REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2387
(CTA Case No. 8974)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

- versus -

SOLUTIONS USING RENEWABLE ENERGY, INC.,
Respondent.

Promulgated:
DEC 06 2022 2:30 pm

x - x

RESOLUTION

UY, *J*.:

For resolution is the ***MOTION FOR RECONSIDERATION (En Banc Decision dated 23 June 2022)*** filed by petitioner through registered mail on July 13, 2022,[1] with ***Comment [To The Respondent's July 12, 2022 Motion for Reconsideration]*** filed by respondent on September 9, 2022.[2]

In the said *Motion*, petitioner prays that the Decision dated July 9, 2020 of the Court in Division(sic)[3] be reversed and set aside, the dispositive portion of which reads:

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[1] EB Docket, pp. 115 to 120.
[2] EB Docket, pp. 125 to 127.
[3] Assailed Decision of the Court *En* Banc dated June 23, 2022.

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated July 9, 2020 and the Resolution dated October 23, 2020 rendered by the First Division of this Court in CTA Case No. 8974 are **AFFIRMED**.

Consequently, the CIR or any person acting on his behalf is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against respondent SURE during the pendency of the instant case.

SO ORDERED."

Petitioner's Motion for Reconsideration:

In her *Motion for Reconsideration*, petitioner repleads her argument that the Petition for Review by respondent was filed out of time asserting that the letter from the BIR granting respondent another fifteen (15) days to submit relevant documents in support of the protest has no leg to stand on.

Petitioner reiterates that the law and regulation clearly limit a 60-day period within which to submit additional documents and the said period is not subject to any agreement and/or compromise by the parties as well as any amendment or revision except by Congress. Allegedly, to sustain the position of the Court in Division is to entertain an amendment that is not provided by law.

Again, petitioner stresses that at the time the notice of extension was issued, the period to submit documents has already lapsed in accordance with law. Hence, there is no longer any period to extend. Even assuming arguendo that the extension made with authority, it cannot operate to renew a period which has already lapsed.

Allegedly, the reckoning of the start of the 180-day period for petitioner to decide is provided by law and cannot be made to depend on the date required by an agent of the petitioner when the same is outside the 60-day period provided in law and in applicable regulations. Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and does not provide any exceptions.

According to petitioner, the period within which to file a Petition for Review is jurisdictional in nature. Absent such compliance, the assessment becomes final, executory, demandable and non-appealable to the Court of Tax Appeals.

Moreover, petitioner reasserts that the issuance of the Formal Letters of Demand (FLDs) and Assessment Notices did not violate respondent's right to due process as the Preliminary Assessment Notices (PAN), FLDs and Assessment Notices were duly served and received. Respondent was notified of the assessment and was given ample time and opportunity to protest the findings of the assessment against it.

Petitioner avers that due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding and that it is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself.

Petitioner admits that though there was a mistake as to the date of issuance of the FLDs/Assessment Notices, it would not amount to the instant violation of due process. Petitioner contends that respondent was notified of the assessment and was given ample time and an opportunity to protest the findings of petitioner. Despite the slight infirmity as regards the date of issuance of FLDs/Assessment Notices, this does not necessarily result in violation of due process considering that respondent was able to intelligently contest the FLD/Assessment Notices, was informed of the factual and legal bases of the assessment and was afforded opportunity to defend itself.

Respondent's Comment:

Respondent submits that a perusal of the allegations in petitioner's motion would show that there is nothing therein that has not yet been carefully deliberated upon, thoroughly reviewed and squarely resolved by the Court in its Decision dated June 23, 2022. Thus, the said motion fails to present any new matter or reason that would warrant the reversal of the Court's Decision.

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THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

After a careful examination and consideration of petitioner's Motion for Reconsideration, it is apparent that no new issues are raised in the said Motion for Reconsideration. The arguments presented are mere rehash of what have been alleged and reiterated in the Petition for Review dated December 7, 2020, and which have already been considered, weighed and resolved in the assailed Decision.

Nevertheless, this Court finds it necessary to emphasize that, as stated in the Court in Division's Resolution dated July 9, 2020, the Court is mindful of the procedure under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended and Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, anent the reckoning of the 180-day period. Nonetheless, the Court cannot turn a blind eye to the glaring injustice committed against respondent, who was made to believe, through the Letter dated June 6, 2014 issued by Revenue District Officer Josephine S. Virtucio, that the 180-day period should be reckoned from the re-submission of the supporting documents on June 25, 2014. Having done so, petitioner cannot be absolved from its consequences and now argue that the Petition for Review was filed out of time. It is the duty of courts and judicial bodies to serve the ends of justice and not to perpetrate injustice.[4]

Moreover, petitioner's argument that the mistake as to the date of issuance of the FLDs/Assessment Notices does not amount to violation of due process as respondent was notified of the assessment and was given ample time and opportunity to protest the findings of petitioner is erroneous.

To be clear, the right to due process requirement was specifically included in Section 228 of the NIRC of 1997, as amended and Section 3 of RR No. 12-99, as amended by RR No. 18-2013. In observing due process in the issuance of tax assessments, a taxpayer is given a period of fifteen (15) days from receipt of the PAN to file a protest with the Bureau of Internal Revenue (BIR). It is only

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[4] *Times Transportation Co. Inc. vs. National Labor Relations Commission and Times Employees Union*, G.R. Nos. 148500-01, November 29, 2006.

after the lapse of the prescribed 15-day period that the BIR may issue the corresponding FLD and Assessment Notice.

In this case, respondent received the FLDs and Assessment Notices on January 13, 2014, or 8 days after respondent received the PAN on January 7, 2014. Without waiting for the lapse of the 15-day period, petitioner already issued the FLDs and Assessment Notices. By the non-observance of the 15-day period provided by law, petitioner disregarded the mandatory due process requirement laid down under the law, thereby denying respondent of its right to due process. As a rule, tax assessments issued in violation of the due process rights of a taxpayer are null and void and of no force and effect.[5]

In sum, We find no compelling reason to modify or reverse our findings and conclusions reached in the Assailed Decision.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[5] *National Power Corporation vs. The Province of Pampanga and Pia Magdalena D. Quibal*, G.R. No. 230648, October 6, 2021.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice