REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TESCO SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8705

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 17 2017
11:30 a.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

This Petition for Review[1] filed by Tesco Services, Inc. on August 22, 2013, assails the Warrant of Distraint and/or Levy (WDL) dated June 6, 2013, issued by respondent Commissioner of Internal Revenue (CIR) to collect the sum of ₱6,377,267.77, allegedly representing deficiency Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), and Valued-Added Tax (VAT) for taxable years 1997 to 1998 on the ground of prescription.

Petitioner Tesco Services, Inc. is a domestic corporation, with principal office address at 1957 España, corner Craig Street, Manila.[2]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with the authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, and penalties imposed in relation thereto or other

[1] Docket, pp. 19-28.
[2] Par. 1, The Parties, Petition for Review, docket, p. 19.

matters arising under the National Internal Revenue Code (NIRC), or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).

The Petition for Review states that on February 28, 2000, petitioner, through its accountant, filed with respondent a letter informing him that it had previously filed with the Collection Services of the BIR Head Office a request for a compromise settlement of its unpaid taxes due to its financial reverses. Petitioner offered to pay the basic tax of ₱6,377,267.77 as full payment of its tax liabilities payable on installment basis over a period of two years based on the amortization schedule attached to the said letter.

Thereafter, nothing was heard from respondent until petitioner received a letter dated April 3, 2012 stating that per BIR records, petitioner had unpaid tax deficiencies in the total amount of ₱6,377,267.77 covering the period January 1997 to December 1998 which should be paid within fifteen (15) days from notice lest collection shall be enforced through summary remedy under the Tax Code.

Hence, the present case on the ground that respondent's right to collect the alleged WTC, EWT and VAT deficiencies has already prescribed. Petitioner prays that while the present case is pending, the enforcement of the Warrant of Distraint and/or Levy (WDL) be held in abeyance as it will jeopardize its interest and cause it further financial difficulties. Petitioner further prays that after appropriate proceedings, the assailed WDL be set aside and declared null and void.

In his Answer[3] filed on October 24, 2013, respondent argues that contrary to petitioner's claim, his right to collect the subject tax deficiencies from petitioner has not yet prescribed. The delay in the collection of the deficiency taxes, if there was any, was attributable to petitioner who filed several requests for compromise settlement of its tax liabilities.

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[3] Docket, pp. 60-67.

The first request for compromise was granted by respondent, through Revenue District Officer (RDO) Celia C. King on April 22, 1999, allowing petitioner to pay its tax deficiencies on installment basis. However, petitioner failed to comply with its undertaking as stated in its own schedule of monthly installment attached to its request. For this reason, respondent issued a Preliminary Collection Letter on September 3, 1999 and a Final Notice Before Seizure on September 16, 1999.

On October 26, 1999, WDL dated September 29, 1999 was served upon petitioner but no property in its name was found to answer for its tax liabilities per the three (3) certifications issued by the Assessor's Office of Manila, Makati and Quezon City.

In its second request for compromise settlement dated October 27, 1999, petitioner reiterated its intention to have a compromise settlement which respondent, through Chief of Collection Division Eliseo ES. Trompeta, of Revenue Region No. 7, denied on February 21, 2000, due to petitioner's failure to comply with its undertaking in the first offer of compromise.

The same offer for compromise settlement of tax liabilities was made by petitioner in its third letter dated February 24, 2000 filed with the Collection Service of the BIR - Head Office.

Subsequently, petitioner transferred to another Revenue District Office (RDO) causing further delay because the revenue officers assigned to its tax case had to locate petitioner's new RDO.

The period of limitation under Section 222 of the National Internal Revenue Code (NIRC) of 1997, as amended, was suspended or interrupted when petitioner filed its first request for compromise settlement followed by the service of WDL and finding that no property was registered in its name to answer for its tax liabilities.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues[4] with the following stipulations of facts:

On December 18, 1998, petitioner, through its Senior Vice President - Treasurer Lucie Quidato-Bantolino, wrote a letter addressed to respondent to negotiate a compromise settlement of its tax liabilities in the amount of ₱6,377,267.77 on installment basis based on the attached Proposed Installment Payment Plan.[5] In the same letter, petitioner admitted that it failed to remit taxes for its VAT, EWT, and WTC for taxable years 1997 and 1998.[6]

In a letter dated April 22, 1999, petitioner's request for offer of compromise and requested payment plan subject to penalties and other increments were granted by respondent through Revenue District Officer Celia C. King of Revenue District Office (RDO) No. 41 - Mandaluyong City.[7] The Schedule of Monthly Installment[8] of petitioner for the period starting March 25, 1999 up to August 25, 2000 was attached to the letter. Such acceptance of the offer of compromise by the BIR through Revenue District Officer Celia C. King was received by petitioner through its Chief Accountant Danilo C. Soriano also on April 22, 1999.[9]

Due to financial difficulties, petitioner failed to comply with the schedule of monthly installment plan[10] as reported in the Memorandum dated May 28, 1999 of Revenue Officer Marietta D. Sta. Maria.[11]

Respondent then issued a Preliminary Collection Letter[12] on September 3, 1999. Thereafter, or on September 16, 1999, respondent issued a Final Notice Before Seizure[13] for

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[4] Docket, pp. 178-181.
[5] Par. 2, Joint Stipulation of Facts and Issues (JSFI), docket, p. 178; Exhibits "R-2" and "R-2-a," BIR Records, pp. 66-67.
[6] Par. 1, JSFI, docket, p. 178.
[7] Par. 3, JSFI, docket, p. 178, Exhibit "R-3", BIR Records, p. 82.
[8] BIR Records, p. 81.
[9] Par. 4, JSFI, docket, p. 179.
[10] Par. 5, JSFI, docket, p. 179.
[11] Exhibit "R-4", BIR Records, p. 84.
[12] Exhibit "R-5", BIR Records, p. 85.
[13] Exhibit "R-6", BIR Records, p. 86.

the amount of ₱6,377,267.77[14] for the period from January 1997 to December 1998.

On September 29, 1999, respondent issued a Warrant of Distraint and/or Levy[15] to petitioner, which was received by the latter on October 26, 1999.[16]

On October 27, 1999, petitioner's accountant, Alba Romeo & Co., sent a letter[17] requesting the cancellation of the Notice of Warrant of Distraint and/or Levy by offering another compromise settlement to respondent in view of petitioner's inability to comply with the earlier approved compromise.[18] On February 21, 2000, respondent, through Deputy Commissioner (Operations) Romeo S. Panganiban, denied the offer of compromise considering petitioner's failure to comply with the first compromise settlement.[19]

Petitioner's accountant sent another letter to respondent on February 24, 2000, requesting again for a compromise settlement.[20] Respondent failed to respond to the said letter.[21]

Petitioner requested the transfer of its registration from Mandaluyong City (RDO No. 41) to Sampaloc, Manila (RDO No. 32)[22] as shown in a Memorandum dated September 29, 2011 issued by Revenue District Officer (Mandaluyong City) Isabel A. Paulino.[23] In a Memorandum[24] dated December 13, 2011, Revenue District Officer (Mandaluyong City) Sarah Jeane B. Alcaraz stated that she exerted an effort to locate petitioner and it was found out that it is no longer operating in Mandaluyong, but is doing business operation in Manila.

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[14] Par. 6, JSFI, docket, p. 179.
[15] Exhibit "R-7", BIR Records, p. 89.
[16] Par. 7, JSFI, docket, p. 179.
[17] Exhibit "R-8", BIR Records, p. 139.
[18] Par. 8, JSFI, docket, p. 179.
[19] Exhibit "R-9", BIR Records, p. 141.
[20] Par. 10, JSFI, docket, p. 179; Exhibit "R-10-a", BIR Records, p. 143.
[21] Par. 11, JSFI, docket, p. 179.
[22] Par. 12, JSFI, docket, p. 179.
[23] Exhibit "R-18-a", BIR Records, p. 187.
[24] Exhibit "R-11", BIR Records, p. 191.

Respondent issued another Final Notice Before Seizure[25] dated May 23, 2012, reiterating the demand to pay the amount of ₱6,377,267.77 representing deficiency withholding tax on salaries and wages, expanded withholding tax, and valued-added tax for the period covering taxable years 1997 to 1998.

On June 6, 2013, respondent issued another Warrant of Distraint and/or Levy,[26] which was received by petitioner on July 19, 2013.

On January 14, 2015, a Pre-Trial Order[27] was issued based on the parties' admissions and stipulations.

On August 22, 2013, petitioner filed the present Petition for Review before this Court.

On February 27, 2015, petitioner filed a *Motion* reiterating therein its *motion* to submit the case for resolution/decision based on the singular legal issue of whether or not the right of the respondent to assess and collect the taxes from petitioner has already prescribed. The said *Motion* was denied during the hearing scheduled for the initial presentation of evidence for petitioner on March 2, 2015. In the same hearing, the Court also ordered petitioner's right to present evidence deemed waived for its failure to appear despite notice.[28]

Respondent, on the other hand, presented his evidence in chief with Revenue Officer **Alice B. Ong** as his lone witness. By way of a Judicial Affidavit[29], Ms. Ong testified that she came to know petitioner because its 1997-1998 internal revenue tax docket was assigned to her for collection when she was still with the Collection Section of Revenue District Office No. 32. According to her, she conducted review of petitioner's docket and found that petitioner failed to file returns and pay the VAT, WTC, and

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[25] Exhibit "R-12", BIR Records, p. 201.
[26] Exhibit "R-19", BIR Records, p. 221.
[27] Docket, pp. 183-189.
[28] Minutes of the Hearing, docket, p. 193.
[29] Exhibit R-24, docket, pp. 218-223.

EWT for taxable years 1997-1998. Through a letter dated December 18, 1998, petitioner admitted its tax liabilities amounting to ₱6,327,267.77 and offered to pay in installment according to its prepared Installment Payment Plan. Petitioner's proposed installment plan was approved through a letter dated April 22, 1999 by Revenue District Officer Celia C. King, Revenue District Officer of Revenue District No. 41, where petitioner was previously registered, which was received by petitioner through Danilo C. Soriano also on April 22, 1999.

Ms. Ong further declared that per Memorandum Report of Revenue Officer Marietta D. Sta. Maria, petitioner failed to comply with its proposed installment payments. Thus, a Preliminary Collection Letter, Final Notice Before Seizure, and Warrant of Distraint and/or Levy were issued to petitioner. Thereafter, petitioner, through its representative Alba Romeo & Co, made another offer of compromise payments for the same tax liabilities in a letter dated October 27, 1999 but the same was denied through a letter dated February 21, 2000. Petitioner then wrote a letter requesting that the Warrant of Distraint and/or Levy be held in abeyance pending evaluation of its offer of compromise filed with the Collection Services of the BIR - Head Office.

She continued that sometime in 2011, petitioner transferred its business from Tesco Compound Sheridan St., Mandaluyong City to 1957 España St. cor. Craig St., Sampaloc, Manila, as borne in the Memorandum by Revenue Officer Sarah Jeane B. Alcaraz dated December 13, 2011. She also declared that she prepared the Final Notice Before Seizure dated May 23, 2012, obtained certifications from different City Governments, and Memorandum Report dated February 13, 2013. She stated further that another Revenue Officer - Emilia M. Nava from Collection Division, Revenue Region No. 6 – Manila, sent a Warrant of Distraint and/or Levy and Warrants of Garnishment to banks for the collection of petitioner's tax liabilities.

There being no other witness to present, respondent rested his case and formally offered his documentary evidence *via* a *Formal Offer of Documentary Evidence (For the Respondent)*[30] filed on July 16, 2015.

In a Resolution[31] dated December 4, 2015, the Court admitted respondent's Exhibits "R-1", "R-2", "R-2-a", "R-2-b", "R-3", R-4", R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-10-a", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-18", "R-18-a", "R-19", "R-20", "R-21", "R-22", "R-24", and "R-24-a"; but denied Exhibits "R-17" and "R-23".

On December 28, 2015, respondent filed an Offer of Proof[32] in order that Exhibits "R-17" and "R-23" would still be attached or be made part of the record of the case pursuant to Section 40 of Rule 132 of the Rules of Court.

On January 28, 2016, the instant case was submitted for decision after the parties submitted their respective memorandum.[33]

THE ISSUES

The parties submitted the following issues[34] for this Court's resolution:

1. Whether or not the right of respondent to collect the taxes from petitioner has already prescribed;

2. Whether or not petitioner is liable to pay the amount of Six Million Three Hundred Seventy-Seven Thousand Two Hundred Sixty-Seven Pesos and 77/100 (₱6,377,267.77) as deficiency value-added tax, expanded withholding tax, and withholding tax on compensation for its failure to remit the said taxes for taxable years 1997 to 1998; and

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[30] Docket, pp. 278-283.
[31] Docket, pp. 266-268.
[32] Docket, pp. 269-271.
[33] Docket, p. 311.
[34] JSFI, docket, p. 180.

3. Whether or not petitioner, based on the totality of its conduct, is estopped to claim the defense of prescription.

THE COURT'S RULING

The issues raised by the parties primarily centered on whether the right of respondent to collect the taxes from petitioner has already prescribed. And corollary to the foregoing is whether the question on the validity of the subject Warrant of Distraint and/or Levy falls within the jurisdiction of this Court.

On the authority of this Court to rule on the validity of a WDL issued by respondent, Section 7(a)(1) of RA 1125, as amended, is instructive, viz.,:

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

The case *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[35] (*Philippine Journalist*), provided a clearer lens on the matter as the Supreme Court in no uncertain terms ruled that the CTA has jurisdiction to resolve controversies involving the validity of the issuance of a WDL as it is among the "other matters" arising under the National Internal Revenue Code (NIRC) of 1997, as amended, thus:

[35] G.R. No. 162852, December 16, 2004.

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected. (*Emphasis supplied*)

Evidently, this Court has jurisdiction to pass upon the validity of a WDL, on condition that the corresponding petition for review impugning such WDL be filed within the period provided under Section 11 of the Republic Act No. 1125, as amended, which reads as follows:

> Section 11. *Who may appeal; effect of appeal.* — Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in 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 xxx (*Emphasis supplied*)

Corollarily, Section 3 (a) of Rule 8 of the Revised Rules of the Court of Tax Appeals provides:

> 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 Commissioners 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 xxx (*Emphasis supplied*)

Note that the 30-day period to appeal before the CTA is reckoned from petitioner's receipt of the challenged WDL on July 19, 2013. Thus, counting 30 days from July 19, 2013, petitioner had until August 19, 2013[36] to file the instant Petition for Review. Clearly, the instant Petition for Review was filed beyond the 30-day reglementary period on August 22, 2013 thereby depriving the Court of jurisdiction to determine the same.

Basic is the rule that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, the Court declares that the right to appeal is not a natural right nor a part of due process. It is merely a

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[36] August 18, 2013 fell on a Sunday.

statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[37]

WHEREFORE, the instant case filed by Tesco Services, Inc. on August 22, 2013, is hereby **DISMISSED**, on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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[37] *Commissioner on Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division Chairperson's Attestation, 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