REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SCICINDUSTRIAL CORP., Petitioner,	**CTA CASE NO. 9616**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* *and* **BACORRO-VILLENA,** *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 25 2021 9:05 a.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration** filed through registered mail on September 18, 2020, and received by the Court on September 30, 2020, without petitioner's comment as per Records Verification dated February 3, 2021.

On August 27, 2020, this Court promulgated a Decision cancelling respondent's deficiency tax assessments against petitioner for being issued without authority, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the *Petition for Review* is **GRANTED**. Accordingly, the Formal Assessment Notice (FAN) dated January 23, 2017 under *Assessment Notice Nos. IT-ELA78214-13-17-396 and VT-ELA78214-13-17-396* issued against petitioner for taxable year 2013 is **CANCELLED** and **SET ASIDE** for being void.
>
> **SO ORDERED.**"

In his Motion, respondent primarily argues that the Court erred in granting petitioner's Motion for Reconsideration (of the Resolution dated 17 July 2017) filed on August 7, 2017.[1] Respondent claims that petitioner's Petition of Review filed via registered mail on June 7, 2017 should have been dismissed since the Court lacks jurisdiction to review the same for failure of petitioner to pay docket fees within the applicable reglementary period. Respondent continues that settled is the rule that the non-payment of the prescribed filing fees at the time of the filing of complaint or other initiatory pleading fails to vest the court's jurisdiction over the case.

Respondent likewise avers that perusal of the Petition for Review shows that petitioner failed to allege their legal standing as a corporation to sue and be sued. There was no board resolution or secretary's certificate attached to the said Petition showing proof of Atty. Benzon Judd C. Cong's authority to act on behalf of the corporation at the time the Petition for Review was filed. To state otherwise, the petitioner did not allege in the Petition capacity to bring suit as required by Section 4, Rule 8 of the 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. No. 19-10-20-SC).[2]

Lastly, respondent points out that he was not given the opportunity to comment or oppose petitioner's Motion for Reconsideration filed on August 7, 2017. Respondent claims that the Court erred in granting the said Motion for Reconsideration by allowing petitioner to pay the docket fees because petitioner's remedy should have been to refile the present case, and not file the said Motion for Reconsideration. Accordingly, respondent insists that the Resolution[3] dated September 11, 2017, granting the said Motion for Reconsideration should be withdrawn and the Petition for Review be dismissed for lack of jurisdiction.

The Court finds no merit in respondent's Motion for Reconsideration.

Verily, Section 2, Rule 37 of the Rules of Court provides: *jz*

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[1] Docket, pp. 49-53.

[2] Section 4. *Capacity.* — Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge

[3] *Id.*, pp. 61-62.

> "Section 2. *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.
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> x x x
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> **A motion for reconsideration shall point out specifically the findings or conclusions of the judgment** or final order which are not supported by the evidence or **which are contrary to law**, making express reference to the testimonial or documentary evidence or to the provisions of law **alleged to be contrary to such findings or conclusions**.
>
> A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal." *(Emphases supplied)*

From the above, a motion for reconsideration should specifically point out the erroneous conclusions of the judgment or final order assailed.

In the present case, while it may seem that the instant Motion seeks reconsideration of the findings or conclusions made in the Decision, a cursory glance of the said Motion would readily show however that what respondent is actually assailing is the Court's Resolution dated September 11, 2017 and petitioner's Petition for Review filed on June 7, 2017. In fact, respondent's Motion for Reconsideration is strikingly similar to his Answer filed on November 10, 2017.

More so, had respondent really believed this Court's lack of jurisdiction over the present case due to the payment of docket fees not being made on time and petitioner's failure to allege capacity to sue, he would have continuously raised and point out the same all throughout the proceedings. Yet, in his Memorandum filed on August 2, 2019, he did not mention any of the aforementioned reasons. Respondent's active participation during trial without pointing out anymore the said issues, coupled with raising arguments and defenses other than those relating to the jurisdiction of the Court, tantamount to an invocation of that jurisdiction and willingness to abide by the resolution of the Court regarding petitioner's payment of docket fees and capacity to sue. For the said reasons, the Court cannot help but think that it is only after receiving an unfavourable decision that respondent reiterates lack of jurisdiction, which is clearly a mere afterthought.

As to respondent's claim that he was not given the opportunity to comment or oppose petitioner's Motion for Reconsideration filed on August 7, 2017, perusal of the records of the case reveals that it was on September 11, 2017 that the Court issued a resolution that, among others, gave due course to petitioner's Petition for Review. Consequently, it was only on September 13, 2017 that Summons was served to respondent's counsels, the Legal Division of the Bureau of Internal Revenue and the Office of the Solicitor General, which were received on September 22, 2017 and September 26, 2017, respectively. Clearly then respondent could not have been required to file a comment to petitioner's Motion for Reconsideration because the Court does not have yet jurisdiction over respondent.

In view of the foregoing disquisitions, the Court finds no cogent reasons that will justify the reversal or any modification of the Decision promulgated on August 27, 2020.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice