REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2394** (CTA Case No. 8851)
	Present:
- versus -	**DEL ROSARIO,** P.J., **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** JJ.
OIC CONSTRUCTION & DEVELOPMENT CORPORATION, Respondent.	***Promulgated:*** FEB 07 2023 3:01pm

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RESOLUTION

UY, J.:

For resolution is petitioner's *Motion for Reconsideration (Of Decision Dated 31 March* [sic] *2022)*[1] filed on June 23, 2022, without respondent's Comment, despite due notice.[2]

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[1] Should be May 31, 2022, EB Docket, pp. 85 to 92.

[2] Per Records Verification Report dated November 8, 2022 issued by Leocadia D. Victoria, Records Officer I, Receiving Unit – Judicial Records Division (JRD) and noted by Benjamin D. Pineda, Jr., Chief Judicial Staff Officer, JRD, three (3) attempts were made to serve the *Resolution* dated July 1, 2022 on respondent, where the Court ordered respondent to file its Comment on petitioner's *Motion for Reconsideration (Of Decision Dated 31 March* [sic] *2022)*, as follows:

In the said *Motion*, petitioner prays that the Court *En Banc* give due course to his *Petition for Review*; the *Decision* dated May 29, 2020 and the *Resolution* dated November 4, 2020 be reversed and set aside; and the *Petition for Review* docketed as CTA Case No. 8851 be dismissed for lack of merit. The dispositive portion of the assailed *Decision* reads:

***Decision* dated May 31, 2022:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.
>
> The *Decision* dated May 29, 2020 and the *Resolution* dated November 4, 2020 by the First Division of this Court in CTA Case No. 8851 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In his *Motion,* petitioner reiterates that respondent is estopped from denying the receipt of the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) and Final Assessment Notice (FAN). Allegedly, the PAN, FLD and FAN were sandwiched between documents that respondent does not deny receiving, *i.e.* the Letter of Authority (LOA) and the Preliminary Collection Letter (PCL). Petitioner finds it dubious that respondent did not receive the PAN, FLD and FAN when it received the LOA and PCL, considering that said documents were all sent to the same address of respondent. For petitioner, respondent's denial of the receipt of the PAN and FAN is a self-serving alibi that should not be given any probative value.

DATE	MODE OF DELIVERY	NOTATION
July 7, 2022	Personal Service	No one in the unit
July 13, 2022	Personal Service	No one in the unit
July 20, 2022	Registered Mail	Return to Sender (RTS) Moved 8/9/2022

Per *Resolution* dated January 9, 2023, considering that three (3) attempts were already made to serve the *Resolution* dated July 1, 2022 on respondent at its counsel's old address, while no Notice of Change of Address was filed by respondent's counsel; hence, the *Resolution* dated July 1, 2022 was deemed served to respondent, and the lapse of the period given in the *Resolution* dated July 1, 2022, petitioner's *Motion for Reconsideration (Of Decision Dated 31 March* [sic] *2022)* was submitted for resolution.

Petitioner further insists that a public official enjoys the presumption of regularity in the discharge of official duties and functions. The findings and conduct of the revenue officers, which include the service of the subject tax assessments, must stand in the absence of proof of any irregularities in the performance of their duties.

Likewise, petitioner claims that even assuming that respondent did not receive the assessment notices, the fact remains that respondent received the LOA, informing it of the conduct of the tax/audit investigation, and the PCL, informing it of its internal revenue tax liabilities and its obligation to settle them, at the same address of respondent.

Petitioner also maintains that assuming that there was a mistake or neglect on the part of his representatives to comply with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and the provisions of Revenue Regulations (RR) No. 12-99, as amended, the assessment should not be abandoned because the government should not be bound by the errors committed by its agents. The government cannot and must not be estopped particularly in matters involving taxes.

Finally, while petitioner agrees that the provision of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements, petitioner avers that when stringent application of the rules will result in manifest injustice, courts may set aside technicalities because rules of procedure are mere tools intended to facilitate the attainment of justice rather than frustrate it. Petitioner claims that the delayed filing of his *Motion for Reconsideration* in CTA Case No. 8851 was not meant to be frivolous or dilatory, that the cause of the delay was not entirely attributable to the fault or negligence of petitioner or his counsels, and the admission of the said *Motion* would not prejudice the right of respondent. Petitioner explains that the delayed filing of the said *Motion* was because the case was assigned to petitioner's counsel only on October 13, 2020.

THE COURT *EN BANC*'S RULING

After a careful and thorough consideration of petitioner's arguments in his *Motion*, We note that the same are mere reiterations of matters which have already been considered, weighed and resolved in the assailed *Decision*. Thus, we shall not belabor, in this *Resolution*, the disquisitions made therein.

At the outset, the Court *En Banc* emphasizes that the Court in Division's *Decision* dated May 29, 2020 had already attained finality and could no longer be reviewed by the Court *En Banc* due to petitioner's filing of his *Motion for Reconsideration of Decision Dated 29 May 2020* more than four (4) months after the receipt of the copy of the *Decision* dated May 29, 2020. It is doctrinally-entrenched that the right to appeal is a statutory right and the one who seeks to avail that right must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence, failure to perfect the same renders the judgment final and executory.[3]

In any case, the Court *En Banc* stresses that the issuance of the PAN/FLD/FAN is part of a taxpayer's right to due process in tax assessments. Any assessment issued in violation of Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended, is void.

As regards petitioner's assertion that respondent is estopped from denying the receipt of the PAN, FLD and FAN because these were sandwiched between the LOA and PCL, which respondent does not deny receiving, and were sent to the same address of respondent where the LOA and PCL were also sent, We find the same inconclusive. It does not necessarily follow that just because respondent received the LOA and PCL, it also received the PAN, FLD and FAN, on the ground that the latter were sent also to the same address as that where the LOA and PCL were sent. Petitioner must still prove that respondent **actually received** the PAN, FLD and FAN. Unfortunately for petitioner, he failed to prove that the PAN, FLD and FAN were actually received by respondent.

As explained in the *Decision* dated May 29, 2020 of the Court in Division, and affirmed by in the assailed *Decision dated May 31, 2022*, while the PAN and the FLD with Assessment Notice Nos. 33-08-IAET-3335 and 33-08-IT-3334 were issued by petitioner, the records of this case are bereft of evidence that these notices were sent by petitioner to respondent either, by personal delivery or registered mail. There are no acknowledgment receipts appearing on said notices and petitioner's witnesses did not testify on how the FAN and

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[3] *Gregorio de Leon, doing business as G.D.L. Marketing v. Hercules Agro Industrial Corporation and/or Jesus Chua and Rumi Rungis Milk*, G.R. No. 183239, June 2, 2014.

FLD/Assessment Notices were served upon respondent. Meanwhile, there are no registry receipts or registry return cards attached to the assessment notices. Neither was there any Certification from the Bureau of Posts to prove the fact of mailing.

Further, petitioner's claim that a public official enjoys the presumption of regularity in the discharge of one's official duties and functions is not applicable in this case. While there indeed exists a presumption of regularity in the performance of official duty, said presumption cannot stand in the face of positive evidence of irregularity or failure to perform a duty.[4]

As previously mentioned, there was no substantial compliance with the due process requirements under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended; thus, the presumption of regularity in the performance of official duty does not apply to the instant case. Due to petitioner's failure to prove that respondent received the PAN, FLD and FAN, in violation of the latter's right to due process, the assessment is void.

Neither can petitioner invoke the principle that the government should not be bound by the errors committed by its agents and that the government cannot be estopped particularly in matters involving taxes to exculpate him for the mistake or neglect of his representatives to comply with Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended.

Jurisprudence show that the errors which could warrant the application of the abovementioned principle are those which involve the Bureau of Internal Revenue's (BIR) deprivation of its day in court by reason of the mistakes and/or negligence of the BIR's officials and employees;[5] those where there is an erroneous application and enforcement of the law by the Commissioner of Internal Revenue;[6] or those where the state acts to rectify mistakes, errors, irregularities or illegal acts of its officials and agents.[7] Said errors are wanting in the case at bar.

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[4] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[5] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 106611, July 21, 1994.
[6] *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 119122, August 8, 2000.
[7] *Secretary of Finance v. Oro Maura Shipping Lines*, G.R. No. 156946, July 15, 2009; *Intra-Strata Assurance Corporation and Philippine Home Assurance Corporation v. Republic of the Philippines, represented by the Bureau of Customs*, G.R. No. 156571, July 9, 2008.

Here, the error involved is petitioner's violation of respondent's right to due process due to the former's failure to issue the assessment in accordance with Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended, which the Supreme Court has ruled on numerous occasions as one which would render an assessment void.

It is also worth noting that petitioner's argument that the assessment should not be abandoned despite the mistake or negligence on the part of his representatives to comply with Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended, because the government should not be bound by the errors committed by its agents, is a dangerous proposition. This could result in a situation where revenue officers would fail to afford the taxpayers due process and excuse their conduct by simply invoking the aforementioned principle, to the detriment of taxpayers.

Finally, as to petitioner's contention that when stringent application of the rules will result in manifest injustice, courts may set aside technicalities because rules of procedure are mere tools intended to facilitate the attainment of justice rather than frustrate it, it bears emphasis that it is for the most persuasive of reasons that the rules of procedure can be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed,[8] which in this case, is lacking.

In view of the foregoing, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration (Of Decision Dated 31 March* [sic] *2022)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[8] *Aichi Forging Company of Asia, Inc. v. Court of Tax Appeals – En Banc and Commissioner of Internal Revenue*, G.R. No. 193625, August 30, 2017.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice