REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2262** (CTA Case No. 9402)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
PHILSAGA MINING CORPORATION, Respondent.	Promulgated: APR 18 2022 11:55

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves Petitioner's "Motion for Reconsideration (Re: Decision promulgated 23 September 2021)"[1] ("Motion for Reconsideration") filed on October 21, 2021, with Respondent's "Comment/Opposition (To Petitioner's Motion for Reconsideration filed on 21 October 2021)" ("Comment/Opposition") filed on January 04, 2022.

The Petitioner's Motion for Reconsideration prays for the reversal and setting aside of the Decision[2] promulgated on September 23, 2021 ("Assailed Decision"), and that a new one be rendered ordering Respondent to pay the amount of Php339,786,736.08 as deficiency income tax, Expanded Withholding Tax, Final Withholding Tax and administrative penalty for the fiscal year ending 2013, plus twenty-five percent (25%) surcharge and twenty percent (20%)

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[1] Rollo, pp. 98-113.
[2] *Id.,* pp. 83-94.

deficiency and delinquency interest for late payment until December 31, 2017, pursuant to Section 249(C) of the National Internal Revenue Code ("NIRC") of 1997, and delinquency interest at the rate of twelve percent (12%) per annum from January 01, 2018 until the amount is fully paid pursuant to Section 249(C) of the NIRC of 1997, in relation to Section 249(A) of the same Code, as amended by the TRAIN Law.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed with the Court *En Banc* on June 17, 2020 is **DENIED** for lack of merit. Accordingly, the December 17, 2019 Decision and March 06, 2020 Resolution in CTA Case No. 9402 are **AFFIRMED**.
>
> Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amounts representing the assessed deficiency tax liabilities which was set aside and cancelled by this court.
>
> **SO ORDERED.**"[3]

In his Motion for Reconsideration, Petitioner contends that Respondent's protest to the Formal Letter of Demand ("FLD") was merely a rehash of its Protest to the Preliminary Assessment Notice ("PAN"). Hence, there was nothing new to consider for Petitioner. In other words, although the letter is termed a "Request for Reinvestigation", it was actually a motion for reconsideration as can be seen in the body of the letter itself.

Likewise, Petitioner avers that the essence of due process is simply to be heard, and in the case at bar, Petitioner thoroughly considered Respondent's arguments which ultimately led to the issuance of the FLD and Final Decision on Disputed Assessment ("FDDA").

Finally, Petitioner mentions the Dissenting Opinion of Associate Justice Catherine T. Manahan in the Assailed Decision, which stated that a void FDDA does not automatically render the FLD void as well, quoting the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[4] ("*CIR v. Liquigaz*").

On the other hand, Respondent in its Comment/Opposition claims that Petitioner blatantly disregarded the sixty-day period within which a taxpayer may

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[3] *Id.,* Decision dated September 23, 2021, p. 93.
[4] G.R. No. 215534, April 18, 2016.

submit documents in support of his request for reinvestigation, as prescribed under Section 228 of the NIRC of 1997, as amended.

According to Respondent, due process must be a real opportunity to be heard as opposed to "simply an opportunity to be heard", and it is not for the taxing authority to waive the statutory period given to the taxpayer to submit evidence in support of Respondent's protest.

Respondent also asserts that its Protest to the FLD expressly indicated that it would be furnishing Petitioner with additional supporting documents, and that it was effectively robbed of a significant period of seventeen (17) days within which it could have sufficiently checked its records and prepared and submitted its supporting documents to Petitioner. Instead, Respondent was constrained to prepare and file its judicial protest, to preserve its right to appeal the alleged deficiency tax assessments.

Further, Respondent alleges that the Supreme Court's pronouncement in *CIR v. Liquigaz* are inapplicable to the case at bar, for having a different factual *milieu*. In *CIR v. Liquigaz*, the taxpayer was given the opportunity to dispute the assessment by filing a protest to the FLD and subsequently submitting its supporting documents within sixty (60) days.

Lastly, Respondent maintains that to rule the assessments in the FLD nevertheless remain valid despite the premature issuance of the FDDA would render the said remedy inutile, and goes again the well-entrenched principle that procedures granted by law under Section 228 of the NIRC of 1997, as amended, are a statutory right of the taxpayer which cannot be wantonly disregarded without violating the latter's right to due process.

The court is not persuaded by Petitioner's motion.

Petitioner's contentions are mere reiterations of the arguments raised in his "Petition for Review". These issues have been amply considered, weighed and resolved in the Assailed Decision, and will not suffice to warrant the reconsideration of the same. Thus, to discuss anew the explanation of the court on these matters is superfluity.

In sum, the Court *En Banc* finds no cogent reason to overturn the Assailed Decision.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration (Re: Decision promulgated 23 September 2021)" is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Catherine T. Manahan

(With due respect, I maintain my Concurring and Dissenting Opinion dated September 23. 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

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice