Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

***En Banc***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

**CTA EB No. 1470**
(CTA Case No. 8750)

Present:

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

**- versus -**

**Promulgated:**

**ESPER R. VARGAS, JR.,**
Respondent.

JAN 29 2018 3:35 p.m.

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# RESOLUTION

**CASANOVA, *J.*:**

Before *Us* is petitioner's **Motion for Reconsideration**[1] filed on November 21, 2017, with respondent's **Comments on Petitioner's Motion for Reconsideration**[2] filed on December 8, 2017.

On October 20, 2017, the Court *En Banc* promulgated a Decision[3] denying petitioner's Petition for Review, thereby, affirming the cancellation of the Warrant of Garnishment addressed to the Bank of the Philippine Islands for respondent's bank accounts. The *fallo* of the *En Banc* Decision found that petitioner failed to observe respondent's right to due process by not, among others, issuing a Letter of Authority (LOA)

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[1] *En Banc* Rollo, pp. 131-140.
[2] *Ibid.*, pp. 141-143.
[3] *Id.*, pp. 115-130.

before commencing audit on respondent's books of accounts. The dispositive portion of the said *En Banc* Decision reads as follows:

> "**WHEREFORE,** the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated March 8, 2016 and Resolution dated May 27, 2016 in CTA Case No. 8750 are both **AFFIRMED.**
>
> **SO ORDERED.**"

In the instant Motion, petitioner Commissioner of Internal Revenue (CIR) prays that the above Decision be reconsidered and set aside. Petitioner pleads that, instead, judgment be rendered ordering respondent to pay the deficiency tax assessments stated in the Formal Letter of Demand and Assessment Notices plus increments until their full payment. In support of his plea, petitioner reiterates that he sent, through registered mail, the deficiency tax assessment notices to respondent's registered address as testified by his witness, Revenue Officer Betty Esplana, in her testimony during trial before the CTA-Division. However, since respondent vacated his registered address without informing the Bureau of Internal Revenue (BIR), it logically follows that petitioner cannot personally serve the said assessment notices to respondent. As such, petitioner has no recourse but to mail the assessment notices which is, therefore, considered received by respondent *via* constructive mode of service. Nonetheless, respondent was given the opportunity to file his protest to the FAN with attached Assessment Notices dated July 20, 2011 pursuant to Section 3.1.5 of Revenue Regulations (RR) No. 12-99.

On the other hand, in his Comment, respondent Esper R. Vargas, Jr. alleges that petitioner's Motion raised no new matters that were not traversed and considered in the assailed *En Banc* Decision. As such, respondent claims that petitioner's appeal is merely for harassment and thus deserves to be denied outright for utter lack of merit.

After due consideration of the arguments presented by the parties, *We* find no merit in the instant Motion for Reconsideration.

As correctly pointed out by respondent, the arguments proffered by petitioner in his Motion are mere reiterations of the same facts and issues he had previously raised in his Petition for Review[4] and Memorandum[5] filed with the Court *En Banc*, and his Motion for Reconsideration[6] filed with the CTA-Division. Hence, to discuss them again would be mere superfluity which will result in appalling misuse of judicial time and resources.

Again, *We* stress that, considering the extensive machineries the government has within its disposal, due process dictates that taxpayers must be properly informed and duly served of any tax deficiency assessments against them. The power to tax must be used justly and not treacherously in order to maintain the general public's trust and confidence in the government. To recap, in the present case, by failing to issue an LOA, the requirement of first having authorization before an examination of a taxpayer may be made was not duly complied with. As such, following the well-settled rule that a void assessment bears no fruit, petitioner's subsequent assessment notices cannot be validly used as bases for the issuance of a Warrant of Garnishment.

Accordingly, *We* find no cogent justification to disturb the conclusions reached by Court *En Banc* in the Decision dated October 20, 2017.

**WHEREFORE,** petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

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[4] CTA *En Banc* Rollo, pp. 1-15.
[5] *Ibid.*, pp. 79-90.
[6] Division Docket, pp. 454-464.

**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