REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BAP CREDIT BUREAU, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9570

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

JUN 1 3 2019 3:07 pm

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RESOLUTION

MANAHAN, *J.*:

For resolution of this Court is petitioner's **Motion for Reconsideration (of the Decision dated 8 April 2019)**, filed on April 25, 2019, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 8 April 2019)**, filed on May 14, 2019.

Petitioner seeks reconsideration of this Court's Decision dated April 8, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's claim for refund of or issuance of tax credit certificate for alleged erroneously imposed and collected penalties in the filing of its Annual ITR for 2014 in the amount of Php1,062,626.00 is **DENIED** for lack of merit.
>
> **SO ORDERED**."

Petitioner contends that the Court erred in ruling that petitioner should have followed Revenue Memorandum Circular (RMC) No. 14-2015, which mandated it to manually file the 2014 Annual Income Tax Return (ITR) and manually pay the corresponding taxes on the April 15, 2015 deadline, arguing that there are no instructions in the said RMC and its annexes that direct the taxpayer to file and pay manually in case the ITR is not submitted via the Electronic Filing and Payment System (eFPS) on or before April 15, 2015. Petitioner also alleges that the Court wrongly applied Revenue Memorandum Order (RMO) No. 05-2002 in this case, arguing that while it may be true that RMO 05-2002 provides an alternative mode of compliance in lieu of eFPS, this RMO concerns filing only, and not filing and payment. Petitioner avers that assuming that RMO No. 5-2002 can be made applicable to payment, the said RMO required a categorical declaration that the eFPS is unavailable. Petitioner alleges that in this case, there was none. Thus, petitioner argues that RMO No. 05-2002 is wrongly applied.

Petitioner insists that what is controlling is RMC No. 20-2015 as this would squarely address the issue on unavailability of the eFPS for the same compliance requirement with the same deadline. Further, petitioner argues that the late filing and payment was due to a cause beyond petitioner's control considering that the unavailability of the eFPS is independent of petitioner's will. According to petitioner, notwithstanding that it attempted to e-file a day before the deadline, petitioner cannot be faulted of an event caused by the technical inadequacy of the eFPS.

Petitioner maintains that it has established and proved in evidence that the eFPS was unavailable and offline on April 14 and 15, 2015 despite various attempts to access the eFPS website/portal. As such, petitioner argues that its failure to file and pay the 2014 Annual ITR on time was caused by a circumstance beyond its control. Moreover, petitioner argues that the notion of requiring taxpayers to file way earlier than the set deadline by the Tax Code defeats the purpose of setting due dates. According to petitioner, penalties are only imposed once the deadline has lapsed.

Finally, petitioner argues that given the pronouncement of this Court in *Philippine Plaza Holdings, Inc. vs. Commissioner of Internal Revenue*[1] that late filing and payment due to a system error in the eFPS facility is considered a circumstance beyond the taxpayer's

[1] CTA Case No. 8609, August 12, 2016.

control, there is no reason for this Court not to apply the same in the instant case.

In his opposition, respondent avers that petitioner's contention that it was able to follow the instructions as mandated in the applicable Bureau of Internal Revenue (BIR) rules concerning alternative modes of filing and payment in case of unavailability of the eFPS is utterly bereft of merit. Respondent also alleges that petitioner's argument that the late filing and payment was due to a cause beyond its control and that it cannot be faulted of an event caused by the technical inadequacy of the eFPS is also bereft of merit. Finally, respondent maintains that partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

Petitioner's motion lacks merit.

A cursory reading of the arguments presented by petitioner 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 dated April 8, 2019.

It is expected that petitioner would also insist that RMC No. 14-2015 and RMO No. 5-2002 do not apply in this case in light of its previous claim that respondent failed to issue any guidelines for the alternative filing of BIR Form No. 1702-RT or the Annual ITR and thus RMC No. 20-2015 suppletorily applies. To reiterate:

> As can be gleaned from the foregoing, taxpayers who are mandated to use the eFPS, after several unsuccessful attempts of e-filing of *BIR Form Nos. 1701Q and 1702Q* with corresponding payments should manually file and pay following the existing procedures on or before April 15, 2015, attaching proof of unsuccessful eFPS, then re-file electronically on or before June 15, 2015. Notably, there is nothing under RMC No. 20-2015 which can be interpreted to mean that it also applies to BIR Form No. 1702RT. However, even assuming for the sake of argument that RMC No. 20-2015 should have suppletory application in this case, petitioner is still required under the said RMC to manually file its return, attaching proof of unsuccessful e-filing, and manually pay its taxes on or before April 15, 2015 and to re-file electronically on or before June 15, 2015.

Contrary to petitioner's claim that there is no applicable issuance providing for the alternative filing of the annual ITR for taxable year 2014 and thus RMC No. 20-2015 should have suppletory application insofar as the procedure to be followed in case of unsuccessful attempt of e-filing of the Annual ITR, respondent previously issued RMC No. 14-2015 dated March 30, 2015 or the "Guidelines in the Filing, Receiving and Processing using the Electronic Platform of BIR for Taxable Year 2014 Income Tax Returns (ITRs) BIR Form Nos. 1700, 1701, 1702-RT, 1702-EX and 1702-MX, All June 2013 ENCS Version under Revenue Regulations No. 2-2014". RMC No. 14-2015 provides as follows:

> "This Circular is issued to provide guidelines in the filing, receiving and processing, using the ELECTRONIC PLATFORM OF BIR for 2014 ITRs (BIR Form Nos. 1700, 1701, 1702-RT, 1702-EX and 1702-MX), as well as define policies for the filing of ITRs which are due *on or before April 15, 2015.* This circular does not cover taxpayers who are not mandated to use eFPS/eBIRForms and who have not opted to file electronically, and thus, the existing procedures on manual filing shall apply.
>
> For expediency, ease and convenience in filling-up the ITRs, all taxpayers mandated to use eFPS and eBIRForms are advised to use the latest version of *Offline eBIRForms Package* which can be accessed from the BIR website (www.bir.gov.ph) through the eServices→eBIRForms link. Taxpayers using the said package can directly encode data, validate the entries as it can do automatic computations, edit, save, delete, view, print and submit their tax returns following the steps below:
>
> xxx xxx xxx
>
> Process Flow for electronic platform in Annex A. For *eFPS,* follow the detailed guidelines shown in Annex B. For *eBIRForms,* follow the detailed guidelines shown in Annex C.
>
> For the purpose of determining the date when the returns are filed, it shall be the date the original eFiling was duly submitted."

Annex A of RMC No. 14-2015 provides for an alternative procedure in case the ITR is not submitted via the eFPS, which is to manually file the ITR and pay (with the required attachments) to Authorized Agent Banks/Collection Agents (in proper cases), in the RDO where registered. Contrary to petitioner's claim, it is not left without recourse in the event of problems encountered during e-filing of its Annual ITR. In fact, as early as April 1, 2002, respondent in Revenue Memorandum Order (RMO) No. 5-2002, as amended, or the "Guidelines and Procedures in the Adoption of Electronic Filing and Payment System (EFPS)" already stated that in case the eFPS is not available during due dates, as declared by the BIR, taxpayers shall *manually* file their returns, thus:

> "III. POLICIES:
>
> xxx xxx xxx
>
> D. The e-filing of returns shall be available 24 hours a day, 7 days a week. However, to ensure receipt by the BIR before midnight of the due date set by applicable laws and regulations for the filing of a return and the payment of the corresponding tax, the electronic return for the applicable tax must be filed on or before 10 p.m. of the due date. **In case the EFPS is not available during due dates, as declared by the BIR, taxpayers shall manually file their returns with the collecting agent (AAB or RCO/DMT) for the returns with payment, or with the Revenue District Office (RDO) or Large Taxpayers Service (LTS) or Large Taxpayers District Office (LTDO) where they are registered for no-payment returns.**" *(Emphasis supplied)*

Petitioner's claim that respondent has no relevant issuances regarding alternative procedures in filing of annual ITRs and payment of taxes in the event of technical problems in the eFPS has no merit.

Further, petitioner's insistence that *Philippine Plaza* applies in this case, citing the doctrine of *stare decisis* that once a question of law has been examined and decided, it should be deemed settled and closed to further argument, deserves scant consideration. In *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*[2], the Supreme Court ruled:

> xxx Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why

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[2] G.R. No. 196907, March 13, 2013.

> CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.

Besides, in *Philippine Plaza,* petitioner sufficiently proved by testimonial and documentary evidence that the late filing of its value-added tax return for the 2nd quarter of 2011 and payment of the corresponding tax therein can be attributed to the system error in the eFPS facility. In the instant case, foresight and diligence on petitioner's part could have prevented the late filing which resulted in the imposition of penalties. To reiterate:

> Respondent cannot be faulted for petitioner's failure to e-file its return and pay its taxes on time. It must be noted that when petitioner's accountant went to RDO No. 48 on April 15, 2015 at 11:45 a.m. to report her alleged unsuccessful attempt to file petitioner's Annual ITR through the eFPS on April 14, 2015, she was instructed to bring the hard copies of petitioner's 2014 Annual ITR to Chinabank and to request the said bank to auto-debit the tax due from the account of petitioner. Thus, petitioner was not left without any recourse when it informed respondent of the alleged unavailability of the eFPS.
>
> Petitioner's argument that the proposed alternative measure was not possible at that time as per advice of BDO is already beyond respondent's control. Petitioner's problem with transacting with its own bank and failure to pay the corresponding taxes through the payment channel advised by the BIR RDO No. 48 should not be blamed on respondent. Petitioner could have manually paid its taxes had it been zealous to timely pay its taxes, if its attempt to auto-debit the payment failed, considering that Authorized Agent Banks (AABs) are mandated to receive internal revenue tax payments through eFPS or over the counter unless the receipt of manual payment is not allowed in the MOA signed with either or both the BIR and the Bureau of Treasury accrediting a bank as an eFPS AAB in accordance with Revenue Memorandum Order No. 5-2002, as amended.
>
> Petitioner could have opted for early e-filing of its return instead of doing so one day before the deadline. Notably, RR No. 9-2001, as amended by RR No. 9-2002, provides the following relative to the time and place of filing of returns and payment of tax:
>
> "SECTION 8. TIME AND PLACE OF PAYMENT. –

> 8.1 Large Taxpayers. (a) xxx
>
> (b) xxx
>
> 8.2 Non-Large Taxpayers.
>
> xxx xxx xxx
>
> The provisions of the foregoing paragraphs notwithstanding, **the filing of the return ahead of the payment of the tax due thereon is still in accordance with "pay-as-you-file" principle** as long as the payment of the tax is made on or before the due date of the applicable tax. (*Emphasis supplied*)

Petitioner could have filed its annual ITR much earlier than its payment of the tax due and it still would have complied with the "pay-as-you-file" principle of the eFPS. Hence, petitioner cannot claim that its failure to file its return and pay its taxes within a reasonable period of time is beyond its control.

Be that as it may, petitioner could have done remedial measures immediately on April 14, 2015 the day when it discovered that e-filing proved to be difficult and not wait until the last day (for filing) on April 15, 2015 to seek assistance from the RDO as shown by the records of this case. It is indeed a reality that revenue examiners and officials have their hands full on the last day of filing of income tax returns (April 15) and may not properly address each and every concern of taxpayers having difficulty in accessing the e-filing system. Foresight and diligence on the part of the taxpayer in filing its Annual ITR could have prevented the late filing which resulted to the imposition of penalties.

Accordingly, there was no erroneous and unlawful payment of penalties that would entitle petitioner to a refund considering the prevalent circumstances when respondent imposed penalties on petitioner for late e-filing of its Annual ITR and payment of taxes on April 16, 2015.

In view thereof, this Court finds no reversible error in the assailed Decision to warrant reconsideration thereof.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 8 April 2019)** is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

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