Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

Third Division

NETREPRENEUR CONNECTIONS ENTERPRISES INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9037

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 19 2018
2:27 p.m.

x- -x

RESOLUTION

RINGPIS-LIBAN, ***J.***:

For resolution is respondent's **Motion for Reconsideration**, filed on December 13, 2017, with petitioner's **Comment/Opposition (To the Motion for Reconsideration filed by Respondent Commissioner of Internal Revenue)**, filed through registered mail on January 18, 2018 and received by the Court on January 25, 2018.

Respondent seeks reconsideration of the Court's Decision dated November 21, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱2,299,335.74** in favor of petitioner representing overpaid DST on the original issued shares to Intervision.
>
> **SO ORDERED**."

Respondent anchors his arguments on the following grounds:

1. Petition for Review lacks proper verification and a valid certification against forum shopping; and

2. The DST paid by petitioner is not erroneously or illegally collected.

According to respondent, the Petition for Review lacks proper verification and a valid certification against forum shopping in accordance with the applicable rules because it is not signed by an authorized representative. The Verification and Certification of Non-Forum Shopping was allegedly signed on April 7, 2015, and the Secretary's Certificate authorizing Ms. Arianne Rose Delos Santos David to sign the said verification was executed only on April 8, 2015. As such, respondent claims that Ms. Arianne Rose Delos Santos David is not authorized to sign the Verification and Certification against Forum Shopping at the time she executed the document.

Respondent further avers that the documentary stamp tax (DST) paid by petitioner is not erroneously or illegally collected because the latter paid the said DST voluntarily. Respondent states that even if what has been paid is beyond what is required by law, the same cannot be considered erroneous assessment or collection since what is required to be paid is only the proper taxes. Allegedly, the surplus paid by petitioner can be considered as an erroneous payment, but cannot be construed as erroneously assessed or erroneously collected tax.

On the other hand, petitioner contends that the motion for reconsideration lacks the necessary affidavit of service. Petitioner points out that respondent failed to attach the affidavit of service in accordance with Section 13, Rule 13 of the Revised Rules of Court. As such, the motion should allegedly be denied pursuant to Section 6, Rule 15 of the same Rules.

Petitioner also alleges that respondent did not raise new arguments that have not been fully threshed out by the Court and merely reiterated the arguments that he presented in the Answer.

Further, petitioner maintains that the signatory has the proper authority to sign the Petition for Review and the necessary verification and certification; that as early as April 6, 2015, Ms. David had already been given the authority by petitioner's board of directors through a resolution to sign the Petition for Review and the necessary verification and certification; and that an erroneous or wrongful payment includes excessive payment because it refers to payment of taxes not legally due.

Section 13, Rule13 of the Rules of Court provides:

> "**SEC. 13.** *Proof of service.* – Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of the facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee."

The Supreme Court explained in the case of *Fortune Life Insurance Company, Inc. vs. Commission on Audit (COA) Proper*[1] that Section 13, Rule 13 of the Rules of Court requires two types of proof of service, which are the affidavit and registry receipt, to wit:

> "The petitioner claims that the affidavit of service attached to the petition for certiorari complied with the requirement on proof of service.
>
> The claim is unwarranted. The petitioner obviously ignores that **Section 13, Rule 13 of the Rules of Court concerns two types of proof of service, namely: the affidavit and the registry receipt**, viz:
>
>> Section 13. *Proof of Service.* – x x x. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[1] G.R. No. 213525, January 27, 2015.

> Section 13 thus requires that **if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing and the registry receipt, both of which must be appended to the paper being served. A compliance with the rule is mandatory, such that there is no proof of service if either or both are not submitted.**" (*Emphasis supplied*)

In the present case, the motion has the registry receipt attached therein, but there is no affidavit of the person who effected the mailing.

Clearly, respondent did not comply with the requirement of proof of service as mandated under Section 13, Rule 13 of the Rules of Court.

Even assuming that there is substantial compliance with the requirement of proof of service, the Court finds that the arguments raised by respondent in the instant motion are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

As already found by the Court, a perusal of the Secretary's Certificate[2] shows that Ms. Arianne Rose Delos Santos David has been duly authorized by petitioner's Board of Directors to institute the Petition for Review and to execute the Verification and Certification of Non-Forum Shopping pursuant to the resolutions which were passed by the Board of Directors at a special meeting on **April 6, 2015**. Thus, at the time of execution of the Verification and Certification of Non-Forum Shopping on **April 7, 2015**, Ms. David already had the authority to sign the same.

Also, contrary to respondent's claim, the Secretary's Certificate attached to the Petition for Review is dated April 6, 2015, and not April 8, 2015.

With regard to respondent's allegation that the documentary stamp tax (DST) paid by petitioner is not erroneously or illegally collected because the latter paid the said DST voluntarily, the Court likewise finds the same bereft of merit.

As correctly pointed out by petitioner, "Section 229 should apply xxx to instances of erroneous payment or illegal collection of internal revenue taxes. **Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due**".[3]

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[2] Docket, p. 21.
[3] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and G.R. No. 197156, February 12, 2013.

In this case, petitioner made an excessive payment or overpayment of its DST liability amounting to ₱2,299,335.74. Clearly, it is within the ambit of Section 229 of the National Internal Revenue Code of 1997, as amended which allows the refund of taxes erroneously or illegally collected.

WHEREFORE, finding no cogent reason to reverse the assailed Decision, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice