REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PAMPANGA RURAL ELECTRIC SERVICE COOPERATIVE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10996

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
11:40 Am

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion for Reconsideration (Re: Resolution Promulgated on 07 July 2025)** filed on July 30, 2025, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration dated 30 July 2025)** filed on August 11, 2025.

On July 7, 2025, the Court promulgated a Decision cancelling respondent's deficiency income tax assessment against petitioner for violating the latter's right to due process of law, the dispositive portion of which reads as follows:

> "**ACCORDINGLY,** in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> The FLD/FAN dated June 07, 2016, assessing petitioner for deficiency income tax, EWT, and WTC, for taxable year 2013 is **CANCELLED** and **SET ASIDE**. Furthermore, the FDDA dated June 20, 2017, assessing petitioner for deficiency income tax in the

total amount of **Php10,639,553.03**, inclusive of surcharges and interest, for taxable year 2013, is **REVERSED** and **SET ASIDE**.

SO ORDERED."

In his Motion, respondent argues that the Court erred in ruling that the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) dated June 7, 2016, was prematurely issued prior to expiration of the fifteen (15)-day period to respond to the Preliminary Assessment Notice (PAN). Respondent asserts that Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the procedure regarding the taxpayer's remedies in deficiency assessments. Respondent continues that petitioner, being a taxpayer, is presumed to know the applicable periods for the filing of documents before the Bureau of Internal Revenue (BIR). However, instead of filing a reply to the PAN within the 15-day period provided by law, petitioner opted to request for an extension of another thirty (30) days within which to file its reply to the PAN. Respondent avers that by making said request for extension clearly signifies petitioner's option to waive its right to file its reply within the mandated 15-day period. Respondent expounds that Revenue Memorandum Order (RMO) No. 26-2016, specifically states that Protest against the PAN is not an indispensable requirement, that petitioner has the option to file a reply within 15 days from receipt of the PAN and that an FLD/FAN will still be issued regardless of the taxpayer's option to file a reply to the PAN.

On the other hand, in its Comment, petitioner submits that the Court correctly found that respondent violated petitioner's right to due process of law by not giving it the opportunity to dispute the PAN before the FAN was issued. Petitioner assails respondent's Motion for Reconsideration arguing that Section 228 of the NIRC of 1997, as amended, and its implementing revenue regulations clearly used the word "shall" in requiring respondent to properly inform the taxpayer of his assessment and afford the same fifteen (15) days to file a reply to the PAN. Petitioner points out that the PAN stage is a mandatory process and the BIR must strictly observe the prescribed procedure in its issuance of assessment notices. Moreover, petitioner asserts that evidence also show that respondent committed other acts in violation of its right to due process of law as a taxpayer (*i.e.*, no valid Letter of Authority). Lastly, petitioner maintains that by the very nature of its franchise, it is not liable for income tax since electric cooperatives enjoy permanent exemption from income taxes.

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

To recall, the assailed Decision cancelled respondent's tax deficiency assessments on the ground that petitioner's right to due process of law was violated when the FLD/FAN were prematurely issued prior to the lapse of the fifteen (15)-day period provided to petitioner within which to reply to the PAN. Nonetheless, respondent primarily contends that instead of filing a reply within the said period, petitioner opted to request for another thirty (30) days to file its reply to the PAN. Thus, petitioner has already waived its right to file to reply to the PAN.

The Court does not agree.

Time and again the Court bears emphasis that Section 228 of the NIRC of 1997, as amended,[1] explicitly requires that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made and be given the opportunity to respond to the same. This is part of the due process requirement in tax assessments so that taxpayers can be given the opportunity to explain or present their side throughout the process – from tax investigation through tax assessment.[2] To implement the said Section, the BIR issued Revenue Regulations (RR) No. 12-1999,[3] as amended by RR No. 18-2013,[4] which requires the BIR to perform its assessment functions in accordance with law, and strict adherence thereto, with their own rules of procedure, and always with regard to the basic tenets of due process. And, part of the administrative due process requirement is the recognition by the BIR that the taxpayer has the right to present evidence, and thus, should be allowed to submit comments or arguments with supporting documents at each stage in the assessment process.[5]

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[1] "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:

x x x

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.

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. x x x."

[2] *Commissioner of Internal Revenue v. Unioil Corp.*, G.R. No. 204405, August 4, 2021.

[3] "SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty", dated September 6, 1999.

[4] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment", dated November 28, 2013.

[5] "*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 (see illustration in ANNEX 'A' hereof).

In several cases, the Supreme Court has enjoined strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayers' constitutional rights.[6]

In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,*[7] the Court held that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules.

While, in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.,*[8] the Supreme Court made emphasizes that the 1997 NIRC and its corresponding revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. That failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

Also, in the case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.,*[9] the Supreme Court had occasion to state that the 15-day period provided under RR No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR and that "[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN."

Although *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 FLD/FAN even before petitioner was able to submit its Reply to the PAN.

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.

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

[6] See *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153. September 12, 2022; *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021; *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016; and *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.

[7] G.R. No. 185371, December 8, 2010.

[8] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[9] G.R. No. 222476, May 5, 2021.

Truly, 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.[10]

Additionally, while RMO No. 26-2016[11] indeed states that Protest against the PAN is optional/not mandatory, the same is of no moment since, *first*, the RMO took effect after respondent's issuance of the FLD/FAN and the subject taxable year herein is 2013, and, *second*, nowhere does it state in the said RMO that the 15-day period may not be observed. Furthermore, it is beside the point that petitioner submitted a request for an extension of 30 days since the fact remains that the FLD/FAN was prematurely issued, depriving petitioner of the opportunity to be heard on the PAN, in violation of the due process requirement in the issuance of tax assessments.

Indeed, there are no shortcuts when it comes to procedural due process requirements because basic rights, as embodied in the Constitution, are involved. For it proceeds from the basic truism that a void assessment bears no valid fruit.[12] 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 NIRC of 1997, as amended, and RR No. 12-99 is void and produces no effect.[13] The BIR is bound by its very own rules which expressly provide that the FLD/FAN shall be issued only upon receipt of the reply to the PAN or the expiration of the 15-day period to respond, in order to afford due process to the taxpayer.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to justify the reversal or modification of its findings in the Decision promulgated on July 7, 2025.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Resolution Promulgated on 07 July 2025) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RIGPIS-LIBAN
Associate Justice

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[10] See *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

[11] "SUBJECT: Policies and Guidelines in Handling Disputed Assessments," dated June 13, 2016.

[12] *Commissioner of Internal Revenue v. Unioil Corp.*, G.R. No. 204405, August 4, 2021.

[13] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

We Concur:

On Official Business
MARIA ROWENA MODESTO SAN-PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice