REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SPOUSES REMIGIO P. MAGAAN AND LETICIA L. MAGAAN,
Petitioners,

-*versus* -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1338
(CTA Case No. 7866)

Present:

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

Promulgated:

JUN 28 2017 4:10 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondent's Motion for Reconsideration, filed by registered mail on February 3, 2017, with petitioners' Comments (to the Motion for Reconsideration of CIR received April 3, 2017) ("Comment") filed on April 10, 2017.

On January 11, 2017, the Court promulgated a Decision[1] (the "Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the Petition for Review filed by Spouses Remigio P. Magaan and Leticia L.

[1] *Rollo, CTA EB No. 1338 (CTA Case No. 7866),* pp. 253-284.
[2] *Id.,* p. 280.

Magaan is hereby **GRANTED.** The Decision dated March 9, 2015 and the Resolution dated June 30, 2015 are **REVERSED** and **SET ASIDE.** Consequently, Assessment Nos. ES-IT-1998-0699, ES-PT-1998-0700, ES-IT-1999-0701, ES-PT-1999-0702, ES-IT-2000-0703 and ES-PT-2000-0704 are **CANCELLED**.

SO ORDERED.

In its Motion for Reconsideration, respondent avers that the Court *En Banc* has erred in granting the Petition for Review stating that findings of the Court's Second Division ("Court in Division") are entitled to great weight and respect, and are deemed final and conclusive when supported by evidence on record. According to respondent, it was the Court in Division that was able to give relative weight and sufficiency to the testimony of the witnesses presented before it; and that it was peculiarly within the province of the Court in Division to decide the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study or observation of the matters about which he testifies, and any other matters which serve to illuminate his statements.

Respondent insists that petitioners' under-declaration of income/sales was satisfactorily proven by respondent through the totality of the evidence he presented; that the non-declaration of its income generated from the interest income they earned from their transaction with the confidential informant constitute fraud which would warrant the application of the ten (10)-year period under *Section 222(a) of the 1997 National Internal Revenue Code, as amended, ("1997 NIRC")*; that petitioner's income from their transaction with the confidential informant was uncontroverted; and that the assessment has factual and legal bases, thus, the assessment was not arbitrarily made. He thus prays that the Decision dated January 11, 2017 be reversed and set aside, and that the Decision dated March 9, 2015 and the Resolution dated June 30, 2015 be reinstated.

In their Comment, petitioners counter-argue that fraud was not proven; that the checks that were issued to different payees such as Imilec Trade Haus, L4R Realty Development Corporation and Rubelina Simbulan were not proven to be deposited to their account; that the assessments are void due to lack of factual and legal bases;

that the best evidence rule provides that if a party wants to prove the contents of a writing, he must present to the court the original of the writing if available; and that the original checks were not formally offered in evidence; that the affidavit of Mrs. Maniwang is uncorroborated.

Petitioners posit that initially the BIR accused them for willfully not filing their tax returns, but with the certification issued by BIR Assistant Commissioner for Information Systems Alberto Pio de Roda dated November 30, 2005 certifying that petitioners filed their respective ITRs, VAT and Withholding Tax Returns for the years 1998 to 2001, BIR changed its accusation for not including alleged interest income of about Php20,806,202.65 for the years 1998 to 2000.

Lastly, petitioners aver that the rule that assessments made by the tax examiners are presumed correct does not apply when the assessment is arrived at arbitrarily; that assessment cannot be the product of guesswork, and being a guesswork, the assessment became onerous, whimsical, capricious, incredible, unjust, unfair, illegal and unconstitutional.

The Court will now resolve.

It must be stated at the outset that respondent's Motion for Reconsideration is *pro forma*, hence, it deserves scant consideration. A perusal of respondent's Motion for Reconsideration reveal that it did not set the date, time and place of hearing on the motion which is required under *Section 3, Rule 15 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*, and under *Sections 4* and *5, Rule 15* of the *1997 Rules of Civil Procedure*.

Section 3, Rule 15 of the RRCTA read as follows:

> Section 3. *Hearing of the Motion.* - The motion for reconsideration or new trial, as well as the opposition thereto, shall embody all supporting arguments and <u>the movant shall set the same for hearing on the next available motion day</u>. 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

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deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order.[3]

Sections 4 and 5, *Rule 15* of the *1997 Rules of Civil Procedure* read as follows:

> Section 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, <u>every written motion shall be set for hearing by the applicant.[4]</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.
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> Section 5. *Notice of hearing.* — 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.

Pursuant to the above-quoted provisions, every written motion should have a notice of hearing addressed to all parties concerned which shall specify the time and date of hearing.

Respondent's Notice of Hearing reads as follows:

> ATTY. GIL A. VALERA
> 24 Tindalo St., Brgy. Quirino 3A
> Project 3, Quezon City
> (copy furnished)
>
> Please take notice that the undersigned counsel will submit the foregoing motion for the consideration and approval of the Honorable Court immediately upon receipt hereof without prejudice to the right of petitioner to comment on the same.
>
> BERNARDINO PAUL R. SOMERA, JR.

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[3] Underscoring ours.
[4] Underscoring ours.

Respondent's Motion for Reconsideration is totally lacking a notice of hearing. A motion which does not meet the requirements of *Sections 4* and *5, Rule 15 of the 1997 Rules of Civil Procedure* is considered *pro forma;* it is nothing but a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon.[5] The service of a copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with the said requirements renders his motion fatally defective.[6] Without such notice, the motion is *pro forma* which does not suspend the running of the period to appeal[7], which therefore made the Assailed Decision final and executory for respondent's failure to file the appeal.

Even assuming that respondent's Motion for Reconsideration complied with the notice of hearing requirement, it will still fail.

There is no merit in respondent's argument that the findings of the Court in Division are deemed final and conclusive. Indeed, the findings of fact by the Court in Division are entitled to great weight and respect, in fact the Court *En Banc* adapted the findings of fact by the Court in Division. It bears stressing that the Court *En Banc* is not bound by the decision of the Court in Division. In the exercise of its exclusive appellate jurisdiction, the Court *En Banc* can review the entire records of the case, i.e., all the testimonial and documentary evidence, transcript of the proceedings, etc., and arrive at a decision based on the law, rules, regulations and existing jurisprudence. In its appreciation of the facts and the law, the Court *En Banc* can affirm, modify or reverse the decision of the Court in Division.

Litigants should be reminded that decisions by the Court of Tax Appeals ("CTA") do not constitute precedents, neither does it bind other courts or the public; that is why decisions of the Court in Division are appealable to the CTA *En Banc,* and the decisions of the latter are appealable to the Supreme Court, which may affirm, reverse or modify its decisions as the facts and the law may warrant. Thus, contrary to the argument of respondent, only decisions of the

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[5] *Pedro G. Resurreccion, et al. vs. People of the Philippines,* G.R. No. 192866, July 9, 2014, 729 SCRA 508.
[6] *Id.*
[7] *Sembrano vs. Judge Ramirez,* G.R. No. 192866, July 9, 2014, 248 Phil. 260.

Supreme Court constitute binding precedents, forming part of the Philippine legal system.[8]

In the instant case, respondent failed to support the allegations that he made against the petitioners. Based on the records, respondent failed to establish that petitioner committed fraud. Basic is the rule in civil tax fraud cases, that the burden of proof is always on the CIR to prove that the taxpayer committed fraud intentionally.[9] Respondent alleges that the testimony of his witness, Ms. Maniwang was uncontroverted.

The Court *En Banc* does not agree. In fact, during cross-examination of his witness, Ms. Maniwang, petitioner's counsel was able to solicit information that she has no proof that the account numbers where the checks were allegedly deposited belong to petitioners. Aside from the checks that were presented by its witness, no other proof was presented to support respondent's claims that petitioners had undeclared income.

The Court *En Banc* stand by its decision that fraud was not established, hence, the application of the ten (10)-year period of prescription is not warranted. Moreover, in questioning the Assailed Decision, respondent failed to point out the specific findings or conclusions in the Assailed Decision which are not supported by evidence or which are contrary to law, neither did it provide evidence that would convince the Court *En Banc* that it made an error.

Party litigants are reminded that among the ends to which a motion for reconsideration is addressed, is to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence.[10] Thus, having failed to convince the court, respondent's Motion for Reconsideration must necessarily fail.

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[8] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue,* G.R. No. 196907, March 13, 2013, 693 SCRA 456, citing *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013, 690 SCRA 336.

[9] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005, 454 SCRA 301.

[10] *Guerra Enterprises Company, Inc. vs. Court of First Instance of Lanao del Sur,* G.R. No. L-28310, April 17, 1970, 32 SCRA 314.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated January 11, 2017 is **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(joined PJ del Rosario's D.O.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(joined PJ del Rosario's D.O.)
Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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QUEZON CITY

EN BANC

SPOUSES REMIGIO P. MAGAAN AND LETICIA L. MAGAAN, *Petitioners,*	**CTA EB No. 1338** (CTA CASE No. 7866)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 28 2017 4:10 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With all due respect, I maintain my dissent in the Decision promulgated on January 11, 2017. Still, I will take this opportunity to further expound my position in this case.

In petitioner spouses' "**Comments (to the Motion for Reconsideration of CIR received April 3, 2017)**, they contend that respondent failed to establish that there was fraud; that the checks issued to different payees such as Imilec Trade Haus, L4R Realty Development Corporation and Rubelina Simbulan were not proven to be deposited to their account; that the assessments were void due to lack of factual and legal bases; that the best evidence rule provides that if a party wants to prove the contents of a writing, he must present to the court the original of the writing if available; that the original checks were not formally offered in evidence; and that the affidavit of Ms. Yolanda G. Maniwang was uncorroborated.

Petitioners' contention on the inadmissibility of the checks had been addressed in the assailed Decision, which I quote in agreement:

> "The general rule is that the Court only considers evidence that are formally offered to and admitted by the Court. However, as stated in the above case, any evidence not formally offered may still be admitted if, *first*, the same was duly identified by testimony duly recorded; and, *second*, it was duly incorporated in the records of the case.
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> In the instant case, respondent satisfied the first requirement since her confidential informant and witness, Ms. Yolanda G. Maniwang, was able to duly identify in her Judicial Affidavit the assailed checks she issued to Imilec Trade Haus, L4R Realty Development Corporation, and a certain Rubelina Sibulan. Respondent's witness, Ms. Maniwang, also explained the contents of said checks and that they were duly signed by her and their Vice President for Administrative/Finance, a certain Mr. Nelson C. Dela Torre. Ms. Maniwang further clarified that even though the checks were issued to different payees, they were all owned and managed by petitioner spouses, and in fact, the checks were deposited to their accounts.
>
> Moreover, **even though the checks were initially denied admission by this Court for being mere photocopies, they were eventually marked as originals during the Commissioner's hearing on November 25, 2013**, thereby satisfying the second requirement.
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> xxx xxx xxx
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> However, when respondent submitted the subject checks as evidence, the same were not admitted for failure of respondent to present the originals thereof. Nevertheless, as earlier discussed, the following checks may still be considered as evidence in determining the merits of the instant case, as long as the same have been duly identified by testimony duly recorded or the same have been incorporated in the records of the case or were repeatedly referred to in the course of the trial.[1]
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> xxx xxx xxx
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> **Notably, petitioner spouses did not deny the existence of the alleged loans, nor did they refute the allegation by the informant that the checks issued to Imilec were deposited to their bank account in MetroBank and Planters Development**

[1] *Laborte, et al. vs. Pagsanjan Tourism Consumers Cooperative, et al., supra.*

> **Bank.** Petitioner spouses likewise failed to submit any certification of whether or not they hold an account with the said banks during the years 1998 to 2000." (Boldfacing supplied)

Upon careful scrutiny of the records of the case, the following transpired as regards the admission of said checks:

1. Respondent initially offered the checks in question when it filed its Formal Offer of Documentary Evidence before the Court in Division on January 10, 2013.

2. The admission of the said checks were denied in the Resolution dated February 21, 2013[2] and the Resolution dated April 18, 2013[3] for being mere photocopies.

3. Respondent filed an Omnibus Motion on May 7, 2013[4] praying for reconsideration of the April 13, 2013 Resolution, setting of a commissioner's hearing to mark original of denied exhibits and for the filing of a Supplemental Formal Offer of Evidence to offer the said checks in evidence.

4. The Court in Division, in its Resolution dated July 3, 2013,[5] granted respondent's Omnibus Motion.

5. **The checks were eventually marked as originals during the Commissioner's Hearing dated November 25, 2013.**[6]

6. Due to respondent's failure to file his Supplemental Formal Offer of Evidence, the Court in Division, in its Resolution dated December 18, 2013,[7] declared that respondent's right to offer the documents was deemed waived.

Notwithstanding the lapse committed by respondent in failing to make a supplemental formal offer of evidence, I submit that the checks may still be considered by the Court in Division as they were identified by witnesses and eventually incorporated in the records of

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[2] CTA Division Docket, pp. 1237-1238.
[3] CTA Division Docket, pp. 1305-1309.
[4] CTA Division Docket, p. 1310.
[5] CTA Division Docket, pp. 1415-1417.
[6] CTA Division Docket, p. 1445.
[7] CTA Division Docket, p. 1455.

the case. Hence, the Court in Division correctly gave probative value to the checks in question consistent with the doctrine laid down in *Laborte vs. Pagsanjan Tourism Consumers Cooperative, et al.*,[8] *viz:*

> "Section 34, Rule 132 of the Revised Rules on Evidence provides the general rule, to wit:
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> > Sec. 34. *Offer of Evidence.* – The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> From the above provision, it is clear that the court considers the evidence only when it is formally offered. The offer of evidence is necessary because it is the duty of the trial court to base its findings of fact and its judgment only and strictly on the evidence offered by the parties. A piece of document will remain a scrap of paper without probative value unless and until admitted by the court in evidence for the purpose or purposes for which it is offered. The formal offer of evidence allows the parties the chance to object to the presentation of an evidence which may not be admissible for the purpose it is being offered.
>
> However, there are instances when the Court relaxed the foregoing rule and allowed evidence not formally offered to be admitted. Citing *People v. Napat-a and People. v. Mate*, the Court in *Heirs of Romana Saves, et al., v. Heirs of Escolastico Saves, et al.*, **enumerated the requirements for the evidence to be considered despite failure to formally offer it, namely: '*first*, the same must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.**' In *People v. Vivencio De Roxas et al.*, the Court also considered exhibits which were not formally offered by the prosecution but **were repeatedly referred to in the course of the trial by the counsel of the accused.**" (Boldfacing supplied and Citations omitted)

I am not unaware of the *Pilipinas Shell Petroleum Corporation* case[9] (*Shell case*) where the Supreme Court held that evidence not formally offered during trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. The factual milieu of the aforecited case is different from the facts of the present

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[8] G.R. No. 183860, January 15, 2014.
[9] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

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case. In the *Shell* case, the documents rejected admission by the Supreme Court pertain simply to the records of the Bureau of Customs which were neither formally offered, identified nor marked as exhibits during trial. In contrast, the checks involved in the present case - - to which no probative value was given - - were properly identified and marked. While respondent failed to file its Supplemental Offer of Evidence, the photocopies of the checks were compared with the originals during a Commissioner's Hearing and they were found to be faithful reproductions of the original.

In other words, the *Shell case* is a mere reiteration of the general rule that all evidence must be formally offered. It did not in any way set aside the doctrine laid down in the *Laborte case* - - that documents identified, marked, and repeatedly referred to by respondent's counsel during trial, though not formally offered, may be admitted in evidence.

Anent the allegation that fraud was not established, the same is without merit. As extensively discussed in my earlier Dissenting Opinion, the totality of evidence shows that there is undeclared income on the part of petitioners which makes the Income Tax Returns they filed with the Bureau of Internal Revenue fraudulent.

I cannot, therefore, subscribe to the conclusion of the *ponencia* that the ten-year prescriptive period is inapplicable on the ground that fraud was not established in this case.

With regard to the issue on the failure of the present Motion to set the date and time of hearing thereof, suffice it to say that while a notice of hearing under Sections 4 and 5, Rule 15 of the Rules of Court is a requirement and non-compliance therewith makes the motion *pro forma*, such rule is not absolute. In *Vlason Enterprises Corporation vs. Court of Appeals*,[10] the Supreme Court highlighted certain exceptions to the strict application of the Rule (*i.e.* where rigid application will result in a manifest failure or miscarriage of justice; where the interest of substantial justice will be served, among others) and ruled that the purpose of a notice of hearing had been served as the circumstances of the case show that the adverse party was not

[10] G.R. Nos. 121662-64, July 6, 1999.

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denied procedural due process (*i.e.* Court granted the party a period to file opposition).

In this case, petitioners were able to file their Comments on the Motion for Reconsideration on April 10, 2017 which had been duly considered and passed upon by the Court in issuing its Resolution thereon; thus, petitioners were not denied due process.

All told, I **VOTE** to **GRANT** respondent's Motion for Reconsideration.

ROMAN G. DEL ROSARIO
Presiding Justice