REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

POLYMER PRODUCTS (PHIL.), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8299

Members:

DEL ROSARIO, *PJ,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
MAY 20 2015 ; 3:50p.m.

x---x

RESOLUTION

DEL ROSARIO, PJ.:

This resolves respondent's **"MOTION FOR RECONSIDERATION (Notice of Decision promulgated on January 30, 2015)"** filed on February 24, 2015, with petitioner's **"COMMENT"** filed on April 10, 2015.

A perusal of the subject Motion for Reconsideration reveals that it did not state the date, time and place of hearing on the motion which is required under Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure which state:

"RULE 15
MOTIONS

Sec. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every written motion shall be set for hearing by the applicant.**

> Every written motion required to be heard and the notice of hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> Sec. 5. Notice of Hearing. – The notice of hearing shall be addressed to all parties concerned, and shall **specify the time and date** of the hearing which must not be later than ten (10) days after the filling of the motion." (Emphasis supplied)

In *Pedro G. Resurreccion, Joseph Cometa and Criseforo Litera To, Jr. vs. People of the Philippines,*[1] the Supreme Court categorically ruled that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure is considered *pro forma,* a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon, *viz*:

> "A motion which does not meet the requirements of Sections 4 and 5, Rule 15 of the 1997 Rules of Civil Procedure is considered pro forma; it is nothing but a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon. "**Service of [a] copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with [the] said requirements renders his motion fatally defective**.
>
> In the present case, the motion for reconsideration filed by the petitioners before the Sandiganbayan reads as follows:
>
> NOTICE OF HEARING
>
> The Division Clerk of Court
> 1st Division, Sandiganbayan, Quezon City
>
> Greetings:
>
> Please x x x submit the foregoing Motion for Reconsideration of Decision for the immediate consideration and approval by this Honorable Division as soon as receipt is made hereof.
>
> (SGD)
> ATTY. LEO T. EDUARTE

---

[1] G.R. No. 192866, July 9, 2014.

> COPY FURNISHED: BY PERSONAL SERVICE
> The Honorable Trial Prosecutors
> 1st Division
>
> Sandiganbayan, Quezon City.
>
> The notification, however, only prays for the submission of the motion for reconsideration and approval of the court, without stating the time, date and place of the hearing of the motion. It was, therefore, not the notice of hearing contemplated by the rules as the same has not been set for hearing. In Manila Surety and Fidelity Co., Inc. v. Batu Const. and Co., et al, we declared that:
>
> The written notice referred to evidently is that prescribed for motions in general by Rule 15, Sections 4 and 5 (formerly Rule 26), which provide that such notice shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance. And according to Section 6 of the same Rule, no motion shall be acted upon by the court without proof of such notice. Indeed, it has been held that in such a case the motion is nothing but a useless piece of paper. The reason is obvious: unless the movant sets the time and place of hearing, the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition.
>
> Similarly, we held in Sembrano v. Judge Ramirez that:
>
> **A motion without notice of hearing is a mere scrap of paper. It does not toll the running of the period of appeal. This requirement of notice of hearing equally applies to a motion for reconsideration.** Without such notice, the motion is pro forma. **And a pro forma motion for reconsideration does not suspend the running of the period to appeal.**
>
> Since the motion for reconsideration filed by the petitioners did not contain the time, date and place for the hearing, the motion is nothing but a useless scrap of paper, a pro forma motion, hence, properly dismissible by the Sandiganbayan." (Citations omitted)

Even assuming that respondent's Motion for Reconsideration is not a *pro forma* motion, the Court still finds no valid and cogent reason to reconsider its Decision.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 12-99 expressly provide a taxpayer a 15-day period from receipt of the Preliminary Assessment Notice (PAN) within which to respond thereto. It is only upon the lapse of the 15-day period that the Bureau of Internal Revenue (BIR) may validly issue a

Final Assessment Notice (FAN) *sans* any response from the taxpayer. This is the procedural due process laid down by law and BIR rules and regulations.

In this case, records show that petitioner received the PAN on January 3, 2011. The prescribed fifteen (15) day period to respond thereto, therefore, expired on January 18, 2011. As the records further show, however, respondent issued the FAN on January 7, 2011, barely four (4) days after petitioner received the PAN, in violation of Section 228 of the NIRC of 1997, as amended, and RR No. 12-99.

Respondent's issuance of the FAN and petitioner's protest thereto do not *per se* justify respondent's non-observance of procedural due process. The BIR must strictly comply with the law and its own rules and regulations in issuing the FAN. Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 clearly provide that the prescribed 15-day period to reply to the PAN must first lapse before the BIR can issue the FAN. For failure to comply with the 15-day period to respond to the PAN, respondent has no legal basis to issue the FAN.

To reiterate, in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,*[2] 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."

---

[2] G.R. No. 172598, December 21, 2007.

WHEREFORE, foregoing premises considered, the "Motion for Reconsideration (Notice of Decision promulgated on January 30, 2015)" is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

I maintain my Dissenting Opinion.

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