REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1419** (CTA Case No. 8516)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
NEXT MOBILE, INC., Respondent.	***Promulgated:***
	MAY 24 2017 3:55 p.m.

x - x

RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on December 21, 2016, with respondent's **"COMMENT/OPPOSITION (On Petitioner's Motion for Reconsideration dated 20 December 2016)"** filed on February 10, 2017, praying for the reconsideration of the Court *En Banc*'s Decision dated November 21, 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 Amended Decision dated December 22, 2015 of the Court in Division in CTA Case No. 8516, granting respondent's Petition for Review and cancelling the FLD and FAN No. 32-06-IT-0071 dated April 14, 2010, is **AFFIRMED**.

SO ORDERED."

In the instant Motion, petitioner argues that records of the instant case indubitably show that the procedural due process requirements in the issuance of deficiency tax assessment under Section 228 of the National Internal Revenue Code (NIRC), as amended, and Revenue Regulations (RR) No. 12-99 were complied with. According to petitioner, respondent's failure to file a reply to the Preliminary Assessment Notice (PAN) because the Assessment Notice No. 32-06-IT-0071 (FAN) was issued before the lapse of the fifteen (15) days from receipt of the PAN shall not be deemed as a deprivation of its right to procedural due process.

Moreover, petitioner contends that it is erroneous to conclude that the FAN was issued and mailed to the respondent before considering the protest to the previously issued PAN because no protest to the PAN was filed by respondent; and that the failure to strictly comply with the 15-day period provided under Section 3.1.2 of RR No. 12-99 shall not be a valid basis to invalidate an assessment.

Furthermore, petitioner submits that the cases of *Commissioner of Internal vs. Metro Star Superama, Inc.*[1] ("*Metro Star* case") and *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*[2] ("*Pilipinas Shell* case") should not be made as bases to invalidate the assessment issued by the Bureau of Internal Revenue (BIR) against the respondent.

On the other hand, in its *Comment/Opposition*, respondent avers the following:

1. Contrary to petitioner's position, both Section 228 of the NIRC of 1997 and RR No. 12-99 require the taxpayer to respond to the PAN;

2. Petitioner cannot rely on the case of *International Exchange Bank vs. Commissioner of Internal Revenue*[3] to insist otherwise. This Court's Third Division already rejected the application of said case. Further, the then Second Division of the Supreme Court, which issued the Decision in the said case, already reversed said ruling in the *Pilipinas Shell* case;

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[1] G.R. No. 185371, December 8, 2010.
[2] G.R. No. 172598, December 21, 2007.
[3] G.R. No. 171266, April 4, 2007.

3. As correctly ruled by this Court, the *Pilipinas Shell* case and *Metro Star* case are squarely on point and go to the issue of this case;

4. Contrary to petitioner's allegation, he systematically deprived respondent of its right to due process; and

5. Even assuming that the violation of respondent's right to due process may be disregarded, petitioner's issuance of the deficiency income tax assessment for the taxable year ending December 31, 2006 was still erroneous because respondent incurred a net operating loss of ₱504,271,519.00 in the same year.

THE COURT *EN BANC*'S RULING

We deny the instant *Motion for Reconsideration*.

A careful perusal of the *Motion for Reconsideration* shows that the arguments raised therein 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, We shall no longer belabour, in this Resolution, to repeat the disquisitions made therein.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice