REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CITIAIRE INDUSTRIAL SERVICES CORPORATION,
Petitioner,

CTA CASE NO. 9713

- versus -

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 03 2021 1:15 PM

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RESOLUTION

BACORRO-VILLENA, J.:

For resolution is a "Motion for Reconsideration" (**MR**) filed by petitioner Citiaire Industrial Services Corporation (**petitioner/CISC**) on 04 November 2020, assailing the Amended Decision (dated 14 October 2020) denying the Petition for Review for lack of jurisdiction.

Put forth as issue in the MR is whether the Court erred when it ultimately dismissed petitioner's Petition for Review for lack of jurisdiction.

Relative to the above issue, petitioner insists that respondent Commissioner of Internal Revenue (**respondent/CIR**) was made aware of its change of registered address prior to the mailing of the Formal Letter of Demand/Final Assessment Notice (**FLD/FAN**). Even after another careful scrutiny of the records, We are unable to agree with respondent. The reasons are essayed below, in *seriatim*.

First, all throughout the trial, petitioner has maintained that respondent was aware of its change of address due to respondent's personal delivery of the *subpoena duces tecum* (for another taxable year i.e., 2013) to its new address. However, as exhaustively discussed in Our Decision dated 23 January 2020, the *subpoena* was only served on 10 October 2016, which was way beyond the mailing date of the FLD/FAN *per* Registry Return Receipt, i.e., on 24 June 2016. Moreover, it bears stressing that there were inconsistencies in petitioner's Letter Request for Reinvestigation dated 27 September 2017[1], Judicial Affidavit of Antonio M. Cambe[2] and Judicial Affidavit of Kathrina Rose D. Cambe[3], as regards the date of transfer of petitioner to its new address that would cast doubt as to whether or not petitioner was no longer in its registered address as of 24 June 2016.

The Letter Request for Reinvestigation reads, to wit:

> ...
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> We transferred from our former address at 5/F Ben-Lor Building No. 1184 Quezon Ave, Quezon City to No. 25 Road 4, Project 6, Quezon City sometime in **May of 2016** for the reason that our lease contract on the said premises was no longer renewed.[4]
>
> ...

Meanwhile, in the Judicial Affidavit of Antonio Cambe, it was stated:

> ...
>
> Question 16: You made mentioned *(sic)* about the former office address which respondent erroneously sent its Assessment Notice and Formal Letter of Demand, what made you say that it was your company's former address?
>
> Answer: In view of the expiration of the contract of lease sometime in *(sic)* **04 April 2015** to which our company

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[1] Exhibit "P-5", Division Docket, pp. 290-292.
[2] Exhibit "P-12", id., pp. 311-319.
[3] Exhibit "P-13", id., pp. 320-324.
[4] Emphasis supplied.

no longer renew the same as per contract of lease executed 25 March 2010.[5]

...

On the other hand, the Judicial Affidavit of Kathrina Rose D. Cambe reads as follows:

...

Question 9: By the way, when did CITIAIRE transferred *(sic)* in current office address you mentioned?

Answer: It was sometime after the expiration of the lease contract with Ben-Lor Building.

Question 10: Exactly when was that, if you know?

Answer: sometime *(sic)* around early month of **May of 2015** when we were just setting up all chattels, documents and furniture during that time.[6]

...

Relevantly, petitioner did not submit as evidence its new lease contract or any other pertinent documents to prove the start date of its occupation in its new address.

Second, petitioner agreed in the Joint Stipulation of Facts and Issues[7] **(JSFI)** that the "The Formal Letter of Demand with Details of Discrepancies and/or Final Assessment Notices bearing Demand No. 39-B058-12 (FLD/FAN) **were served unto petitioner CITIAIRE via registered mail under registry receipt no. RD 627 953 280 ZZ**"[8]. It must be noted that, as a rule, a judicial admission (such as that made by petitioner in the Joint Stipulation of Facts) is binding on the declarant except if it was shown that petitioner made a palpable mistake, or no such admission was made.[9] Considering that there was no showing of palpable mistake nor the absence of such admission, such admission is deemed binding on petitioner.

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5 Emphasis supplied.
6 Emphasis supplied.
7 Paragraph B, Joint Stipulation of Facts/Admissions, Division Docket, p. 221.
8 Emphasis supplied.
9 Section 4, Rule 129, Rules of Court.

Lastly, petitioner, citing *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.* (**BASF Coating**)[10] and *Commissioner of Internal Revenue v. Coolmate Corporation* (**Coolmate**)[11], pointed out that the envelopes[12] containing the FLD/FAN and Preliminary Assessment Notice (**PAN**) with stamped markings and notation on the face and dorsal sides thereof showing "RTS" (meaning, "Return To Sender") and "MOVED OUT" have sufficiently proved that respondent was aware of petitioner's new address. However, the afore-cited cases are not on all fours with the instant case.

In *BASF Coating,* **prior** to the mailing of the FLD/FAN on 24 January 2003, the Bureau of Internal Revenue (**BIR**) was already aware of the new address of the taxpayer as evidenced by the following pieces of evidence **containing the new taxpayer's address**: (1) Report on Taxpayer's Delinquent Account, dated June 27, 2002; (2) Activity Report, dated October 17, 2002; (3) Memorandum Report of Examiner, dated June 27, 2002; (4) Letter, dated September 27, 2001, signed by Revenue Officer I Eugene R. Garcia; and, (5) Final Request for Presentation of Records Before Subpoena Duces Tecum, dated March 20, 2002, signed by Revenue Officer I Eugene R. Garcia.

Furthermore, in *BASF Coating,* the fact that prior to mailing the FAN, the CIR sent to taxpayer's old address a PAN but it was "returned to sender" was testified to by the Revenue Officer. However, in the instant case, no evidence was proffered to support petitioner's contention that the BIR had prior knowledge of petitioner's true and correct address before the mailing of the FAN/FLD i.e., on 24 June 2016.

Likewise, in *Coolmate,* the taxpayer submitted as evidence its filing of BIR Form No. 1702 (Annual Income Tax Return) for fiscal years 2007 and 2008 with the new Revenue District Officer (**RDO**) to show that the BIR was notified and was aware of the taxpayer's new address prior to the issuance of PAN and FAN. However, in the instant case, as discussed in Our Decision dated 23 January 2020, petitioner's tax returns for Taxable Year (**TY**) 2012 such as BIR Form No. 1604-E, 1604-CF and 1702, among others, and even its audited financial statements indicate petitioner's **<u>old address</u>** as its place of business.

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10 748 Phil. 760 (2014).
11 CTA EB No. 1226, 08 June 2016.
12 BIR Records, pp. 246 and 354.

In addition, the presence of "RTS" and "Moved Out" notations on the envelopes of the PAN and FAN/FLD that were sent to the registered address of taxpayer did not render the delivery invalid or not binding. Section 11 of Revenue Regulations (**RR**) No. 12-85[13] states:

> ...
>
> SEC. 11. *Change of Address.* — **In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business**, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, **<u>and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply</u>**.[14]
>
> ...

As stated above, if the **taxpayer fails to inform the BIR of its change of address**, any communication previously sent to its **<u>former</u>** legal residence or place of business shall be considered **valid and binding for purposes of the period within which to reply**. Thus, what is crucial in cases concerning change of registered address is for the taxpayer **to prove that it has informed or notified the BIR of its new legal address and that it's no longer doing business in its former legal address**. Unfortunately, in herein case, the records are bereft of substantial evidence to support prior notice to the BIR of petitioner's new address before the issuance of FAN/FLD. Noteworthy is the fact that the "RTS" and "Moved Out" notations on the envelope[15] containing the PAN was dated "6/16/16"; however, the envelope[16] containing the FAN/FLD was registered with the Post Office of Metro Manila on **10 June 2016**. Hence, it is reasonable to assume that at the time of the mailing of the FAN/FLD, respondent was unaware of petitioner's change of address.

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13 Procedure covering administrative protests on assessments of the Bureau of Internal Revenue.
14 Emphasis and underscoring supplied.
15 BIR Records, p. 246.
16 Id., p. 354.

It is noted that the purpose of the rules on notice of change of address in RR No. 12-85[17] is to place the date of receipt of assessment notices and consequently, the validity of the assessment, beyond the power of the taxpayer to determine at its pleasure. With the attendant circumstances here, the Court finds that the said purpose will be rendered without use if it were to rule in petitioner's favor.

As regards the issue on the FLD/FAN lacking due date, this was already exhaustively discussed in the Amended Decision, to wit:

> ...
>
> Upon a second hard look at the pieces of evidence, the Court is constrained to reconsider. The FLD appears to carry the following:
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> > ...
> >
> > Pursuant to the provisions of Section 228 of the NIRC of 1997, as amended, and its implementing Revenue Regulations (RR), **you are hereby given fifteen (15) days from receipt hereof to pay the aforesaid deficiency tax liabilities** in a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605.)
> >
> > ...
>
> Consistent thus with our pronouncement in the assailed Decision that respondent's service of the FLD and/or Final Assessment Notice (**FAN**) on 24 June 2016 (as provided in the Registry Receipt with Number RD 627953280) on petitioner's old address was valid and binding...[18]
>
> ...

Anent the issue on prescription, since the assessment here has already attained finality, the defense of prescription could no longer be raised; it being a defense which must be raised in the proper forum and at the *proper* time.[19]

Finally, it must be noted as well that petitioner executed a Waiver of the Defense of Prescription[20] dated 19 June 2015 extending respondent's period to assess up to **30 June 2016** which was subsequently received by petitioner on 08 July 2015. Considering that

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[17] Supra at note 13.
[18] Citations omitted and emphasis supplied.
[19] *Singer Finance Corporation v. CIR*, CTA EB No. 10, 04 March 2005, citing *Republic of the Philippines v. Manila Port Service*, 120 Phil. 1174 (1964).
[20] BIR Records, p. 232.

the FLD/FAN was served on 24 June 2016, the same is within respondent's period to assess.

WHEREFORE, with the foregoing premises, petitioner Citiaire Industrial Services Corporation's Motion for Reconsideration filed on 04 November 2020 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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