**₱34,659,531.05**	**₱15,952,810.49**	**₱210,000.00**	**₱50,822,341.54**

Counting 15 days from September 7, 2018, petitioner's reply should have been filed with the BIR on September 22, 2018. Considering, however, that September 22, 2018 is a Saturday, the reply should have been filed the next working day. The reply dated September 21, 2018 contesting respondent's assessment for alleged deficiency taxes for taxable year 2015[8] was filed with the BIR on a Tuesday, September 25, 2018.[9]

Thereafter, on September 27, 2018, respondent issued the FLD, the alleged tax liabilities of petitioner under the FLD were as follows:[10]

Tax Type	Basic	20% / 12% Interest	Compromise Penalty	TOTAL
Income tax	₱11,475,907.91	₱ 4,950,046.41		₱16,425,954.32
WTC	350,643.48	168,731.56		519,375.04
EWT	836,915.20	236,810.78		1,073,725.98
FBT	1,849,457.13	889,968.91		2,739,426.04
Final tax	15,540,298.97	7,478,077.01		23,018,375.98
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DST	2,298,586.45	1,118,687.39		3,417,273.84
Compromise penalty			₱210,000.00	210,000.00
TOTAL	**₱34,659,531.05**	**₱15,952,810.49**	**₱210,000.00**	**₱50,822,341.54**

Clearly, the amounts indicated in the PAN and FLD are identical. Despite the fact that the PAN was issued on September 7, 2018 and the FLD

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7 Par. 8, *Petition for Review, vis-à-vis* par. 1, *Answer*, Docket – Vol. I, pp. 20 and 343, respectively; Exhibit "R-6", BIR Records – Folder 1 (Exhibit "R-13-2"), pp. 552 to 559.

8 Par. 2, JSFI, Docket – Vol. I, p. 523.

9 Refer to BIR Records – Folder 1 (Exhibit "R-13-2"), pp. 568 to 575.

10 Par. 10, *Petition for Review, vis-à-vis* par. 1, *Answer*, Docket – Vol. I, pp. 20 to 21, and 343, respectively; Exhibits "R-8", "R-8-1", "R-8-2", "R-8-3", "R-8-4", "R-8-5", "R-8-6", "R-8-7", "R-8-8", BIR Records – Folder 2 (Exhibit "R-13-1"), pp. 614 to 627.

was issued on September 27, 2018, both indicated interest until September 30, 2018.[11]

A comparison of the *Memorandum* dated September 26, 2018,[12] recommending the issuance of the FLD against petitioner, and the *Memorandum* dated September 3, 2018,[13] recommending the issuance of the PAN, would reveal that both *Memoranda* are essentially identical, except for the following additional statement, which discussed petitioner's reply to the PAN, viz:

> **MMPC responds to the PAN on September , 2018 which is within the prescribed fifteen (15) days from the receipt thereof.** However, per RR No. 18-2013 Section 3.1.1 and RMO No. 26-2016 a Formal Letter of Demand and Final Assessment Notice shall be issued whether the PAN was protested or not. **The documents and explanations in the reply to PAN will be considered/evaluated during the FAN stage.** Subject taxpayer was advised that it may resubmit the documents and reiterates its position. (*Emphasis ours*)

Revenue Officer (RO) Ma. Theresa V. Carillo and Group Supervisor (GS) Teresita B. Villamor acknowledged petitioner's submission of its reply to PAN, albeit with blank date, within the prescribed 15-day period. Moreover, the foregoing statement affirms that the documents and explanations indicated in petitioner's reply to PAN will be considered or evaluated during the FAN stage, in which case it may resubmit the documents and reiterate its position.

Ostensibly, despite acknowledging that the reply to PAN was filed within the 15-day period, RO Carillo and GS Villamor recommended the issuance of the FLD with no intention of considering the arguments and documents in the reply to PAN, which is a clear violation of petitioner's right to due process.

This issue has been categorically addressed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[14] to wit:

> The facts demonstrate that Avon was deprived of due process. **It was <u>not fully apprised of the</u> legal and <u>factual bases of the assessments issued against it</u>.** The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. **Thus, <u>Avon was left unaware on how</u>**

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[11] BIR Records – Folder 2 (Exhibit "R-13-1"), pp. 604 to 611.
[12] Exhibit "R-7", BIR Records – Folder 2 (Exhibit "R-13-1"), pp. 597 to 602.
[13] Exhibit "R-5", *Id.* at 523 to 529.
[14] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

> **the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> xxx xxx xxx
>
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
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> xxx xxx xxx
>
> **The Commissioner's total disregard of due process rendered the identical** Preliminary Assessment Notice, **Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.** (Boldfacing ours)

As aptly conferred in the assailed Decision, respondent is mandated to perform assessment functions in accordance with, and in strict adherence to, the law, with their own rules of procedure, and always with regard to the basic tenets of due process. A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when respondent rejects the taxpayer's explanations, more so if its explanation was not even considered for allegedly being filed out of time, he must give some reason for doing so and the particular facts and law upon which his conclusion is based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

To reiterate, in case respondent or his duly authorized representative fails or effectively fails to observe the foregoing due process requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void.

Clearly, the Court finds no sufficient reason to modify the assailed Decision.

WHEREFORE, in light of the foregoing considerations, the **Motion for Reconsideration Re: Decision dated 13 August 2024** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice