REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DIONISIA D. PACQUIAO,
Petitioner,

- versus -

HON. THELMA S. MILABAO OIC, REGIONAL DIRECTOR BUREAU OF INTERNAL REVENUE REGION NO. 18,
Respondent.

CTA CASE NO. 9039

Members:

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

Promulgated:

JAN 18 2018 4:22 pm

x- x

RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's **Omnibus Motion (Resolution dated 14 September 2017)**, filed on October 4, 2017, without petitioner's comment per Records Verification dated December 20, 2017.

In the Resolution dated September 14, 2017, the Court deemed respondent's Motion for Reconsideration (Re: Decision promulgated on 30 May 2017) as not filed for failure to submit the lacking copies of the said motion as directed in the Resolution dated July 6, 2017.

In the Omnibus Motion, respondent avers that this case was originally assigned to Atty. Katrina C. Muli who has already tendered her resignation with the Bureau of Internal Revenue (BIR) and the case was only recently assigned to respondent's current handling lawyer. Respondent claims that it appears on record that Atty. Muli filed the Motion for Reconsideration (Re: Decision promulgated on 30

May 2017) on June 15, 2017 by registered mail but was not able to submit the additional copies of the said motion. Respondent's current handling lawyer only learned of such non-compliance when he received the Resolution of the Court dated September 14, 2017.

Respondent argues that the government is not bound by the errors committed by its agents. Hence, respondent should not be bound by the neglect of the previous handling lawyer. In the highest interest of substantial justice, respondent begs and implores the generosity of the Court to reconsider the assailed Resolution and admit respondent's Motion for Reconsideration. Respondent alleges that the additional three (3) copies of the Motion for Reconsideration are already attached to the Omnibus Motion.

In the interest of substantial justice and considering that petitioner failed to file an objection to the said motion, respondent's **Omnibus Motion (Resolution dated 14 September 2017)** is **GRANTED**. Accordingly, the Court's Resolution dated September 14, 2017 is **REVERSED** and **SET ASIDE** and respondent's **Motion for Reconsideration (Re: Decision promulgated on 30 May 2017)** is **ADMITTED**.

On September 4, 2017, petitioner filed her **Compliance Comment (with Manifestation)** to respondent's Motion for Reconsideration. As prayed for, petitioner's **Compliance (with Manifestation)** to the Court's Resolution dated July 6, 2017 is **NOTED** and shall be considered in resolving respondent's motion for reconsideration.

In view of the foregoing, the Court shall now resolve respondent's **Motion for Reconsideration (Re: Decision promulgated on 30 May 2017)**, filed through registered mail on June 15, 2017 and received by the Court on June 28, 2017, with petitioner's **Comment**, filed on September 4, 2017.

Respondent moves for the reconsideration of the Decision dated May 30, 2017 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner, including the

imposition of compromise penalties, for taxable year 2010 are **CANCELLED** and **WITHDRAWN** for violation of petitioner's right to due process. Consequently, respondent's **Final Decision on Disputed Assessment** dated January 5, 2015 is **REVERSED** and **SET ASIDE**.

SO ORDERED."

In the Motion for Reconsideration, respondent maintains that the Preliminary Assessment Notice (PAN) was duly sent and received by petitioner. Respondent argues that Section 3 (v), Rule 131 of the Revised Rules of Court states that a letter duly directed and mailed was received in the regular course of mail. Respondent stresses that the PAN was sent by registered mail as evidence by Registry Return Receipt No. 227 (Exhibit "R-7"[1]) and the Certification issued by the Koronadal Post Office (Exhibit "R-9"). Moreover, respondent alleges that the PAN was served to petitioner's registered address as evidenced by petitioner's Certificate of Registration (Exhibit "R-8"). Thus, respondent argues that a presumption, albeit being disputable, arises that the PAN was received by petitioner and petitioner's bare denial of the receipt of the PAN cannot and should not overcome hard evidence. According to respondent, a contrary view would enable taxpayers to unilaterally avoid assessments simply by its bare allegations that the notices were not received by them.

Respondent also argues that the Final Assessment Notice (FAN) was issued in accordance with Revenue Regulations (RR) No. 2-98[2], as amended. Respondent avers that the PAN was issued on September 16, 2013, and the same was sent, via registered mail, to petitioner on September 24, 2013. More than enough time was given to petitioner to file its reply to the PAN. Respondent further avers that after having heard nothing from petitioner, despite the fact that she was aware of the audit and investigation being conducted, the FAN dated October 16, 2013 was issued by respondent. Respondent emphasizes that due process in administrative proceedings simply means the opportunity to be heard. In this case, respondent argues that petitioner was given all the opportunity to present her side.

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[1] However, Exhibit "R-7" is actually the "PAN dated 16 September 2013 for Compromise Penalties", see Respondent's Formal Offer of Evidence, Docket (Vol. II), p. 595 and BIR Records, p. 23.

[2] Respondent may be referring to RR No. 12-99 considering that RR No. 2-98 pertains to withholding tax regulations.

Moreover, respondent maintains that the assessment had become final, executory and demandable pursuant to the clear provision of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. According to respondent, petitioner, through her authorized representative, received the two Formal Letters of Demand (FLD)/FAN dated October 16, 2013 on November 5, 2013, and petitioner, through its representative, filed a protest on December 4, 2013 (First Protest). Respondent avers that the BIR denied petitioner's protest through a letter dated January 23, 2014. However, respondent stresses that after a lapse of almost six (6) months from the letter denying petitioner's protest, clearly beyond the thirty (30)-day period to file her Motion for Reconsideration, petitioner erroneously opted to file a new protest (Second Protest), which is not in accord with the settled law and jurisprudence.

Hence, respondent argues that petitioner was rightly informed, through a letter dated July 21, 2014, that pursuant to Section 228 of the NIRC of 1997, as amended, her right to protest the FLD/FAN has already lapsed and as a result, the assessment for deficiency Income Tax and Value Added Tax had become final, executory and demandable. Respondent also avers that petitioner, maybe having realized her mistake of filing an erroneous Second Protest instead of a Motion for Reconsideration, filed her Motion for Reconsideration on the denial of the two protests, which was likewise denied since the assessment has become final, executory and demandable.

On the other hand, petitioner stresses that respondent's motion is a mere rehash of the Answer to the Petition for Review and no new matters were raised therein. In said motion, petitioner argues that the alleged documentary exhibits utilized to show proof of respondent's allegations are inexistent or inconsistent with the exhibits formally offered by respondent. Petitioner points out that the document marked as Exhibit "R-7" is denominated in respondent's Formal Offer of Evidence as "PAN dated 16 September 2013 for Compromise Penalties" and not Registry Receipt No. 227 while a scrutiny of the document marked as Exhibit "R-9" shows that it is a certification issued by the Acting Postmaster, Office of the Postmaster of General Santos City Post Office, Postal Area 7, (Eastern Mindanao), Philippine Postal Corporation and not a certification issued by the Koronadal Post Office. Moreover, petitioner avers that respondent is persistent that the PAN was duly sent and received by petitioner, but deliberately failed to adduce evidence that a Notice for Informal Conference was issued and duly served to petitioner, which is a procedural flaw, in violation of the administrative due process requirement mandated by RR No. 12-99.

A perusal of respondent's motion shows that the arguments raised therein are a mere reiteration of the arguments in the Answer to the Petition for Review which were already considered, thoroughly discussed and passed upon in the assailed Decision. There being no new matters or issues raised, the Court finds no compelling reason to reverse or modify the assailed Decision.

The Court also noted that the alleged Registry Return Receipt No. 227, erroneously referred to by respondent as Exhibit "R-7", was never presented during trial. However, it appears that respondent may be referring to Registry Receipt No. 244 which was, likewise, not presented in Court, but was nevertheless referred to in the Certification[3] issued by the Philippine Postal Corporation, Postal Area 7 (Eastern Mindanao), Office of the Postmaster, on September 4, 2015, to wit:

> This is to certify that **Registry Letter No. 244** was acted by this office, *viz*:
>
> Sender: **BUREAU OF INTERNAL REVENUE**
> Revenue Region No. 18
> Koronadal City
>
> Addressee: **MRS. DIONISIA D. PACQUIAO**
> Purok Acharon, Labangal
> 9500 General Santos City
>
> Received by: ANALYN N. ABRERA
> Date Received: October 18, 2013

Notwithstanding, as thoroughly discussed in the assailed Decision the pieces of evidence presented by respondent failed to satisfactorily prove that the PAN was indeed received by petitioner or by her authorized representative.

[3] Exhibit "R-9", Docket, (Vol. II), p. 609.

Moreover, the Court stresses that pursuant to RR No. 12-99, the counting of the fifteen (15)-day period to reply to the PAN should be reckoned from the receipt of the PAN by the taxpayer, and not from the date the PAN was sent through registered mail, as respondent would want this Court to do.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated on 30 May 2017)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice