REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NUEVA ECIJA I ELECTRIC COOPERATIVE, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9563

Members:

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

Promulgated:

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RESOLUTION

MANAHAN, J.:

For resolution is petitioner's *Motion for Reconsideration* posted on August 14, 2019, with respondent's *Opposition with Motion for Entry of Judgment* filed on September 13, 2019.

Petitioner seeks reconsideration of the Court's Decision promulgated on July 23, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

Petitioner assails this Court's Decision dismissing its Petition for Review for lack of jurisdiction, on the following grounds:

1. The 180-day period should be reckoned from the filing of the request for reconsideration;

2. The case of *Lascona Land Co. vs. CIR,* is for a 1993 taxable year assessment while the present case involves a 2011 taxable year and covered by the issuances until its filing on April 3, 2017;

3. The alleged deficiency tax assessment against petitioner is prescribed already thus cannot ripen into a valid assessment.

Petitioner argues that the 180-day period given by law to respondent to act on a disputed assessment, should be counted from the filing of its request for reconsideration to the Final Decision on Disputed Assessment (FDDA), hence the inaction on such request for reconsideration will pave the way for the filing of an appeal to the Court of Tax Appeals ("the Court") within thirty (30) days from the lapse thereof.

Applying its theory to the facts of the instant case, petitioner narrates that it received the FDDA issued by respondent on August 4, 2016 and consequently filed a request for reconsideration (with respondent) on September 5, 2016. Petitioner goes on to state that counting from September 5, 2016, the 180th day fell on March 4, 2017, thus it had thirty (30) days or until April 3, 2017 to file an appeal with the Court via a Petition for Review. It then concludes that the Petition for Review, having been filed on April 3, 2017, is well within the prescriptive period provided by the relevant law and was therefore filed on time.

Further, petitioner avers that the Court should have cancelled the alleged deficiency tax assessment because it was issued way beyond the prescriptive period provided by law. Petitioner alleges that the two (2) Waivers of the Statute of Limitations (waivers) were defective for not being compliant with the requirements of Revenue Memorandum Order (RMO) No. 20-90, hence did not have the effect of extending the government's right to assess and collect its alleged deficiency internal revenue taxes.

In his *Opposition with Motion for Entry of Judgment* (Opposition), respondent primarily points to the blunder committed by petitioner in filing its *Motion for Reconsideration* because it was filed beyond the fifteen (15) day period from receipt of the Decision, in violation of Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Respondent firmly alleges that petitioner received a copy of the Decision dated July 23, 2019 on July 26, 2019 so it only had until August 10, 2019 to file its Motion for Reconsideration. Respondent avers that petitioner filed its Motion for Reconsideration only on August 14, 2019 hence was filed out of time making the assailed Decision final and unappealable. Respondent then prayed that an entry of judgment be made as the Decision rendered by the Court on July 23, 2019 has attained finality.

As to the main issue raised by petitioner in its *Motion for Reconsideration*, respondent counters that the Court correctly ruled that the Petition for Review was filed out of time because a plain reading of Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, in relation to Sections 3.1.5 of Revenue Regulations (RR) No, 12-99, discloses quite clearly that a taxpayer who originally filed a protest before the duly authorized representative of the Commissioner of Internal Revenue (CIR) has two options if his protest is denied: the taxpayer may either (1) elevate its protest to the CIR within thirty days from denial or (2) appeal within the same period to the Court. Petitioner goes on to elaborate that in cases of inaction by the CIR on protests elevated to him by reason of the denial of his authorized representative, a reading of said Section 228 of the 1997 NIRC, in relation to Sections 3.1.5 and 3.1.6 of RR 12-99 discloses that the CIR is only given the remaining days of the 180-day period from filing of the protest within which to decide, thereafter the protest must be elevated to the Court within thirty days from receipt of said decision. Respondent further asseverates that in case the CIR failed to act on the protest within the 180-day period, the same shall be considered as a denial of the protest and taxpayers may either: (1) appeal to the Court within 30 days from the lapse of the 180-day period, or (2) wait for the decision of the CIR even beyond the 180-day period, and thereafter appeal such decision to the Court within 30 days from receipt thereof.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of the *Motion for Reconsideration* of petitioner with this Court as this was initially raised by respondent in his *Opposition with Motion for Entry of Judgment.*

As narrated by respondent, petitioner received the Court's Decision in the above-captioned case on July 26, 2019 and subsequently filed its *Motion for Reconsideration* only on August 14, 2019 which is beyond the fifteen (15) day period allowed by law.

We analyze.

Records show that the Court promulgated a Decision in the above-entitled case on July 23, 2019. Records also show that a copy of said Decision was received by respondent CIR on July 25, 2019 and by the Office of the Solicitor General on July 29, 2019. On the part of petitioner, its counsel, Atty. Vicente F. Rovero, Jr., through the law office of Rovero Tamayo and Associates, received a copy of the Decision on July 26, 2019 via LBC courier services. Subsequently, petitioner posted its *Motion for Reconsideration* via registered mail on August 14, 2019. Counted from July 26, 2019, petitioner's *Motion for Reconsideration* was filed 19 days after it received the Decision of the Court.

Section 1 of Rule 15 of the RRCTA provides as follows:

> "Rule 15
> Motion for Reconsideration or New Trial
>
> Section 1. *Who may and when to file motion.*- Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. **He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question."** (emphasis supplied)

It is plain from the foregoing rule that a motion for reconsideration of a decision must be filed within fifteen days from receipt of said decision. The records of the instant case reveal that petitioner received a copy of the assailed Decision on July 26, 2019. Counting fifteen days therefrom, petitioner should have filed its motion for reconsideration on or before

August 10, 2019; however, since said date fell on a Saturday, and August 12, 2019 (Monday) was declared a non-working holiday,[1] petitioner had until August 13, 2019 (Tuesday) to file said motion for reconsideration.[2] Petitioner only posted its motion for reconsideration on August 14, 2019 via registered mail. The assailed Decision therefore has already attained finality and is therefore immutable and unappealable. As such, respondent's *Motion for Entry of Judgement* is proper pursuant to Sections 6 and 7 of Rule 14 of the RRCTA, and we quote:

> "Rule 14
> Judgment, Its Entry and Execution
>
> xx xxx xxx
>
> Section 6. *Entry of Judgement and final resolution.* – **If no appeal or motion for reconsideration or new trial is filed within the time provided in these Rules, the Clerk of Court shall forthwith enter the judgment or final resolution in the book of judgment.** The date when the judgment or final resolution becomes executory shall be deemed the date of its entry. The entry shall contain the dispositive part of the judgment or final resolution and shall be signed by the Clerk of Court, with a certification that such judgment or resolution has become final and executory.
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> Section 7. *Execution of judgment.* – Upon the expiration of the period to appeal from a judgment or order that disposes of the action or proceeding and no appeal has been duly perfected, *execution shall issue as a matter of right, on motion."* (emphasis supplied)

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* posted on August 14, 2019 is **DENIED** for having been filed out of time. Respondent's *Motion for Entry of Judgment* is hereby **GRANTED.**

Accordingly, let entry of judgment be made in due course.

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[1] Feast of Eid al-Adha.

[2] Revised Rules of Court

Rule 22
Computation of Time

Section 1. *How to Compute Time.-* In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day or the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day."** (emphasis supplied)

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice