REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SOUTHERN LUZON DRUG CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8941

Members:

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

Promulgated:
DEC 04 2018
9:03 am

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R E S O L U T I O N

MANAHAN, *J.*:

This resolves the Motion for Reconsideration (Decision dated 7 September 2018) filed on September 25, 2018 by the Commissioner of Internal Revenue (CIR). After notice, petitioner Southern Luzon Drug Corporation (SLDC) filed its Comment/Opposition (To Respondent's Motion for Reconsideration dated September 25, 2018) through registered mail on October 25, 2018. Said Comment/Opposition was received by the Court on November 8, 2018.

In his Motion for Reconsideration, the CIR states that the Court has no jurisdiction over the case because the protest filed by petitioner was filed with the wrong office. The CIR goes on to state that the stamp on the protest dated July 21, 2014 and marked as Exhibit "P-6-a-TRO" reveals that it was received by RDO 40, Cubao. The CIR concludes that the protest having been filed in the wrong venue, the same is considered without force and effect and thus, the Court has no jurisdiction over the instant case.

The CIR also invokes the presumption of regularity in the performance of official duties as a basis for upholding the assessment in the absence of clear and convincing evidence to dispute the assessment. The CIR states that to cancel the VAT assessment would be giving premium to under-declaration or non-declaration of purchases, which would even give an impetus for the commission of fraud. Finally, the CIR argues that it would be very difficult for the BIR to prove that the undeclared sales were in fact converted to sales by petitioner.

In its Comment/Opposition, petitioner alleges that while tax audits are presumed to have been conducted in due course, this presumption must be based on sufficient evidence and not on another presumption. Petitioner also states that VAT is imposed on sales, not on expenses; and that the existence of expenses does not automatically mean there are sales.

The motion has no merit.

The Court finds no compelling reason to reverse the findings in the assailed Decision.

With respect to the alleged filing of the protest in the wrong venue, the Court reiterates that the protest was addressed to the Regional Director and was stamped received by the BIR. Respondent alleges that the stamp[1] clearly shows that the same was received by RDO 40, Cubao, thus, filed in the wrong venue. However, respondent did not present evidence to prove that said stamp refers only to "RDO 40-Cubao", since the said stamp also contains "RR 7 QC."

Further, the Court finds that Revenue Memorandum Circular (RMC) No. 039-2013[2] cited by respondent refers to "Receipt of Protest Letter on Final Assessment Notices and Final Decision on Disputed Assessment". RMC 039-2013 provides that protests filed not in accordance with the procedure prescribed therein shall be considered void and without force and effect. However, in the instant case, if as alleged by respondent that the protest was filed in the wrong venue, then the same should not have been stamped received by the said BIR office. The fact that petitioner's protest, clearly addressed to the Regional Director, was received leads the taxpayer to believe that its protest has been validly filed.

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[1] Docket, Vol. 1, Exhibit "P-6-a-TRO", p. 407.
[2] Receipt of Protest Letter on Final Assessment Notices and Final Decision on Disputed Assessments, April 4, 2013.

As to the computation and validity of the VAT assessment, respondent does not point to any specific error that the Court committed in cancelling the subject VAT assessment. Respondent merely argues on the basis of presumption of regularity of the performance of official duties. There being no compelling reason to modify nor reverse the findings in the said Decision, respondent's motion of reconsideration should be denied.

WHEREFORE, respondent's Motion for Reconsideration (Decision dated 7 September 2018) is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice