19-000233-0049

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10089

JOSE LUIS BATO BATO MENDOZA,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

COMMISSIONER OF INTERNAL REVENUE
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. MARY JOYCE P. MAGGAY
Bureau of Internal Revenue - Revenue Region No. 7B
25th Floor, West Tower Podium
Ortigas Center, Mandaluyong City

ATTY. BENJAMIN D. TAÑEDO, JR.
No. 20 East Capitol Drive
Bo. Kapitolyo, 1603 Pasig City

GREETINGS:

You are hereby notified by these presents that on **June 21, 2023**, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 27, 2023.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

JOSE LUIS BATO BATO MENDOZA,	**CTA Case No. 10089**
Petitioner,	Members:
- *versus* -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 21 2023, 9:00 AM

x - x

R E S O L U T I O N

MANAHAN, *J.*:

For this Court's resolution is respondent's *Motion for Reconsideration (Decision dated February 01, 2023)* posted on February 27, 2023 and received by the Court on March 7, 2023 without petitioner's comment.[1]

Respondent seeks reconsideration of the Court's Decision promulgated on February 1, 2023 (Assailed Decision), the dispositive portion of which reads as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the present Petition for Review is **GRANTED**. Accordingly, the BIR's WOG dated August 8, 2018, WDL dated March 21, 2019, FLD dated September 27, 2016, and FAN No. 43B-B032-12 dated September 27, 2016, for deficiency income tax and VAT for taxable year 2012, all issued against petitioner, are **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the alleged tax deficiencies embodied in the FAN/FLD issued against petitioner.
>
> **SO ORDERED**."

---

[1] Records Verification dated April 18, 2023, CTA Docket, p. 404.

Respondent reiterates the Court's lack of jurisdiction over the case pursuant to Section 7 (a) (1) of Republic Act (R.A.) No. 1125 as amended by RA 9282 arguing that it is the decision of the Commissioner of Internal Revenue (CIR) on a disputed assessment that is appealable to the Court. Respondent contends that the alleged failure of petitioner to file a timely administrative protest against the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) for taxable year 2012 within thirty (30) days from notice made the same final and unappealable.

Assuming without necessarily conceding that the subject of the instant Petition for Review falls under the category of "other matters", to determine the validity of the Warrant of Distraint and/or Levy (WDL), petitioner observes that the same was filed out of time. If reckoned from the time it received the WDL on March 21, 2019, the filing of the Petition for Review with the Court on June 4, 2019 was beyond the thirty-day period to appeal, thereby depriving the Court of its jurisdiction.

RULING OF THE COURT

We first determine the timeliness of respondent's Motion for Reconsideration.

Records disclose that a copy of the assailed Decision was received by the respondent's Legal Division on February 9, 2023.[2]

Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **"Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1.***Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision , resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

[2] Court Docket, page 379.

Counted from respondent's receipt of the decision on February 9, 2023, he had until February 24, 2023 to file his Motion for Reconsideration. However, February 24, 2023 was declared a special non-working holiday,[3] hence the Motion for Reconsideration posted on the next business day, February 27, 2023 was filed on time.

On the merits of respondent's *Motion for Reconsideration,* we find the same bereft of legal basis and should be denied.

Respondent's allegation that petitioner failed to file a timely protest against the FLD/FANs is premised on their valid service and receipt by petitioner.

It is clear from the records of this case that petitioner categorically denied ever having received these FLD/FANs for taxable year 2012 to enable him to make a timely protest. He alleges that his counsel had to request for copies of the FLD/FANs and other documents from the Bureau of Internal Revenue (BIR) - Revenue Region No. 7 after having been informed that his bank account in Security Bank was garnished and that it was only then that he was able to file a protest against the FLD/FANs.

Records also show respondent was remiss in refuting such allegations of non-receipt by failing to submit the Judicial Affidavit of his witness in spite of several extensions given by the Court and was finally declared to have waived the presentation of his witness.[4] The lackaidaisical attitude of respondent's counsel was evident all throughout the trial and was detailed in the assailed Decision, in this manner:

> "We find merit in petitioner's arguments and accept them at face value as respondent was remiss in exerting sufficient efforts to rebut them in the course of the trial. This seemingly lackadaisical attitude of respondent's counsel is evidenced by her failure to submit the Judicial Affidavit of respondent's sole witness, Revenue Officer Angelita Jordan, despite a direct Order from the Court for its submission and several extensions granted by the Court to submit the same. This resulted to the imposition of a fine and a waiver to present the aforenamed witness in Court and consequently to a waiver to present any evidence to dispute the allegations of petitioner. No motion for reconsideration was filed by respondent's counsel on this Resolution. Further, respondent also failed to file a memorandum after having been given the

---

[3] Anniversary of the EDSA People Power Revolution.
[4] Court Resolution dated July 1, 2020, Court Docket, pp.218-219. *am*

> opportunity by the Court before the case was submitted for decision.
>
> Considering that there were important factual issues raised in the Petition for Review, e.g., non-receipt of the PAN and the FAN/FLD, the silence of respondent was fatal to its cause and only served to bolster the veracity of petitioner's arguments."

Well-entrenched is the rule that a direct denial of receipt of the FLD/FAN shifts the burden to the Commissioner of Internal Revenue to prove that the mail matters were actually received by the addressee.[5] In the case of *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[6] the Supreme Court clarified the shift of the evidentiary burden in this manner, thus:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee."

In the instant case, the CIR was unable to discharge the burden of proving that the FLD/FANs were received by petitioner, hence, the allegation that petitioner failed to file a timely protest must fail.

Respondent presented an alternative argument on the Court's lack of jurisdiction when it alleges that the Petition for Review with the Court should have been filed within thirty (30) days counted from receipt of the WDL on March 21, 2019. Further, respondent contends that petitioner opted instead to file a protest on April 12, 2019 which was allegedly not sanctioned by law or by rules and regulations.

We find the above argument to be without merit.

Due to lack of evidentiary support of respondent, be it documentary and testimonial, to refute the allegations of

---

[5] *Commissioner of Internal Revenue vs. T-Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.
[6] G.R. No. 202695, February 29, 2016.

petitioner, it remains undisputed that petitioner was furnished by respondent through revenue officer, Mr. John Cris R. Leynes, copies of the FLD/FANs for taxable year 2012 on March 27, 2019.[7] Within thirty (30) days from March 27, 2019 or on April 12, 2019, petitioner filed a protest thereto.[8] Equally significant and undisputed is the decision of the respondent on this protest which was received by petitioner on May 10, 2019.[9] The Petition for Review filed with this Court on June 4, 2019 was then timely filed pursuant to Section 228 of the 1997 NIRC, as amended, quoted as follows:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**" (Emphasis supplied)

---

[7] Exhibits "P-8", "P-8-A" and "P-9", Court Docket, pp. 291 to 293.
[8] Exhibit "P-6," Court Docket, pp.275 to 282.
[9] Paragraph 4.3 of the Petition for Review filed with this Court on June 4, 2019, Court Docket, p. 15; Exhibit "P-1", Court Docket, pp. 30 to 31.

It is quite plain from the facts, that what is being appealed to this Court is the decision on the protest and not the validity of the WDL rendering the latter insignificant in the counting of the 30-day period.

Considering that the only issue raised by respondent in his Motion for Reconsideration is the Court's alleged lack of jurisdiction based on the alternative arguments discussed, we stand by and affirm the other rulings enunciated and discussed in the assailed Decision.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Decision dated February 01, 2023)* is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice