REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

XYLEM WATER SYSTEMS INTERNATIONAL, INC. (formerly GOULDS PUMPS [N.Y.], INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8901

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, ***JJ.***

Promulgated:
JUL 25 2019
9:44 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution are:

1. petitioner's **Motion to Lift Bond**, filed on February 21, 2019, with respondent's **Opposition [Re: Petitioner's Motion to Lift Bond dated 21 February 2019]**, filed on April 8, 2019; and

2. respondent's **Motion for Reconsideration (Re: Decision promulgated on 31 January 2019)**, filed on February 28, 2019, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration)**, filed on March 29, 2019.

Petitioner's Motion to Lift Bond

Petitioner avers that since 2015, petitioner has been paying an annual premium amounting to ₱812,000.00 for the surety bond and an annual premium of around ₱2,800,00.00 [*sic*] for the bank guarantee provided by Citibank N.A. relative to the instant case.

Thus, petitioner prays that the requirement to post a Surety Bond be lifted.

Respondent opposes the motion, arguing that the bond requirement may not be dispensed with in suspending the collection of deficiency tax assessed. According to respondent, the collection of deficiency taxes may be suspended only if (1) in the opinion of the Court, the collection by the government agencies may jeopardize the interest of the Government and/or the taxpayer, and (2) the taxpayer is required either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

Respondent avers that while indeed a Decision was promulgated by the Court in the instant case cancelling the deficiency tax assessment issued by respondent against petitioner for taxable year 2004, respondent was able to timely file his Motion for Reconsideration thereon. Thus, according to respondent, the assailed Decision has not yet attained finality.

It is settled that a judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion for reconsideration being filed.[1] Section 4, Rule 15 of the Revised Rules of the Court of Tax Appeals ("RRCTA"), as amended, also provides that the filing of a motion for reconsideration or new trial shall suspend the running of the period within which an appeal may be perfected.

In this case, respondent received a copy of the assailed Decision on February 14, 2019. Respondent had 15 days from February 14, 2019 (or until March 1, 2019) within which to file a motion for reconsideration or new trial. On February 28, 2019, respondent filed the instant motion for reconsideration. Accordingly, the Court agrees with respondent that the assailed Decision has not yet attained finality.

Thus, the Court deems it proper at this stage of the proceedings to deny petitioner's motion that the requirement to post a Surety Bond be lifted.

Respondent's Motion for Reconsideration

Respondent seeks reconsideration of the Court's Decision dated January 31, 2019, the dispositive portion of which reads:

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[1] *Philippine Veterans Bank vs. Solid Homes, Inc.*, G.R. No. 170126, June 9, 2009.

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and the Final Assessment Notice No. 56-2004 dated January 22, 2008, assessing Petitioner for alleged deficiency EWT, FWT, and FBT for taxable year 2004, in the total amount of Php44,023,764.92, as well as the Warrant of Distraint and/or Levy dated September 09, 2014 are hereby **CANCELLED**."

SO ORDERED."

Respondent anchors his arguments on the following grounds:

I. The Court has no jurisdiction over the instant petition. The assessment against petitioner has already become final, executory and demandable; and

II. The Court erred in declaring the assessments void for the alleged failure on the part of respondent to prove service thereof to petitioner.

Respondent contends that petitioner only filed the instant petition before the Court on October 3, 2014, allegedly within 30 days from receipt of the Warrant of Distraint and/or Levy ("WDL"); that the decision contemplated in the law is one rendered on a disputed assessment; that petitioner should have elevated to the Court the decision dated December 21, 2010 of respondent's Revenue District Office No. 56, denying the protest on the assessment, within 30 days from receipt thereof.

Respondent avers that since the decision on petitioner's protest had long become final, executory, and demandable by failure on the part of petitioner to appeal such decision to the Court within the period allowed by law, the Court cannot exercise appellate jurisdiction over the issue at hand. According to respondent, jurisprudentially, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

Respondent also argues that no less than the Post Master authenticated the registry return card proving actual mailing and receipt by petitioner of the FAN and FLD.

Further, respondent alleges that the fact of mailing was supported by the corresponding registry return card from the Philippine Postal Corporation. According to respondent, considering the existence of the registry return receipt, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of mails.

Respondent also contends that contrary to what happened in *Barcelon Roxas Securities Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[2], he was able to present the registry return card which was duly authenticated by the Post Master Mary Antonette S. Parfan.

Respondent maintains that petitioner's barefaced denial and testimony are nothing but self-serving evidence which cannot overcome petitioner's positive pieces of evidence which gave rise to a disputable presumption of law.

Finally, respondent implores the Court not to lose sight of the fact that this is a civil case. According to respondent, as to the fact in issue, preponderance of evidence should prevail and not technicalities.

On the other hand, petitioner counter-argues that the WDL constitutes an act of the Commissioner on "other matters" arising under the National Internal Revenue Code ("NIRC") of 1997, which may be the subject of an appropriate appeal before the Court. According to petitioner, the jurisdiction of the Court has also been confirmed by the Supreme Court in *Commissioner of Internal Revenue vs. Bank of the Philippine Islands.*[3]

Petitioner also alleges that the registry return card, marked as Exhibit "R-13", does not contain any details of the document alleged to be received by petitioner. Petitioner avers that no evidence was presented that the document accompanied by this return card was the FAN and FLD.

Finally, petitioner avers that aside from admitting that she has no personal knowledge on the mailing of the FAN and FLD, Ms. Parfan, the Postmaster of the Post Office of Southern Luzon Area 4, San Pablo City, could not even recall if she really saw the original registry return card when she certified the photocopy of the same. Hence, petitioner prays that respondent's Motion for Reconsideration be denied.

Respondent's motion is bereft of merit.

A cursory reading of the arguments presented by respondent readily reveals that no new matters or issues have been raised and that they deal with the very same issues which have been thoroughly passed upon at length in our Decision[4] dated January 31, 2019.

The Court maintains that the WDL constitutes an act of the Commissioner of Internal Revenue on "other matters" arising under the NIRC

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[2] G.R. No. 157064, August 7, 2006.
[3] G.R. No. 224327, June 11, 2018.
[4] Docket, vol. III, pp. 1295-1312.

of 1997, as amended, or other laws administered by the Bureau of Internal Revenue, which may be the subject of an appropriate appeal before this Court.

Moreover, the Court reiterates that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.[5]

The Court finds that respondent failed to prove that the FAN and FLD was actually delivered to petitioner absent a certification from the Postmaster to that effect and an affidavit of the person who mailed the FAN and the FLD. As such, the certified photocopy of the return card was not properly authenticated in order to serve as proof of receipt by petitioner of the FAN and FLD.

Accordingly, the Court finds no sufficient and valid reason to disturb the ruling in the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion to Lift Bond** and respondent's **Motion for Reconsideration (Re: Decision promulgated on 31 January 2019)** are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[5] Assailed Decision dated January 31, 2019, docket, vol. III, p. 1309.