REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CATHERINE T. LOH/ ARYSTA MARKETING,	**CTA CASE NO. 9934**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA,** *JJ.*
BUREAU OF INTERNAL REVENUE,	Promulgated:
Respondent.	MAY 16 2019 4:02 pm

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RESOLUTION

For resolution of this Court are the following:

1. petitioner's **Motion for Reconsideration**, filed through registered mail on February 11, 2019, and received by this Court on February 27, 2019, with respondent's **Comment (To Petitioner's Motion for Reconsideration on the Resolution Dated January 15, 2019)**, filed through registered mail on March 10, 2019, and received by this Court on March 25, 2019; and

2. petitioner's **Compliance**, filed through registered mail on March 18, 2019, and received by this Court on March 21, 2019.

It should be recalled that in the Resolution dated January 15, 2019, the Court dismissed petitioner's Petition for Review with Motion to Suspend Collection of Taxes for lack of jurisdiction. Pertinent portions of the assailed Resolution are hereunder quoted for ready reference, to wit:

> "In this case, petitioner's witness, Ms. Bangloy, testified, by way of Judicial Affidavit, that the Final Decision on Disputed Assessment dated June 30, 2015, denying its Motion for Reconsideration dated July 30, 2015, was received by petitioner on August 22, 2018.
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> Applying Section 228 of the 1997 NIRC, as amended, and RA No. 1125, as amended, petitioner had only 30 days, or until September 21, 2018 to appeal such final decision of the respondent to the CTA. However, petitioner filed its Petition for Review before this court only on September 24, 2018; hence, the same was filed out of time. Consequently, the subject assessment has already attained finality at the time petitioner elevated its case before the CTA Division.
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> In the light of the above facts, this Court has no recourse but to dismiss the instant Petition on the ground that the appeal was filed beyond the reglementary 30-day period provided by law. It follows that it is also devoid of authority to act on its Motion to Suspend Collection of Taxes.
>
> **WHEREFORE**, premises considered, the **Petition for Review with Motion to Suspend Collection of Taxes** filed by petitioner on September 24, 2018 is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Aggrieved, petitioner filed a Motion for Reconsideration claiming that there was a typographical error in the date of receipt of respondent's Final Decision stated in its Petition for Review. Accordingly, it should have been August 23, 2018, and not August 22, 2018.

To prove such date, petitioner undertakes to provide a certification from the post office.

However, in the subject Compliance, petitioner alleges that to date, it has yet to find the envelope containing the said Final Decision.

Nonetheless, petitioner claims that the Legal Petition Notice[1] dated September 23, 2018 filed before the Bureau of Internal Revenue would show that the actual receipt by petitioner of the subject Final Decision was on August 24, 2018, and not August 23, 2018. Thus, it had until September 23, 2018 within which to file its petition. However, since the last day to file the petition for review fell on Sunday, petitioner had until the next working day, or until September 24, 2018 to file the same, pursuant to Section 1, Rule 22 of the Rules of Court. As such, the instant petition was seasonably filed by petitioner on September 24, 2018.

On the other hand, respondent claims that the Court correctly ruled that the subject Petition was filed out of time. As such, the Court can no longer entertain any evidence that petitioner undertakes to present in this case.

The Court **NOTES** petitioner's Compliance.

With respect to the subject Motion for Reconsideration, the Court finds the same meritorious.

In the case of *Belle Corporation vs. De Leon-Banks*,[2] the Supreme Court emphasized the importance of a full-blown trial on the merits where the ground invoked in the motion to dismiss is not indubitable, the pertinent portion of which reads:

> "xxx. As jurisprudence holds, so rigid is the norm prescribed that **if the court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits**. This dictum is in line with the policy that motions to dismiss should not be lightly granted where the ground invoked is not indubitable, as in the present case. In such a situation, the objections to the complaint must be embodied in the answer as denials or special and affirmative defenses and

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[1] Attached as Annex "A" in the subject Compliance.
[2] G.R. No. 174669, September 19, 2012.

threshed out in a full-blown trial on the merits." (*Emphasis supplied.*)

Considering the parties' opposing claims as to the date of the actual receipt of the subject Final Decision by petitioner, it is logical and proper to resolve this issue after having a full-blown trial so that both parties can substantiate their respective claims.

Thus, the Court deems it proper to **GRANT** the instant Motion for Reconsideration in order to allow the parties to prove their factual claims; to **RECALL** and **SET ASIDE** the assailed Resolution promulgated on January 15, 2019; and to **PROCEED** with the resolution of petitioner's Motion to Suspend Collection.

Hence, this Motion to Suspend Collection.

Section 11 of Republic Act (RA) No. 1125, as amended by Republic Act (RA) No. 9282, authorizes the Court to suspend the collection of tax if such collection would jeopardize the interest of the government and/or taxpayer, to wit:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – xxx
>
> xxx xxx xxx
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however*, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

xxx xxx xxx."

Corollary thereto, Sections 1 and 2, Rule 10 of the Revised Rules of the Court of Tax Appeals provide:

> "SECTION 1. *No suspension of collection of tax, except as herein prescribed.* – No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of tax liability as provided under existing laws, except as hereinafter prescribed.
>
> SEC. 2. *Who may file.* – Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardize the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability."

In proving that the collection of tax may jeopardize its interest, petitioner presented the testimony of its Compliance Officer, Ms. Lorreine Bangloy, who testified, by way of Judicial Affidavit, as follows:

> "***Q31: As the Compliance Officer who is responsible for the general accounting and bookkeeping of Petitioner's business, does the Petitioner have the ability to pay this tax deficiency?***
> A31: No, Ma'am.
>
> ***Q32: Why do you say that Petitioner does not have the ability to pay this tax deficiency?***
> A32: The numbers in the Audited Financial Statement for fiscal year 2017 says so.
>
> ***Q33: Ms. Witness, please explain what do you mean by your statement that the Audited Financial Statement for fiscal year 2017 says so?***
> A33: The total Cash of the Petitioner is only Four Hundred Ninety Six Thousand Three Hundred Fifty Four Pesos (Php 496,354) which cannot absolutely cover the

tax deficiency of Php 19,196.937.60.

The Petitioner does not have the ability to pay this tax deficiency immediately in cash.

Q34: As you've mentioned the Audited Financial Statement, is Cash the only asset that the Petitioner could use to pay this alleged tax deficiency?
A34: No, Ma'am.

Q35: What are other assets the Petitioner has that could be used to pay this alleged tax deficiency?
A11: The Petitioner has Inventories, Other current assets, and Equipment.

Q36: What are other assets the Petitioner has that could be used to pay this alleged tax deficiency?
A36: The Petitioner has Inventories amounting to Seven Million Six Hundred Seventy Five Thousand Four Hundred Eighty Four Pesos (Php 7,675,484), Other current assets amounting to Ninety Thousand One Hundred Sixty Four Pesos (Php 90,164), and Equipment amounting to One Million Five Hundred Forty Thousand Four Hundred Ninety Two Pesos (Php 1,540,492).

Q37: After enumerating all the available assets of the Petitioner, can the Petitioner pay the alleged deficiency tax pending resolution of the Petition for Review filed?
A37: No, ma'am.

Q38: Why do you say the Petitioner cannot pay the alleged deficiency taxes considering that she has assets other than cash?
A38: The Petitioner would not be able to pay the alleged deficiency taxes pending resolution of the Petition for Review for she is not liquid.

Q39: What do you mean when you said the Petitioner is not liquid?
A39: I say the Petitioner is not liquid because her current assets are not enough to cover her current liabilities.

> ***Q40: Can you please expound and explain what do you mean when you say her current assets are not enough to cover her current liabilities?***
> A40: As shown in the Audited Financial Statements of fiscal year 2017, the Petitioner's total current assets totals to Php 8,262,002 and her total current liabilities is Php 8,855,698. To simply put, for every Php 1.00 liability of the Petitioner, it could only be covered by Php 0.93 asset of the Petitioner which is Php 0.07 short to cover just a Php 1.00 liability. Furthermore, this amount of Php 0.93 to cover a Php 1.00 liability could only be feasible subject to the condition that the current assets could be easily converted to cash which is hardly possible for a business like ours.
>
> As you can see it, it is clear that the Petitioner does not have the ability to settle this alleged tax deficiency pending resolution of her Petition basing it on her ability to settle her very own current liabilities. If the Petitioner does not have the ability to settle her liabilities, how much more if the alleged tax deficiency is ordered to be paid by her.
>
> Even the total assets of the Petitioner amounting to **Nine Million Eight Hundred Two Thousand Four Hundred Ninety Four Pesos (Php 9,802,494)** is far from enough to cover the alleged deficiency of Php19,196,937.60."[3]

Moreover, petitioner's Audited Financial Statements as of December 31, 2017[4] indeed show that petitioner's total assets (current assets, inventories, other current assets and equipment) for taxable year 2017 in the amount of ₱9,802,494.00 is not sufficient to cover the subject deficiency taxes in the aggregate amount of ₱19,196,137.10[5].

As such, the Court resolves to grant the instant motion on the ground that petitioner's business will be jeopardized by the said collection of taxes.

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[3] Docket, pp. 82-84.
[4] Docket, p. 144.
[5] As Per Answer, Docket, p. 70.

WHEREFORE, premises considered, petitioner's **Motion to Suspend Collection of Taxes** is **GRANTED**. Accordingly, the collection of taxes is hereby **SUSPENDED**.

Petitioner is **ORDERED** to post a cash or surety bond equivalent to **₱19,196,937.10**, within ten (10) days from receipt of this resolution.

The bond must be a GSIS bond, or a bond from other reputable surety company duly accredited by the Supreme Court with the required supporting documents specified in Supreme Court A.M. No. 04-7-02-SC, dated July 20, 2004, namely:

1. Certified copy of a valid Certificate of Accreditation and Authority issued by the Office of the Court Administrator;

2. Copy of the Certificate of Compliance with Memorandum Circular No. 1-77, dated March 1, 1977 which suspended Circular No. 66 of the Insurance Commission;

3. Proof of payment of legal fees under the Rules of Court and the documentary stamp tax (thirty centavos [₱ 0.30] on each four pesos [₱4.00] or fractional part thereof, of the premium charged, pursuant to Section 187 Title VII of RA No. 8424) and value-added tax (VAT) under the National Internal Revenue Code of 1997;

4. Photocopy of the Certificate of Accreditation and Authority issued by the Court Administrator containing the photograph of the authorized agent (after presentation to the Clerk of Court of the original copy thereof as copy of the Certificate of Accreditation and Authority containing the photograph of the agent); and

5. Secretary Certificate containing the specimen signatures of the agents authorized to transact business with the courts.

Further, the said bond must be a continuing bond, *viz*, the bond shall remain effective until the above-captioned case is finally decided, resolved, or terminated by the Court without the necessity of renewing the same on a yearly basis, or being dependent on the payment of a renewal premium, pursuant to Section 177 of the Insurance Code of the Philippines.

Failure to post the required cash or surety bond and submit the above-stated requirements within ten (10) days from receipt of this Resolution will warrant the setting aside of the suspension of collection of taxes as herein granted.

On the other hand, let this case be set for Pre-Trial Conference on June 6, 2019 at 1:30 p.m.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice