REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

BUREAU OF INTERNAL REVENUE represented by COMMISSIONER KIM S. JACINTO-HENARES

Petitioner,

-versus-

HON. LEILA M. DE LIMA in her capacity as SECRETARY OF JUSTICE and GEORGE ERWIN M. GARCIA

Respondents.

CTA CASE NO. 9171

Members:

Bautista, Chairperson,
Fabon-Victorino, and
Ringpis-Liban *JJ.*

Promulgated:

JUN 3 0 2017
4:01 p.m.

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RESOLUTION

For resolution are the following:

1) Petitioner's "Motion for Reconsideration (of the Decision Promulgated March 29, 2017)" (MR)[1] filed on May 09, 2017 seeking to set aside the Decision[2] issued on March 29, 2017 denying the Petition for Certiorari for lack of merit (assailed Decision);

2) Respondent George Erwin M. Garcia's "Urgent Ex Parte Motion for Additional Time to File Opposition (To the Petitioner's Motion for Reconsideration dated 9 May 2017)" filed on June 07, 2017; and

[1] Docket, pp. 500-510.
[2] *Id.*, pp. 486-498.

3) Respondent George Erwin M. Garcia's "Motion to Expunge with Opposition Ad Cautelam (As Comment to the Motion for Reconsideration dated 9 May 2017" filed on June 19, 2017.

On May 12, 2017, the Court issued a Resolution requiring Respondents Secretary of Justice and George Erwin M. Garcia to comment on Petitioner's "Motion for Reconsideration (of the Decision Promulgated March 29, 2017)" within fifteen (15) days from notice.[3]

In response thereto, Respondent Secretary of Justice filed a "Manifestation/Compliance"[4] on May 26, 2017, which reiterated his request that the Department of Justice (DOJ) be excused from filing a comment and participating in the instant case, since the Secretary of Justice is being impleaded in an official capacity, following Section 5, Rule 65 of the 1997 Revised Rules of Court. The Court issued a Resolution[5] granting the same on June 14, 2017.

Respondent George Erwin M. Garcia on the other hand filed an "Urgent Ex Parte Motion for Additional Time to File Opposition (To the Petitioner's Motion for Reconsideration dated 9 May 2017)"[6] on June 07, 2017 and a "Motion to Expunge with Opposition Ad Cautelam (As Comment to the Motion for Reconsideration dated 9 May 2017"[7] on June 19, 2017.

Thus, in accordance with Resolution dated May 12, 2017, the incident is submitted for resolution.

The dispositive portion of the assailed Decision[8] reads:

> **WHEREFORE**, premises considered, the instant Petition for Certiorari is hereby **DENIED** for lack of merit. The Resolution dated June 10, 2015 of the Secretary of Justice, which upheld the State Prosecutor's Resolution date [sic] December 22, 2011 dismissing the Joint Complaint-Affidavit filed by the Bureau of Internal Revenue, in NPS Docket No. XVI-INV-11I-00344, for lack of probable cause, is hereby **AFFIRMED**.

After a careful consideration, the Court finds that Petitioner's MR should be denied.

First, the same was not set for hearing, in violation of the Revised Rules of the Court of Tax Appeals (RRCTA) and Rules of Civil Procedure.

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3 *Id.*, p. 512.
4 *Id.*, pp. 513-515.
5 *Id.*, pp. 517-518.
6 *Id.*, at pp. 519-522.
7 *Id.*, at pp. 523-535.
8 *Id.*, at p. 497.

Section 3, Rule 15 of RRCTA provides:

RULE 15
MOTION FOR RECONSIDERATION OR NEW TRIAL

SEC. 3. *Hearing of the Motion.* – **The motion for reconsideration** or new trial, as well as the opposition thereto, **shall embody all supporting arguments <u>and the movant shall set the same for hearing on the next available motion day</u>.** Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which the case the Court shall issue the proper order. (RCTA, Rule 13, sec. 3a)[9]

On the other hand, Sections 4 of 5, Rule 15 of Rules of Civil Procedure provide:

RULE 15
MOTIONS

Sec. 4. *Hearing of motion.* - Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every written motion shall be set for hearing by the applicant.**

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. *Notice of hearing.* - **The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.**[10]

Therefore, for failure to set the foregoing motion for hearing, and contain a notice of hearing directed to Respondents stating the time and place of the

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9 Section 3, Rule 15 of Revised Rules of the Court of Tax Appeals; *Emphasis and underscoring supplied.*
10 Sections 4 and 5, Rule 15 of Rules of Civil Procedure; *Emphasis supplied.*

hearing, Petitioner's MR is a mere scrap of paper which should be disregarded and ignored.[11]

Second, the MR was filed out of time. Under Section 3, Rule 15 of RRCTA, a motion for reconsideration must be filed within fifteen days from the date of receipt of the notice of the decision. Petitioner received a copy of the assailed Decision on April 19, 2017.[12] Thus, it only had until May 04, 2017 within which to file the same. However, Petitioner filed the MR only on May 09, 2017, five (5) days after the deadline.

Third, the issues and arguments raised in Petitioner's MR had already been amply discussed, passed upon and considered by this Court in the assailed Decision. In fact, Petitioner's MR is a complete rehash of his Petition for Certiorari[13] filed on October 19, 2015. Petitioner's arguments constitute neither compelling nor cogent reason to modify, much less reverse our Decision dated March 29, 2017.

We reiterate our finding that –

> The Secretary of Justice was justified in dismissing the petition for review of the resolution of the Investigating Prosecutor. The findings of the Investigating Prosecutor were based on the documents presented and were in no way arbitrary, whimsical, capricious or despotic. The finding that petitioner's complaint was not sufficiently substantiated to find probable cause was judiciously affirmed by the Secretary of Justice, who found that the loaned amount of ₱53,000,000.00 did not constitute income[.]
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> xxx
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> The Court finds no grave abuse of discretion on the part of the Investigating Prosecutor or the Secretary of Justice to warrant interference in their determination of lack of probable cause in this case. Hence, the instant Petition for *Certiorari* must be denied.[14]

[11] Hon. Pete Nicomedes Prado v. Hon Regino T. Veridiano II, G.R. No. 98118, December 06, 1991 *citing* Philippine Advertising Counselors, Inc. v. Revilla, G.R. No. L-31869, August 08, 1973; Sacdalan v. Bautista, G.R. No. L-38014, March 27, 1974; Bank of the Philippine Islands v. Far East Molasses Corp, G.R. No. 89125, July 02, 1991; and Filipinas Fabricators and Sales, Inc. v. Hon. Magsino G.R. No. L-47574, January 29, 1988.

[12] Docket, p. 485.

[13] *Id.*, pp. 5-31.

[14] *Id.*, at pp. 496-497.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration (of the Decision Promulgated March 29, 2017)" is hereby **DENIED** for failure to comply with procedural requirements AND for lack of merit.

Respondent George Erwin M. Garcia's "Urgent Ex Parte Motion for Additional Time to File Opposition (To the Petitioner's Motion for Reconsideration dated 9 May 2017)" filed on June 07, 2017 is hereby **NOTED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

(on leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice