REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

REMA TIP TOP PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 10347**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	8:45 am

x - x

RESOLUTION

FERRER-FLORES, J.:

Before this Court is respondent's **Motion for Reconsideration (Decision dated 12 September 2024)** filed through an accredited courier service on October 3, 2024, and received by the Court on October 4, 2024, with petitioner's **Comment (Re: Motion for Reconsideration dated 03 October 2024)** posted on November 18, 2024, and received by the Court on November 26, 2024.

On September 12, 2024, the Court promulgated a Decision cancelling respondent's deficiency income tax, expanded withholding tax (EWT), improperly accumulated earnings tax (IAET), value-added tax (VAT), and compromise penalty assessments against petitioner, for violating its right to due process of law by failing to observe the 15-day period from receipt of the Preliminary Assessment Notice (PAN) before issuing the Formal Letter of Demand and Final Assessment Notice (FLD/FAN), the dispositive portion of which states as follows:

> **WHEREFORE**, in view of the foregoing, the present *Petition for Review* is **GRANTED**. Accordingly, the Assessment Notices and Formal Letter of Demand, all dated January 13, 2020, assessing petitioner for deficiency income tax, expanded withholding tax, improperly accumulated earnings tax, value-added tax, and compromise penalty in the aggregate

amount of ₱21,818,644.73, inclusive of interests and penalties, for taxable year 2016 are **CANCELLED** and **SET ASIDE**. Respondent is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.

In his *Motion*, respondent assails the above Decision and insists that the Court erred in ruling that respondent violated petitioner's right to due process of law for failure to await the lapse of the 15-day period from petitioner's receipt of the PAN before issuing the FLD/FAN. Although respondent admits that there was a slight infirmity in the date of the issuance of the FLD/FAN, he nonetheless submits that this does not necessarily result in a violation of petitioner's right to due process of law, as the latter was still notified of the assessments and was given ample time and opportunity to protest respondent's findings therein.

On the other hand, in its *Comment*, petitioner asserts that respondent's *Motion* should be denied for lack of merit since it does not raise any substantial ground that would warrant a reconsideration of the Decision it assails. In any case, petitioner reiterates that the non-observance of the 15-day period to protest the PAN before issuing the FLD/FAN violates its right to due process, thereby rendering the resulting assessment void. Petitioner expounds that even if it was notified of the assessment and was later able to file a protest to the FLD/FAN, due process still demands that petitioner be given a mandatory period of at least 15 days within which to respond to the PAN. Petitioner maintains that the reason for the said period is not only to be given the opportunity to present its case and adduce evidence in support thereof, but so that the Bureau of Internal Revenue (BIR) must also consider the evidence presented.

After due consideration, the Court finds respondent's *Motion* bereft of merit.

While petitioner correctly pointed out that the argument proffered by respondent in his *Motion* is essentially a rehash of the same argument that has already been considered and weighed by the Court in the Decision, the Court nonetheless reiterates that the PAN is part and parcel of the due process requirement in tax assessment proceedings, as it gives the taxpayer 15 days upon its receipt to contest the same before the BIR issues a FAN/FLD.

To emphasize, compliance of the 15-day period should be strictly observed for it is part of the taxpayer's right to procedural due process of law, as succinctly held by the Supreme Court in *Prime Steel Mill v. Commissioner of Internal Revenue*,[1] as follows:

> **The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.**
>
> In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines, Corp.*, the Court had occasion to state that **the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that '[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.'**
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> While Yumex rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. **There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.**
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> **As the Court also held in Yumex, '[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment.'** 'Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response.'
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> In the same vein, it is beside the point that petitioner was able to submit a 'well-prepared protest letter.' The fact remains that **respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.**
>
> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect. *(Emphases added)*

Herein, respondent disregarded the 15-day period mandated by law, and by his own implementing rules, when he issued the FLD/FAN dated January 13, 2020, which was received by petitioner on January 14, 2020, merely four days after petitioner received the PAN on January 10, 2020. Petitioner's right to due process was indeed violated, as it "does not denigrate the fact that petitioner was deprived of statutory and procedural due process to contest the assessment before it was issued".[2]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his *Motion*, the Court finds no

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[1] G.R. No. 249153, September 12, 2022; citing *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021.

[2] *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007.

compelling reason to reverse or modify the Decision promulgated on September 12, 2024.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Decision dated 12 September 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