REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

E-POWER SECURITY AND INVESTIGATION SERVICES, INC., Petitioner,	**CTA CASE NO. 10143**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson*, **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
HON. CAESAR R. DULAY – IN HIS CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE,[1] Respondent.	Promulgated: MAR 16 2023 8:35 A.M.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **Motion for Reconsideration (Re: Decision dated 21 November 2022)** sent via private courier on January 20, 2023 and received by the Court on January 23, 2023, with respondent's **Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated January 20, 2023)** filed on February 13, 2023.

Petitioner's Motion seeks reconsideration of the Court's Decision dated November 21, 2022, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."[2]

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[1] The incumbent CIR is the Hon. Romeo D. Lumagui, Jr.
[2] CTA Docket, Vol. III, p. 1588.

In the present Motion, petitioner argues that this Court has jurisdiction over the case. It insists that the Court erred in finding that the Formal Letter of Demand (FLD) and Assessment Notices (ANs) were served upon petitioner's authorized representative, a certain Herdel Dela Cruz, as respondent did not present the testimony of the revenue officer (RO) who served the FLD and ANs. There being no testimonial evidence to support the view that the FLD and ANs were validly served, petitioner contends that its allegation that it only received the FLD and ANs "on or about the end of March 2019 or beginning of April of the same year" remained uncontroverted.

On the other hand, respondent maintains that the FLD and ANs were validly served upon petitioner when it was received by its authorized representative, Herdel Dela Cruz, as admitted during cross-examination by petitioner's President, retired Brigadier General Emiliano D. Templo. Thus, respondent is of the view that petitioner belatedly filed its protest to the FLD, which stripped the Court of jurisdiction to hear and decide this case.

THE COURT'S RULING

The Court finds that the arguments raised by petitioner are essentially a mere rehash or reiteration of the matters judiciously discussed and passed upon in the assailed Decision dated November 21, 2022. Nevertheless, the Court shall discuss the issue raised in the present Motion for a thorough and comprehensive disposition of this case.

Exhibit "R-8", including Exhibits "R-8-A" to "R-8-D",[3] representing the FLD and ANs, were admitted in evidence by the Court in its Resolution dated June 23, 2022.[4] These Exhibits were identified in the Judicial Affidavit of respondent's witness, RO Mary Grace Belen T. Villaluz.[5]

Although RO Villaluz admitted on cross-examination that she is not the RO who served the FLD and ANs,[6] nevertheless, as the RO who was tasked to review the assessments made against petitioner, she had knowledge based on the documents incorporated as part of the BIR Records anent the veracity of the information appearing on the face of the FLD and ANs.[7]

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[3] Docket, Vol. III, pp. 1503-1512.
[4] Docket, Vol. III, pp. 1532-1533.
[5] Docket, Vol. II, pp. 902-903.
[6] Transcript of Stenographic Notes, April 28, 2022, pp. 10-12.
[7] *Id.*, p. 10.

The fact that the FLD and ANs were received by Herdel Dela Cruz is supported not only by the FLD and ANs themselves, but also by the Affidavit of Service of Final Assessment Notice executed by the ROs who conducted the investigation of petitioner, and subscribed and sworn to before the authorized revenue district officer.[8] This Affidavit, under oath, sets forth the manner, place and date of service, and the name of the person who received the same.

Assuming *arguendo* that respondent was not able to prove receipt of the FLD and ANs by petitioner's authorized representative on December 17, 2018, the Court cannot, in turn, accept petitioner's allegation that it received the FLD and ANs "on or about the end of March 2019 or beginning of April of the same year". Such is an indefinite timeframe as the Court cannot ascertain the real reckoning point from which petitioner should have filed its protest.

In fact, in petitioner's own Protest-Letter dated April 12, 2019 filed with the Bureau of Internal Revenue (BIR) on the same date, Ms. Mildred O. Templo, Chairperson of petitioner's board of directors, stated that they received the assessment dated December 13, 2018 on **December 27, 2018**.[9] This own admission belies petitioner's allegation that it only received the FLD and ANs on or about March or April of 2019. Thus, even with petitioner's receipt of the FLD and ANs on December 27, 2018, petitioner still failed to file its protest within thirty (30) days therefrom, or until **January 26, 2019**, as the Protest-Letter was filed on **April 12, 2019**.

Moreover, a protest which does not observe the form and manner of filing as prescribed by implementing rules and regulations is void; it is as if there was no protest filed at all. As held by the Supreme Court in *Commissioner of Internal Revenue vs. Court of Tax Appeals – Third Division and Citysuper, Incorporated*:[10]

> "Nowhere in respondent's April 29, 2015 letter did it state the assessment notice's date and the applicable law, rules and regulations, or jurisprudence on which its protest was based. Attaching copies of the audit results/assessment notices is not stating the date of the assessment notice, any more than attaching copies of assailed judgments to a petition without stating them in the petition itself complies with the rule on statements of material dates.
>
> While respondent's declaration that it was 'in the process of compiling the necessary documentation to support [its] protest to

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[8] Exhibit "R-9", Docket, Vol. III, p. 1513.
[9] Exhibit "P-15", Docket, Vol. II, pp. 477-479; Exhibit "R-14", Docket, Vol. III, pp. 1519-1521.
[10] G.R. No. 239464, May 10, 2021.

said assessments' could imply that it was requesting a reinvestigation, its failure to explicitly state this means that petitioner had no way of knowing whether it should monitor the 60-day period stated in Revenue Regulations No. 18-2013.

Section 228 of the National Internal Revenue Code is clear. The administrative protest must be filed not only within the stated period, but also 'in such form and manner as may be prescribed by implementing rules and regulations.' Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.

x x x x x x x x x

Section 228 of the National Internal Revenue Code requires that administrative protests against assessments conform to the rules and regulations issued by the Bureau of Internal Revenue. Respondent's April 29, 2015 letter did not comply with the requirements set down in Revenue Regulations No. 18-2013. There was no administrative protest to speak of, and no decision on a disputed assessment to assail. Thus, the Court of Tax Appeals had no jurisdiction over the Petition for Review assailing the July 13, 2015 letter." (*Boldfacing supplied*)

Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides:

"3.1.4 Disputed Assessment. – x x x

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, **otherwise, his protest shall be considered void and without force and effect.** x x x" (*Boldfacing supplied*)

Review of petitioner's Protest-Letter dated April 12, 2019 shows that petitioner requested for "reconsideration/reinvestigation of the taxable year 2015 transactions".[11] Petitioner failed to comply with the requirement under the above-quoted provision to state the nature of the protest whether it be for reconsideration or reinvestigation. Such requirement is necessary so that the BIR may determine whether to monitor the sixty (60)-day period for submission of relevant supporting documents. Thus, the Protest-Letter is void, and there was no valid administrative protest to speak of.

[11] Exhibit "P-15", Docket, Vol. II, p. 479; Exhibit "R-14", Docket, Vol. III, p. 1521.

Considering that the subject assessment per FLD No. 010-2018-B075-15 has attained finality, the present Petition for Review was appropriately dismissed.

In view of the foregoing, the Court finds no compelling reason to modify or reverse the Decision dated November 21, 2022.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 21 November 2022)** is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice