

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

TRAVEL WAREHOUSE, INC.,

Petitioner,

CTA Case No. 9103

Members:

-versus-

CASTAÑEDA, JR., *Chairperson*

CASANOVA, and

MANAHAN, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Promulgated:

SEP 22 2017

2:05 pm



Respondent.

X- - - - - X

RESOLUTION

MANAHAN, J.:

This resolves respondent's Motion for Reconsideration (Decision dated August 7, 2017) filed on August 16, 2017, with petitioner's Opposition (To the Respondent's Motion for Reconsideration dated 16 August 2017) filed through registered mail on September 4, 2017 and received by this Court on September 11, 2017.

Respondent assails this Court's Decision, dated August 7, 2017, the dispositive portion of which states:

WHEREFORE, the instant Petition for Review is hereby GRANTED. Accordingly, the Formal Letter of Demand and Assessment Notices dated January 14, 2014 and Warrant of Garnishment dated June 23, 2015 issued against Travel Warehouse Inc. are declared NULL and VOID.¹

In his motion, respondent argues that the Court erred in ruling that the assessments were void for failure to comply with due process requirements and thereby resulting to the assessments not becoming final, executory and demandable. Respondent states that due process means an opportunity to be

¹ Docket, CTA Case No. 9103, Decision, p. 873.

heard; that opportunity was given to petitioner when it was served with the Notice for Informal Conference, Preliminary Assessment Notice (PAN), and Formal Letter of Demand (FLD) with Assessment Notices; that it was petitioner which ignored all the communications from respondent; and that petitioner only acted upon the assessment when respondent has already started collection efforts. Further, respondent argues that petitioner is already estopped from asserting its rights, and that when it failed to file a valid protest against the FLD and assessment notices, the same became final, executory and demandable.

On the other hand, petitioner argues that respondent failed to prove that it accorded due process to petitioner; that respondent failed to dispute that the PAN and FAN were served on petitioner on the same date; that petitioner participated in the proceedings; and that the arguments raised by respondent are a mere rehash. Further, petitioner argues that respondent's motion is a *pro forma* motion and should be treated as a mere scrap of paper for failing to include a notice of hearing.

We agree with petitioner.

A perusal of the subject motion reveals that it does not have a notice of hearing and affidavit of service.

Under Sections 4, 5, and 6 of Rule 15 of the 1997 Rules of Civil Procedure, a notice of hearing and proof of service are required for every written motion, as follows:

Sec. 4. Hearing of motion. – 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.

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 a shorter notice.

Sec. 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.

Sec. 6. Proof of service necessary. – No written motion set for hearing shall be acted upon by the court without proof of service thereof.

It has been held repeatedly that the notice requirement in a motion is mandatory. A motion without a notice of hearing is a mere scrap of paper and does not toll the running of the period of appeal.² As for proof of service, Section 13 of Rule 13 of the same Rules of Civil Procedure provide that proof of service of registered mail shall be by an affidavit of service and the registry receipt issued by the mailing office, however, the instant motion does not have an affidavit of service.

These two defects of absence of notice of hearing and affidavit of service in respondent's motion for reconsideration are sufficient grounds for the dismissal of the motion or for the Court to refuse to act upon it.

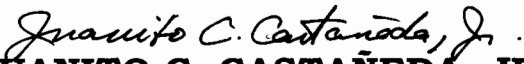
Even if the Court were to relax the procedural rules and take cognizance of the instant motion, there is still no valid and cogent reason to reconsider the Decision dated August 7, 2017. Respondent still failed to refute petitioner's evidence that the PAN and FAN were received on the same date, in violation of petitioner's right to due process.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

² *Pedro G. Resurreccion, Joseph Cometa and Criseforo Litera To, Jr. v. People of the Philippines*, G.R. No. 192866, July 9, 2014.