22-000074-0044

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10776

SCG MARKETING PHILIPPINES, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St. Legazpi Village
Makati City

ATTY. YVETTE C. TENEFRANCIA
Bureau of Internal Revenue
BIR Legal Division Revenue Region No. 8B
2nd Floor, BIR Office Building
No. 313 Gil Puyat Ave., Makati City

N T VIGO LAW OFFICE
36 Snapdragon Street, Midtown Village
San Andres, Cainta, Rizal 1900

GREETINGS:

You are hereby notified by these presents that on **October 22, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 30, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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FIRST DIVISION

SCG MARKETING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10776

Members:

DEL ROSARIO, ***P.J., Chairperson,***
BACORRO-VILLENA, *and*
CUI-DAVID, ***JJ.***

Promulgated:

OCT 22 2024; 4:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is an Amended Petition for Review with Supplemental Annexes[1] (**Amended Petition**) filed by petitioner SCG Marketing Philippines, Inc. (**petitioner**), pursuant to Rule 8, Section 3(a)[2] in relation to Rule 4, Section 3(a)(1)[3] of the Revised Rules of the Court of

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1 Filed on 24 February 2022, Division Docket, Volume I, pp. 59-110.

2 **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3.** *Cases Within the Jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Tax Appeals (**RRCTA**). It seeks to cancel and set aside the Final Decision on Disputed Assessment[4] (**FDDA**) and Formal Assessment Notice[5] (**FAN/FLD**) which respondent Commissioner of Internal Revenue (**respondent/CIR**) issued to petitioner to collect an alleged deficiency tax assessment in the aggregate amount of ₱28,977,838.21 for taxable year (**TY**) 2012.

PARTIES OF THE CASE

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines with office address at Unit 903, 9th Floor, Fort Legend Towers, 3rd Avenue corner 31st Street, Fort Bonifacio, Taguig City with Tax Identification Number (**TIN**) 008-005-846-000.[6] Petitioner is primarily engaged in the purchase, sale, distribution and marketing of all kinds of construction and building materials.[7]

Respondent, on the other hand, is the duly appointed CIR vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).

FACTS OF THE CASE

On 08 November 2013, respondent issued Letter of Authority (**LOA**) No. 044-2013-00000227/eLA201100053705[8], authorizing Revenue Officers (**ROs**) Aida Baguio (**Baguio**), and Group Supervisor (**GS**) Ma. Teresa Reyes (**Reyes**) of Revenue District No. 44, Taguig-Pateros, to examine petitioner's books of accounts for all internal revenue taxes

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(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

4 Exhibit "P-8", Division Docket, Volume I, pp. 159-160.

5 Dated 29 December 2016; Exhibits "P-3" to "P-3-6", id., pp. 121-126. Also see the receiving stamp on the BIR Records, p. 464.

6 See Paragraph 5, Amended Petition for Review with Supplemental Annexes, supra at note 1, p. 61.

7 See Par. 1, Notes to Financial Statements December 31, 2012 and 2011, BIR Records, p. 289.

8 Id., p. 4.

for the period of 01 January 2012 to 31 December 2012, or TY 2012. Petitioner's authorized representative, Anna Liza S. Muldong (**Muldong**), received the LOA on 03 December 2013.

Later, or on 01 August 2014, petitioner received a Letter Notice[9] (**LN**) informing petitioner that it had discrepancies for taxes withheld, in the aggregate amount of ₱736,327.50.

Thereafter, or on 13 October 2015, petitioner, through its President Sunchai Jindasri (**President Jindasri**), executed a Waiver of the Defense of Prescription under Statute of Limitations of the NIRC[10], which extended the period of assessment until 31 December 2016. Regional Director Jonas DP. Amora (**RD Amora**) accepted the waiver. On the other hand, petitioner's Head of Marketing Janalynne Jarillas (**Jarillas**) received the copy of the signed waiver.[11] However, both the date of acceptance and date of Jarillas' receipt of the waiver were not indicated.

On 12 December 2016, petitioner received the Preliminary Assessment Notice[12] (**PAN**), with Details of Discrepancies informing petitioner that it had deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), withholding tax on compensation (**WTC**), improperly accumulated earnings tax (**IAET**), documentary stamp tax (**DST**) and miscellaneous compromise penalties in the aggregate amount of ₱24,345,842.72. Petitioner appears to have not filed a reply thereto.

On 04 January 2017, petitioner received the FAN/FLD[13] with attached Details of Discrepancies, reiterating the audit findings indicated in the PAN.[14] The Assessment Notices (**ANs**) indicated that petitioner should pay the said liabilities on or before 30 January 2017.[15]

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9 Dated 19 June 2014, id., p. 312.
10 Id., p. 314.
11 See written marks on the lower portion of the waiver, id.
12 Exhibits "P-2" to "P-2-6", Division Docket, Volume I, pp. 115-120, also see Pre-Trial Order, id., Volume II, pp. 601-602.
13 Supra at note 5.
14 See Par. 2, Petitioner's Memorandum, Brief Statement of Facts, Division Docket, Volume II, p. 775.
15 BIR Records, pp. 460-463 and 485-488.

On 06 February 2017, petitioner filed a Protest[16] to the FAN (**Protest**) and requested for a reinvestigation to clarify the basis of the alleged tax deficiencies. There, petitioner intimated that, within sixty (60) days from the date of the filing, it will be submitting additional documents in support of the Request for Reinvestigation. Respondent granted the Request for Reinvestigation in a Letter dated 03 March 2017.[17]

Later, on 07 April 2017, petitioner submitted the additional documents in support of the Request for Reinvestigation.[18] On 13 March 2018, petitioner still received respondent's letter, dated 12 March 2018[19], informing it that he or she did not receive any additional documents.

On 01 March 2019, petitioner received the FDDA dated 21 February 2019[20] where it was stated that it failed to submit pertinent records to support its Protest (in violation of Section 228[21] of the NIRC of 1997, as amended), thus, the assessment against it became final. As a result, respondent demanded petitioner's payment of the alleged tax liabilities composed of IT, VAT, EWT, WTC, IAET, DST and compromise penalty in the aggregate amount of ₱24,606,171.16. The FDDA indicated that the due date of payment was on or before 21 March 2019. Then RD Glen A. Geraldino (**Geraldino**) issued and signed the FDDA.

Still later, or on 01 April 2019, petitioner filed its Request for Reconsideration against the FDDA[22] on the following grounds: (*i*) the FAN was issued beyond the three (3) year reglementary period in Section 203[23] of the NIRC of 1997, as amended; and, (*ii*) the deficiency tax assessment was without factual and legal basis. On even date, petitioner also paid the admitted portion of its EWT liability in the amount of ₱806,854.09.[24]

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16 Exhibit "P-4", Division Docket, Volume I, pp. 127-142; BIR Records, pp. 494-509. The Request for Reinvestigation was filed on 06 February 2017 with the BIR Assessment Division and was received by the BIR Director's Office on 08 February 2017.

17 Exhibit "P-5", BIR Records., p. 512.

18 Exhibit "P-6", Division Docket, Volume I, pp. 147-157.

19 Exhibit "P-7", id., p. 158; BIR Records, p. 517.

20 Supra at note 4; BIR Records, pp. 532-536.

21 **SEC. 228.** *Protesting of Assessment.*

22 BIR Records, pp. 629-638.

23 **SEC. 203**. *Period of Limitation Upon Assessment and Collection.*

24 Exhibit "P-14-1", Division Docket, Volume II, p. 668.

On 15 January 2020, pursuant to Republic Act (**RA**) No. 11213[25], petitioner filed its Acceptance Payment Form Tax Amnesty on Delinquencies (BIR Form No. 0621-DA)[26] and Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA)[27] for its VAT liability. Five (5) days after, or on 20 January 2020, petitioner also paid its VAT deficiency of ₱163,956.05.[28]

Despite petitioner's insistence, respondent still issued a Decision dated 21 May 2021[29] or the Final Decision on the Request for Reconsideration (**FDRR**) maintaining all its findings in the FAN. According to respondent, based on the BIR's Records, petitioner received the FAN/FLD on 04 January 2017 and the latter only had thirty (30) days or until 03 February 2017 to file a protest. However, petitioner filed its Protest only on 08 February 2017 or after thirty-five (35) days after its receipt of the FAN/FLD.

Allegedly, on 20 January 2022, petitioner received a copy of the FDRR by personal service.[30]

PROCEEDINGS BEFORE THE COURT

On 18 February 2022, petitioner filed a "Petition for Review" before the Court.[31] Subsequently, on 24 February 2022, petitioner filed an Amended Petition.[32] Pursuant to a Resolution[33], the Second Division noted and admitted the Amended Petition. The case was thereafter raffled to the Second Division and was docketed as CTA Case No. 10776. The Second Division then ordered respondent to file his or her Answer to the petition.[34]

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25 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2017 AND PRIOR YEARS WITH RESPECT TO ESTATE TAX, OTHER INTERNAL REVENUE TAXES AND TAX ON DELINQUENCIES.

26 Exhibit "P-13"/"P-21", Division Docket, Volume I, pp. 199 and 275, respectively.

27 Exhibit "P-20-1", id., p. 273.

28 Exhibit "P-21-1", id., p. 276.

29 Exhibit "P-10", Division Docket, Volume I, pp. 205-209.

30 See Par. 18, Amended Petition for Review with Supplemental Annexes, supra at note 1, p. 66.

31 Division Docket, Volume I, pp. 8-58.

32 Supra at note 1.

33 Dated 28 February 2022, Division Docket, Volume I, p. 294.

34 See Summons dated 28 February 2022, id., p. 292.

After being allowed an extension of time to file an Answer[35], respondent filed the same on 02 May 2022.[36] In his or her Answer, respondent interposed special and affirmative defenses, to wit: (1) the Court has no jurisdiction to entertain the present petition after petitioner failed to file a protest to the FAN/FLD within 30 days from its receipt thereof; (2) even if the administrative protest was filed on time, the Court would still have no jurisdiction over the instant case since petitioner failed to file its Petition for Review within 30 days from its receipt of respondent's FDRR; and, (3) respondent's issuances in relation to the assessment is correct and made in good faith.

In a Resolution dated 17 May 2022[37], the Second Division noted respondent's submission of the entire BIR Records of the case.[38]

On 18 May 2022, the Second Division notified the parties that a Pre-Trial Conference was set for 25 July 2022.[39] Petitioner filed its Pre-Trial Brief[40] on 20 July 2022 and on 02 August 2022, respondent filed his or her Pre-Trial Brief.[41]

During the Pre-Trial Conference held on 06 October 2022[42], the Second Division: (1) verified and validated petitioner's Secretary Certificate as well as respondent's Special Power of Attorney (**SPA**); (2) granted the parties a period of 30 days to file their Joint Stipulation of Facts and Issues (**JSFI**); (3) directed respondent to submit the Judicial Affidavits of his or her witnesses; and, (4) referred and set the case for mediation on 07 December 2022.

On 20 December 2022, the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**) filed a Report and informed the Second Division that the parties have decided not to have their case mediated.[43]

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35 See Order dated 04 April 2022, id., p. 301.
36 Id., pp. 304-311.
37 Id., p. 303.
38 See Compliance, id., p. 302.
39 See Notice of Pre-Trial Conference dated 18 May 2022, id., pp. 314-315.
40 Id., pp. 316-331.
41 Id., pp. 349-353.
42 See Minutes of the Hearing and Order, both dated 06 October 2022, id., Volume II, pp. 582 and 584-586, respectively.
43 Id., p. 589.

In the trial that ensued thereafter, petitioner presented its witness, Louie Lontok (**Lontok**), who testified by way of a Judicial Affidavit[44] dated 20 September 2022 wherein he declared that: (1) he is petitioner's Senior Accounting Officer and has started working for petitioner since 2020; (2) he works closely with petitioner's lawyers regarding the latter's actions on the BIR's assessment against it; (3) respondent's right to assess had already prescribed as petitioner's Income Tax Return (**ITR**) was filed on 11 April 2013 and paid on 15 April 2013, thus, the three (3) year period expired on 16 April 2016; (4) the FAN/FLD was only received on 04 January 2017; (5) petitioner availed of the Amnesty Law under RA 11213[45] as regards its VAT deficiency; (6) petitioner paid the deficient portion of its admitted deficiency EWT in the amount of ₱806,854.09; (7) petitioner or any of its responsible officer did not execute any waiver of the defense of prescription; (8) it was by mere inadvertence that petitioner mistook the last day of the 30 day period to file the protest to be "04 February 2017", a Saturday, thus it filed its Protest to the FAN on 06 February 2017, the next working day; and, (9) on 20 January 2022, petitioner received the FDRR by personal service.

During the cross-examination[46], Lontok essentially declared that it was Ms. Zenaida Cajayun (**Cajayun**) who received respondent's FDRR. According to Lontok, Cajayun scanned the said FDRR and sent a copy to him on 20 January 2022. He admitted to not having any personal knowledge of the actual service or receipt of the FDRR on 21 January 2022.

Later, on 11 May 2023, petitioner also presented Junnel L. Morcilla (**Morcilla**) who similarly testified through her Judicial Affidavit[47] dated 20 September 2022. There, she stated that: (1) she is petitioner's Assistant Vice President for Finance since 2020; (2) she manages petitioner's cash flow, accounting and finance; (3) petitioner has authorized her to file the instant case; (4) she received a copy of the PAN on 12 December 2016 assessing petitioner for deficiency taxes amounting to ₱24,345,842.72; (5) after receiving a copy of the FAN, the filing of a protest thereto was referred to Picazzo Buyco Tan Fider & Santos Law Office; (6) the BIR favorably acted on its Protest in a letter dated

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[44] Exhibit "P-26", id., Volume I, pp. 460-478.
[45] Supra at note 25.
[46] TSN dated 02 March 2023, pp. 7-10.
[47] Exhibit "P-25", Division Docket, Volume I, pp. 356-365.

03 March 2017 and allowed petitioner 60 days to submit the relevant documents; (7) petitioner received a copy of FDDA where the BIR demanded payment for deficiency taxes in the total amount of ₱28,977,838.21; (8) petitioner filed a Request for Reconsideration with respondent, raising prescription as a defense; and, (9) on 20 January 2022, petitioner received a copy of respondent's FDRR by way of personal service.

On cross-examination[48], Morcilla explained that: (1) she did not receive the PAN; (2) it was the Administrative Department in their Bonifacio Global City (**BGC**) office that received the PAN; (3) petitioner employed her in 2020; (4) petitioner's administrative protest was filed on 06 February 2017 and she had no participation therein; and, (4) she has no personal knowledge as to the receipt or the date of receipt of respondent's FDRR.

On redirect examination[49], Morcilla confirmed that her testimony is based on documents filed or compiled in their office. No re-cross examination was conducted.

In a Resolution dated 29 May 2023[50], the Second Division transferred the case to the First Division pursuant to Administrative Circular No. 01-2023 dated 23 May 2023.

On 31 May 2023, petitioner filed its "Formal Offer of Exhibits"[51] (**FOE**) and offered Exhibits "**P-1**" to "**P-26**", inclusive of the sub-markings. Respondent did not object to the admission of the offered exhibits. Thus, in a Resolution dated 27 July 2023[52], the First Division admitted all the offered exhibits with an observation on some discrepancy in the description of a marked document (Exhibit "P-17-11").[53]

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48 TSN dated 11 May 2023, pp. 5-8.
49 Id., p. 8.
50 Reorganizing the Divisions of the Court following the retirement of Associate Justice Erlinda P. Uy. Division Docket, Volume II, p. 649.
51 Filed through courier, id., pp. 650-657.
52 Id., pp. 767-768.
53 2012 Monthly Remittance Return of Creditable Income Taxes (Expanded) for the month of December 2012 filed on 31 January 2013.

Thereafter, or on 14 September 2023, the First Division noted respondent's manifestation that he or she will no longer present any witness considering that the supposed witnesses RO Baguio and GS Reyes had already both retired.[54] The First Division then ordered the parties to file their memoranda within 30 days. On 16 October 2023, petitioner and respondent filed their respective memoranda.[55] On 24 October 2023, the case was submitted for decision.[56]

ISSUE

The parties put forward this sole issue for this Court's resolution –

> WHETHER PETITIONER SCG MARKETING PHILIPPINES, INC. IS LIABLE TO PAY DEFICIENCY INCOME TAX (IT), VALUE-ADDDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT), WITHHOLDING TAX ON COMPENSATION (WTC), IMPROPERLY ACCUMULATED EARNINGS TAX (IAET) AND DOCUMENTARY STAMP TAX (DST) IN THE TOTAL AMOUNT OF ₱28,977,838.21 INCLUSIVE OF INTEREST FOR TAXABLE YEAR (TY) 2012.[57]

ARGUMENTS

In support of the petition, petitioner claims that respondent's right to assess had already prescribed. It argues that under Section 203[58] of the NIRC of 1997, as amended, respondent only had three (3) years to assess it, to be reckoned from the filing of the return *or* from the last day prescribed by law to file the return (whichever comes later). It emphasizes that its Annual ITR was filed and the tax due paid simultaneously on 15 April 2013. Petitioner thus maintains that respondent's FAN, dated 29 December 2016, was issued beyond the period to assess.[59]

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[54] See Order dated 14 September 2023, Division Docket, Volume II, p. 771.
[55] Petitioner's Memorandum, id., pp. 773-817; Respondent's Memorandum, id., pp. 820-835.
[56] See Resolution dated 24 October 2023, id., p. 838.
[57] See Pre-Trial Order, Stipulation of Issue, id., p. 603.
[58] Supra at note 23.
[59] See Petitioner's Memorandum, Division Docket, Volume II, p. 777.

Petitioner adds that the RO who conducted the reinvestigation was without any LOA. According to petitioner, even after the BIR granted its Request for Reinvestigation, no new LOA was issued to any ROs to handle the reinvestigation.[60] It contends further that it was not to be held liable to pay the deficiency IT because there was no failure from its part to withhold any EWT on its income payments.[61] Petitioner also averred that respondent erred in disallowing the deductions for salary and wages although the withholding taxes due therefrom were already withheld from its employees.[62]

Finally, petitioner maintains that it should not be held liable for any deficiency VAT as it had already availed of the tax amnesty under RA 11213.[63] Neither should it be liable for deficiency EWT since it already paid the admitted portion thereof in the amount of ₱806,854.09. Additionally, it insists that it was able to justify that certain income payments are exempt from withholding.[64]

Respondent, on the other hand, assails this Court's jurisdiction over the case. Quoting Section 228[65] of the NIRC of 1997, as amended, and Section 3.1.4 of Revenue Regulations (**RR**) No. 18-13[66], respondent reiterates that the reckoning point of the 30-day period should be from the FAN/FLD's receipt or on 04 January 2017. Thus, petitioner had only until 03 February 2017 to file a Request for Reconsideration before the Regional Director's Office. Considering that it only filed its Protest on 08 February 2017, the assessment had become final, executory, and demandable.[67]

Respondent likewise argues that although the BIR may have accepted petitioner's Request for Reinvestigation, its acceptance did not modify, re-open or revoke the FAN dated 29 December 2016 (which already attained finality).[68]

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60 Id., p. 778.
61 Id., p. 781.
62 Id., p. 785.
63 Id., pp. 790-791.
64 Id., p. 793.
65 Supra at note 21.
66 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the issuance of a Deficiency Tax Assessment
67 See Respondent's Memorandum, Discussions, Division Docket, Volume II, pp. 825-826.
68 Id., p. 826.

Additionally, respondent insists that petitioner's judicial claim was filed beyond the period allowed by law. According to respondent, petitioner's witnesses do not have personal knowledge of the circumstances surrounding the receipt of the FDRR, hence the latter failed to establish the timeliness of its Petition for Review filed with this Court.

RULING OF THE COURT

Before the Court proceeds to discuss the merits of the case, it deems propitious to first determine the timeliness of petitioner's judicial appeal as this is determinative of this Court's valid exercise of jurisdiction.

THE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION FOR REVIEW. PETITIONER FAILED TO PROVE THAT THE JUDICIAL CLAIM WAS TIMELY FILED.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. For the court or an adjudicative body to have authority to dispose of the case, it must acquire jurisdiction over the subject matter. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.**[69]

Verily, the CTA, being a special court, can take cognizance only of matters that are clearly within its jurisdiction. In relation to this, Section 7 of RA 1125, as amended by RA 9282[70], specifically provides:

> ...
> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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69 *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, 17 June 2015.

70 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS, ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

(1) **Decisions of the Commissioner of Internal Revenue** in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][71]

...

Moreover, Section 11 of RA 1125, as amended, states in part:

...

Sec. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction of the **Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the **[Court of Tax Appeals] within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.[72]

...

Section 3(a)(1), Rule 4 of the RRCTA complements the foregoing provision, to wit:

...

SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) **Decisions of the Commissioner of Internal Revenue** in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.][73]

...

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71 Emphasis supplied and italics in the original text.
72 Emphasis supplied and italics in the original text.
73 Emphasis supplied and italics in the original text.

From the foregoing, this Court has appellate jurisdiction over respondent's decisions, rulings or inactions. The appeal must be filed within 30 days from receipt of respondent's decision or ruling, or after the expiration of the period fixed by law for action. This statutory privilege is echoed in Section 3(a), Rule 8 of the RRCTA, *viz*:

> ...
>
> SEC. 3. *Who may appeal; period to file petition.* —
>
> (a) **A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on** disputed assessments or **claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act** on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[74]
>
> ...

Thus, under Section 228 of the NIRC of 1997, as amended, if the CIR or respondent denies, in whole or in part, a taxpayer's protest or administrative appeal, the taxpayer may appeal to the CTA within 30 days from the receipt of the CIR's decision or ruling. In case of inaction, from the lapse of one hundred eighty (180)-day period to decide the said filed protest. The provision reads —

> ...
>
> **SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings[.] ...
>
> ...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If

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[74] Emphasis supplied and italics in the original text.

the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. ...

If the **protest is denied** in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**[75]

...

RR No. 12-99[76], as amended by RR No. 18-13, further provides —

...

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

...

3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

...

[75] Emphasis supplied and italics in the original text.
[76] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.[77]

...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[78] **(PAGCOR)**, explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit —

...

Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

[77] Emphasis supplied and italics in the original text.

[78] G.R. No. 208731, 27 January 2016; Citation omitted, emphasis, italics and underscoring in the original text.

> 1. If the protest is wholly or partially denied by the CIR ***or*** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> ...

To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules as follows —

> ...
>
> To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR** or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.[79]
>
> ...

In the case at bar, the records show clearly that on 01 March 2019[80], petitioner received the FDDA dated 21 February 2019, denying petitioner's Protest and declared the assessments final and demandable. The FDDA's signatory is RD Geraldino. Instead of filing its judicial appeal before this Court, petitioner opted to file a letter-reply to the FDDA before respondent on 01 April 2019.[81] The letter-reply reads –

> ...
>
> We have the honor to formally file this instant request for reconsideration against the Final Decision on Disputed Assessment (FDDA) dated 21 February 2019, issued by the Office of the Regional

---

79 Id.; Emphasis supplied.

80 See receiving date of FDDA, BIR Records, p. 536.

81 Exhibit "P-9", Division Docket, Volume I, p. 164.

> Director of Revenue Region No. 8 – Makati, which our office received last March 1, 2019.[82]
>
> ...

Based on the foregoing, petitioner could be deemed to have filed an administrative appeal with the CIR through a Motion for Reconsideration (**MR**). Later, petitioner also alleges that it received respondent's FDRR dated 21 May 2021[83] issued by then CIR Caesar Dulay (**Dulay**) on 20 January 2022.[84]

It is noted that petitioner actually failed to provide proof that it indeed received the FDRR on 20 January 2022. A scrutiny of Exhibit "P-10"[85] or the FDRR only confirms that petitioner did not indicate the date when it received the FDRR. Petitioner's own witnesses did not also testify or declare the date of the supposed FDRR's receipt. Instead, both of its witnesses even confirmed that they were unaware of the circumstances surrounding the FDRR's receipt. Both Lontok and Morcilla candidly declared that they did not personally receive the FDRR.

Particularly, Lontok's cross-examination rather tells that he has no personal knowledge that the FDRR was actually served on 21 January 2022. We quote:

> ...
> ATTY. TENEFRANCIA:
> Good afternoon, Mr. Lontok. This is in relation to your Answer to Question No. 45 of your Judicial Affidavit. Who received the decision?
>
> A: It was received by the admin personnel.
>
> Q: Who is this admin personnel?
>
> A: I am not quite sure if it's Ms. Zenaida Cajayun or Arian both of them are part of the admin.
>
> Q: How sure are you that these were personally received by them?

---

82 Id.
83 Exhibit "P-10", supra at note 29. See also pp.774 -778 of the BIR Records
84 Par. 18, Amended Petition for Review with Supplemental Annexes, supra at note 1, p. 66.
85 Supra at note 29.

A: Because these documents were scanned to us by e-mail by Ms. Cajayun on January 20 and she mentioned that these were received by her.

Q: Again, you mentioned that it was received by whom?

A: I think Ms. Zenaida Cajayun the admin personnel.

Q: Are you sure that it was Zenaida Cajayun?

A: Yes, because she was the one who e-mailed the scan copy to us.

...

Q: Who served this decision?

A: Since Ms. Zenaida Cajayun is assigned in Taguig office and we were assigned in Batangas I did not personally see who[,] in particular[,] served the decision but Ms. Zenaida Cajayun just mentioned that there was a notice received by her in [the] Taguig office and e-mailed the scanned copy to us.

Q: So you don't have any personal knowledge that it was actually served on January 21, 2022, is that correct?

A: Yes.[86]

...

On the other hand, the cross-examination of Morcilla reveals that he does not have any personal knowledge as to the receipt and date of receipt of the FDRR. We quote:

...

Q: Your Honors, this is in connection to her Answer to Question No. 35 of her Judicial Affidavit. You also mentioned that you received the Decision by the Commissioner of Internal Revenue dated May 21, 2021, is that correct?

A: Yes Mam.

Q: And that you received this on January 20, 2022 by way of personal service, is that correct?

A: Yes, Mam, it was received [at] our office again.

Q: Who received?

---

86 TSN dated 02 March 2023, pp. 7-8; Emphasis supplied.

A: **Ms. Cajay[u]n, our admin.**

Q: **So, do you agree that you don't have any personal knowledge as to the receipt, date of receipt of the Decision of the Commissioner of Internal Revenue?**

A: **Yes, Mam.**[87]

...

Additionally, the copy of the FDRR found in the BIR Records does not bear any date of receipt.[88]

In light of the foregoing, the Court is unable to confirm the date of petitioner's actual receipt of respondent's FDRR. As a result, it could not thus make a proper determination if petitioner's instant Petition for Review has been timely filed.

In *Commissioner of Internal Revenue v. Leonardo S. Villa, et al.*[89] (***Villa***), the Supreme Court held that the period to invoke judicial review must be counted from a taxpayer's receipt of the CIR's decision or ruling on the disputed assessment. It is settled that the party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. Conversely put, the party who asserts, not he who denies, must prove.[90]

Incidentally, Section 2, Rule 42 of the Rules of Court (**ROC**), as amended, provides -

> ...
>
> Section 2. *Form and Contents.* - **The petition** shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and **<u>shall</u>** (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) **indicate the specific material dates showing that it was filed on time**; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon

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87 TSN dated 11 May 2023, pp. 7-8; Emphasis supplied.

88 BIR Records, p. 773.

89 See G.R. No. L-23988, 02 January 1968.

90 *Far East Bank & Trust Company v. Robert Mar Chante, a.k.a. Robert Mar G. Chan*, G.R. No. 170598, 09 October 2013.

> for the allowance of the appeal; (d) **be accompanied** by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and **other material portions of the record as would support the allegations of the petition.**[91]
>
> ...

The above provision of the ROC, as amended, clearly requires that the specific material dates shall be indicated in the petition for the purpose of showing that the same was filed on time, and that the petition be accompanied, among others, of material portions of the record that would support petitioner's allegations.

The timeliness of an appeal is a factual issue that requires a review of the evidence presented.[92] Since petitioner failed to provide supporting evidence (from any part of the record or other sources) showing that it received the FDRR on 20 January 2022, it did not establish that the Petition for Review, filed on 18 February 2022[93], was timely. As this is a jurisdictional requirement, this Court has no other recourse but to dismiss the petition for lack of jurisdiction.

Apropos, the CTA being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[94] Relative thereto, when it appears from the pleadings or the evidence on record that the Court has no jurisdiction over the subject matter, the Court shall dismiss the claim. The Court could not decide the case on the merits.[95]

Assuming the present petition was filed on time, the Court would still dismiss the same as the subject assessment against petitioner had become final, executory and demandable.

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91 Emphasis supplied and italics in the original text.

92 *Republic of the Philippines, represented by The Presidential Commission on Good Government (PCGG), et al. v. Augustus Albert V. Martinez, et al.*, G.R. Nos. 224438-40, 03 September 2020.

93 Supra at note 31. This is the filing date of the Original Petition for Review.

94 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

95 *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, 04 February 2015.

THE ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE, HENCE THE COURT HAS NO JURISDICTION OVER THE PRESENT PETITION

A taxpayer's right to contest an assessment, particularly, the right to appeal to the CTA may be waived or lost.[96] Here, as earlier mentioned, petitioner received the FAN/FLD dated 29 December 2016 on 04 January 2017.[97] It had 30 days from receipt, or until 03 February 2017, to file an administrative protest (Request for Reinvestigation, as in this case). However, its Protest was only filed three (3) days after or only on 06 February 2017.[98]

Petitioner's Exhibit "P-4" or the Request for Reinvestigation shows that petitioner mistakenly deemed 06 February 2017 as its last day to file a protest. It reads —

> ...
>
> The Company received the FAN on 4 January 2017. As the 30-day period to file this protest letter falls on a Sunday (*i.e.*, 4 February 2017), the **Company has until 6 February 2017**, the next succeeding business day within which to submit this protest letter.[99]
>
> ...

The mistake in the determination of the last day of the filing of the Request for Reinvestigation is admitted by petitioner's witness. Lontok declares in his Judicial Affidavit that the Protest was only filed on 06 February 2017, due to an honest mistake. We quote:

> ...
>
> Q: Let me dwell on the allegation that the Protest was filed out of time necessitating dismissal of your Formal Request for Reconsideration. What is the basis of CIR in dismissing your Formal Request for Reconsideration?
>
> A: It was based on the wrong premise of the CIR that our Protest was filed out of time. We strongly disagree with the ruling of the CIR in dismissing our Formal Request for Reconsideration.

---

96 See *Ferdinand R. Marcos II v. Court of Appeals, et al.*, G.R. No. 120880, 05 June 1997
97 Supra at notes 5 and 13.
98 Supra at note 16.
99 Supra at note 16; Emphasis supplied.

> While it was sheer inadvertence when the **Protest was filed on February 6, 2017** it was **due to an honest mistake** in the determination that the last day of the 30 day period within which to file the Protest was February 4, 2017 which was a non-working day being a Saturday when what should have been the last day was February 3, 2017, a Friday.[100]
>
> ...

Unfortunately for petitioner, the failure to file the administrative protest within 30 days from FAN/FLD's receipt is jurisdictional and renders the assessments issued by respondent final, executory and demandable. Respondent even pointed this out in the assailed FDRR[101] as quoted below:

> ...
>
> As may be gathered from the records, the FAN with FLD and DOD were received by SCG on January 4, 2017. Thus, **SCG had thirty (30) days or until February 3, 2017 to file a request for reconsideration** before the Regional Office. However, SCG filed its protest before the Office of the Regional Director on February 8, 2017 or thirty-five days from receipt of the FAN with FLD and DOD. Hence, for its failure to file a protest against the FAN with FLD and DOD within the prescribed thirty-day period before the Regional Office under RR No, 18-2013, **the assessments against SCG has become final, executory and demandable**.[102]
>
> ...

In *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division, et al.*[103] (**CIR v. CTA**), the Supreme Court highlighted the importance of a valid protest —

> ...
>
> Petitioner argues that the [CTA] had no jurisdiction over respondent's Petition for Review because the assessment had attained finality before then.
>
> Section 228 of the National Internal Revenue Code states the procedure in protesting an assessment:
>
> ...

[100] See Q & A, No. 41, supra at note 44, p. 475; Emphasis supplied.
[101] Supra at note 29, pp. 208-209.
[102] Emphasis supplied.
[103] G.R. No. 239464, 10 May 2021; Emphasis supplied and italics in the original text.

Section 3.1.14 of Revenue Regulations No. 18-2013, amending Revenue Regulations No. 12-99, states what constitutes a valid protest:

> 3.1.4. *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> > (i) Request for reconsideration — refers to a plea of reevaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > (ii) Request for reinvestigation — refers to a plea of reevaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of the protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.
>
> ...
>
> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a – tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.
>
> **If the taxpayer failed to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.** No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

...

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

Section 228 of the National Internal Revenue Code is clear. **The administrative protest must be filed not only within the stated period**, but also "in such form and manner as may be prescribed by implementing rules and regulations." Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.

...

WHEREFORE, premises considered, the Amended Petition for Review with Supplemental Annexes filed by petitioner SCG Marketing Philippines, Inc. on 24 February 2022 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice