REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

LORENZO SHIPPING CORPORATION,
Respondent.

CTA *EB* NO. 1964
(CTA Case No. 8694)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 07 2021 2:45p.m.

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RESOLUTION

MANAHAN, J.:

This resolves petitioner's *Motion for Reconsideration Re: Decision dated 04 February 2021*[1] (*sic*) posted on February 26, 2021 and received by the Court on March 10, 2021. Respondent's *Comment & Opposition (Re: Petitioner's "Motion for Reconsideration" dated 24 February 2021)*, on the other hand, was posted on March 23, 2021 and received by the Court on May 19, 2021.

In his *Motion*, petitioner argues that the subject assessment has become final, executory, and demandable rendering the Court without jurisdiction. Petitioner alleges that in ruling that the protest was filed on time, the Court relied on respondent's evidence with no regard to petitioner's evidence on the issue. Petitioner alleges that on the strength of his own evidence there is an overwhelming doubt as to the credibility of respondent's evidence.

[1] The assailed Decision is dated January 26, 2021.

Petitioner states that more credence should be given to the First Certification which was issued based on what appears on the record, that is, that respondent's protest was only posted and dispatched on June 19, 2013. On the other hand, the Second Certification was not based on official record, but based on a story that respondent's protest was withheld by a fired dispatcher and said protest was only subsequently found when they searched the desk of said fired dispatcher.

Petitioner also argues against the Court's conclusion that the Letter dated July 12, 2013 is a decision which is appealable to the Court. Petitioner opines that said Letter is not a decision since the assessment remains undisputed for failure of respondent to file a protest.

Assuming that the Court has jurisdiction, petitioner argues that the Court erred in ruling that the assessment is void for not containing a definite due date for the payment of the tax liabilities.

Respondent, in its *Comment*, states that while the protest was dispatched only on June 19, 2013, the same was posted or submitted to the post office as early as May 17, 2013. Respondent had no control as to the date of dispatch thereof. This is shown by the Second Certification which stated that the mail-matter "was duly received for mailing purpose at the Muntinlupa City Central Post Office on May 17, 2013, Friday as evidenced by Registry Receipt No. 5281 dated May 17, 2013."

Respondent further states that its representatives went to the BIR for the purposes of discussing the merits of its protest and the correctness and accuracy of the subject deficiency assessment. Respondent also states that the Commissioner of Internal Revenue (CIR)'s right to assess the 2008 deficiency taxes had already expired when he failed to accept the third and final waiver before the expiration of the deadline previously agreed upon in the second waiver.

Finally, respondent agrees with the Court's findings that the assessment is void for not containing a definite due date for payment of tax liabilities.

At the outset, the Court finds that petitioner raised the same grounds that have already been discussed in the assailed Decision.

Upon careful review and weighing of the parties' respective documentary and testimonial evidence, the Court finds that the petitioner's argument as to the lack of a validly filed protest raises sufficient doubt as to the timeliness of the protest.

Registry Receipt No. 5281[2] shows the date May 17, 2013 stamped thereon. While the date of the post office stamp on the envelope or the registry receipt is considered the date of filing of a pleading sent by registered mail,[3] petitioner has sufficiently raised doubts as to whether the same was actually received by the post office on May 17, 2013, and hence considered filed thereon.

It should be noted that these registry receipts come in pre-numbered series, with only the date being stamped. Aside from the 2nd Certification from the postmaster, Mr. Quiogue, respondent did not present the registry book showing that Registry Receipt No. 5281 was utilized on May 17, 2013, together with the other registry receipts in that series. Thus, absent a showing that the other registry receipts in that series were utilized on May 17, 2013 or thereabouts, or that the entries in the registry book for May 17, 2013 belonged to that series of registry receipts, the testimony of petitioner's witnesses become convincing.

In this light, it is possible that in the guise of discussing the assessments, respondent may then ask for ante-dating of its protest. The Court finds that petitioner's witnesses are highly unlikely to perjure themselves by stating that respondent asked for ante-dating of its protest, if the same is not true.

Nevertheless, even assuming that respondent failed to file a valid protest, the subject assessments are still void and did not become final and executory for failure of the assessment to contain a definite due date. Further, the examination and assessment were conducted by a revenue officer who was not

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[2] Division Docket, CTA Case No. 8694, Vol. 3, Exhibit "P-5", p. 1193.
[3] Revised Rules of Court, Rule 13, Section 3.

duly authorized by a valid Letter of Authority, rendering said assessment void.

WHEREFORE, petitioner's *Motion for Reconsideration Re: Decision dated 04 February 2021*[4] (*sic*) is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[4] The assailed Decision is dated January 26, 2021.