REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

***EN BANC***
*********

**NATIONAL POWER CORPORATION,**
Petitioner,

- versus -

**THE PROVINCE OF PAMPANGA AND PIA MAGDALENA D. QUIBAL,**
Respondents.

**CTA EB No. 1233**
(CTA AC No. 113)

***Present:***

**DEL ROSARIO,** P.J.,
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,** and
**MANAHAN,** JJ.

***Promulgated:***

MAR 17 2017 3:48 p.m.

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# RESOLUTION

**UY, J.:**

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on October 12, 2016, without respondents' comment despite due notice, praying for the reconsideration of this Court's Decision dated September 9, 2016, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated August 1, 2014 and Resolution dated September 24, 2014 of the Court in Division in CTA AC No. 113, are **AFFIRMED**.

**SO ORDERED.**"

In the *Motion*, petitioner argues that it is not liable as it is clearly exempt from payment of franchise tax; and the Notice of Assessment, not being in compliance with the Local Government Code (LGC), is tantamount to deprivation of property without due process of law and, therefore, null and void.

## THE COURT *EN BANC*'S RULING

The instant *Motion* lacks merit.

A careful perusal of the said *Motion for Reconsideration* shows that the arguments relative to the supposed exemption of petitioner from franchise tax are mere reiterations of matters which have already been considered, weighed, passed upon and exhaustively resolved by the Court *En Banc* in the assailed Decision. Hence, finding no compelling reason to reconsider, modify or reverse the said Decision insofar as the discussion on petitioner's franchise tax exemption is concerned, We shall no longer belabour, in this Resolution, to repeat the disquisitions made therein.

We shall then proceed to address the new argument being raised by petitioner, *i.e.*, that the Notice of Assessment, not being in compliance with the LGC, is tantamount to deprivation of property without due process of law and, therefore, null and void.

The said argument is untenable.

***The defense or objection is deemed waived.***

Section 1, Rule 9 of the Rules of Court provides as follows:

> "SECTION 1. *Defenses and objections not pleaded.* — **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.** However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim."

Petitioner did not contend right away that the subject Notice of Assessment, not being in compliance with the LGC, is tantamount to deprivation of property without due process of law, and therefore, null and void. It did not raise the said objection in the proceedings before the Regional Trial Court, nor before the Second Division of this Court.

Moreover, petitioner had to wait until the Court *En Banc* already rendered its Decision in this case, before it raised the supposed nullity of the said Notice of Assessment upon the said ground which was obviously taken from the Dissenting Opinion of the Honorable Presiding Justice Roman G. Del Rosario. Petitioner did not offer any explanation as to why it did not earlier argue the same, only doing so in the instant *Motion for Reconsideration* of the unfavorable judgment rendered by the Court *En Banc*. Surely, said objection was already available to petitioner when it filed its appeal before the Regional Trial Court.

Be that as it may, the belated raising of the said issue will not be countenanced, since the same is already deemed waived.

In this case, it is clear that the legal basis for petitioner's appeal to the Regional Trial Court is Section 195 of the LGC of 1991, which provides as follows:

> "SEC. 195. *Protest of Assessment.*— When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, **he shall issue a notice of assessment stating the nature of the tax, fee or charge, <u>the amount of deficiency</u>, the surcharges, interests and penalties.** Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protests to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise

the assessment become conclusive and unappealable." *(Emphasis and underscoring supplied)*

Correspondingly, petitioner knows that the said notice of assessment must state, *inter alia*, *"the amount of deficiency"*. Despite such notice, however, petitioner has not raised the objection that the said Notice of Assessment is violative of its right to due process, since it lacked an indication of the amount of the franchise tax being collected, until now.

Petitioner had every opportunity to assert the supposed violation of its right, beginning from the filing of its appeal before the Regional Trial Court. But it did not do so.

It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.[1]

***There was no violation of due process.***

Be that as it may, even granting that the issue being raised is not deemed waived, the same is of no moment because there was no violation of petitioner's right to due process.

Well-settled is the rule that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[2] In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard.[3]

In this case, it is undisputed that after it received the subject Notice of Assessment on June 26, 2009,[4] petitioner was able to file its protest letter on August 24, 2009,[5] thereby was given an

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[1] *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.
[2] *Montoya vs. Varilla, et al.*, G.R No. 180146, December 18, 2008.
[3] Supra.
[4] RTC Records (Civil Case No. 13738), p. 16; Division Docket (AC No. 113), p. 36; and EB Docket, p. 41.
[5] RTC Records (Civil Case No. 13738), p. 17; Division Docket (AC No. 113), p. 37; and EB Docket, p. 42.

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opportunity to explain its side. Parenthetically, in the said protest letter, despite the said opportunity, petitioner merely concentrated on its argument that it was not subject to the subject franchise tax; and nowhere do We see that it is of the view that it's right to due process was violated by reason of the lack of an indication of the amount thereof in the said Notice of Assessment.

With the given opportunity in favor of petitioner, there was no violation of its right to due process.

**WHEREFORE**, in light of the foregoing consideration, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

**SO ORDERED**.

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

*( See Dissenting Opinion )*
**ROMAN G. DEL ROSARIO**
Presiding Justice

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

*( I maintain my Dissenting Opinion )*
**LOVELL R. BAUTISTA**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

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## DISSENTING OPINION

***DEL ROSARIO, P.J.:***

With due respect, I maintain the stand I have taken in my Dissenting Opinion on the Decision dated September 9, 2016 that **the assessment is fatally infirm since petitioner was not duly informed of its exact tax liability as well as the taxable period subject thereof. In essence, this infirmity in the assessment precludes its eventual execution in a manner that is fair, just and certain to the taxpayer.**

Truth to tell, a notice of assessment for local tax cases should be sufficiently informative to apprise the taxpayer of the legal basis of the tax.[1] Section 195 of the Local Government Code (LGC) requires that

[1] Yamane v. BA Lepanto Condominium Corporation, G.R. No. 154993, October 25, 2005.

the notice of assessment states the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties.[2] Absent the required contents, *i.e., the amount of deficiency/exact tax liability including the taxable period covered,* makes the subject assessment void *ab initio*. It is a rule that acts, *like respondent's issuance of the subject assessment,* executed against the provisions of mandatory laws shall be void.[3] **Moreover, I wish to re-emphasize that since the notice of assessment is not in compliance with Section 195 of the LGC, the same constitutes a violation of petitioner's right to due process of law. Thus, being an invalid assessment, the same could not be enforced against petitioner in line with the principle that a void assessment bears no fruit.**[4]

In addition, irrespective of any objection on the part of petitioner to specify "denial of due process" as a ground to invalidate the assessment, the specific objection at this stage pointing out the defects in such assessment cannot be ignored. Parenthetically, petitioner's present argument/objection is necessarily subsumed to the issue of *"Whether or not NPC is liable for the payment of franchise tax,"* which issue was raised not only before the Court *En Banc* and the Court in Division but also in petitioner's Appeal before the Regional Trial Court.[5]

The CTA, in the exercise of its appellate jurisdiction to review decisions on local taxes cases,[6] may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[7] It has been said that where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of

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[2] *Id.*
[3] Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity (Art. 5, Civil Code).
[4] Commissioner of Internal Revenue v. Metro Star Superama, G.R. No. 185371, December 8, 2010; Commissioner of Internal Revenue v. Reyes, G.R. No. 159694, January 27, 2006.
[5] Petition for Review before the Court *En Banc,* CTA EB Rollo, p. 12; Petition for Review before the Court in Division, CTA AC No. 113 Docket, p. 14; and Appeal before the RTC, CTA AC No. 113 Docket, p. 41.
[6] Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx
3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction; xxx.
[7] Sec. 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, as amended.

the controversy as well as to pass upon them.[8] In fact, an appellate court has an inherent authority to review unassigned errors (i) which are closely related to an error properly raised, or (ii) upon which the determination of the error properly assigned is dependent, or (iii) where the Court finds that consideration of them is necessary in arriving at a just decision of the case.[9]

The ancillary issue anent "due process" should be resolved in favor of petitioner, which after all should not be held liable to pay any amount arising from an invalid assessment. I wish to reiterate that to remand the case would not cure the infirmity of the notice of assessment; in the same vein, to allow the Provincial Treasurer to compute petitioner's tax liability is not sanctioned by law and jurisprudence. **The Court should perforce cancel the assessment**.

All told, I **VOTE to GRANT** petitioner's Motion for Reconsideration.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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[8] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 106913, May 10, 1994.
[9] Sesbreo v. Central Board of Assessment Appeals, G.R. No. 106588, March 24, 1997.