REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LANAO DEL NORTE ELECTRIC COOPERATIVE [LANECO], *Petitioner,*	**CTA CASE NO. 8769** For: Assessment
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES, *Respondent.*	Promulgated: OCT 11 2019 2:20 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 11, 2019 is a Petition for Review[1], filed on February 20, 2014, by petitioner Lanao Del Norte Electric Cooperative [LANECO] against respondent Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares, assailing the respondent's Decision, denying petitioner's Protest against the assessment for the alleged deficiency on Value Added Tax (VAT) in the amount ₱18,469,356.21, inclusive of increments, for calendar year (CY) 2008.

The facts, as borne by the records[2] of the case, are as follows:

Petitioner is an electric cooperative with certificate of franchise to distribute electricity to its covered areas within the Province of

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[1] Docket, Vol. I, pp. 6-40.
[2] As culled from the Decision dated April 5, 2017 issued by the CTA *En Banc*, CTA EB No, 1452, Docket, pp. 234-235.

Lanao del Norte, with principal office address at 9209, Sagadan, Tubod, Lanao del Norte.[3]

Respondent 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.

On December 11, 2009, petitioner received the Letter of Authority[4] (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.

Petitioner received the First Notice[5], dated December 10, 2009, and Second Notice[6], dated January 5, 2010, informing petitioner 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, petitioner received a Letter[7] dated February 9, 2011, requesting petitioner to appear for informal conference.

On February 20, 2012[8], petitioner received the Preliminary Assessment Notice[9] (PAN) dated February 8, 2012, with Details of Computation and Details of Discrepancies[10], assessing petitioner for

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3 Par 2.1, Petition for Review, CTA EB No. 1452, Docket, p. Vol. 1, p. 2.
4 Exhibit "R-1", BIR Records, p. 11.
5 Annex "I" of Petition for Review, CTA EB No. 1452, Docket, p. 62 and Exhibit "R-2", BIR Records, p. 10.
6 Annex "J" of Petition for Review, CTA EB No. 1452, Docket, p. 63 and Exhibit "R-3", BIR Records, p. 14.
7 Par. 5.4, Petition for Review and Annex K of Petition for Review, CTA EB No. 1452, Docket, pp. 9-10 and 64 and Exhibit "R-4", BIR Records, p. 52.
8 Exhibit "P-10" was marked in open court which pertains to the date of receipt by petitioner of the PAN on February 20, 2012, Minutes of the hearing dated, July 3, 2018, p. 836 and Docket, Vol. I, p. 88.
9 Annex "P" of Petition for Review, CTA EB No. 1452, Docket, p. 70.
10 Exhibit "R-8", BIR Records, pp. 209-211.

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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, petitioner received the Formal Letter of Demand[11] (FLD) dated February 29, 2012, with Details of Computation and Details of Discrepancies and Assessment Notice[12], 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.

Petitioner filed its Protest against FLD on September 6, 2012[13] and September 7, 2012[14] to the BIR. It also submitted letters requesting for re-evaluation of the assessment against it.[15]

On December 18, 2012, petitioner received the Final Decision on Disputed Assessment[16] (FDDA), dated November 13, 2012 issued by the BIR Revenue Region No. 16, Cagayan de Oro City, denying petitioner'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, petitioner 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.[17]

On January 23, 2014[18], petitioner received the Decision[19] issued by the former Commissioner Kim S. Jacinto-Henares, which ruled that the assessment has become final and executory and ordered petitioner to pay the alleged deficiency on VAT in the amount ₱18,469,356.21, inclusive of increments, for calendar year CY 2008.

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[11] Annex "Q" of Petition for Review, CTA EB No. 1452, Docket, p. 71.
[12] Annexes "R" and "R-1" of Petition for Review, CTA EB No. 1452, Docket, pp. 72-73 and Exhibits "R-7" and "R-10, BIR Records, pp. 212-215.
[13] Par. 5.18 of Petition for Review and Annexes S of Petition for Review, CTA EB No. 1452, Docket, pp. 15 and 74-75.
[14] Par. 5.19 of Petition for Review Annexes T of Petition for Review, CTA EB No. 1452, Docket, pp. 15 and 76-77.
[15] CTA EB No. 1452, Docket, pp. 16-17.
[16] Annex "X" of Petition for Review, CTA EB No. 1452, Docket, p. 84.
[17] Par. 5.26, Petition for Review, CTA EB No. 1452, Docket, p. 18.
[18] Par, 3.1, Petition for Review, Docket, Vol. 1, p. 8.
[19] Annex "H" of Petition for Review, CTA EB No. 1452, Docket, pp. 53-60.

Petitioner filed its Petition for Review incorporating its Motion for Suspension of the Collection of Tax, on February 20, 2014. On March 11, 2014, respondent filed his Comment on Petitioner's Motion to Suspend Collection of Taxes by the Issuance of Preliminary Injunction with Motion to Dismiss.[20] Petitioner filed its Opposition to the Motion to Dismiss & Rejoinder to the Comment to the Motion to Suspend Collection of Taxes[21], through registered mail on March 28, 2014, which was received by the Court on April 10, 2014. On April 28, 2014, Respondent filed his Reply (On Petitioner's Opposition to the Motion to Dismiss & Rejoinder to the Comment to the Motion to Suspend Collection of Taxes).[22]

On April 25, 2014, respondent filed his Answer (Ad Cautelam)[23], interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

Respondent incorporates and repleads all the foregoing averments and by way of special and affirmative defenses further states:

PETITIONER FAILED TO TIMELY FILE A PROTEST AGAINST THE FORMAL LETTER OF DEMAND AND FINAL ASSESSMENT NOTICE.

10. The Formal Letter of Demand and Final Assessment Notice dated February 29, 2012 which was stamped received by petitioner on **March 09, 2012** already attained finality. The **belated protest** through a reply letter to the Regional Director was filed by the petitioner on **September 6, 2012**. This roughly six (6) month wait is beyond the prescribed period provided under Section 228 of the Tax Code in relation to Revenue Regulation 12-99.

11. Petitioner's failure to timely file a protest against the Formal Letter of Demand and Final Assessment Notice is duly admitted on its very own Petition for Review. These judicial admissions are bolstered under paragraphs 5.12

[20] Docket, Vol. I, pp. 135-145.
[21] Docket, Vol. I, pp. 162-174.
[22] Docket, Vol. I, pp. 192-203.
[23] Docket, Vol. 1, pp. 176-191.

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and 5.18 under the heading 'V. FACTS OF THE CASE', to wit:

> '5.12 xxx the Preliminary Assessment (PAN) dated February 8, 2012 which was stamped received by the receiving staff on February 20, 2012 and ***the Formal Letter of Demand (FAN) dated February 29, 2012 which was stamped received on March 9, 2012*** ***was buried among the heap of documents that the Supervising Manager from NEA Manila and then the Officer-in-Charge [OIC Manager] has to attend to.*'** (emphasis and underscoring supplied)
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> '5.18 ***On September 6, 2012, the OIC-Manager in response to the Formal Letter of Demand (FAN) dated February 29, 2012*** xxx (emphasis and underscoring supplied)

12. It is petitioner's own admission as quoted above that the Formal Letter of Demand and Final Assessment Notice dated February 29, 2012 was duly served and received by petitioner on March 9, 2012 and that it responded to the Formal Letter of Demand and Final Assessment Notice only on September 06, 2012.

13. As provided by law and the implementing rules, **petitioner has only thirty (30) days from March 09, 2012 or until April 08, 2012 within which to file its protest to the Formal Letter of Demand and Final Assessment Notice.** However, petitioner belatedly filed its protest to the Formal Letter of Demand and Final Assessment Notice only on **September 06, 2012** or **more or less 150 days later** than the prescribed period provided under Section 228 of the Tax Code in relation to Revenue Regulation 12-99.

14. The relevant provisions on protesting an assessment are Section 228 of the Tax Code in relation to Revenue Regulation No. 12-99 which provides, to wit:

SEC. 228. Protesting of Assessment. -

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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.

'Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from the receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from the filing of the protest, all relevant supporting documents shall have been submitted; **otherwise, the assessment shall become final.'** (emphasis supplied)

xxx xxx xxx

Revenue Regulations 12-99

SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

xxx xxx xxx

3.1.5 Disputed Assessment. – **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx**

xxx xxx xxx

If the taxpayer fails to file a valid protest against formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

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15. In the case of Oceanic Wireless Network Inc. vs. Commissioner of Internal Revenue, the Court of Tax Appeals and the Court of Appeals, the Supreme Court held that:

> '**<u>A request for reconsideration must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise, the decision becomes final, unappealable and therefore, demandable.</u> A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested** xxx' (emphasis supplied and underscoring supplied)

16. Further, as clarified in the case of Ferdinand Marcos II vs. Court of Appeals, Commissioner of Internal Revenue and Herminia D. De Guzman, the Supreme Court held that:

> 'Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in Section 229 of the NIRC on protests on assessments of internal revenue taxes.
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> xxx xxx xxx
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> The subject tax assessments having become final, executory and enforceable, the same can no longer be contested by means of a disguised protest.'

17. The failure to file an administrative protest within the period prescribed ipso jure makes the assessment final, unappealable and therefore demandable. Unfortunately for the petitioner, the failure to file protest is very much apparent from the admissions in the petition for review as cited and discussed above. Being such, the

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assessments are not subject to judicial scrutiny and beyond the jurisdiction of the Honorable Court.

THE INSTANT PETITION WAS ALSO FILED BEYOND THE 30-DAY PERIOD FROM RECEIPT OF THE FINAL DECISION ON DISPUTED ASSESSMENT.

18. Section 228 of the National Internal Revenue Code explicitly provides:

> SEC. 228. Protesting of Assessment.– x x x
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> x x x x
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> '**If the protest is denied in whole or in part,** or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision,** or from the lapse of the one hundred eighty (180)-day period; **otherwise the decision shall become final, executory and demandable.**' (Emphasis and underscoring Supplied)

19. In **RCBC v. CIR, G.R. No. 168498, April 24, 2007,** the Honorable Supreme Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) **await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.**

20. With all due respect, petitioner's appeal must be outrightly dismissed for being filed out of time.

21. Petitioner received the Final Decision on Disputed Assessment dated November 13, 2012 on **December 18, 2012. The date of receipt is evident from the stamp 'received' by petitioner in Annex 'W'**

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attached to its very own Petition for Review which is even certified as true copy from the original document itself.

22. By its very own admission under paragraph 5.28 under the caption 'V. FACTS OF THE CASE', to wit:

> on **November 13, 2012, the OIC Regional Director rendered a Final Decision on Disputed Assessment denying petitioner's protest and request for re-evaluation and reinvestigation** on the ground of technicality reiterating its stand on September 19, 2012 letter-that the assessment has already become final and executory and demandable for failure to raise the objection within the prescribed period provided for by law. **Certified copy of the decision is hereto attached as Annex 'W'.'** (Emphasis and underscoring supplied)

23. Going by the tenor of Section 228 of the NIRC, petitioner has therefore 30 days **from December 18, 2012,** within which to appeal the final decision on disputed assessment to the Honourable Court of Tax Appeals, or **until 17 January 2013**.

24. Unfortunately for the petitioner, it filed its appeal with the Honourable Court only on **20 February 2014.** More than one year from that prescribed under Section 228 of the Tax Code.

25. Consequently, the instant petition should not be given due course, Section 1(f) of Rule 16 of the Rules of Court is explicit:

> 'Rule 16
> MOTION TO DISMISS
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> **SECTION 1.** Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
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> x x x

> (f) That the cause of action is barred by a prior judgment or by the statute of limitations;'

26. Being so, the Honourable Court cannot take cognizance over the instant petition considering that it is a court of special jurisdiction and can only take cognizance of matters as are clearly within its jurisdiction. Section 9 of Republic Act 9282, amending RA 1125 reads:

> **'SECTION 9.** Section 11 of the same Act is hereby amended to read as follows:
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> 'SEC. 11. Who may Appeal; Mode of Appeal; Effect of Appeal. – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue,** the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within</u> thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. (Emphasis Supplied)
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> x x x'

27. Section 7(a)(2) in relation to Section 9 of Republic Act 9282, further provides:

> **'SECTION 7.** Section 7 of the same Act is hereby amended to read as follows:
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> 'Sec. 7. Jurisdiction. – The CTA shall exercise:
>
> '(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> '(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

28. Likewise, Section 3, Rule 4 and Section 3(a) Rule 8 of the Revised Rules of the Court of Tax Appeals, state:

> RULE 4
> Jurisdiction of the Court

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SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

x x x x

RULE 8
Procedure in Civil Cases

x x x x

SECTION 3. Who May Appeal; Period to File Petition. – (a) A party adversely by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance,

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> the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

29. In **RCBC vs. CIR, GR No 168498, April 24, 2007,** the Honourable Supreme Court held:

> 'From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. <u>Such period is not merely directory but mandatory and it is beyond the power of the court to extend the same</u>.**' (Emphasis Supplied)

30. Accordingly, petitioner should have filed the instant petition for review within 30 days from receipt of the Final Decision on Disputed Assessment counted **from December 18, 2012 or until 17 January 2013.**

31. Hence, when petitioner filed the appeal on **20 February 2014,** the Honorable Court did not acquire jurisdiction over the petition for review docketed as CTA Case No. 8769. Resultantly, the assessments had already become final and demandable for failure of petitioner to file its appeal within the 30-day period provided by law.

RESPONDENT OBSERVED BOTH PROCEDURAL AND SUBSTANTIAL DUE PROCESS

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IN ISSUING THE ASSESSMENT.

32. In the alternative that the Honourable Court will find that it has jurisdiction over the instant petition; respondent posits that she observed both procedural and substantial due process in issuing the assessment subject of this case.

33. Petitioner was informed of the factual and legal basis of the assessment. The Preliminary Report of Investigation, Preliminary Assessment Notice, Formal Letter of Demand and Final Assessment notice and Final Decision on Disputed Assessment 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.

34. Likewise, 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.

   a. It is petitioner's mistaken interpretation that the issuance of the PAN and the FAN overlapped. No amount of legal hermeneutics could justify such an interpretation.

   b. On the contrary, the issuance of the PAN is on February 08, 2012 while that of the FAN is on February 29, 2012 which is equivalent to 21 days interval.

   c. Likewise, if the basis would be the receipt, the PAN was received on February 20, 2014 while the FAN 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 12-99.

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL.

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35. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**

36. 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. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc, G.R No. 136975, March 31, 2005).** The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

37. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of tax Appeals, 164 SCRA 524)*. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

THE ASSESSMENT ISSUED AGAINST PETITIONER HAS FACTUAL AND LEGAL BASES.

38. Petitioner was informed of the factual and legal bases of the assessment. The Preliminary Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment 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.

39. The Revenue Officers performed a comprehensive audit procedure taking into account all the relevant documents. Consequently, petitioner is liable to pay for deficiency tax assessments for taxable year 2008 in the aggregate amount of Php18,469,356.21. The following is a summary of the findings of the revenue examiner as a result of the investigation conducted, to wit:

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Basic VAT Deficiency	12,518,959.48
Interest	7,950,396.73
Total VAT Deficiency	**20,469,356.21**
Less: Partial Payment	2,000,000.00
Balance	**18,469,356.21**

40. To reiterate, the assessments issued against petitioner must stand as supported by the following factual and legal bases stated in the Details of Computation and Details of Discrepancies (attached to the Formal Letter of Demand and Final Assessment Notice dated 29 February 2012), reiterated and incorporated hereunder:

DETAILS OF COMPUTATION

Value-Added Tax		
Total VATable Receipts per Returns filed		P 132,179,116.98
Multiply by VAT Rate		12%
Output Tax		15,861,494.04
Less: Allowed Input Tax		
Total input tax claimed per return	P14,790,756.85	
Less: Disallowed input tax (schedule No. 1)	12,518,959,48	2,271,797.37
VAT due and payable		13,589,696.67
Less: VAT paid		1,070,737.19
Basic VAT Deficiency		12,518,959.48
Add: 20% Interest p.a. (01.26.09-02.29.12)		7,950,396.73
Total VAT Due and payable		**P 20,469,356.21**
Less: Partial payments made		
1st payment dated March 07, 2011 (LBP-Iligan)		1,000,000.00
2nd payment dated May 13, 2011 (LBP-Iligan)		1,000,000.00
TOTAL TAX DUE AND DEMANDABLE		**P 18,469,356.21**

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DETAILS OF DISCREPANCIES

1. Value Added Tax Deficiency.

In accordance with Section 4.108-1 and 4.108-2 of Revenue Regulations No. 16-2005 dated September 1, 2005, implementing the provisions as embodied in Republic Act No. 9337 (Tax Code), the gross receipts derived from the sale of electricity by generation, transmission, and/or **distribution companies (which includes electric cooperatives)** is subject to VAT, equivalent to 12 % percent of the gross receipts (excluding VAT), as amended by RMC No. 7-2006).

Investigation of your books of accounts disclosed that the input tax you have claimed arise from purchases of goods and services which includes purchases of power from GENCO (now PSALM) and NPC-transco (now NGCP). Pursuant to Revenue Memorandum Circular No. 61-2005, clarifying the VAT provisions of R.A. 9337 applicable to the power industry, to wit:

'xxx In general, the sources of input tax may be classified as follows:

a. From local purchases or importation of capital goods; and
b. From other sources, such as purchase of goods (other than capital goods), properties, and services.

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The Generation and Transmission companies shall bill the end-user through the Distribution Companies and Electric Cooperatives for sale and transmission of electricity and ancillary services including the VAT thereon. The amount collected from the end-user for such charges shall not form part of the gross receipts of the Distribution Companies and Electric Cooperatives**. The Distribution Companies and Electric Cooperatives shall not claim an input tax on such pass-through charges**. The amount collected from the end-user as payment for the generation and transmission charges including the VAT thereon shall form part of the gross receipts and output VAT of the Generation Company or Transmission Company Accordingly.'

Thus, the P12,518,959.48 claimed input tax from pass through charges disallowed.

2. The 20% interest per annum has been imposed pursuant to the provision of Section 249 (B) of the Tax Code. The amount of interest shall have to be adjusted to conform to the date of actual payment.

41. As decreed by the Honourable Supreme Court:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. 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 in favour of the correctness of tax assessments.'

42. Well settled in the field of taxation – the burden of proof is on the taxpayer to present evidence to show the incorrectness of the assessment. Petitioner miserably failed to provide any concrete proof to justify its claim in assailing the assessments issued against it."

On June 19, 2014, the Court in Division issued a Resolution[24], which granted respondent's Motion to Dismiss for lack of jurisdiction. The Court in Division found that the subject assessment has become

[24] Docket, Vol. I, pp. 208-212.

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final and executory for failure of petitioner to protest against the FLD on time. The Court in Division ruled that:

> "In the present case, the assessment has admittedly become final and executory for failure of petitioner to protest against the Formal Letter of Demand and Final Assessment Notice on time. The law categorically states that assessment may be protested administratively within thirty (30) days from receipt, otherwise, it shall become final. As indicated in its Petition for Review, petitioner received the Formal Letter of Demand on March 9, 2012 and it protested the said assessment only on September 6, 2012. Since petitioner's Protest Letter was filed beyond the prescriptive period, the assessment became final and executory.
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> The records likewise reveal that even in the Decisions of OIC-Regional Director Alberto S. Olasima, Revenue Region No. 16, Cagayan De Oro City and Commissioner Kim S. Jacinto-Henares, the subject assessment has been considered as final, executory and demandable for failure of petitioner to request for a reinvestigation or to file a protest letter within the period prescribed by law.
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> **WHEREFORE**, respondent's **"Motion to Dismiss"** is **GRANTED** for lack of jurisdiction. Accordingly, it has no reason to resolve the other pending incidents.
>
> **SO ORDERED**."

Petitioner filed a Motion for Reconsideration [Re Resolution Promulgated June 19, 2014][25], through registered mail on July 10, 2014 and received by the Court on July 17, 2014. It also filed a Supplemental Pleadings in Support of the Motion for Reconsideration [Re Resolution Promulgated June 19, 2014][26], through registered mail on August 26, 2014 and received by the Court on September 3, 2014. Respondent filed a Comment (Re: Motion for Reconsideration dated July 10, 2014)[27], on August 15, 2014. He also filed a Comment (Re:

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[25] Docket, Vol. I, pp. 213-233.
[26] Docket, Vol. I, pp. 277-280.
[27] Docket, Vol. I, pp. 248-258.

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Supplemental Pleadings in Support of the Motion for Reconsideration dated August 22, 2014)[28], on September 17, 2014.

Petitioner presented its witnesses, Leonor S. Quintia[29], Lilian I. Duarte[30] and Danilo T. Pasiliao.[31]

In support of its Motion for Reconsideration, petitioner filed its Formal Offer of Exhibits[32], through registered mail on November 24, 2015 and received by the Court on December 7, 2015, offering Exhibits "P-1", "P-1-A", "P-2", "P-3", "P-4", "P-5" and its sub-markings, "P-6", "P-7", "P-7-a", "P-8" and sub-markings and "P-9", as its documentary evidence. Respondent filed his Comment (Re: Petitioner's Formal Offer of Exhibits)[33], on December 7, 2015.

In the Resolution[34] 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".

The admitted documentary evidence for the petitioner are as follows:

Exhibit:	**Description:**
P-1-A	Designation as Officer-In-Charge of Leonor S. Quintia
P-4	Certification issued by National Power Corporation (NAPOCOR) dated October 31, 2012 to the effect that LANECO has paid and/or remitted the VAT of its power purchase in the year 2008 with TRANSCO, signed by Lilian I. Duarte of NAPOCOR Finance Division
P-5 and its sub-markings	Judicial Affidavit of Lilian I. Duarte
P-6	The certified true copy of the Certification issued by NAPOCOR
P-7	The letter of OIC -Assistant Commissioner Nestor S. Valeroso dated August 11, 2014

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28 Docket, Vol. I, pp. 312-318.
29 Minutes of the hearing dated September 18, 2014, Docket, Vol. I, pp. 333-336.
30 Minutes of the hearing dated June 11, 2015, Docket, Vol. I, pp. 440-443.
31 Minutes of the hearing dated November 12, 2015, Docket, Vol. I, pp. 479-480.
32 Docket, Vol I, pp. 492-495.
33 Docket, Vol II, pp. 503-506.
34 Docket, Vol II, pp. 511-512.

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P-7-a	The computer-generated data from the BIR National Data Center which is attached to the letter of Assistant Commissioner Valeroso (Exh. P-7) showing the VAT Sales of the power purchase of LANECO from NAPOCOR and TRANSCO
P-8 and sub-markings	The March 19, 2015 letter of LANECO Board Secretary, the late Benjamin Cabatic, addressed to Assistant Commissioner Valeroso requesting for a clarificatory tenor of its August 11, 2014 letter (Exh. P-7)
P-9	The reply of Assistant Commissioner Valeroso of the March 19, 2015 letter (Exh. P-8) of LANECO Board Secretary

The Court denied petitioner's Motion for Reconsideration [Re: Resolution Promulgated June 19, 2014] in the Resolution[35] dated March 31, 2016.

Hence, petitioner filed a Petition for Review[36] before the Court *En Banc*, filed on April 28, 2016. The case was docketed as CTA EB No. 1452.

On July 13, 2016, respondent filed a Motion to Admit Attached Comment[37], which was subsequently granted in a Resolution[38] dated July 21, 2016. The Resolution also required the parties to submit their memoranda within thirty days from receipt of notice. On August 15, 2016, respondent filed a Manifestation[39] that the previously filed Comment shall be adopted as respondent's Memorandum. Petitioner filed its Memorandum[40], through registered mail on September 26, 2016, which was received by this Court on October 5, 2016.

In the Decision[41] dated April 5, 2017, the Court *En Banc* granted the Petition for Review, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, the Petition for Review is **GRANTED**. Accordingly, the Resolutions

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[35] Docket, Vol II, pp. 515-520.
[36] CTA EB No. 1452, Docket, pp. 1-34 and Docket, Vol. II, pp. 521-554.
[37] CTA EB No. 1452, Docket, pp. 150-155 and 157-170.
[38] CTA EB No. 1452, Docket, pp. 172-174 and Docket, Vol. II, pp. 565-567.
[39] CTA EB No. 1452, Docket, pp. 175-178.
[40] CTA EB No. 1452, Docket, pp. 181-217.
[41] CTA EB No. 1452, Docket, pp. 233-255 and Docket, Vol. II, pp. 572-594.

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> 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.**"

The Pre-Trial Conference was reset[42] on February 1, 2018. Petitioner's Pre-Trial Brief[43] was filed through registered mail on November 14, 2017 and received by the Court on December 4, 2017; while Respondent's Pre-Trial Brief[44] was filed on January 26, 2018.

During the Pre-Trial Conference, petitioner manifested that it will be adopting all the testimonies of the witnesses presented during the hearing on the Motion for Reconsideration as well as the written Formal Offer of Evidence.[45]

On March 5, 2018, the parties filed their Joint Stipulation of Facts and Issue[46], which was approved by the Court in its Resolution[47] dated March 12, 2018. The Court issued its Pre-Trial Order[48] on April 16, 2018.

Respondent presented Revenue Officer, Dante C. Velayo[49] and Assistant Chief Revenue Officer Emelita M. Braña[50], as his witnesses,

On August 7, 2018, respondent filed his Formal Offer of Evidence[51], 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. Petitioner filed its Comment/Opposition (To Respondent's Formal Offer of

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[42] Order dated October 30, 2017, Docket, Vol. II, p. 688.
[43] Docket, Vol. II, pp. 690-699.
[44] Docket, Vol. II, pp. 703-707.
[45] Minutes of the hearing dated February 1, 2018, Docket, Vol. II, p. 715.
[46] Docket, Vol. II, pp. 743-750.
[47] Docket, Vol. II, p. 752.
[48] Docket, Vol. II, pp. 764-770.
[49] Minutes of the hearing dated July 3, 2018, Docket, Vol. II, pp. 835-836.
[50] Minutes of the hearing dated August 2, 2018, Docket, Vol. II, pp. 833-834.
[51] Docket, Vol. II, pp. 819-824.

Evidence)[52], through registered mail on September 27, 2018 and received by the Court on November 8, 2018.

The Court admitted all the exhibits formally offered by respondent in the Resolution[53] dated November 23, 2018.

Respondent's admitted documentary exhibits are as follows:

Exhibit:	Description:
R-1	Letter of Authority with LOA No. LOA-000-46035 dated December 1, 2009
R-2	First Notice dated December 10, 2009
R-3	Second Notice dated January 5, 2010
R-4	Notice of Informal Conference (NIC) dated February 9, 2011
R-5	Details of discrepancy
R-6	Memorandum for issuance of Preliminary Assessment Notice dated December 1, 2009
R-7	Formal Letter of Demand (FLD), Details of Discrepancies and Assessment Notices dated February 29, 2012
R-8	Preliminary Assessment Notice dated February 8, 2012 with attached Details of Discrepancies
R-10	Audit Result/Assessment Notice (BIR Form No. 0401

Respondent's Memorandum[54] was filed on January 31, 2019; while Petitioner's Memorandum was filed through registered mail on January 28, 2019 and received by the Court on February 27, 2019. The case was submitted for decision earlier on February 11, 2019.[55] In its Resolution dated March 11, 2019, the Court admitted petitioner's Memorandum stating that –

> "While petitioner's 30th day in filing its Memorandum was due on January 26, 2018 (sic), a Saturday, nonetheless, the filing made on January 28, 2019, a Monday, was well within the period allowed by Section 1, Rule 22 of the Rules of Court."

[52] Docket, Vol. II, pp. 837-841.
[53] Docket, Vol. II, pp. 844-845.
[54] Docket, Vol. II, pp. 851-870.
[55] Resolution dated February 11, 2019, Docket, II, p. 872.

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ISSUE

The parties submitted[56] the following issue for the Court's resolution:

> Whether or not the VAT deficiency assessment of respondent in the aggregate amount of ₱18,469,356.21 for the taxable year 2008 inclusive of interests and surcharges is valid.

At the outset, the Court finds it no longer necessary to discuss its jurisdiction to resolve the instant Petition for Review for the same was extensively discussed and resolved by the Court *En Banc* in its Decision dated April 5, 2017. The relevant portion[57] of the Decision is quoted, as follows:

> "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."

Considering the foregoing, the Court shall now resolve the merits of the case.

In this case, petitioner raises as one of its arguments, that it was denied due process considering that the FLD was issued prior to the lapse of the period of fifteen (15) days given to respond to the PAN.[58] On the other hand, respondent argues that he observed both the procedural and substantial due process in issuing the assessment. Moreover, he asserts that there was an interval of twenty-one (21) days between the issuance of the PAN on February 8, 2012 and the issuance of the FLD on February 29, 2012. Respondent further claims that if the basis would be the receipt of PAN and FLD, it must be noted that more than fifteen (15) days had already elapsed between the

[56] Joint Stipulation of Facts and Issue, Docket, Vol. II, p. 748.
[57] CTA EB No. 1452, Docket, p. 242 and Docket, Vol. II, p. 581.
[58] Par. 5.23, Petition for Review, Docket, Vol. I, p. 21.

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receipt of PAN on February 20, 2012 and the receipt of FAN on March 9, 2012.[59]

Taxation is an essential attribute of sovereignty and the lifeblood of every nation - are doctrines well-entrenched in our jurisdiction. Taxes are the government's primary means to generate funds needed to fulfill its mandate of promoting the general welfare and well-being of the people and so should be collected without unnecessary hindrance. While taxation *per se* is generally legislative in nature, collection of tax is administrative in character. Thus, Congress delegated the assessment and collection of all national internal revenue taxes, fees, and charges to the BIR. Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible. **However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.**[60]

Consequently, the Court needs to resolve the issue on the alleged violation of due process in the issuance of the assessment since this is crucial in determining the validity of the assessment.

Central to the resolution of the issue are Section 228 of the NIRC of 1997, as amended and Revenue Regulations (RR) No. 12-99, as amended. They lay out the procedure to be followed in tax assessments.

A cursory reading of the relevant portions of Section 228 of the NIRC of 1997, as amended, shows:

> SECTION. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative

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[59] Respondent's Answer (Ad Cautelam), Docket, Vol. I, pp. 185-186.
[60] As culled from *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. No. 197945, July 9, 2018.

finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings xxx

xxx xxx xxx

The taxpayer 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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

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Implementing the said provision is Section 3.1.2 of RR No. 12-99, as amended, which provides as follows:

"SECTION 3. *Due Process Requirement in the Issuance of Deficiency Tax Assessment.* –

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

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xxx xxx xxx

> 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 (see illustration in ANNEX A hereof). **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. xxx" (*Emphasis supplied*)

Based on the foregoing, after the issuance of the PAN, the CIR or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt thereof. If during the said period, the taxpayer failed to respond to the PAN, it is only then that the CIR or his duly authorized representative can consider the taxpayer in default, and correspondingly cause the issuance of a formal letter of demand and assessment notice, which shall be subsequently served to the said taxpayer. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.[61]

In the case of *Polymer Products (Phil.), Inc. vs. Commissioner of Internal Revenue*[62], the Court cited the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[63] and *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*[64], where the Supreme Court held that:

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[61] As culled from *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, CTA EB No. 1419, (CTA Case No. 8516), November 21, 2016.
[62] CTA Case No. 8299, January 30, 2015.
[63] G.R. No. 185371, December 8, 2010.
[64] G.R. No. 172598, December 21,2007.

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Pursuant to the afore-quoted provisions, it is clearly mandated that a taxpayer is given an opportunity to respond to the PAN within fifteen (15) days from receipt thereof. Upon the lapse of the 15-day period, without any response from the taxpayer, the latter shall be considered in default and the BIR shall issue a formal letter of demand and assessment notices.

In the instant case, **records show that petitioner received a copy of the PAN dated December 17, 2010 on January 3, 2011**. Thus, petitioner has fifteen (15) days or until **January 18, 2011** within which to file a reply or protest against the PAN. Prior to the lapse of the fifteen-day period within which petitioner can respond to the PAN, **petitioner received the FLO dated January 7, 2011 and Assessment Notices on January 17, 2011. Notably, the BIR did not even wait for petitioner to reply to the PAN before issuing the FLO and the Assessment Notices on January 7, 2011.** Stated differently, the assessment notices were issued by the BIR even before the lapse of the fifteen-day period within which petitioner could file a reply or protest to the PAN.

As earlier quoted, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. Indubitably, the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, sans giving the taxpayer an opportunity to respond thereto.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, the Supreme Court emphasized the importance of complying with the requirement to send a PAN to the taxpayer as an integral part of due process in the issuance of a deficiency tax assessment. It then declared in no uncertain terms that **the failure of the CIR to strictly comply with the requirements laid down by law and its own rules** is a denial of Metro Star's right to due process. Undeniably, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period would be ignored.

Although petitioner was given ample opportunity to contest the FLD and Assessment notices, **the fatal infirmity that attended its issuance prior to the lapse of the period to respond to the PAN is not cured thereby**. In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, the Supreme Court ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz*:

> "In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued**. Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in Roxas v. Court of Tax Appeals:
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>> The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

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It is worthy to note that, in a number of cases, the Court has declared void any assessment that fails to comply with the due process requirement.

In *A Brown Co., Inc. vs. Commissioner of Internal Revenue*, the CTA ruled that an assessment is void because of the multiple violations of due process committed by the BIR. The violations include, among others: (1) **issuance of the final assessment only four (4) days after the issuance of the PAN**; and, (2) **the lack of opportunity given to the taxpayer to reply to the PAN within fifteen (15) days from its receipt**.

Similarly, in *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue*, the Court ruled that:

> "**Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC of 1997, as well as of the provisions of Revenue Regulations Nos. 12-85 and 12-99 and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of fifteen days within which to reply to the PAN**. Even assuming that there was an Informal Conference that took place between petitioner and respondent, and that during the conference and even thereafter, petitioner, through its counsel, requested a copy of the FAN, the fact remains that as indicated in the FAN, it was issued on the same day the PAN was received by petitioner. Clearly, petitioner was denied of its right to due process." *(Emphasis supplied)*

The above rulings were reiterated in *Yumex Philippines Corporation vs. Commissioner of Internal Revenue* wherein the assessments were cancelled on the ground of non-observance by the CIR of the 15-day period granted to the taxpayer to respond to the PAN, viz:

> "Respondent violated Section 228 of the NIRC of 1997 and the provisions of Revenue Regulations

No. 12-99, which give the taxpayer a period of fifteen days within which to reply to the PAN. **In view of respondent's violation of petitioner's right to due process, the assessment would thus be considered void**." *(Emphasis supplied)*

All told, considering the palpable violation of petitioner's right to procedural due process pursuant to Section 228 of the NIRC of 1997, as amended, and the provisions of RR No. 12-99, FLD No. 043A-B319-07 dated January 7, 2011 and the Assessment Notices - - being fatally infirm - - should be considered void. For that reason, their cancellation and withdrawal is therefore warranted.

Apparently, petitioner did not observe the procedure laid down under Section 228 of the NIRC of 1997, as amended and RR No. 12-99, as amended.

In this case, petitioner received a copy of the PAN dated February 8, 2012 on February 20, 2012. It is worthy to note that the fifteen (15)-day period to take action on the PAN starts to run not from respondent's issuance, but from the taxpayer's receipt thereof.[65] Thus, counting fifteen (15) days from the date of receipt of the PAN on February 20, 2012, petitioner had until March 6, 2012 to protest or respond to the PAN. Only after the lapse of the fifteen (15)-day period without any action on the part of the petitioner would respondent be legally allowed to issue the FLD. Respondent, however, prematurely issued the FLD on February 29, 2012, resulting in the denial of due process on the part of the petitioner. To emphasize, the non-compliance with statutory and procedural due process renders the assessment null and void.

The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.[66]

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[65] *Commissioner of Internal Revenue vs. Linde Philippines. Inc. (formerly, Consolidated Industrial Gases, Inc.*, CTA EB No. 1515 (CTA Case No. 8724), March 7, 2018.
[66] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

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As earlier quoted, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. Indubitably, the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, sans giving the taxpayer an opportunity to respond thereto.[67]

The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.[68]

Finding that the assessment for CY 2008 is void for being issued in violation of petitioner's right to due process, the Court finds it no longer necessary to discuss the other issues raised by both parties.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Decision issued by respondent, denying petitioner's protest against the assessment of the alleged deficiency on Value Added Tax in the amount ₱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.

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

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[67] *Polymer Products (Phil.), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8299, January 30, 2015.

[68] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice