REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

IBM PLAZA CONDOMINIUM ASSOCIATION, INC., Petitioner,	**CTA CASE NO. 8740**
	Members:
- versus -	**CASATAÑEDA, JR.**, *Chairperson*, **MINDARO-GRULLA** *and* **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 24 2020 8:55 Am

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RESOLUTION

MINDARO-GRULLA, J.:

For this Court's resolution is respondent's **Motion Reconsideration**, filed by registered mail on September 18, 2019 and received by this Court on September 25, 2019, with petitioner's **Comment [To Respondent's Motion for Reconsideration dated 17 September 2019]**, filed on October 24, 2019.

Respondent seeks reconsideration of the Court's Decision dated September 2, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of ₱40,451,907.93, for deficiency value-added tax in the amount of ₱9,854,917.85 and ₱1,349,515.59, all inclusive of interest, surcharges, and penalties for taxable year 2008, and the

Warrant of Distraint and/or Levy are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."

Respondent claims that petitioner failed to prove how its right to due process was violated, contending that petitioner admitted that it received the notices from the Bureau of Internal Revenue (BIR) and that petitioner was in fact able to file a letter protesting the subject assessments. He claims that petitioner failed to provide proof that the persons who received the said notices were not authorized to do so.

Respondent further argues that petitioner failed to disprove the validity, finality and enforceability of the subject assessments.

On the other hand, petitioner contends that due process as to the service of notices requires that there was proper service and proper authority on the part of the person receiving such notice and emphasizes that the ability to administratively protest a FLD and FAN does not cure a violation of due process rights, citing *Pilipinas Shell Petroleum Corp. vs. Commissioner of Internal Revenue*[1].

The instant motion is bereft of merit.

After a careful and thorough evaluation of the arguments raised by petitioner and respondent, the Court finds the same a mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision, to wit:

> "In this case, petitioner denied the receipt of the LOA, the PAN, the FAN/FLD and the FDDA by authorized persons. Respondent also failed to present any evidence to show that they served the notices to authorized representatives. Hence, the receipt of these notices cannot be deemed as receipt by the petitioner. Essentially, the failure of the respondent to prove actual receipt of the Notice of assessment renders the assessment void for failure to accord the taxpayer due process.

[1] G.R. No. 172598, December 21, 2007.

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The fact that petitioner was able to protest the FAN does not cure respondent's violation of petitioner's right to due process. Thus, petitioner's filing of a protest to the FAN 'does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued'.

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In the present case, it is clear that the respondent failed to properly serve the FDDA to petitioner. Moreover, even if the petitioner received the same, it would not have been able to file an intelligent appeal as the respondent also failed to apprise the petitioner the basis for the denial of its Protest.

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The Supreme Court in *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation* has ruled that it is important to note that Sec. 228 of the Tax Code did not limit the requirement of stating the facts and law only to the FAN/FLD. In addition, RR No. 12-99 which provided for the detailed process of assessment actually required that both the FAN/FLD and the FDDA state the law and facts on which the tax assessment is based.

Accordingly, the deficiency tax assessments against herein petitioner for the taxable year 2008 are void for violating petitioner's right to due process. It has been settled that an invalid assessment bears no fruit. Since the assessment against petitioner is void, the Warrant of Distraint and/or Levy subsequently issued by respondent to enforce the collection of such assessment is therefore also void."

In view of the foregoing, the Court finds that respondent failed to raise a new or substantial matter, or compelling reason to justify the reversal or modification of the assailed Decision.

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

SO ORDERED.

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Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice