REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1176** (CTA Case No. 8435)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA,** JR., **BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
FABTECH EXPORT INDUSTRIES, INC., Respondent.	Promulgated: MAY 29 2015

x--3:41 p.m.-x

RESOLUTION

DEL ROSARIO, PJ.

This resolves petitioner's **"MOTION FOR RECONSIDERATION (Re: Decision promulgated 28 January 2015)"** posted on February 24, 2015, with respondent's **"COMMENT"** filed on April 20, 2015.

In her motion for reconsideration, petitioner argues that a valid preliminary assessment notice (PAN) was duly sent to respondent through registered mail. A photocopy of the mailing envelope containing the PAN was attached to the present Petition for Review. Petitioner is insisting that the Court *En Banc* should have considered the said documents as proof of transmittal, pursuant to *BPI-*

Family Savings Bank, Inc. vs. Court of Appeals, et al.[1] Petitioner further claims that the presence of the original copy of the envelope in the BIR records proves the transmittal of the same through registered mail. Lastly, petitioner maintains that since she sent the PAN to respondent through registered mail and presumed that it was received by respondent pursuant to Section 3(v) of Rule 131 of the Rules of Court, she complied with the due process requirements of law.

In its Comment, respondent contends that the Motion for Reconsideration should be denied as the grounds raised by petitioner are a mere rehash of the arguments raised in her Petition for Review which have been carefully and exhaustively resolved by the Court *En Banc* in the assailed Decision.

The Court *En Banc* agrees with respondent that the contentions presented by petitioner in the subject Motion are a mere rehash of its previous arguments which have been duly considered and adequately discussed in the assailed Decision. Thus, the Court *En Banc* finds no cogent reason to modify or reverse the assailed Decision.

To stress, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations No. 12-99, receipt of PAN by the taxpayer is indispensable to due process. As the Court *En Banc* noted in its Decision:

> " xxx [P]etitioner failed to present substantial evidence that the PAN was indeed mailed or sent and that the same was received by respondent. Records reveal that petitioner merely alleged that the PAN dated February 25, 2011 was sent to respondent by registered mail. Petitioner, however, failed to present independent evidence, such as the Registry Receipt or a certification from the Bureau of Posts, which could have easily been obtained. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof.
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> As aptly ruled by the Second Division in the assailed Resolution:
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>> "It is clear from the foregoing that even the mere fact of mailing, release or sending of the notice must be proved with clear and convincing evidence and not just bare allegations of such facts.

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[1] G.R. No.122480, April 12, 2000.

> > The records of this case bear out that respondent (herein petitioner) failed to present any evidence to prove that the Preliminary Assessment Notice was indeed issued against petitioner (herein respondent) and that the same was sent by registered mail. Further, respondent has not even forwarded to this Court a copy of the Preliminary Assessment Notice in connection with the Letter of Authority No. 200800007920. As pronounced in the assailed Decision, respondent only issued PAN against petitioner in connection with Letter of Authority No. 2009 00010290, to wit:
> >
> > " xxx. It is worthy to note that the Preliminary Assessment Notice attached in the record was issued in connection with the Letter of Authority No. 2009 00010290.'
> >
> > Since respondent cannot prove the existence of the PAN or the fact that it was mailed, released or sent to petitioner, it is clear that respondent violated the required due process on the issuance of the assessment notice."
>
> Furthermore, the Court cannot give probative value to the photocopy of the alleged PAN and alleged mailing envelope attached to the instant Petition for Review considering that the same were not formally offered during trial, in violation of Section 34, Rule 132 of the Revised Rules of Court."

Verily, in the absence of a valid service of PAN, respondent's right to due process was violated, rendering the assessment null and void.

WHEREFORE, premises considered, petitioner's **"MOTION FOR RECONSIDERATION (Re: Decision promulgated on 28 January 2015)"** posted on February 24, 2015 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice