REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SOLUTIONS USING RENEWABLE ENERGY, INC., Petitioner,	**CTA CASE NO. 8974**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson, and* **MANAHAN,** *JJ.*
COMMISSION OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 23 2020 9:09 am

x---x

RESOLUTION

For resolution is respondent's **Motion for Reconsideration (Decision dated 09 July 2020)** filed on July 30, 2020, with petitioner's **Opposition to the Motion for Reconsideration** filed on October 14, 2020.

Respondent seeks reconsideration of the Decision dated July 9, 2020 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by petitioner Solutions Using Renewable Energy, Inc. is hereby **GRANTED**. Accordingly, the Formal Letters of Demands and Assessment Notices, all dated January 13, 2014, assessing petition for the following deficiency taxes for taxable year 2010, *viz.*: [1] deficiency income tax of ₱2,012,799.82; [2] deficiency value-added tax of ₱22,421,948.59; [3] deficiency expanded withholding tax on compensation of ₱377,826.27; [4] deficiency expanded withholding tax of ₱490,209.36; [5] deficiency documentary stamp tax of ₱491,290.73; and, [6] compromise penalty of ₱17,000.00, are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED**."

Respondent argues that the Court erred in ruling that (i) the Petition for Review filed by petitioner was timely filed; and, (ii) the Final Letters of Demand (FLDs) and Assessment Notices were issued in violation of petitioner's right to due process; hence, void ab initio.

Petitioner, on the other hand, avers that respondent's motion should be denied for lack of merit. It contends that there is nothing in respondent's motion which has not yet been carefully deliberated upon, thoroughly reviewed, and squarely resolved by the Court in the assailed Decision. Petitioner argues that the Court correctly found that respondent failed to comply with the requirements of due process by issuing the FLDs and Assessment Notices even before the lapse of the fifteen (15)-day period within which petitioner may reply to the Preliminary Assessment Notice (PAN).

The Court notes that no new argument has been adduced by respondent to warrant the reconsideration sought.

The first argument interposed by respondent is a mere rehash of the argument it raised in its Motion for Reconsideration filed on June 18, 2018 which has been squarely passed upon and resolved by the Court in the Resolution dated September 6, 2018 and in the assailed Decision.

As to respondent's second argument, that petitioner was not denied of due process, the same is bereft of merit.

Respondent contends that it is undisputed that the PAN was duly served to petitioner thru registered mail on December 27, 2013 and that the FLDs and Assessment Notices were also served to petitioner on January 13, 2014. He also avers that petitioner was able to file its protest on February 11, 2014, and that on April 11, 2014 it was given the chance to submit relevant documents which were given due course. Thus, respondent argues that petitioner was not denied due process as it was given the opportunity to be heard.

While respondent avers that the PAN was served to petitioner through registered mail on December 27, 2013, he still failed to refute that the same was only received by petitioner on January 7, 2014. Petitioner had fifteen (15) days from January 7, 2014 or until January 22, 2014 within which to file a protest or reply to the PAN. Thus, it is clear that the FLDs and Assessment Notices were prematurely issued on January 13, 2014.

To reiterate, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the Bureau of Internal Revenue (BIR) to actually consider the taxpayer's position on the proposed assessment.

The Supreme Court, in *Commissioner of Internal Revenue vs. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*,[1] has ruled that due process demands that the taxpayer receives the PAN, and that he is given the opportunity to respond thereto and that the CIR must consider the same, to wit:

> "Succinctly put, if it was determined that there exists sufficient basis to assess the taxpayer for deficiency taxes, the CIR or her duly authorized representative shall issue to the taxpayer a Preliminary Assessment Notice (PAN), to which the taxpayer is required to respond. Upon **receipt** of the PAN, the taxpayer is granted fifteen (15) days, within which to file a reply. If he fails to do so within the prescribed period, he shall be considered in default and only then shall the CIR or her duly authorized representative issue an FLD/FAN, calling for the payment of the assessed deficiency tax liability, surcharges and penalties.
>
> Clearly, due process demands that the taxpayer receives the PAN **and** that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond "opportunity to be heard" as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*, held that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the [CIR] must consider the evidence presented***.
>
> In this case, the records show that respondent received the PAN on February 5, 2009. However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued."

The fatal infirmity that attended the issuance of the FLDs and Assessment Notices prior to the lapse of the fifteen (15)-day period to respond to the PAN was not cured by petitioner's filing of a protest to the FLDs and Assessment Notices.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated July 9, 2020.

---

[1] G.R. No. 227616, June 19, 2019.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Decision dated 09 July 2020)** is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice