REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

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,** and **MODESTO-SAN PEDRO,** JJ.
LANAO DEL NORTE ELECTRIC COOPERATIVE (LANECO), Respondent.	***Promulgated:*** JUN 09 2021 3:30 pm

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DECISION

UY, J.:

In the instant *Petition for Review* filed on March 5, 2020, the petitioner, Commissioner of Internal Revenue (CIR), prays that the Decision dated October 11, 2019 and the Resolution dated February 4, 2020, promulgated by the Second Division of this Court, in CTA Case No. 8769, entitled, *"Lanao Del Norte Electric Cooperative (LANECO), Petitioner vs. Commissioner of Internal Revenue, Respondent",*[1] be reversed and set aside, and a new one be entered ordering respondent to pay P18,469,356.21 plus 25% surcharge as well as 20% deficiency and delinquency interest as provided in Sections 248 and 249 of the NIRC of 1997 and 12% interest starting January 01, 2018 until full payment pursuant to the TRAIN law. The dispositive portions thereof respectively read as follows:

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[1] EB Docket, pp. 6 to 22.

Decision dated October 11, 2019:

> "**WHEREFORE,** premises considered, the Petition for Review is **GRANTED.** Accordingly, the Decision issued by the respondent, denying petitioner's protest against the assessment of the alleged deficiency on Value Added Tax in the amount of ₱18,469,356.21, inclusive of increments, for calendar year 2008, is **SET ASIDE** and the Formal Letter of Demand dated February 29, 2012 for calendar year 2008 is **CANCELLED.**
>
> **SO ORDERED.**"

Resolution dated February 4, 2020:

> "**WHEREFORE,** premises considered, respondent's Motion for Reconsideration (Re: Decision dated 11 October 2019) is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

As stated in the assailed Decision dated October 11, 2019, these are the relevant facts of this case, to wit:

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

Respondent LANECO is an electric cooperative with certificate of franchise to distribute electricity to its covered areas within the Province of Lanao del Norte, with principal office address at 9209, Sagadan, Tubod, Lanao Del Norte.

On December 11, 2009, LANECO received the Letter of Authority (LOA) dated December 1, 2009, issued by BIR Revenue Region No. 16, Cagayan de Oro City, authorizing concerned revenue officers to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008.

LANECO received the First Notice, dated December 10, 2009, and Second Notice, dated January 5, 2010, informing LANECO of the examination of its books of accounts and requesting it to provide documents and records necessary for the correct determination of its tax liabilities for CY 2008.

On February 21, 2011, LANECO received a Letter dated February 9, 2011, requesting respondent to appear for informal conference.

On February 20, 2012, LANECO received the Preliminary Assessment Notice (PAN) dated February 8, 2012, with Details of Computation and Details of Discrepancies, assessing respondent for deficiency VAT in the total amount of ₱18,263,565.10, inclusive of legal increments, for CY 2008 issued by the BIR Revenue Region No. 16, Cagayan de Oro City.

On March 9, 2012, LANECO received the Formal Letter of Demand (FLD) dated February 29, 2012, with Details of Computation and Details of Discrepancies and Assessment Notice, amounting to ₱18,469,356.21, inclusive of legal increments, for CY 2008 issued by the BIR Revenue Region No. 16, Cagayan de Oro City.

LANECO filed its Protest against the FLD on September 6, 2012 and September 7, 2012 with the BIR. It also submitted letters requesting for re-evaluation of the assessment against it.

On December 18, 2012, LANECO received the Final Decision on Disputed Assessment (FDDA) dated November 13, 2012, issued by the BIR Revenue Region No. 16, Cagayan de Oro City, denying respondent's Protest on the ground that the assessment has already become final, executory and demandable for its failure to raise the objection within the prescribed period provided for by law.

On January 14, 2013, LANECO filed its Protest against the FDDA with BIR Deputy Commissioner for Operations stating that the disallowed VAT was already paid to NAPOCOR-PSALM and TRANSCO-NGCP.

On January 23, 2014, LANECO received the Decision issued by the former Commissioner Kim S. Jacinto-Henares, which ruled that the assessment has become final and executory and ordered respondent to pay the alleged deficiency on VAT in the amount ₱18,469,356.21, inclusive of increments, for calendar year 2008.

LANECO filed its *Petition for Review* incorporating its *Motion for Suspension of the Collection of Tax* before the Court in Division on February 20, 2014 docketed as CTA Case No. 8769. On March 11, 2014, the CIR filed his *Comment on Petitioner's Motion to Suspend Collection of Taxes by the Issuance of Preliminary Injunction with Motion to Dismiss.* LANECO filed its *Opposition to the Motion to Dismiss & Rejoinder to the Comment to the Motion to Suspend Collection of Taxes*, on March 28, 2014. On April 28, 2014, the CIR filed his *Reply (On Petitioner's Opposition to the Motion to Dismiss & Rejoinder to the Comment to the Motion to Suspend Collection of Taxes).*

On April 25, 2014, the CIR filed his *Answer (Ad Cautelam)*, in CTA Case No. 8769, interposing, among others, the following special and affirmative defenses:

1. LANECO failed to timely file a protest against the Formal Letter of Demand and Final Assessment Notice dated February 29, 2012 which was stamped received by LANECO on March 9, 2012, and the same have already attained finality. The belated protest through a reply letter to the Regional Director was filed by LANECO on September 6, 2012, which was roughly six (6) months beyond the prescribed period provided under Section 228 of the Tax Code in relation to Revenue Regulation 12-99;

2. The Petition for Review was also filed beyond the thirty (30) day period from receipt of the FDDA and must therefore be outrightly dismissed for being filed out of time;

3. The CIR observed both procedural and substantive due process in issuing the assessment whereby the Letter of Authority, First Notice for Presentation of Books of Accounts, Second Notice for Presentation of Books of Accounts, Preliminary Report of Investigation with Notice of Informal Conference, Preliminary Assessment Notice, Formal Letter of Demand with Audit Result/Assessment Notice and Final Decision on Disputed Assessment were chronologically issued in accordance with law, rules and jurisprudence;

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4. The assessment issued against LANECO is valid and lawful, and the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right; and

5. The assessment issued against LANECO has factual and legal bases as the PAN, FLD and FDDA indicated not only the deficiency tax involved and interest due thereon, but also sufficiently stated the facts, the law, rules and regulations on which the assessment is based.

On June 19, 2014, the Court in Division issued a Resolution, granting the CIR's *Motion to Dismiss* for lack of jurisdiction. The Court in Division found that the subject assessment has become final and executory for failure of LANECO to protest against the FLD on time.

LANECO filed its *Motion for Reconsideration [Re: Resolution Promulgated June 19, 2014],* on July 10, 2014 and *Supplemental Pleadings in Support of the Motion for Reconsideration [Re Resolution Promulgated June 19, 2014],* on August 26, 2014. For his part, the CIR filed his *Comment (Re: Motion for Reconsideration dated July 10, 2014),* on August 15, 2014 and *Comment (Re: Supplemental Pleadings in Support of the Motion for Reconsideration dated August 22, 2014),* on September 17, 2014.

In support of its Motion for Reconsideration, LANECO presented its witnesses, Leonor S. Quintia, Lilian I. Duarte, and Danilo T. Pasiliao. Thereafter, it filed its *Formal Offer of Exhibits* on November 24, 2015, to which the CIR filed his *Comment (Re: Petitioner's Formal Offer of Exhibits)* on December 7, 2015. In the Resolution dated February 4, 2016, the Court admitted Exhibits "P-1-a," "P-4," "P-5" and its sub-markings, "P-6," "P-7," "P-7-a," "P-8" and sub-markings, and "P-9," but denied the admission of Exhibits "P-1," "P-2," and "P-3," for failure to present the originals for comparison.

The Court denied LANECO's *Motion for Reconsideration [Re: Resolution Promulgated June 19, 2014]* in the Resolution dated March 31, 2016 for lack of merit.

Thereafter, LANECO filed *a Petition for Review* before the Court *En Banc* on April 28, 2016, docketed as CTA EB No. 1452 entitled *"Lanao Del Norte Electric Cooperative (LANECO), Petitioner vs. Commissioner of Internal Revenue, Respondent".*

On July 13, 2016, the CIR filed a *Motion to Admit Attached Comment*, which was granted in the Resolution dated July 21, 2016. With the filing of the CIR's *Manifestation* on August 15, 2016, stating that his previously filed *Comment* shall be adopted as his Memorandum, and of LANECO's *Memorandum* on September 26, 2016, CTA EB No. 1452 was submitted for decision.

In the Decision dated April 5, 2017 in CTA EB No. 1452,[2] the Court *En Banc* held that the Court in Division had jurisdiction over the case under the term "other matters," pursuant to Section 7(a)(1) of R.A. No. 1125 and Section 3(a)(1), Rule 4 of the RRCTA. Thus, the Court *En Banc* granted LANECO's *Petition for Review* and remanded CTA Case No. 8769 to the Court in Division for further proceedings. The dispositive portion thereof reads as follows :

> "**WHEREFORE**, the Petition for Review is **GRANTED**. Accordingly, the Resolutions promulgated on June 19, 2014 and March 31, 2016 by First Division in CTA Case No. 8769 are **REVERSED** and **SET ASIDE**.
>
> Let the case be **REMANDED** to the Court in Division for further proceedings in order to determine and rule on the merits of petitioner's appeal seeking the cancellation of the deficiency VAT assessment for taxable year 2008.
>
> **SO ORDERED."**

Subsequently, an Entry of Judgment[3] was issued which stated that the Decision dated April 5, 2017 of the Court *En* Banc in CTA EB No. 1452 has become final and executory on May 19, 2017.

On September 15, 2017, the Court in Division noted the Entry of Judgment in CTA EB No. 1452 and directed the Clerk of Court to set CTA Case No. 8769 for Pre-Trial Conference.[4]

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[2] Penned by Associate Justice Catherine T. Manahan, and concurred by Associate Justice Juanito C. Castaneda, Jr, Associate Justice Lovell R. Bautista (Retired), Associate Justice Esperanza R. Fabon-Victorino (Retired), and Associate Justice Ma. Belen M. Ringpis-Liban; with Presiding Justice Roman G. Del Rosario maintaining his Dissenting Opinion, joined by Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova (Retired), and Associate Justice Cielito N. Mindaro-Grulla (Retired)

[3] Division Docket (CTA Case No. 8769) - Vol. 2, p. 596.

[4] Division Docket (CTA Case No. 8769) - Vol. 2, pp. 632 to 633.

During the Pre-Trial Conference held on February 1, 2018, LANECO's counsel manifested that LANECO will be adopting all the testimonies of its witnesses presented during the hearing on its *Motion for Reconsideration,* and its *Formal Offer of Evidence.*

On March 5, 2018, the parties filed their *Joint Stipulation of Facts and Issue*, which was approved by the Court in Division in the Resolution dated March 12, 2018. Subsequently, the Court in Division issued a Pre-Trial Order on April 16, 2018.

For his part, the CIR presented the following : 1) Revenue Officer Dante C. Velayo; and 2) Assistant Division Chief and Chief Revenue Officer Emelita M. Braña, as his witnesses.

On August 7, 2018, the CIR filed his *Formal Offer of Evidence,* offering Exhibits "R-1," "R-2," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," and "R-10," as his documentary evidence. For its part, LANECO filed its *Comment/Opposition (To Respondent's Formal Offer of Evidence*), on September 27, 2018. In the Resolution dated November 23, 2018, all of the CIR's exhibits were admitted into evidence.

Thereafter, the CIR file his *Memorandum* on January 31, 2019; while LANECO filed its *Memorandum* on January 28, 2019. Thus, CTA Case No. 8769 was submitted for decision on February 11, 2019.

In the Decision[5] dated October 11, 2019, the Court in Division granted LANECO's Petition for Review. Thus, FDDA was set aside and the FLD dated February 29, 2012 for CY 2008 was cancelled.

The CIR filed his *Motion for Reconsideration (Re: Decision dated 11 October 2019)* on October 30, 2019, to which LANECO filed its *Comment/Opposition (To Respondent's Motion for Reconsideration)* on November 28, 2019. In the Resolution[6] dated February 4, 2020, the Court in Division denied the Motion for Reconsideration for lack of merit.

Undaunted, the CIR filed a *Motion for Extension of Time to File Petition for Review* on February 20, 2020.[7] In the Resolutions dated

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[5] EB Docket, pp. 23 to 53.
[6] EB Docket, pp. 54 to 57.
[7] EB Docket, pp. 1 to 4.

February 26, 2020[8] and June 26, 2020,[9] the subject Motion was granted and the CIR was given a final and non-extendible period of fifteen (15) days from February 22, 2020, or until March 9, 2020,[10] within which to file his Petition for Review.

Thereafter, the CIR filed the instant *Petition for Review*[11] on March 5, 2020. In the Resolution[12] dated June 26, 2020, respondent was directed to file its Comment to the Petition for Review, within ten (10) days from notice. Respondent filed its *Comment/Opposition (To Petitioner's Petition for Review)*[13] through electronic mail on April 21, 2020.[14]

Subsequently, the *Petition for Review* was deemed submitted for Decision on July 29, 2020.[15] Hence, this Decision.

ISSUE

The sole ground raised by the CIR in his Petition for Review reads as follows:

> " WITH ALL DUE RESPECT, THE SECOND DIVISION ERRED WHEN IT HELD THAT HONORABLE RESPONDENT WAS DENIED DUE PROCESS DUE TO ALLEGED PREMATURE ISSUANCE OF THE FLD BY THE PETITIONER. "[16]

Petitioner's arguments:

The CIR contends that while the Honorable Court of Tax Appeals – En Banc has rendered a decision on the issue of jurisdiction, petitioner maintains that respondent's belated filing of its administrative protest and subsequently, respondent's belated filing of its petition for review within the period prescribed made the subject

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[8] EB Docket, p. 5.
[9] EB Docket, pp. 59 to 61.
[10] The fifteenth (15th) day, March 8, 2020, falls on a Sunday. Hence, the petitioner had until the next working day, or until March 9, 2020, within which to file his Petition for Review.
[11] EB Docket, pp. 6 to 22.
[12] EB Docket, pp. 59 to 61.
[13] EB Docket, pp. 66 to 82.
[14] EB Docket, p. 62.
[15] EB Docket, pp. 102 to 103.
[16] EB Docket, p. 8.

assessment final, unappealable, and demandable as can be gleaned from its own admission in its petition for review.

Nevertheless, he posits that he observed both procedural and substantive due process in issuing the subject assessment of this case. Allegedly, the issuance of the Preliminary Assessment Notice (PAN) was on February 8, 2012, while that of the Formal Letter of Demand (FLD) was on February 29, 2012, which is equivalent to 21-days interval. Hence, there was no overlap in the issuance of PAN and the FLD. Likewise, if the basis would be the receipt, the PAN was received on February 20, 2014 (should be 2012)[17] while the FLD was received on March 9, 2012 equivalent to 17 days interval. In both cases of issuance and receipt, more than 15 days had already lapsed as mandated under Revenue Regulation (RR) No. 12-99. Therefore, respondent was afforded due process and no violation was committed by petitioner.

According to the CIR, the assessment issued against respondent has factual and legal bases. Allegedly, respondent was informed of said factual and legal bases because the Preliminary Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment, together with the Details of Computation and Details of Discrepancies (attached to the Formal Letter of Demand and Final Assessment Notice dated 29 February 2012), indicated not only the deficiency tax involved and interest due thereon, but also sufficiently stated the facts, the law, rules and regulations on which the assessment is based.

In addition, the CIR avers that tax assessments are presumed valid and respondent has the duty to prove the impropriety of the assessment, if there is any. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are allegedly in favor of the correctness of the tax assessments.

Respondent's counter-arguments:

Respondent counters that petitioner's failure to observe any single step in the collection of taxes constitutes denial of respondent's right to due process as it is a fundamental rule that taxes must be

[17] Petition for Review, p. 4, EB Docket, p. 9.

collected reasonably and in accordance with the prescribed procedure.

Allegedly, it is but a basic rule expected of petitioner to know that the counting of the prescribed period, in this case the 15-day period, within which a party is directed to make a protest, answer or any responsive pleading is counted from the receipt thereof. In this case, it is an undisputed fact that the PAN was received by respondent on February 20, 2012 and the FAN was issued on February 29, 2021. Very clearly, there was only a 9-days interval from the receipt of the PAN to the issuance of the FAN and thus, the 15-day prescribed period has not yet expired and/or was not observed or followed by petitioner.

Moreover, respondent maintains that the subject assessment is not only void for lack of factual and legal basis, hence, cannot attain finality, it is also void because the same has long been paid. Petitioner may have forgotten that respondent presented evidence derived from no less than the National Office Data Center of the Bureau and was confirmed by Assistant Commissioner Nestor Valeroso himself. Also, respondent's claim that the subject VAT deficiency has already been paid and/or remitted to the Bureau was supported with evidence on record.

Respondent likewise avers that the factual findings of the Court in Division must be accorded great weight and respect, as nothing in the assailed Decision shows that the Court overlooked, misunderstood, or misapplied facts and law.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

At the outset, petitioner asserts that "*While the Honorable Court of Tax Appeals – En Banc has rendered a decision on the issue of jurisdiction, petitioner maintains that respondent's belated filing of its administrative protest, and subsequently, respondent's belated filing of its petition for review within the prescribed period, made the subject assessment final, unappealable, and demandable*".[18]

We are not convinced.

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[18] Petition for Review, p. 4, EB Docket, p. 9.

The alleged lack of jurisdiction of the Court in Division in CTA Case No. 8769 due to respondent's purported failure to timely file a protest has already been categorically ruled upon by the Court *En Banc* in the Decision dated April 5, 2017 in CTA EB No. 1452. Said Decision has already become final and executory.

A judgment that has become final and executory can no longer be modified in any respect.

In CTA EB No. 1452, the Court *En Banc* ruled that the Court in Division had jurisdiction over CTA Case No. 8769 under the term "other matters," pursuant to Section 7(a)(1) of R.A. No. 1125 and Section 3(a)(1), Rule 4 of the RRCTA. The case was then remanded to the Court in Division for determination of the merits of LANECO's appeal seeking the cancellation of the deficiency VAT assessment for taxable year 2008. We quote pertinent portions of the Court *En Banc's* ruling in said case as follows:

> "The Court in Division found that there was no disputed assessment for failure of the petitioner to file its protest within the time required, thus, dismissing the case before it for lack of jurisdiction. However, the Court En Banc finds that while there is no disputed assessment, the Court in Division should have assumed jurisdiction under "other matters". Similar to the previously ruled cases, the BIR's right to collect upon an assessment may be reviewed by the Court. In determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed and are properly included as "other matters". The failure to protest, or to raise said issues in a protest, should not result to a waiver of said defenses, for the reason that "[a] void assessment bears no fruit.
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> xxx xxx xxx
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> The Court En Banc finds that the petition for review filed before the Court in Division was timely filed. Petitioner received the decision of the CIR on January 23, 2014. Counting thirty (30) days therefrom, petitioner had until

February 22, 2014 within which to file its petition, thus, petitioner's appeal was timely filed on February 20, 2014.

The Court En Banc will now determine whether petitioner's circumstances warrant the exercise of the Court in Division's jurisdiction over other matters. Petitioner has repeatedly raised the defense that the disallowed input VAT has been paid and remitted to the BIR. On the other hand, respondent has continually ordered the payment of the said assessment for deficiency VAT and has even begun collection proceedings, as follows:

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Clearly, respondent's right to collect on the subject assessment and petitioner's defense that it has paid, or that the assessed amount has been paid and remitted to the BIR, are matters arising under the 1997 NIRC. From the foregoing, the Court in Division had and should have assumed jurisdiction" (Citations omitted)[19].

There being no motion for reconsideration or appeal interposed by the parties in CTA EB No. 1452, the Decision dated April 5, 2017 became final and executory on May 19, 2017.[20]

Having attained finality, the subject judgment is binding upon the parties, and can no longer be modified or contested anew before this Court insofar as the jurisdictional issue is concerned.

Well-settled is the rule that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. The rationale of this doctrine is to avoid delay in the administration of justice and in order to put an end to judicial controversies.[21]

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[19] *Spouses Jorge Navarra and Carmelita Navarra vs. Yolanda Liongson,* G.R. No. 217930, April 18, 2016

[20] Entry of Judgment, Division Docket (CTA Case No. 8769) - Vol. 2, p. 596.

[21] *Spouses Jorge Navarra and Carmelita Navarra vs. Yolanda Liongson,* G.R. No. 217930, April 18, 2016.

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Respondent's right to due process was violated

Petitioner argues that there was compliance with both procedural and substantive due process in the issuance of the subject assessment.

We disagree.

Section 228 of the NIRC of 1997 provides:

> "**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
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> 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.
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> **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**." *(Emphasis supplied)*
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> xxx xxx xxx."

A plain reading of the foregoing provision shows that within a specific period to be prescribed by the implementing rules and regulations, a taxpayer is mandated to respond to the PAN within a period to be prescribed by implementing rules and regulations.

As a corollary, the implementing rules and regulations thereon, specifically Section 3.1.2 of Revenue Regulations (RR) No. 12-99, provides the period within which the taxpayer is required to respond to the PAN, to wit:

> "**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —

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> 3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing 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 assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**" *(Emphasis supplied)*

According to Section 3.1.2 of RR No. 12-99, 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*. It is only then that 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, records show that respondent received[22] the PAN[23] on February 20, 2012. Ideally, it had until March 6, 2012, within which to file its protest. On March 9, 2012, however, petitioner received[24] the subject FLD[25] dated February 29, 2012.

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[22] Petition for Review, Division Docket (CTA Case No. 8769) – Vol. 1, p. 17; Answer *Ad Cautelam*, Division Docket (CTA Case No. 8769) – Vol. 1, p. 177.
[23] Exhibit "R-8." BIR Records, pp. 209 to 211.
[24] Petition for Review, Division Docket (CTA Case No. 8769) – Vol. 1, p. 17; Answer *Ad Cautelam*, Division Docket (CTA Case No. 8769) – Vol. 1, p. 177.
[25] Exhibit "R-7." BIR Records, pp. 212 to 214.

It is clear, therefore, that even 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 on February 29, 2012. It must be noted that the date of receipt of the FLD on March 9, 2012 by respondent is not significant. Instead, it is the date when the FLD was issued that is of importance because it 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.

Thus, petitioner's failure to observe the fifteen (15) day period to lapse before issuing the FLD is a clear violation of respondent's right to due process. Consequently, the subject FLD and assessment notice are void, and bears no valid fruit.[26]

It must be emphasized that the 1997 NIRC, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage of 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.[27]

In sum, We find no reversible error committed by the Court in Division in cancelling and setting aside the subject assessment against respondent for deficiency VAT in the amount of ₱18,469,356.21, inclusive of increments, for CY 2008.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice