REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MINDANAO SANITARIUM AND HOSPITAL COLLEGE, INC.,
Respondent.

CTA EB NO. 2139
(CTA Case No. 8673)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro, and
Reyes-Fajardo, *JJ*.

Promulgated:

OCT 0 7 2021 2:42 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J*.:

For resolution of the Court is petitioner's Motion for Reconsideration (Re: Decision promulgated on 27 January 2021) filed on February 19, 2021, with respondent's Comment (On Petitioner's Motion for Reconsideration) filed on May 31, 2021.

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

> **WHEREFORE**, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED."[1]

In the instant motion, petitioner asserts that he has sufficiently proven with overwhelming evidence that respondent received the Preliminary Assessment Notice in the due course of mail. Meanwhile, this is a mere reiteration of petitioner's arguments in his Petition for Review.

After revisiting the records of the case, the Court *En Banc* still maintains that respondent was denied due process when it failed to receive the PAN.

Again, records show that the PAN was addressed and delivered to **Mindanao Sanitarium and Hospital, Inc.**, which is a different entity from respondent.

While petitioner's witness, Ms. Denise Borja testified that she sent the PAN to petitioner, there is no other evidence presented by petitioner showing that the PAN was properly addressed and delivered to respondent. On the contrary, petitioner's own pieces of evidence, *i.e.*, Masterlist of Registered Mail of the BIR and the Certification issued by the postmaster, show that the PAN was wrongfully delivered to an entity other than respondent.

Thus, there is no reason to disturb the following findings of the Court *En Banc*:

> "In support of his Petition, petitioner insists that:
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> 'The fact of mailing was supported by the corresponding Master List of Mail Matters and even a certification from the Post Office. If indeed the *onus probandi* had shifted to petitioner, he maintains his position that he has sufficiently proven with overwhelming evidence that respondent indeed received the PAN in the due course of mail.'
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> In ruling against petitioner, the Court in Division found that:
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>> 'Respondent failed to discharge this duty and to present substantial evidence showing that petitioner indeed received the PAN dated July 17, 2012. In support of his allegation of proper service of PAN, respondent merely presented the Masterlist of Registered Mail

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[1] Decision, Court *En Banc* Docket, p. 75.

prepared and signed by Elmie L. Ello of BIR Revenue Region No. 16-Cagayan de Oro City, where the name of petitioner, its address, and registry receipt number were noted, and the Certification issued by Postmaster IV Macapado P. Caye. A perusal of the Certification, however, proves that the letter was addressed and delivered to a certain Mindanao Sanitarium and Hospital. **Records reveal that Mindanao Sanitarium and Hospital College, Inc. (petitioner) and Mindanao Sanitarium and Hospital, Inc. are two different entities**. Hence, the Court does not put much credence to these exhibits since they do not prove that the PAN was duly served upon petitioner. **Furthermore, the registry receipt of the assessment notice could have been obtained easily. Yet respondent failed to present such evidence.**'

A careful review of the records shows that, indeed, the subject PAN was addressed and delivered to **Mindanao Sanitarium and Hospital, Inc.** which is an entity different from petitioner. Thus, it is clearly established that respondent did not receive the PAN."

Finally, with respect to petitioner's argument that PAN is not part of respondent's right to due process, suffice it to state that no less than Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, provides the importance of PAN with respect to deficiency assessment. Thus:

"Section 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.

xxx xxx xxx"

Hence, the Court *En Banc* committed no error when it ruled that:

"In the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, the Supreme Court explained the nature of PAN as part of due process rights of taxpayers, as follows:

'Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.

xxx xxx xxx

xxx, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.'"

Considering the foregoing, the Court *En Banc* finds no reason to disturb the ruling in the assailed Decision. Hence, the denial of the instant motion is in order.

WHEREFORE, the instant Motion for Reconsideration (Re: Decision promulgated on 27 January 2021) 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

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

MARIAN IVY F. REYES-FAJARDO
Associate Justice