REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1366** (CTA Case No. 8438)
	Present:
	Del Rosario, *P.J.* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, and Ringpis-Liban, *JJ.*
- versus -	
AYALA HOTELS, INC., *Respondent.*	Promulgated: NOV 04 2016 2:56 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is the Commissioner of Internal Revenue's (CIR) **Motion for Reconsideration (Re: Decision Promulgated on 28 June 2016)** filed on July 25, 2016, with Ayala Hotels, Inc.'s (Ayala Hotel) **Opposition** filed on September 19, 2016.

The aforementioned Motion seeks reconsideration of the Decision of the Court *En Banc* promulgated on June 28, 2016,[1] (the "assailed Decision") affirming the judgment of the Third Division of this Court ("Court in Division") in CTA Case No. 8438. The dispositive portion of the assailed Decision reads:

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[1] Court *En Banc*'s Docket, pp. 101-128.

"**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit."

SO ORDERED."

The CIR raises the following arguments in support of his Motion, to wit:

a. Respondent has filed a request for reconsideration and not a request for reinvestigation. Hence, the sixty (60) day period for the submission of additional documents is not applicable; and

b. Assuming but not conceding that the Letter-Protest may be considered as a request for reinvestigation, the sixty (60) day period within which all supporting documents should have been submitted is not a mandatory or jurisdictional requirement before the Commissioner of Internal Revenue may act on a protest of assessment.[2]

On the other hand, Ayala Hotel, in its Opposition, submits that the assailed Decision should be affirmed, based on the following grounds:[3]

a. The challenged decision has factual and legal basis, and there is no compelling [reason] to reverse it;

b. Petitioner merely reiterated the arguments raised in h[is] previous pleadings which were thoroughly discussed and passed upon by this Honorable Court *En Banc* in the challenged decision; and

c. With all due respect, the dissenting opinion erred in its appreciation of facts that respondent is not seeking for reinvestigation, thus, not entitled to submit relevant supporting documents within the sixty (60) day period.

The Court *En Banc* resolves to deny CIR's Motion for Reconsideration for lack of merit.

A careful review of the case records and the arguments raised by the CIR in his Motion for Reconsideration shows that the arguments relied upon

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[2] *Ibid.*, pp. 130-131.
[3] *Id.*, pp. 146-147.

are mere reiterations of the matters which have already been sufficiently discussed and passed upon by the Court *En Banc* in the assailed Decision. Indeed, the CIR failed to raise any new or substantial matter or any compelling reason that will justify reversal or even modification of the Court *En Banc*'s findings. Nevertheless, the Court *En Banc* shall state below a few points, if only to reinforce its discussion in the assailed Decision.

The Court *En Banc* stands by its finding that Ayala Hotel's letter-protest dated December 19, 2011 is in the nature of a request for the reinvestigation of its deficiency tax assessments. As stated in the assailed Decision, the submission of additional documentary evidence simultaneously with the filing of the letter-protest only goes to show that Ayala Hotel is seeking re-evaluation of its tax assessments on the basis of additional evidence to be presented during the course of the investigation.

The Court *En Banc* likewise maintains its position that, taking into account the fact that the case involves a request for reinvestigation, Ayala Hotel must be fully accorded with the 60-day period from the date of filing of its protest within which to submit relevant documents in support of its protest. Such period to submit relevant supporting documents cannot be dispensed with or waived by the taxing authority as it is an integral part of the due process requirement in the issuance of deficiency tax assessments, pursuant to Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC), and as implemented by Section 3 of Revenue Regulations (RR) No. 12-99.

The mandatory nature of the 60-day period within which to submit relevant supporting documents is, in fact, consistent with the doctrine laid down by the Supreme Court in *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*,[4] to the effect that it is the taxpayer which determines which document it desires to present in support of its protest. The right of the taxpayer to determine which document to present to support its protest, to be meaningful, must be accompanied by a reasonable period within which to make such determination. In this regard, the law itself definitely provides that the said period should be 60 days counted from the time of filing of protest. Thus, the taxing authority is bound to respect the same.

As discussed in the assailed Decision, the CIR failed to comply with the due process requirement prescribed under Section 228 of the 1997 NIRC and Section 3 of RR No. 12-99 when it precipitately issued the Final Decision on Disputed Assessment (FDDA) on January 25, 2012, or merely thirty-five (35) days[5] from the date of filing of protest. Accordingly, the

[4] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253, 275.
[5] It should be thirty-six (36) days.

Court in Division correctly declared as null and void the deficiency income tax, value-added tax (VAT), and documentary stamp tax (DST) assessments against Ayala Hotel for calendar year 2008.

WHEREFORE, premises considered, the CIR's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(With all due respect, I maintain my position, i.e., I am joining the D. O. of P. J. Del Rosario)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice