REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FREELIFE PHILIPPINES DISTRIBUTION, INC. – PHILIPPINE BRANCH, Petitioner,	**CTA CASE NO. 8838**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Casanova,** *and* **Manahan,** *JJ.*
HON. KIM S. JACINTO - HENARES - IN HER CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 27 2017 11:15 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is a Petition for Review[1] filed on June 20, 2014 by Freelife Philippines Distribution, Inc. – Philippine Branch to seek the reversal and setting aside of the Final Decision on Disputed Assessment (FDDA) dated May 22, 2014 and the cancellation and withdrawal of the deficiency income tax and value-added tax (VAT) assessments in the total amount of ₱5,029,856.44, inclusive of interest and compromise penalties for taxable year 2009.

[1] Docket, pp. 6-27.

THE FACTS

Petitioner Freelife Philippines Distribution, Inc. – Philippine Branch is a foreign corporation duly licensed to do business in the Philippines, with principal office at the UGF-3, One San Miguel Avenue Bldg., San Antonio, Pasig City.[2] It is engaged primarily in the importation, sale, marketing, and distribution of fruit juices and other nutritional products on wholesale basis to independent distributors.[3] It is registered with the Bureau of Internal Revenue (BIR) with Certificate of Registration No. OCN3RC0000442640 issued on December 5, 2008.[4]

Respondent is the duly appointed Commissioner of the 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 the BIR National Office Building, Agham Road, Quezon City.

On June 29, 2010, petitioner received the Letter of Authority (LOA) No. 200900033180[5] dated June 24, 2010 issued by the BIR, authorizing Revenue Officer Janice Solomon and Group Supervisor Antonino Ilagan to examine the books of accounts and other accounting records of petitioner for all its internal revenue taxes for the period covering January 1, 2009 to December 31, 2009.[6]

Respondent served the Preliminary Assessment Notice (PAN) with Details of Discrepancies[7] dated January 4, 2013[8] through registered mail, which was received by petitioner on January 10, 2013.[9]

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[2] Exhibit "P-24".
[3] Exhibits "P-23" and "P-23-A".
[4] Exhibit "P-24".
[5] Exhibit "P-5", "Docket, p. 238.
[6] Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 172.
[7] Exhibits "P-6", "P-6A", "P-7", and "P-7A", Docket, pp. 239-242.
[8] Par. 3, JSFI, Docket, p. 172.
[9] Exhibit "P-11", Docket, p. 249.

On January 25, 2013[10], petitioner received through electronic mail[11] the Formal Letter of Demand with Assessment Notices (FLD-FAN) and Details of Discrepancies[12], all dated January 25, 2013 signed by OIC-Chief of Assessment Division Norma P. Ceroma and OIC – Regional Director Jonas DP. Amora, covering alleged deficiency income tax and VAT in the amounts of ₱934,507.23 and ₱4,095,349.21, respectively.

On February 22, 2013, petitioner filed its Protest[13] dated February 20, 2013 to respondent's FLD-FAN addressed to Regional Director Jonas DP. Amora of Revenue Region No. 7, Quezon City.

On May 22, 2014, the BIR issued the FDDA[14] signed by Regional Director Jonas DP. Amora. Hence, petitioner filed the present Petition for Review on June 20, 2014.

Respondent filed his Answer[15] through registered mail on August 26, 2014 and received by the Court on September 3, 2014, interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

11. All presumptions are in favor of the correctness of the Assessment.

12. The Preliminary Assessment Notice and the Assessment Notice/Demand No. 043-B222-09 dated 25 January 2013 for the for the [sic] year 2009 issued against the petitioner were issued in compliance with the provisions of [S]ection 228 of the National Internal Revenue Code and in accordance to existing Revenue Rules and Regulations relative to the right of the taxpayer/petitioner to be informed of the factual and legal bases upon which the assessment was made.

13. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter

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[10] Exhibit "P-11", Docket, p. 248.
[11] Par. 5, JSFI, Docket, p. 172.
[12] Exhibits "P-8", "P-9", "P-10", and "P-10A", Docket, pp. 243-247.
[13] Exhibits "P-11" and "P-11A", Docket, pp. 248-256.
[14] Exhibit "P-17", Docket, p. 289.
[15] Docket, pp. 106-109.

and Details of Discrepancies which were all together sent at the same time to the [p]etitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.

14. The herein assessment has already become final, executory and demandable by reason of the failure of the petitioner to timely file the Petition for Review pursuant to the provisions of Section 228 of the Tax Code of 1997, as amended.

15. Verification disclosed that petitioner failed to subject portion of salaries and wages to withholding tax, hence, disallowed as deduction from gross income pursuant to Section 34 (K) of the NIRC of 1997, as amended, in relation to Revenue Regulation No. 2-98.

16. Verification disclosed that income payments and certain expenses were not subjected to expanded withholding tax as required under Revenue Regulation 2-98, as amended, thus, disallowed as deduction from gross income pursuant to Section 34 (K) of the NIRC of 1997, as amended.

17. Verification disclosed that purchases claimed per VAT returns exceeds the amount presented in the Financial Statement, therefore, the input tax attributed to the unsupported purchases is disallowed pursuant to Section 110 of the NIRC of 1997, as amended.

18. The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC."

The Pre-Trial Conference[16] was set on October 9, 2014. Petitioner's Pre-Trial Brief[17] was filed on October 2, 2014; while the Pre-Trial Brief for the Respondent[18] was filed on December 3, 2014.

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[16] Notice of Pre-Trial Conference, Docket, p. 111.
[17] Docket, pp. 112-122.
[18] Docket, pp. 162-165.

The parties filed their Joint Stipulation of Facts and Issues[19] on December 23, 2014, which was approved by the Court via the Pre-Trial Order[20] dated January 28, 2015.

The Formal Offer of Evidence for the Petitioner[21] was filed on March 23, 2015, offering Exhibits "P-1", "P-1A", "P-2", "P-2A", P-3", "P-3A", P-4", "P-4A", P-4B", "P-4C", P-4D", "P-4E", "P-5", "P-6", "P-6A", "P-7", "P-7A", "P-8", "P-9", "P-10", "P-10A", "P-11", "P-11A", "P-12"/"P-25", "P-12A"/"P-25A", "P-12B", "P-12C", "P-12D", "P-13"/"P-26", "P-13A"/"P-26A", "P-13B", "P-13C", "P-13D", "P-14"/"P-27", "P-14A"/"P-27A", "P-14B", "P-14C", "P-14D", "P-14E", "P-15"/"P-28", "P-15A"/"P-28A", P-15B", "P-15C", "P-15D", "P-16", "P-17", "P-18", "P-19", "P-22", "P-23", "P-23A", "P-24", "P-12"/"P-25", "P-12A"/"P-25A", "P-13"/"P-26", "P-13A"/"P-26A", "P-14"/"P-27", "P-14A"/"P-27A", "P-15"/"P-28", "P-15A"/"P-28A", "P-29", "P-30-A", "P-30-B", "P-30-C", "P-30-D", "P-30-E", "P-30-F", "P-30-G", "P-30-H", "P-30-I", "P-30-J", "P-30-K", "P-30-L", "P-31-A", "P-31-B", "P-31-C", "P-31-D", "P-31-E", "P-31-F", "P-31-G", "P-31-H", "P-31-I", "P-31-J", "P-31-K", "P-31-L", "P-32-A", "P-32-B", "P-32-C", "P-32-E", "P-32-F", "P-33", and the "Testimony of Atty. Jackielyn N. Arceño – ICPA as embodied in her Judicial Affidavit filed on March 13, 2015" as its documentary evidence. Respondent, however, failed to file his comment to petitioner's Formal Offer of Evidence.[22]

In the Resolution[23] dated May 8, 2015, the Court admitted Exhibits "P-5", "P-6", "P-6A", "P-7", "P-7A", "P-8", "P-9", "P-10", "P-10A", "P-11", "P-11A", "P-12"/"P-25", "P-12A"/"P-25A", "P-13"/"P-26", "P-13A"/"P-26A", "P-14"/"P-27", "P-14A"/"P-27A", "P-15"/"P-28", "P-15A"/"P-28A", "P-16", "P-17", "P-18", "P-19", "P-22", "P-23", "P-23A", "P-24", and the "Testimony of Atty. Jackielyn N. Arceño – ICPA as embodied in her Judicial Affidavit filed on March 13, 2015"; but denied the admission of Exhibits "P-1", "P-1A", "P-2", "P-2A", P-3", "P-3A", P-4", "P-4A", P-4B", "P-4C", P-4D", "P-4E", "P-12B", "P-12C", "P-12D", "P-13B", "P-13C", "P-13D", "P-14B", "P-14C", "P-14D", "P-14E", "P-15B", "P-15C", "P-15D", "P-29", "P-30-A", "P-30-B", "P-30-C", "P-30-D", "P-30-E", "P-30-F", "P-30-G", "P-30-H", "P-30-I", "P-30-J", "P-30-K", "P-30-L", "P-31-A", "P-31-B", "P-31-C", "P-31-D", "P-31-E", "P-31-F", "P-31-G", "P-31-H", "P-31-I", "P-31-J", "P-31-K", "P-31-L", "P-32-E", "P-32-F", "P-33", "P-32-A", "P-32-B", and "P-32-C".

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[19] Docket, pp. 171-175.
[20] Docket, pp. 203-209.
[21] Docket, pp. 224-237.
[22] Records Verification dated April 13, 2015, Docket, p. 312.
[23] Docket, pp. 314-316.

Petitioner filed a Motion for Reconsideration with Prayer for Mandatory Judicial Notice[24] on May 27, 2015. The Court admitted Exhibits "P-1" to "P-4", inclusive of submarkings in the Resolution[25] dated June 17, 2015.

On February 9, 2016, respondent filed his Formal Offer of Evidence[26], offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-7-A", "R-8", "R-9", "R-10", "R-10-A", "R-11", "R-12", "R-13", "R-13-A", "R-14", "R-15", "R-16", "R-17", "R-18", and "R-19" as his documentary evidence. Petitioner filed its Comment/Opposition [To Respondent's Formal Offer of Evidence][27] on March 2, 2016.

In the Resolution[28] dated April 13, 2016, the Court partially granted petitioner's Motion for Reconsideration with Prayer for Mandatory Judicial Notice. The Court still denied Exhibits "P-12B", "P-12C", "P-12D", "P-13B", "P-13C", "P-13D", "P-14B", "P-14C", "P-14D", "P-14E", "P-15B", "P-15C", "P-15D", "P-29", "P-30-A", "P-30-B", "P-30-C", "P-30-D", "P-30-E", "P-30-F", "P-30-G", "P-30-H", "P-30-I", "P-30-J", "P-30-K", "P-30-L", "P-31-A", "P-31-B", "P-31-C", "P-31-D", "P-31-E", "P-31-F", "P-31-G", "P-31-H", "P-31-I", "P-31-J", "P-31-K", "P-31-L", "P-32-E", "P-32-F", "P-33", "P-32-A", "P-32-B", and "P-32-C".

In the same Resolution, the Court admitted "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-7-A", "R-8", "R-9", "R-11", "R-12", "R-17", and "R-18"; but denied the admission of Exhibits "R-1", "R-10", "R-10-A", "R-13", "R-13-A", "R-14", "R-15", "R-16", and "R-19". Thereafter, the parties were given a period of thirty (30) days within which to file their memoranda.

The case was declared submitted for decision on June 6, 2016,[29] considering the Memorandum (For the Petitioner)[30] filed on May 19, 2016 and respondent's failure to file his memorandum.[31]

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[24] Docket, pp. 323-327.
[25] Docket, p. 331.
[26] Docket, pp. 405-411.
[27] Docket, pp. 451-459.
[28] Docket, pp. 461-464.
[29] Resolution dated June 6, 2016, Docket, p. 491.
[30] Docket, pp. 465-489.
[31] Records Verification dated June 1, 2016, Docket, p. 490.

THE ISSUES

The parties submitted the following issues for this Court's resolution:[32]

1. Whether or not the Assessment has become final, executory and demandable by reason of the failure of the petitioner to timely file the Petition for Review pursuant to the provisions of Section 228 of the Tax Code, as amended;

2. Whether or not the petitioner is liable for deficiency income tax and VAT for taxable year ending December 2009;

3. Whether the assessment for VAT against the petitioner has already prescribed;

4. Whether the Formal Assessment against the petitioner was issued in accordance with law; and

5. Whether petitioner's right to due process as a taxpayer had been violated.

DISCUSSION/RULING

The Court has jurisdiction to entertain the present Petition for Review since the assessment has not yet attained finality.

Respondent claims that the assessment has attained finality for petitioner's failure to timely file its Petition for Review before the Court in violation of Section 228 of the NIRC of 1997, as amended.

Section 228 of the NIRC of 1997, as amended, provides:

> "**SEC. 228.** *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first

[32] JSFI, Docket, p. 174.

notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Based on the foregoing, an assessment may be protested by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment by the taxpayer. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. Should the protest be denied, it may be appealed to the CTA within thirty (30) days from receipt of said denial.

In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company Inc.*[33], the Supreme Court explained the phrase "relevant supporting documents", as follows:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

Thus, petitioner may choose to file its protest even with no supporting documents without invalidating its protest.[34]

Section 7 of Republic Act (RA) No. 1125, as amended, grants the CTA the exclusive appellate jurisdiction to review the decisions of respondent in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, and penalties in relation thereto, or other matters arising under the NIRC of 1997, as amended. Moreover, Section 11 of RA No. 1125 provides that any taxpayer adversely affected by a decision of the CIR may file an appeal with the CTA within thirty (30) days after the receipt of such decision.

Records reveal that petitioner received the FLD-FAN on January 25, 2013 and it had thirty (30) days or until February 25, 2013[35] to submit its protest. On February 22, 2013, petitioner filed its protest to the FLD-FAN. Hence, petitioner has sixty (60) days from the filing of the said protest or until April 23, 2013 to submit relevant supporting documents, only if it chooses to do so. On May 22, 2014, the BIR issued the FDDA, reiterating the assessment and requesting the payment of the alleged deficiency taxes. Petitioner, therefore, complied with the requisites provided in Section 228 of the NIRC of 1997, as amended, when it filed the present Petition for Review on June 20, 2014.

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[33] G.R. Nos. 172045-46, June 16, 2009.
[34] *Phil. Foods Properties, Inc. vs. Commissioner of Internal Revenue*, CTA Case Nos. 8185 and 8238, December 3, 2014.
[35] February 24, 2013 fell on Sunday.

Accordingly, the tax assessment cannot be considered as final, executory, and demandable; and petitioner was correct in filing the present Petition for Review with the Court, which in turn, has jurisdiction to entertain the same.

Petitioner's right to procedural due process was violated by respondent when the latter issued the FLD-FAN before the lapse of the period granted to respond to the PAN.

Section 3 of Revenue Regulations (RR) No. 12-99 lays down the due process requirement in the issuance of a deficiency tax assessment, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 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.**" *(Emphasis supplied)* Jc

Based on the foregoing, after the issuance of the PAN, the Commissioner of Internal Revenue 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 Commissioner of Internal Revenue 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.[36]

In the case of *Polymer Products (Phil.), Inc. vs. Commissioner of Internal Revenue*,[37] this Court, citing the Supreme Court's decisions in *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[38] and *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*[39], ruled in this wise:

> "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 <u>from receipt</u> 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 <u>January 3, 2011</u>**. 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 FLD dated <u>January 7, 2011</u> and Assessment Notices on January 17, 2011.** Notably, **the BIR did not even wait for petitioner to reply to the PAN before issuing the FLD and the Assessment Notices on January 7, 2011**. Stated differently, the assessment notices were issued by

[36] *Commissioner of Internal Revenue vs. Next Mobile, Inc.,* CTA EB No. 1419, (CTA Case No. 8516), November 21, 2016.
[37] CTA Case No. 8299, January 30, 2015.
[38] G.R. No. 185371, December 8, 2010.
[39] G.R. No. 172598, December 21,2007.

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*:
>
>> 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.'

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: ℊ

> '**<u>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</u>**. 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. **<u>In view of respondent's violation of petitioner's right to due process, the assessment would thus be considered void</u>**.' *(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."

The foregoing is applicable to the facts of the present case. In this case, the PAN was issued on January 4, 2013 and received by petitioner on January 10, 2013. Petitioner therefore has fifteen (15) days from January 10, 2013 or until January 25, 2013 within which to respond to the PAN. However, even before filing its protest to the PAN, petitioner received, through electronic mail, the FLD-FAN on January 25, 2013. Respondent's issuance of the FLD-FAN on January 25, 2013 (which was prior to the expiration of the fifteen-day period), deprived petitioner of its right to due process. Consequently, the subject FLD-FAN is a nullity.

The FAN shall be sent to the taxpayer only by registered mail or by personal delivery pursuant to Section 3.1.4 of RR No. 12-99.

Section 3.1.4 of RR No. 12-99 also provides for the modes of service of the FLD-FAN to petitioner, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery**. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and

authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." *(Emphasis supplied)*

It is also worthy to note that the FAN shall be sent to the taxpayer **only** by registered mail or by personal delivery as required by Section 3.1.4 of RR No. 12-99. In this case, as admitted by both parties, the FLD-FAN was sent to petitioner through electronic mail which is not one of the recognized modes of service of FAN under Section 3.1.4 of RR No. 12-99. Thus, the service of the FLD-FAN through electronic mail to petitioner was not valid.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[40] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[41]

Considering that no valid notice of assessment was sent to petitioner, the assessment against petitioner for its alleged tax liabilities for taxable year 2009, based on the FLD-FAN dated January 25, 2013, must be cancelled. Consequently, the Court finds no need to discuss the other remaining stipulated issues raised by both parties for being moot and academic.

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[40] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

[41] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Thus, the assailed Decision of respondent dated May 22, 2014 upholding the FLD-FAN dated January 25, 2013 is **REVERSED** and **SET ASIDE**. Accordingly, the assessment against petitioner for deficiency income tax and deficiency VAT for taxable year 2009 is hereby **CANCELLED**.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice