REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

POLYMER PRODUCTS (PHIL), INC.,
Respondent.

CTA *EB* NO. 1320
(CTA Case No. 8299)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

SEP 09 2016 3:10 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court *En Banc* is a Petition for Review[1] under *Section 4(b)*[2], *Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* seeking to reverse the Decision[3] ("Assailed Decision") dated January

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[1] *Rollo, CTA EB Case No. 1320, Petition for Review,* pp. 1-35, with annexes.

[2] "SECTION 4. *Where to Appeal; Mode of Appeal.* — xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal."

[3] *Records, CTA Case No. 8299, Vol. 3, Assailed Decision,* pp. 1421-1435, with annexed Dissenting Opinion; penned by Presiding Justice Roman G. del Rosario, with Associate Justice Erlinda P. Uy concurring and Associate Justice Cielito N. Mindaro-Grulla dissenting.

30, 2015, as well as the Resolution[4] ("Assailed Resolution") dated May 20, 2015, both of the First Division of the Court of Tax Appeals ("Court in Division").[5]

The Parties[6]

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR") vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and other laws, rules and regulations.

Respondent Polymer Products (Phil.), Inc. ("PPPI") is a domestic corporation, duly organized and existing under Philippine laws, with principal office at No. 11, Joe Borris St., Bo. Bagong Ilog, Pasig City.

The Facts

As stated in the Assailed Decision[7], the factual antecedents of this case are as follows:

> On September 1, 2008, [the CIR] issued Letter of Authority [("LOA")] No. 200700042013 for purposes of investigating [PPPI's] all internal revenue taxes for the year ending December 31, 2007.
>
> As a result of said investigation, [PPPI] received on January 3, 2011 a Preliminary Assessment Notice [("PAN")] dated December 17, 2010, finding [PPPI] liable for deficiency income tax, [value-added tax ("VAT")] and [expanded withholding tax ("EWT")] for taxable year 2007 in the following amounts:

Deficiency Income Tax	[Php]	38,848,860.51

[4] *Records, Vol. 3, Assailed Resolution,* pp. 1477-1481; penned by Presiding Justice Roman G. del Rosario, with Associate Justice Erlinda P. Uy concurring and Associate Justice Cielito N. Mindaro-Grulla maintaining her dissent.
[5] *Rollo, Petition for Review,* p. 1.
[6] *Records, Vol. 3, Assailed Decision,* pp. 1421-1422.
[7] *Id.* at 1422-1424.

Deficiency VAT	[Php]	12,685,048.30
Deficiency EWT	[Php]	1,563,650.03

On January 17, 2011, [PPPI] received [the CIR's] Formal Letter of Demand [("FLD")] No. 043A-B319-07 dated January 7, 2011, with attached Assessment Notices and Details of Discrepancies, assessing [PPPI] of the following deficiency taxes for the year 2007:

I.	Income Tax	[Php]	39,669,513.13
II.	VAT		12,945,458.13
III.	EWT		1,595,638.71
Total amount due		**[Php]**	**54,210,609.97**

On January 20, 2011, [PPPI] filed its protest letter against the FLD and Assessment Notices pursuant to *Section 228 of the [1997 NIRC]*.

On May 26, 2011, [PPPI] received a letter dated May 18, 2011, signed by Regional Director Nestor S. Valeroso, informing [PPPI] that the assessments are being reiterated in view of [PPPI's] alleged failure to submit documents in support of its protest. Moreover, [the CIR] stated that the May 18, 2011 letter will serve as the Bureau of Internal Revenue [("BIR")'s] "FINAL DECISION" on the matter.

On June 27, 2011, [PPPI] filed the instant Petition for Review.

In [his] Answer, [the CIR] raised the following special and affirmative defenses:

a) The assessment for calendar year 2007 in the total amount of [Php]54,210,607.97 was issued in accordance with law and regulations;

b) [PPPI] has undeclared sales of [Php]49,549,730.67 which were not reflected in its financial statements, hence assessed pursuant to *[Section] 31 of the 1997 [NIRC]*. It is likewise subject to VAT pursuant to *Sections 106 and 108 of the 1997 [NIRC]*;

c) [PPPI] has payments in the aggregate amount of [Php]22,977,679.12[] which were not subjected to withholding taxes as required under *RR No. 2-98*, as amended, hence, disallowed as deductions pursuant to *[Section] 34 (K) of the 1997 NIRC*;

d) There is unsupported excess input tax carried over from previous period in the amount of [Php]2,109,082.13 claimed even without documentary evidence, hence disallowed as deductions from VAT liability pursuant to *[Section] 110 of the [1997 NIRC]*; and,

e) Settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith (*Cagayan Robina Sugar Milling Co. v[]. Court of Appeals, 342 SCRA 671*). It is the taxpayer not the [BIR] who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

After the Pre-Trial Conference on September 9, 2011, the parties filed their Joint Stipulations of Facts and Issues and Supplemental Joint Stipulations of Facts and Issues on October 4, 2011 and October 17, 2011, respectively. The Court approved the parties' Joint Stipulation of Facts and Issues and Supplemental Joint Stipulation of Facts and Issues and terminated the pre-trial on October 19, 2011. Thereafter, the Court issued the Pre-Trial Order on January 9, 2012.

On January 10, 2012, Atty. Pepito Po of R.S. Bernaldo and Associates was commissioned as Independent Certified Public Accountant [("ICPA")] upon motion of [PPPI].

Thereafter, trial ensued, wherein the parties presented their respective evidence. [PPPI] presented Mutya T. Faigao and Atty. Pepito G. Po, as its witnesses, and documentary evidence marked as Exhibits "A" to "SSSSSSSSS-1", which the Court admitted in its Resolution dated October 5, 2012.

On the other hand, [the CIR] presented BIR Revenue Officer I Charlie de Leon and BIR Revenue Officer Benedict R. Bacani, as [his] witnesses, and documentary evidence, marked as Exhibits "1" to "16", inclusive of sub-markings, which were admitted by the Court (except Exhibit "6") in the Resolution dated November 20, 2013.

The parties having filed their respective memoranda within the extended period granted by the Court, the case was deemed submitted for decision on February 10, 2014.

The Assailed Decision[8] was rendered on January 30, 2015 granting PPPI's Petition for Review. The *fallo* states:

> **WHEREFORE,** premises considered, the Petition for Review filed on June 27, 2011 by [PPPI] is hereby **GRANTED.** Accordingly, Formal Letter of Demand No. 043A-B319-07 dated January 7, 2011 and the attached Assessment Notices, assessing and demanding from [PPPI] the payment of deficiency income tax, value-added tax and expanded withholding tax in the total amount of [Php]54,210,609.97 for the period covering taxable year 2007, are hereby **CANCELLED** and **WITHDRAWN.**
>
> **SO ORDERED.**[9]

Unsatisfied with the Decision, the CIR filed a Motion for Reconsideration (Notice of Decision promulgated on January 30, 2015) ("Motion for Reconsideration")[10] on February 24, 2015. On the other hand, PPPI filed its Comment (To Respondent's Motion for Reconsideration) ("Comment")[11] through registered mail on April 10, 2015.

On May 20, 2015, the Court in Division issued the Assailed Resolution[12] upholding the Decision and denying the Motion for Reconsideration, stating the following:

> **WHEREFORE,** foregoing premises considered, the "Motion for Reconsideration (Notice of Decision promulgated on January 30, 2015)" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[13]

On June 9, 2015, the CIR filed the present appeal before the CTA *En Banc*, *via* Petition for Review docketed as CTA *EB* No. 1320.[14]

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[8] *Records, Vol. 3, Assailed Decision,* pp. 1421-1435, with annexed Dissenting Opinion
[9] *Id.* at 1429-1430.
[10] *Id., Motion for Reconsideration,* pp. 1436-1442.
[11] *Id., Comment,* pp. 1457-1472.
[12] *Id., Assailed Resolution,* pp. 1477-1481.
[13] *Id.* at 1481.
[14] *Rollo, Petition for Review,* pp. 1-35, with annexes.

On July 1, 2015, the Court *En Banc* issued a Resolution[15] ordering PPPI to file its comment, within ten (10) days from receipt thereof.

On July 16, 2015, PPPI filed a Motion for Additional Time to File Comment,[16] which was granted in a Minute Resolution dated July 20, 2015.[17]

In compliance with the above Resolution, PPPI filed its Comment to the Petition for Review[18] through registered mail on August 3, 2015.

On August 26, 2015, the Court *En Banc* issued a Resolution[19] giving due course to the Petition for Review and requiring the parties to submit their respective memoranda within thirty (30) days from receipt of the Resolution.

On September 23, 2015, the CIR filed his Memorandum[20].

PPPI filed a Motion for Additional Time to File Memorandum[21] on October 8, 2015, which was granted in a Minute Resolution[22] dated October 13, 2015. On November 9, 2015, PPPI filed its Memorandum[23].

The Court *En Banc* issued a Resolution[24] dated December 9, 2015, stating that the case was deemed submitted for decision; hence, this Decision.

The Issue[25]

WHETHER OR NOT THE COURT IN DIVISION ERRED IN CANCELLING AND WITHDRAWING THE FLD WITH DETAILS

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[15] *Rollo*, pp. 37-38.
[16] *Id.* at 39-41.
[17] *Id.* at 42.
[18] *Id.* at 44-58.
[19] *Id.* at 77-78.
[20] *Id., Petitioner's Memorandum* pp. 79-87.
[21] *Rollo*, pp. 88-90.
[22] *Id.* at 91.
[23] *Id., Respondent's Memorandum,* pp. 92-113.
[24] *Id.* at 122-123.
[25] *Id., Petition for Review,* p. 4.

OF DISCREPANCIES, AND ASSESMENT NOTICES IN ITS DECISION DATED JANUARY 30, 2015 BECAUSE THE RIGHT OF PPPI TO DUE PROCESS WAS NOT VIOLATED, THUS, THE ASSESSMENTS ARE VALID.

The Arguments of the CIR[26]

According to the CIR, the Court in Division erred in the Assailed Decision dated January 30, 2015 when it ruled that the right to due process of PPPI was violated citing the Supreme Court decision in the case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue* ("*Pilipinas Shell Case*"). It is the CIR's position that the aforementioned case is inapplicable in the instant case, since the Notice of Informal Conference ("NIC"), the PAN, and the Final Assessment Notice ("FAN")/FLD were all received by the taxpayer, PPPI, unlike the *Pilipinas Shell Case* wherein the PAN was not received by the taxpayer.

The CIR argues that the applicable case is the Court *En Banc* decision entitled *Commissioner of Internal Revenue v. Ajinomoto Philippines Corporation*. The Court *En Banc* ruled:

> It cannot be denied that Ajinomoto having been given the opportunity to refute the charges against it, was able to timely file its administrative protest and was able to discuss its position on the deficiencies being assessed against it. Apparently, there was substantial compliance in the procedure in protesting the assessments and petitioner's right to due process was adequately observed and protected. Thus, we find that the Court's Division correctly ruled as follows:
>
>> ". . . due process in our jurisdiction refers to the right of the taxpayer to be informed of the legal and factual findings of the BIR as regards its deficiency taxes, and the opportunity to be heard through protest. *Section 228 of the [1997 NIRC]* clearly refers to the [FAN] that should be formally protested. In the instant case, there is no doubt that petitioner was able to file its protest to the FAN.

The CIR stresses that PPPI filed its protest to the PAN and

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[26] *Rollo, Petitioner's Memorandum*, pp. 82-85.

FAN/FLD with documents to substantiate its protest. Accordingly, the CIR insists that the Court *En Banc* order the reversal of the January 30, 2015 Assailed Decision and the May 20, 2015 Assailed Resolution.

The Counter-arguments of PPPI[27]

Five major points were invoked by PPPI to controvert the CIR's allegations, *viz.*: *(1)* that the CIR's *pro forma* Motion for Reconsideration with the Court in Division did not suspend the running of the fifteen (15) day period to appeal, thus, the Assailed Decision has become final and executory; *(2)* that the CIR's Petition for Review before the Court *En Banc* is fatally infirm pursuant to *Section 2, Rule 6 and Section 4(b), Rule 8 of the RRCTA,* in relation to *Sections 6 and 7, Rule 43 of the Rules of Court; (3)* that the Court in Division correctly ruled that PPPI was denied due process of law as prescribed by *RR No. 12-99* when it issued the FAN/FLD without first resolving the protest to the PAN; (4) that the *Pilipinas Shell Case* finds application in the present case; and (5) that the CIR has no legal basis to support his position.

In view of the foregoing major points, PPPI prays that the Court *En Banc* dismiss the instant Petition for Review and uphold the Assailed Decision dated January 30, 2015 and the Assailed Resolution dated May 20, 2015.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the Petition for Review.

The Court in Division correctly ruled that the CIR's Motion for Reconsideration was pro forma, thus, the Assailed Decision has already become final and executory.

PPPI avers that the CIR's Motion for Reconsideration was denied by the Court in Division in the Assailed Resolution for being

[27] *Rollo, Respondent's Memorandum,* pp. 96-110.

pro forma, due specifically to the CIR's failure to comply with the mandatory rule on setting a motion for hearing. PPPI further avers that the CIR failed to raise as an issue the denial of his Motion for Reconsideration on the aforementioned ground, thus the ruling of the Court in Division in its Assailed Resolution is uncontested by the latter. Accordingly, the Assailed Decision has become final and executory.

The Court *En Banc* finds merit in PPPI's contention.

For ease of reference, the following are the provisions of the *Revised Rules of Court* ("*Rules of Court*") and *RRCTA* applicable to the instant case:[28]

Rules of Court

RULE 15
Motions

SECTION 4. *Hearing of motion.* — <u>Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.</u>

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SECTION 5. *Notice of hearing.* — <u>The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.</u>

RULE 37
New Trial or Reconsideration

SECTION 2. *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

[28] Underscoring ours.

xxx xxx xxx

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.

RRCTA

RULE 15
MOTION FOR RECONSIDERATION OR NEW TRIAL

SEC. 3. Hearing of the Motion. - The motion for reconsideration or new trial, as well as the opposition thereto, shall embody all supporting arguments and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which the case the Court shall issue the proper order.

In *Manila Surety and Fidelity Co., Inc. v. Bath Construction and Company*,[29] the Supreme Court ruled that a notice of time and place of hearing is mandatory for motions for new trial or motion for reconsideration and the lack thereof is fatal to a motion for reconsideration. This doctrine has been reiterated by the Supreme Court in *Magno v. Ortiz*,[30] *Calero v. Yaptinchay*,[31] *Vda. de Azarias v. Maddela*,[32] *Phil. Advertising Counselors, Inc. v. Revilla*,[33] *Sacdalan v. Bautista*,[34] *New Japan Motors, Inc. v. Perucho*,[35] *Firme v. Reyes, et al.*,[36] and others.

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[29] G.R. L-16636, June 24, 1965, 14 SCRA 435.
[30] G.R. L-22670, January 31, 1969, 26 SCRA 692.
[31] G.R. L-27654, February 18, 1970, 31 SCRA 562.
[32] G.R. L-25932, March 19, 1971, 38 SCRA 35.
[33] G.R. L-31869, August 8, 1973, 52 SCRA 246.
[34] G.R. L-38014, March 27, 1874, 56 SCRA 175.
[35] G.R. L-44387, November 5, 1976, 74 SCRA 14.
[36] G.R. L-35858, August 21, 1979, 92 SCRA 713.

Moreover, the Supreme Court ruled in the case *National Commercial Bank of Saudi Arabia v. Court of Appeals*[37] that the requirement of notice under *Sections 4 and 5, Rule 15* in connection with *Section 2, Rule 37 of the Rules of Court* is mandatory; that absence of a notice of hearing is fatal; that in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency; and that due to the mandatory nature of the requirement of notice, failure to comply with the same shall result to the Motion for Reconsideration being deemed as a mere scrap of paper which deserves no consideration.

Additionally, in the Supreme Court case of *Casella v. People of the Philippines, et. al.,*[38] the Highest Tribunal stated that it has consistently ruled that the requirements laid down in the Rules of Court, that the notice of hearing shall be directed to the parties concerned and shall state the time and place for the hearing of the motion, are mandatory; that non-compliance will render the motion *pro forma;* and as such the motion is a useless piece of paper that will not toll the running of the prescriptive period.

In the present case, the Motion for Reconsideration[39] filed by the CIR on February 24, 2015 states the following after the body and the signatures of counsels:

NOTICE OF HEARING

CLERK OF COURT
First Division, Court of Tax Appeals

Salvador & Associates
Units 815-816, 8/F Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
Makati City

Greetings:

Please take notice that the undersigned will submit the foregoing Motion for Reconsideration for the consideration and approval of this Honorable Court upon receipt hereof.[40]

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[37] G.R. No. 124267, January 31, 2003, 396 SCRA 541.
[38] G.R. No. 138855, October 29, 2002, 391 SCRA 344.
[39] *Records, Vol. 3, Motion for Reconsideration*, pp. 1436-1442.
[40] *Id.* at 1442.

(Signed)
LORNA SB. CRUZ

In PPPI's Comment[41], it pointed out this defect and concluded that the Motion for Reconsideration should be deemed *pro forma* due to the CIR's failure to set it for hearing.[42]

Hence, in the Assailed Resolution[43], the Court in Division ruled that the Motion for Reconsideration is *pro forma,* among others.

It is glaringly apparent that the CIR failed to observe the mandatory requirements under *Sections 4 and 5, Rule 15 of the Rules of Court* and *Section 3, Rule 15 of the RRCTA.*

Therefore, not only does the Court *En Banc* agree with the Court in Division's resolution to deny the CIR's Motion for Reconsideration for being a mere scrap of paper, the Court *En Banc* likewise agrees with PPPI's contention that the filing of the said Motion for Reconsideration will not toll the running of the prescriptive period.

Furthermore, the Court *En Banc* notes that the CIR did not raise as an issue the denial of his Motion for Reconsideration for being *pro forma,* as ruled by the Court in Division in the Assailed Resolution.

In view of the foregoing, it follows that the CIR does not contest the Assailed Resolution in relation to its Motion for Reconsideration being declared *pro forma;* that the Decision dated January 30, 2015 has become final and executory; and thus the Court *En Banc* has no jurisdiction to take cognizance of instant Petition for Review, pursuant to *Section 1, Rule 8 of the RRCTA, viz.:*[44]

> RULE 8
> Procedure in Civil Cases
>
> SECTION 1. *Review of Cases in the Court En Banc.* — <u>In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or</u>

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[41] *Records, Vol. 3, Comment,* pp. 1457-1472.
[42] *Id.* at 1459-1462.
[43] *Id., Assailed Resolution,* pp. 1477-1481.
[44] Underscoring ours.

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resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

Litigants must bear in mind that procedural rules should always be treated with utmost respect and due regard since these are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Though litigations should, as much as possible, be decided on their merits and not on technicalities, this does not mean, however, that procedural rules are to be belittled to suit the convenience of a party. Indeed, the primordial policy is a faithful observance of the *Rules of Court*, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases,[45] which, unfortunately, are not attendant in the instant case.

WHEREFORE, premises considered, the Petition for Review filed by petitioner is hereby **DENIED.** The Court *En Banc* hereby **AFFIRMS *IN TOTO*** the Decision of the First Division dated January 30, 2015, as well as its Resolution dated May 20, 2015.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[45] *Asia United Bank v. Goodland Company, Inc.*, 650 Phil. 174, 185 (2010).

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

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

POLYMER PRODUCTS (PHIL), INC.,
Respondent.

CTA EB NO. 1320
(CTA CASE NO. 8299)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and,
RINGPIS-LIBAN, *JJ.*

Promulgated:
SEP 09 2016 3:10 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the findings of the *ponencia* that the Motion for Reconsideration filed by petitioner Commissioner of Internal Revenue (CIR) was pro forma, thus, the assailed decision has already become final and executory.

Nevertheless, I find it imperative to emphasize and expound on the fatal infirmity of the issuance of the CIR of the Formal Letter of Demand (FLD) and Assessment Notices which amounts to a violation of respondent's right to due process.

In the case at bar, it is undisputed that the respondent received the Preliminary Assessment Notice (PAN) dated December 17, 2010 on January 3, 2011; the FLD dated January 7, 2011 on January 7, 2011 and the assessment notices on January 17, 2011.

Under these factual circumstances, I lengthily discussed my view that respondent was denied due process of law in the assailed Decision, to wit:

"Section 228 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.

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. 12-9924 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'

Pursuant to the afore-quoted provisions, it is clearly mandated that a taxpayer is given an opportunity to respond to the PAN within fifteen (15) days from receipt thereof. Upon the 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.

xxx xxx xxx

As earlier quoted, 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 a taxpayer may respond thereto. Indubitably, the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner'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.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, the Supreme Court emphasized the importance of complying with the requirement to send a PAN to the taxpayer as an integral part of due process in the issuance of a deficiency tax assessment. It then declared in no uncertain terms that **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. Undeniably, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period would be ignored.

Although petitioner was given ample opportunity to contest the FLD and Assessment notices, the fatal infirmity that attended its issuance prior to the lapse of the period to respond to the PAN is not cured thereby. In Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, the Supreme Court ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, viz:

> 'In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued**. Respondent must

> be more circumspect in the exercise of his functions, as this Court aptly held in Roxas v. Court of Tax Appeals:
>
> > The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously." (citations omitted)

I am not unaware of the conclusion of the majority in *Commissioner of Internal Revenue vs. Ajinomoto Philippines Corporation* [1] that violation of the right to due process is cured when the taxpayer, respondent therein, was able to file a protest letter to contest the FLD.

To be sure, however, in a number of cases cited in the assailed Decision, the Court has declared void any assessment that fails to comply with the due process requirement, to wit:

> "In *A Brown Co., Inc. vs. Commissioner of Internal Revenue,* the Court ruled that an assessment is void because of the multiple violations of due process committed by the BIR. The violations include, among others: (1) **issuance of the final assessment only four (4) days after the issuance of the PAN**; and, (2) **the lack of opportunity given to the taxpayer to reply to the PAN within fifteen (15) days from its receipt**.
>
> Similarly, in *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue*, the Court ruled that:
>
> > **Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC of 1997, as well as of the provisions of Revenue Regulations Nos. 12-85 and 12-99 and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of fifteen days within which to reply to the PAN**. Even assuming that

[1] CTA EB Nos. 1010 and 1015, November 3, 2014.

> there was an Informal Conference that took place between petitioner and respondent, and that during the conference and even thereafter, petitioner, through its counsel, requested a copy of the FAN, the fact remains that as indicated in the FAN, it was issued on the same day the PAN was received by petitioner. Clearly, petitioner was denied of its right to due process.

The above rulings were reiterated in *Yumex Philippines Corporation vs. Commissioner of Internal Revenue* wherein the assessments were cancelled on the ground of non-observance by the CIR of the 15-day period granted to the taxpayer to respond to the PAN, viz:

> 'Respondent violated Section 228 of the NIRC of 1997 and the provisions of Revenue Regulations No. 12-99, which give the taxpayer a period of fifteen days within which to reply to the PAN. **In view of respondent's violation of petitioner's right to due process, the assessment would thus be considered void.**" (citations omitted)

Moreover in the case of *Next Mobile Inc. vs. Commissioner of Internal Revenue,*[2] the Court ruled that issuance of the FAN prior to the lapse of the fifteen (15) day period provided by law for protesting the PAN is a violation of due process, to wit:

> "In the present case, the PAN was issued on March 25, 2010 and received by petitioner on April 6, 2010. However, even before filing its protest to the PAN, petitioner received the FAN dated April 14, 201[0] on April 15, 2010. Therefore, **respondent issued and mailed the FAN before considering the protest to the previously-issued PAN, depriving petitioner of its right to due process.**" (emphasis supplied) (citations omitted)

Also, in *Commissioner of Internal Revenue vs. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Science Institute), Inc.,*[3] the Court reiterated that a taxpayer must be given an opportunity to respond to the PAN within fifteen (15) days from receipt thereof, and that failure to do so constitutes a violation of due process:

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[2] CTA Case No. 8516, December 22, 2015. (penned by Associate Justice Lovell R. Bautista, concurred by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban)

[3] CTA EB No. 1151, February 17, 2015. (penned by the undersigned and concurred by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, Associate Justice Amelia R. Cotangco-Manalastas and Associate Justice Ma. Belen M. Ringpis-Liban)

> "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 a taxpayer may respond thereto. **It is well-settled that the right of the taxpayer to respond to the 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." (emphasis supplied)

A Brown, Puratos, Yumex, Next Mobile and De La Salle are consistent with the Supreme Court's rulings in *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[4] and *Pilipinas Shell Petroleum Corp. vs. Commissioner of Internal Revenue*[5] that non-compliance with statutory and procedural due process renders the final assessment notice as null and void. Basic is the rule that "there is only one Supreme Court from whose decision all other courts should take their bearings".[6]

Based on the foregoing, it is my humble opinion that respondent's right to due process was violated as the FLD was issued prior to the lapse of the fifteen (15) day period mandated by law notwithstanding the fact that the respondent was able to contest the FLD thereafter.

All told, I VOTE to DENY the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

[4] G.R. No. 185371, December 8, 2010.
[5] G.R. No. 172598, December 21, 2007.
[6] *Diaz vs. Republic of the Philippines,* G.R. No, 181502, February 2, 2010.