REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2802** (CTA Case No. 9764)
	Present:
-*versus*-	**RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
D.M. WENCESLAO & ASSOCIATES, INC., *Respondent.*	Promulgated: NOV 18 2025 4:06 pm

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RESOLUTION

ANGELES, *J.*:

Before the Court *En Banc* is a *Motion for Reconsideration*[1] **(Motion)** filed by petitioner via registered mail on March 3, 2025, and the *Comment (Re: Motion for Reconsideration dated February 28, 2024)*[2] **(Comment)** filed by respondent via registered mail on April 16, 2025.

In its Motion, petitioner prays for the Court to reconsider and set aside the Decision dated February 6, 2025[3] **(assailed Decision)**, which denied its *Petition for Review* and affirmed the Decision dated May 9, 2023 and Resolution dated September 15, 2023 respectively promulgated by the First Division and Special First Division in CTA Case No. 9764.

[1] EB Docket, pp. 110-113.
[2] EB Docket, pp. 118-131.
[3] EB Docket, pp. 74-87.

Petitioner argues that respondent's right to due process was not violated when petitioner issued the Final Assessment Notice (FAN) dated January 14, 2013. Petitioner avers that even though respondent received the Preliminary Assessment Notice (PAN) on January 9, 2013, it only filed its reply thereto on February 11, 2013, or thirty-three (33) days after it received the PAN, well-beyond the fifteen (15)-day period to file a protest to the PAN. Hence, the issue on whether the issuance of the FAN violated respondent's right to due process is moot and academic, considering respondent's belated filing of a protest to the PAN.

Petitioner also argues that while he prepared the FAN on January 14, 2013, or barely five (5) days after petitioner received the PAN on January 9, 2013, such was done in the exigencies of his duties, in anticipation of the voluminous workload, for him to protect the interest of the government.

Petitioner additionally points out that respondent received the FAN on January 24, 2013, or fifteen (15) days from receipt of the PAN.

Further, citing the definition of due process in administrative proceedings per jurisprudence, petitioner posits that the BIR did not fail to afford respondent due process of law, as there was no absence of opportunity for respondent to file its protest.

In the contrary, respondent argues that: (1) petitioner's Motion contains a mere reiteration of arguments already submitted to and pronounced without merit by the Court in its judgment; and, (2) respondent's right to due process in the issuance of a deficiency tax assessment was violated by petitioner, in light of the hasty issuance of the FAN before the lapse of respondent's fifteen (15)-day period to file its reply to the PAN.

Before We rule on the merits of the instant Motion, the Court notes that the assailed Decision was received by the Office of the Solicitor General (OSG) on February 18, 2025.[4] Pursuant to Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner had a period of fifteen (15) days from such receipt, or until March 5, 2025, within which to file a motion for reconsideration. Since petitioner filed the instant Motion on March 3, 2025, the same was timely filed.

Anent petitioner's arguments and explanations, We find the same to be utterly unconvincing.

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[4] EB Docket, p. 73.

It bears noting that the instant Motion is an almost verbatim reiteration of petitioner's *Motion for Reconsideration*[5] filed before the Court *a quo*.

Nonetheless, to lay the issue to rest, We shall address the points raised by petitioner in the instant Motion.

Section 228 of the 1997 National Internal Revenue Code, as amended (Tax Code) 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: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> 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)*

Section 3.1.1 of Revenue Regulations (RR) No. 12-99, as amended by RR No. No. 18-13, implements the foregoing provision as follows:

> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —*
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> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> 3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.
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> 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,

[5] Division Docket, pp. 1829-1833.

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> 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.
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> **If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response,** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. *(Emphasis supplied)*

It is clear and undeniable from the foregoing rules that the taxpayer is given a fifteen (15)-day period within which to file a response to the PAN as part of its due process rights in the issuance of a deficiency tax assessment. In turn, petitioner is given a period of fifteen (15) days from receipt of such response to issue the FLD/FAN.

In the oft-cited case of *CIR vs. Avon Products Manufacturing, Inc.*,[6] the Supreme Court ruled that the issuance of the PAN and the full opportunity to reply thereto are part of the taxpayer's due process rights, such that failure to comply with the same shall render the assessment null and void, and of no force and effect. In this regard, the High Court held, to wit:

> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.
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> **The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**
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> 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

[6] *CIR v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

> facts upon which his or her conclusions are based, and those facts must appear in the record.
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> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process.** The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason. *(Emphasis supplied)*

The foregoing principles are anchored on two cardinal rights established under jurisprudence relative to a litigant's right to due process in administrative proceedings: (1) that the party must not only be given an opportunity to present his case and to adduce evidence, but the tribunal must also consider the evidence presented; and (2) that the tribunal should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered.[7]

Thus, based on the cases of *Avon*[8] and *Ang Tibay,*[9] the requirement of administrative due process is not met sufficiently by the mere formal act of receiving a taxpayer's defenses submitted in writing. Administrative due process also requires judicious consideration of the matters raised therein, independent evaluation of the case, and due notification to parties of the reasons for judgment.[10]

In the instant case, the records evidently show that the PAN dated December 28, 2012 was received by respondent on **January 9, 2013**, and only five (5) days later, the FAN dated **January 14, 2013** was issued by petitioner. Hence, respondent was not afforded the full fifteen (15)-day period within which to respond to the PAN. Moreover, petitioner could not have possibly, truly and validly considered respondent's defenses and explanations to the PAN when the FAN was issued before respondent filed its reply thereto, and before the lapse of the period allowed for the filing of a reply. For these reasons, respondent's right to due process was patently violated.

Respondent's belated filing of its response to the PAN on February 11, 2013 neither cures nor negates the nullification of the FAN on the ground of due process concerns, nor does such belated

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[7] *Ang Tibay v. Court of Industrial Relations*, G.R. No. 46496, February 27, 1940.
[8] *Supra*, note 6.
[9] *Supra*, note 7.
[10] *Abundance Providers and Entrepreneurs Corp. v. CIR*, C.T.A. Case No. 9407, July 14, 2023.

filing render the FAN moot and academic, as petitioner would have it, as there is no basis to support such conclusion.

Neither does "the exigencies of its duties, in anticipation of the voluminous workload, for it to protect the interest of the government" serve as sufficient justification for petitioner to disregard the procedure laid down by the Tax Code and applicable BIR rules for the proper assessment of national internal revenue taxes.

Jurisprudence has decreed that although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."[11]

With the foregoing findings, We find no cogent reason to reverse, set aside, or otherwise modify Our ruling in the assailed Decision.

WHEREFORE, premises considered, the *Motion for Reconsideration*[12] filed by petitioner via registered mail on March 3, 2025, is **DENIED** for lack of merit.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

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[11] *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.
[12] EB Docket, pp. 110-113.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice