REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NEW COAST HOTEL, INC.,
Petitioner,

CTA EB NO. 1758
(CTA Case No. 9146)

- versus -

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-VIllena, and
Modesto-San Pedro, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 0 1 2019 2:30 pm

x--x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is petitioner's Motion for Reconsideration (Re: Decision dated April 15, 2019), *sans* respondent's comment.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated

September 19, 2017 and the Resolution dated December 4, 2017 are **AFFIRMED**.

SO ORDERED."

In the instant motion, petitioner argues that respondent's Preliminary Notice was not required under Section 228(b) of the National Internal Revenue Code (NIRC) of 1997, as amended. Hence, the same constitutes a Final Assessment Notice.

The Court *En Banc* finds petitioner's arguments bereft of merit.

Section 228(b) of the NIRC of 1997, as amended, provides:

> "SEC. 228. **Protesting of Assessment.** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; xxx"

In relation thereto, Sections 3.1.2 and 3.1.3(ii) of Revenue Regulations (RR) No. 12-99 respectively state that:

> "**SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.** —
>
> 3.1.2 **Preliminary Assessment Notice (PAN).** — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of

> the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> 3.1.3 **Exceptions to Prior Notice of the Assessment.** — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:
>
> xxx xxx xxx
>
> (ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; xxx"

The above provisions provide the procedural **rights** to due process of taxpayers in the issuance of a deficiency tax assessment. Thus, the general rule is that in the observance of a taxpayer's right to due process, the taxpayer is initially entitled to the prior receipt of a PAN. However, such taxpayer loses this right, and a formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient, when a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent.

In the instant case, Section 228(b) of the NIRC of 1997, as amended, in relation to Section 3.1.3(ii) of RR No. 12-99, is invoked under a mistaken context. Simply put, petitioner argues that it is not entitled to the right to receive PAN by necessarily admitting that there is a discrepancy between the taxes it withheld and the amount it actually remitted to the BIR. Considering such discrepancy, petitioner suggests that it must be penalized under the circumstances, *i.e.*, respondent should immediately issue a FAN without affording petitioner the benefit of a PAN.

Clearly, petitioner's position is outright erroneous. Again, Section 228(b) of the NIRC of 1997, as amended, in relation to Section 3.1.3(ii) of RR No. 12-99, is an exception to the taxpayer's right to receive a PAN, and is available to respondent as a defense should a question arise *vis-à-vis* the non-issuance of a PAN. It is not part of petitioner's right to due process, *i.e.*, not to receive a PAN and instead be automatically issued a FAN. As such, the same is incorrectly invoked in the present case.

Considering the foregoing, the Court *En Banc* sees no cogent reason to deviate from its previous ruling.

WHEREFORE, the instant Motion for Reconsideration (Re: Decision dated April 15, 2019) is **DENIED**, for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice