REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1151** (CTA CASE NO. 8095)
	Present:
- versus -	**DEL ROSARIO**, *PJ*, **CASTAÑEDA**, JR., **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **COTANGCO-MANALASTAS**, *and* **RINGPIS-LIBAN**, *JJ.*
HERMANO (SAN) MIGUEL FEBRES CORDERO MEDICAL EDUCATION FOUNDATION (DE LA SALLE – HEALTH SCIENCE INSTITUTE), INC., Respondent.	Promulgated: MAY 29 2015 3:30 p.m.

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RESOLUTION

DEL ROSARIO, PJ.:

This resolves petitioner's **"MOTION FOR RECONSIDERATION (of the Decision promulgated on 17 February 2015)"** posted on March 17, 2015, with respondent's **"COMMENT/OPPOSITION"** filed on March 30, 2015.

In the subject Motion for Reconsideration, petitioner prays that the Court *En Banc* set aside the portion of its Decision promulgated on February 17, 2015 denying her Petition for Review, and another one be rendered ordering respondents to pay the amount of Php3,572,329.11 inclusive of interest and compromise penalty, for fiscal year ending May 31, 2005.

In support thereof, petitioner argues that respondent was not and was never deprived of its procedural due process under Section 228 of the

National Internal Revenue Code of 1997, (1997 NIRC) as amended and Revenue Regulations No. 12-99. Petitioner also posits that Section 222 (a) of the 1997 NIRC, as amended applies in this case.

Respondent, on the other hand, counter-argues that it was deprived of procedural due process under Section 228 of the 1997 NIRC, as amended and Revenue Regulation No. 12-99. Respondent also retorts that Section 222 of the 1997 NIRC, as amended does not apply in the case at bar.

Petitioner's arguments are bereft of merit.

Petitioner's arguments with regard to the application of Section 222 of the 1997 NIRC are a mere rehash of her arguments in her Petition for Review which were duly considered and extensively discussed in the assailed Decision.

As regards the argument that respondent was not deprived of its procedural due process under Section 228 of the 1997 NIRC and Revenue Regulation No. 12-99, the Court finds the same untenable.

Section 228 of the 1997 NIRC, 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.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> xxx xxx xxx."

Corollary thereto, Section 3.1.2 of Revenue Regulations No. 12-99[1] provides:

> "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 law, rules and regulations, or jurisprudence on which the proposed assessment is based..... **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.
>
> xxx xxx xxx"

As previously discussed in the assailed Decision,

> "Indubitably, a taxpayer is given an opportunity to respond to the PAN within fifteen (15) days from receipt thereof. Upon lapse of the 15-day period, without any response from the taxpayer, the latter shall be considered in default and the BIR shall issue a formal letter of demand and assessment notices.
>
> Here, respondent received a copy of the PAN dated December 12, 2008 on January 5, 2009. Pursuant to RR No. 12-99, respondent has fifteen (15) days or until January 20, 2009 within which to file a reply or protest against the PAN.
>
> Respondent filed its protest to the PAN on January 20, 2009. Barely a day after it filed its protest to the PAN or on January 21, 2009, respondent received the Formal Letter of Demand and Assessment Notice No. 54-2005 which are both dated January 9, 2009.
>
> Evidently, petitioner did not wait for respondent to reply to the PAN nor considered the arguments raised in respondent's protest thereto. The Formal Letter of Demand and Assessment Notice No. 54-2005 were already prepared by petitioner as early as January 9, 2009 or way before the lapse of the fifteen-day period within which petitioner could file a reply or protest to the PAN.
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> As oft-repeated, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribe a fifteen (15)-day period from receipt of a PAN within which to a taxpayer may respond thereto. It is well-settled that the right of the taxpayer to respond to the

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[1] Dated September 6, 1999.

> PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding respondent's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated respondent's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto."

The right of the taxpayer, therefore, to respond to a PAN carries with it the correlative duty on the part of the BIR to consider the response. The procedure is intrinsic in the taxpayer's right to be heard. Verily, the issuance of a FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process.

Worse, any precedent that upholds the validity of a FAN as long as the taxpayer is able to file a protest is fraught with mischievous consequences. Parenthetically, it would in essence encourage the unscrupulous practice of issuing a FAN even without prior compliance with the procedure no less prescribed by law, <u>first</u>, in requiring the issuance of a PAN; and, <u>second</u> in considering the taxpayer's response thereto. There is nothing more devious than the scenario where government ignores as much its own rules as the taxpayer's constitutional right to due process.

Thus, petitioner's failure to observe the period prescribed under Section 228 of the 1997 NIRC, as amended and Section 3.1.2 of Revenue Regulation No. 12-99 in this case violates respondent's right to procedural due process.

In closing, the admonition of the Supreme Court as early as in 1962 to an agency of government similar to the BIR is apropos:

> "The Public Service Commission is an agency of the **government, and should at all times, maintain a due regard for the constitutional rights of parties litigant**. Also, the Commissioners (who are not judges in the true sense) would do well **to ponder the implications of Article 32, No. 6 of the New Civil Code on the individual responsibility of public officers and employees who impair a person's right against the deprivation of property without due process of law**."[2] (*Emphases supplied*)

WHEREFORE, based on the foregoing premises, petitioner Commissioner of Internal Revenue's **"MOTION FOR RECONSIDERATION (of the Decision promulgated on 17 February 2015)"** posted on March 17, 2015 is hereby **DENIED**.

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[2] *Danan vs. Aspillera*, G.R. No. L-17305, November 28, 1962.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice