REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

FRESH N' FAMOUS FOODS, INC.,
Respondent.

CTA EB No. 1632
(CTA CASE No. 8173)

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

Promulgated:
JAN 14 2019
3:27 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) seeking to set aside this Court's Decision promulgated on August 14, 2018,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated December 15, 2016 and March 22, 2017 respectively are hereby **AFFIRMED**.

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[1] Filed on September 10, 2018; *En Banc* Docket, pp. 121-127.
[2] *En Banc* Docket, pp. 100-114.

SO ORDERED."

In his motion, the CIR reiterates that Fresh N' Famous Foods, Inc. (FNF) failed to prove receipt of his decision on September 6, 2010. Consequently, FNF failed to prove that its Petition for Review was timely filed before this Court. He also reiterated that FNF failed to comply with the requirement of informing the BIR of its change of address, thus the FAN was properly served to FNF's old address.

In its Comment,[3] FNF insists that it sufficiently established the timeliness of the filing of its Petition for Review, that no valid assessment was sent by the CIR, and that the latter failed to provide any new basis for this Court to reverse the assailed Decision.

The motion is bereft of merit.

All the arguments presented by CIR readily reveal that they deal with the very same issue, which has been thoroughly passed upon by the Court in Division and clearly discussed in the assailed Decision.

The Court is guided by the rulings in the Supreme Court case of *Coquilla v. Commission on Elections*,[4] to wit:

> "The mere reiteration in a motion for reconsideration of the issues raised by the parties and passed upon by the court does not make a motion *pro forma*; otherwise, the movants remedy would not be a reconsideration of the decision but a new trial or some other remedy. But, as we have held in another case:
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> > Among the ends to which a motion for reconsideration is addressed, <u>one is precisely to convince the court that its ruling is erroneous and improper, contrary</u>

[3] Filed on November 8, 2018; *En Banc* Docket, pp. 131-137.
[4] 434 Phil. 861 (2002), cited in the case of *Philippine National Bank vs. Pineda,* G.R. No. 149236, February 14, 2007.

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> to the law or the evidence; xxx" (Underlining Supplied.)

Upon review of the Motion for Reconsideration, there is no provision of law contrary to such findings or conclusions of the Court. A motion for reconsideration is *pro forma* where:[5]

1. it was a second motion for reconsideration;
2. it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence;
3. it failed to substantiate the alleged errors;
4. it merely alleged that the decision in question was contrary to law; and
5. the adverse party was not given notice thereof.

It is apparent that the CIR merely reiterated and restated his arguments in the Petitions for Review filed before this Court in Division and *En Banc*. The motion is a mere slashed adaptation of his arguments already considered and exhaustively discussed by the Court *En Banc* in its assailed Decision.

To reiterate the ruling of this Court:

> "As to the denial of the actual receipt of the CIR's Decision by FNF, in the case of *Fernando Medical Enterprises, Inc. vs. Wesleyan University Philippines, Inc.,*[6] the Supreme Court held that "denials based on lack of knowledge or information of matters clearly known to the pleader, or ought to be known to it, or could have easily been known by it are insufficient, and constitute ineffective or sham denials."[7] The Petition for Review averred the date of receipt of the CIR Decision that the CIR ought to know or could have easily known, but the answer did not specifically deny such material averment. Other than his bare

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[5] *Ibid.*
[6] G.R. No. 207970, January 20, 2016.
[7] Citing *J.P. Juan & Sons, Inc. vs. Lianga Industries, Inc.*, G.R. No. L-25137, July 28, 1969, 28 SCRA 807, 809-812 and *Manufacturer's Bank & Trust Co. vs. Diversified Industries, Inc.,* G.R. No. 33695, May 15, 1989, 173 SCRA 357, 364.

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allegations, the CIR failed to present evidence that the CIR Decision was received by FNF on a date other than September 6, 2010. xxx

Moreover, a perusal of the Joint Stipulation of Facts and Issues reveals that it is nowhere stated in the issues for consideration the date of actual receipt of the CIR's Decision. If the CIR really specifically denies such date of receipt, it could have been easily raised as an issue. In short, it was a mere afterthought on the part of the CIR to raise this as an issue.

As to the service of mail matter to the old address of FNF, this issue is not new as this Court has already discussed the same in the case of *Commissioner of Internal Revenue vs. Yukon General Manpower Services Corp.*,[8] which provides:

> "xxx xxx xxx
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> xxx [T]he change of respondent's address was reflected in its Certificate of Registration dated May 25, 2009 issued by BIR RDO 43A, the new RDO of respondent in its new location. The said Certificate of Registration also clearly indicated the transfer by respondent from RDO 30 Binondo to RDO 43A Pasig City. In other words, respondent substantially complied xxx by informing both the old and the new RDO of its change of address. In fine, petitioner has only himself to blame for the *faux pas* on the service of assessment notices as he obviously failed to verify his own record.
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> Significantly, <u>it has been held that if the BIR is already aware of the new location of the taxpayer, even in the absence of any formal application for change of address, the BIR cannot simply pretend lack of knowledge of the change of address and is bound to send any</u>

[8] CTA EB No. 1444, July 24, 2017.

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issuances or notices to such new location of the taxpayer. This was the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. BASF Coating +Inks Phils., Inc.*, thus:

xxx xxx xxx

In the present case, petitioner, by all indications, is well aware that respondent had moved to its new address in Calamba, Laguna, as shown by the following documents which form part of respondent's records with the BIR:

xxx xxx xxx

The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna. The CTA also found that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of respondent's tax liabilities for 1999 at the latter's new address in Laguna as evidenced by the following, in addition to the above mentioned records:

xxx xxx xxx" (Italics in the original; Underlining Supplied.)

The change of address of FNF was made known to the Bureau of Internal Revenue (BIR) through the following documents:

a.) Certificate of Registration, reflecting the address of FNF as

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"Jollibee Center Condo San Miguel Ave Pasig City 1600" as of December 31, 2001;

b.) Annual Income Tax Return for 2002, showing the address of Petitioner at Jollibee Center, San Miguel Avenue, Ortigas Center, Pasig City;

c.) Preliminary Collection Notice dated April 13. 2004 issued by the BIR.

In fact, the audit of FNF for taxable year 2000 was conducted at its new address at Jollibee Center, San Miguel Avenue, Ortigas Center, Pasig City. xxx

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The CIR's witness, Mr. Florido Saso, likewise affirmed that the BIR was aware of the transfer of address of Fresh N' Famous, as he indicated "Jollibee Center, San Miguel Avenue, Ortigas Center, Pasig City" as the address of FNF when he prepared the Preliminary Collection Notice.

Without receipt of the PAN, FAN and FLD, FNF was deprived of due process required under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. Compliance with Section 228 of the NIRC is a substantive requirement. It is not a mere formality. Consequently, the subject assessment is deemed null and void." (Citations omitted.)

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice