REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TEN-FOUR READYMIX CONCRETE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2311
(CTA Case No. 10081)

Present:

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

Promulgated:

JAN 25 2022 11:25 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals

---

1 Filed on 03 August 2020, *Rollo*, pp. 1-34.

2 **SEC. 3.** *Who may appeal; period to file petition.*

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper

(**RRCTA**), filed by petitioner Ten-Four Readymix Concrete, Inc. (**petitioner/TFRCI**). It seeks the reversal of the Resolutions dated 16 January 2020[3] and 15 June 2020[4] (**assailed Resolutions**) of the First Division.[5] The dispositive portion of the assailed Resolution dated 16 January 2020 reads, thus:

> ...
>
> **WHEREFORE**, premises considered, respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* is hereby **GRANTED**. Accordingly, petitioner's *Petition for Review* is **DISMISSED** for lack of jurisdiction due to prescription.
>
> **SO ORDERED.**
>
> ...

On the other hand, the dispositive portion of the 15 June 2020 assailed Resolution states:

> ...
>
> **WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolution dated January 16, 2020 is **AFFIRMED**.
>
> **SO ORDERED.**
>
> ...

The antecedent facts follow.

Pursuant to a Bureau of Internal Revenue (**BIR**) audit investigation, petitioner was assessed and served a Preliminary Collection Letter[6] (**PCL**) and Final Notice Before Seizure[7] (**FNBS**) on 27 November 2018 and 17 December 2018, respectively.

---

motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 Division Docket, pp. 352-359.

4 Id., pp. 412-418.

5 The First Division is composed of Presiding Justice Roman G. Del Rosario, Associate Justice Esperanza R. Fabon-Victorino (ret.), and Associate Justice Catherine T. Manahan, as Members.

6 Exhibit "P-4", Division Docket, p. 32.

7 Exhibit "P-5", id., p. 33.

On 03 January 2019, petitioner wrote a letter[8] to the Chief of the Collection Division of Revenue Region No. 1 - Calasiao, Pangasinan, Josephine B. Paragas (**Chief Paragas**), inquiring about the reason for the issuance of the PCL and the FNBS absent receipt of any action on its previously filed protest.

On 16 January 2019, Chief Paragas issued a Warrant of Distraint and/or Levy[9] (**WDL**) against petitioner.

On 17 January 2019, petitioner wrote another letter[10] to Chief Paragas about the WDL's issuance despite the absence of any reply to its previous letter of 03 January 2019.

On 21 January 2019, Chief Paragas responded[11] to petitioner's 03 January 2019 letter. In her letter-response, Chief Paragas informed petitioner that, on 20 September 2018, it was constructively served a copy of the Final Decision on Disputed Assessment (**FDDA**) since a certain Engr. Charlito Flores (**Engr. Flores**) refused to receive the said notice. According to the letter of Chief Paragas, due to such refusal, the concerned revenue officer (**RO**) sought the assistance of the Barangay Captain and Barangay Secretary to witness the service of the FDDA. The letter further stated that the PCL and subsequent notices were issued due to the FDDA's finality, given that no protest was raised to either the office of respondent Commissioner of Internal Revenue (**respondent/CIR**) or this Court with thirty (30) days from the FDDA's service.

On 24 January 2019, petitioner received another letter[12] of similar tenor from Chief Paragas.

According to petitioner, its representatives went to Chief Paragas' office several times to request for a copy of the FDDA but its requests were refused on the ground that a copy thereof had already been duly served (on petitioner). Anxious that the WDL will be enforced against it and as allegedly suggested by Chief Paragas,

---

8 Exhibit "P-6", id., p. 34.
9 Exhibit "P-7", id., p. 35.
10 Exhibit "P-8", id., p. 36.
11 Exhibit "P-9" and "P-9-a", id., p. 38.
12 Exhibit "P-10", "P-10-a", and "P-10-b", id., p. 39.

petitioner reluctantly paid the amount of ₱500,000.00[13] as partial settlement of its tax liabilities. Petitioner also quoted Chief Paragas saying that all requests for another copy of the FDDA should be in writing.

Later, petitioner found out that the Investigating Office had disapproved its payment. The payment form was marked "SUBJECT TO APPROVAL BY HIGHER AUTHORITIES".[14] Petitioner then went to Chief Paragas, who confirmed that its payment had yet to be approved. She also reiterated that petitioner's request for a copy of the FDDA should be put in writing.

On 06 March 2019, petitioner, through counsel, wrote another letter[15] to Chief Paragas, asking for the cancellation of the WDL or for its implementation to be put on hold until petitioner's receipt of the FDDA.

On 29 April 2019, petitioner received a letter dated 24 April 2019[16] from Regional Director Thelma S. Milabao (**RD Milabao**), wherein the latter reiterated the contents of Chief Paragas' previous letters regarding the constructive service of the FDDA.

On 20 May 2019, petitioner filed a Petition for Review[17] before the Court in Division. The same was raffled to the First Division. Before trial could commence, respondent filed a "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court"[18] on 07 October 2019.

On 21 January 2020, petitioner filed a "Comment/Opposition [To Respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court]" (**Motion for Early Resolution**).[19] In the assailed Resolution dated 16 January 2020, the First Division granted respondent's Motion for Early Resolution and dismissed petitioner's case for lack of jurisdiction. The First Division declared:

---

13 BIR Form 0605, Exhibit "P-11", id., p. 41.
14 Exhibit "P-11-b", id.
15 Exhibit "P-13", pp. 42-45.
16 Exhibit "P-15", pp. 49-50.
17 Id., pp. 10-28.
18 Id., pp. 272-281.
19 Id., pp. 360-363.

> ...
>
> Petitioner should be aware that the issuance of the said PCL and FNBS is tantamount to a denial of its protest. In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue et al.*, the Supreme Court ruled that when the taxpayers receive a notice or a letter other than the Final Decision on Disputed Assessment (FDDA) demanding payment of the alleged tax deficiency assessment after the latter filed its protest letter, the same is deemed a denial of such protest...
>
> ...
>
> The protest was deemed denied by the issuance of said PCL and FNBS. Hence, petitioner should have appealed before this Court within 30 days from December 21, 2018 or until January 20, 2019 by filing a PFR.
>
> However, petitioner only filed its PFR on May 20, 2019. Thus, prescription on the filing of said petition PFR (*sic*) has already set in, thereby depriving this Court of jurisdiction in heating the instant case.[20]
>
> ...

Aggrieved, petitioner filed a Motion for Reconsideration[21] (**MR**) of the foregoing assailed Resolution on 06 February 2020. In the similarly assailed Resolution dated 15 June 2020[22], the First Division also denied petitioner's MR.

Hence, the present petition.

After respondent was ordered to comment on petitioner's petition[23], he filed his Comment/Opposition[24] on 14 December 2020. Thereafter, in a Resolution dated 12 January 2021[25], the petition was submitted for decision.

In this petition, petitioner raises this sole issue —

---

20 Supra at note 3, pp. 358-359
21 Division Docket, pp. 369-385.
22 Supra at note 4.
23 See Resolution dated 24 November 2020, *Rollo*, pp. 65-66.
24 Id., pp. 67-78.
25 Id., pp. 80-81.

> WHETHER THE HONORABLE FIRST DIVISION WAS CORRECT IN RULING THAT PETITIONER TEN-FOUR READYMIX CONCRETE, INC.'S PERIOD TO APPEAL HAS ALREADY PRESCRIBED.[26]

In support of its arguments, petitioner insists that it did not receive a copy of the FDDA. It further argued that even the BIR, through the numerous letters of Chief Paragas, has admitted that the FDDA's receipt should be the reckoning point of its period to appeal. It cites the following excerpt from Chief Paragas' 21 January 2019 letter:

> ...
> ... Since no appeal was filed to the Commissioner or the Court of Tax Appeals (CTA) within thirty (30) days after the receipt of the FDDA, the assessment became final and executory, thus the collection of your delinquent account is hereby enforced.[27]
> ...

Petitioner also argues that, since it alleges an improper service of the FDDA, it falls upon this Court to determine the same on the ground of "other matters" provided for under Section 3, Rule 4 of the RRCTA which states:

> ...
> **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original 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[.][28]
>
> ...

---

26 Supra at note 1, p. 9.
27 Supra at note 10.
28 Emphasis supplied.

On this note, petitioner claims that the period to file its action should be counted from RD Milabao's last communication on 29 April 2019.

For his part, respondent agrees fully with the findings of the First Division. He adds that petitioner's right to appeal its case is merely a statutory right and the rules in relation thereto cannot be simply ignored.

The Court's ruling follows.

After a careful review of the parties' arguments and the records of the case, the Court *En Banc* finds no cogent ground to overturn the assailed Resolutions of the First Division.

Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides:

> ...
> **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...
> ...
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If 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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

> 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.
>
> ...

In relation thereto, Revenue Regulations (**RR**) No. 12-99, as amended by RR No. 18-13[29], states:

> ...
>
> 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.
>
> ...
>
> 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.

---

[29] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> If the taxpayer fails 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, executor and demandable.
>
> 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.
>
> ...

From the foregoing rules, it is clear that a taxpayer has two (2) alternative remedies from the denial of its protest by the CIR's authorized representative. *First*, a taxpayer can file a request for reconsideration with the CIR within 30 days from the denial's receipt. *Second*, the taxpayer may directly elevate its claim within the same period to this Court. The taxpayer's failure to exercise either remedy within such 30-day period shall make the assessment final and executory.

In the case at bar, petitioner denies receiving the FDDA. Instead, petitioner was served with a PCL and an FNBS. The provisions above do not patently disclose a remedy when such circumstances occur. However, as the First Division correctly ruled, the Supreme Court has already settled this issue in the case of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*[30] (**Oceanic**). There it was ruled:

> ...
>
> The demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, "while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed

[30] G.R. No. 148380, 09 December 2005; Citation omitted.

> by petitioner clearly shows the intention of the respondent to make it as [his] final decision."
>
> ...

While, in the earlier case of *Commissioner of Internal Revenue v. Isabela Cultural Corporation*[31] (**Isabela**), the Supreme Court, drawing from its rulings in *Commissioner of Internal Revenue v. Ayala Securities Corporation, et al.*[32] (**Ayala**), *Surigao Electric Co., Inc. v. Court of Tax Appeals, et al.*[33] (**Surigao**), and *Commissioner of Internal Revenue v. Union Shipping Corporation, et al.*[34] (**Union**) held, thus:

> ...
> Lastly, jurisprudence dictates that a final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment...
>
> ...
>
> In the instant case, the second notice received by private respondent verily indicated its nature — that it was *final*. Unequivocably, therefore, it was tantamount to a rejection of the request for reconsideration.
>
> ...
>
> Having admitted as a *fact* private respondent's request for reconsideration, petitioner must have passed upon it prior to the issuance of the Final Notice Before Seizure.
>
> ...

Just like in *Isabela*, herein petitioner admits that it filed a protest against the BIR's assessment prior to its receipt of the PCL and the FNBS. Therefore, it could be reasonably assumed that the same had been denied with the issuance of the PCL and the FNBS, both of which are unequivocal demands of payment of petitioner's tax deficiencies.

Guided by the foregoing provisions and jurisprudence, the First Division was thus correct when it ruled that the 30-day period for petitioner to appeal its case, either with the CIR or the CTA, had already lapsed when it filed its prior Petition for Review before the First Division on 20 May 2019.

---

[31] G.R. No. 135210, 11 July 2001; Italics in the original text.
[32] G.R. No. L-29485, 31 March 1976.
[33] G.R. No. L-25289, 28 June 1974.
[34] G.R. No. L-66160, 21 May 1990.

Incidentally, as opposed to the First Division's findings that the period to appeal should be counted from the receipt of the FNBS, the Court *En Banc*, however, finds the tacking of the 30-day period from petitioner's receipt of the PCL more proper.

A review of the rulings in *Oceanic*, *Isabela*, *Ayala*, and *Union* reveals that the Supreme Court considered a protest denied absent an FDDA upon the taxpayer's receipt of a demand for payment of its tax liabilities. In most of these cases, the CIR's demand came by way of a demand letter. It was only in *Isabela* that the 30-day period was counted from the receipt of the FNBS since it was the only communication that the taxpayer therein had allegedly received after it filed its protest.

In herein case, when petitioner received a copy of the PCL on 27 November 2018, it was already informed of the BIR's decision to collect its tax deficiencies. The PCL states:

> ...
> To avoid the accumulation of interest and surcharge, it is requested that you pay the tax liability/ies within ten (10) days from receipt hereof...
> ...
>
> However, if payment has been made, please furnish us copies of the receipts of payment together with this letter to be the basis of cancelling/closing tour liability/ties **<u>Otherwise we shall be constrained to enforce the collection thereof [through] the administrative summary remedies provided for by law, without any further notice.</u>**[35]
> ...

The same demand for payment was merely reiterated in the FNBS that now came with a threat of legal action. Therefore, since petitioner was first notified through the PCL of the BIR's decision to collect, it had 30 days from receipt thereof, or until 27 December 2018, to file a request for reconsideration with the CIR or a petition for review with the CTA.

---

[35] Emphasis and underscoring supplied.

On petitioner's claim that the Court has jurisdiction over the case because it falls under "other matters" that it may hear, to be sure, it is empowered to settle the subject matter regarding the propriety of the FDDA's constructive service. *However*, despite having such jurisdiction, the Court must first settle whether petitioner's action has already prescribed.

In *Pomposa Vda. De Nator, et al. v. The Hon. Court of Industrial Relations, et al.*[36], the Supreme Court held that "the basis of prescription is the unwarranted failure to bring the matter to the attention of those who are by law authorized to take cognizance thereof".

Due to petitioner's insistence to first obtain a copy of the FDDA, it lost sight of the fact that the BIR was already gearing to collect the assessed tax deficiencies (which was made clear not only in the PCL, FNBS, and WDL but also in the numerous letters sent by Chief Paragas).

It is noteworthy that even after Chief Paragas allegedly instructed petitioner to submit a written request for another copy of the FDDA, petitioner still failed to do the same. For its failure to do so despite the advice, the Court is inclined to deem petitioner's refusal as a lame attempt to extend the prescriptive period to file its appeal. Of course, petitioner was unsuccessful in such attempt.

Granting that petitioner failed to timely file its petition, the First Division was therefore correct in refusing to take cognizance thereof. We echo the First Division when it held:

> ...
> It is true that law and jurisprudence have vested this Court with jurisdiction on other matters arising under the 1997 NIRC or other laws administered by the BIR. However, such jurisdiction is not absolute but is pre-conditioned on whether prescription has already set in.[37]
>
> ...

---

36 G.R. No. L-16671, 30 March 1962.

37 Supra at note 3, p. 359.

At any rate, even assuming that the Court may take cognizance of such issue, the result would be the same. Regardless of whether there was constructive service of the FDDA on petitioner, any answer thereto would not change the fact that prescription had already set in. Had there been constructive service, the Court would count the 30-day period from petitioner's receipt thereof on 20 September 2018. Conversely, had there been no constructive service, the Court would then maintain the tacking of the 30-day period from petitioner's receipt of the PCL. Either way, petitioner would still be deemed to have belatedly filed its Petition for Review before the First Division.

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed by petitioner Ten-Four Readymix Concrete, Inc. on 03 August 2020 is hereby **DENIED**. Accordingly, the assailed Resolutions dated 16 January 2020 and 15 June 2020, respectively, of the First Division in CTA Case No. 10081, entitled *Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue* are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice