REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PANAY ELECTRIC COMPANY, INC.,
Respondent.

CTA EB NO. 2372
(CTA Case No. 9523)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, *and*
Cui-David, *JJ.*

Promulgated:
MAY 31 2022 9:10a.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner[1] Commissioner of Internal Revenue (CIR) to seek nullification of the Decision[2] dated June 1, 2020 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated December 20, 2016 issued by respondent, and the assessments for deficiency tax, VAT, EWT, WTC, and DST, in the aggregate amount of P890,996,459.00, inclusive of interest and penalties, for taxable year 2009, are **CANCELLED and SET ASIDE**.

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[1] Respondent in CTA Case No. 9523.
[2] Rollo, CTA EB Case No. 2372, pp. 27-56.

> **SO ORDERED.**"

and the Resolution[3] dated October 16, 2020 (assailed Resolution) of the same Second Division of the Court (Court in Division) denying the CIR's Motion for Reconsideration, the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Panay Electric Company Inc. (PECO) is a corporation duly organized and existing under and by virtue of the laws of the Republic of Philippines, with office address at No. 23, General Luna Street, Iloilo City, Philippines. It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 001-002-833-000.

THE FACTS

The facts as stated in the assailed Decision[4] are as follows:

> "On May 14, 2010, then Commissioner of Internal Revenue issued the Letter of Authority (LOA) NO. 116-2010-00000076, authorizing Revenue Officers Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Walter Batoon, Reynoso Bravo, and Group Supervisor Erlinda Ulgado, of the LT Regular Audit Division I of the BIR, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2009.

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[3] Rollo, pp. 57-66.
[4] Citations omitted.

Petitioner executed two (2) *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code,* the details of which are as follows:

Waiver	Date Executed by petitioner	Agreed period to assess petitioner	Date Accepted by the BIR
First Waiver	July 10, 2012	Until June 30, 2013	July 12, 2012
Second Waiver	May 17, 2013	Until June 30, 2014	May 29, 2013

On June 5, 2014, petitioner received the Preliminary Assessment Notice (PAN) dated May 30, 2014, with Details of Discrepancies, issued by the BIR which stated that after investigation, petitioner has been found [liable for] deficiency income tax, VAT, EWT, WTC, final tax (FT), fringe benefits tax (FBT), and DST, for the year 2009.

Petitioner then filed with the BIR a Reply dated June 19, 2014 to the PAN on June 20, 2014, arguing that the assessment is invalid and ineffectual for being made after the lapse of the prescriptive period.

On June 30, 2014, petitioner received the *Formal Letter of Demand* (FLD) dated June 27, 2014 with *Details of Discrepancies*, and with the corresponding *Audit Result/Assessment Notices*, assessing petitioner in the aggregate amount of P1,973,630,053.21, inclusive of interests and penalties, broken down as follows:

Assessment No.	Type of Tax	Amount
IT-116-LOA-00000076-09-14-1037	Income tax	P1,122,876,420.88
VT-116-LOA-00000076-09-14-1038	VAT	809,428,169.65
WE-116-LOA-00000076-09-14-1039	EWT	21,436,773.59
WC-116-LOA-00000076-09-14-1040	WTC	8,851,271.56
WF-116-LOA-00000076-09-14-1041	FT	8,957,322.00
WR-116-LOA-00000076-09-14-1042	FBT	559,122.93
DS-116-LOA-00000076-09-14-1043	DST	1,520,972.60
Total Deficiency Assessment		**P1,973,630,053.21**

Petitioner then filed its Request for Reinvestigation, on July 30, 2014, submitting that the assessment is invalid and ineffectual on the ground that they have no factual and/or legal bases, and requesting the cancellation of the same, after reinvestigation.

On December 21, 2016, petitioner received the FDDA dated December 20, 2016 issued by respondent, with Details of Discrepancies, and with the corresponding Audit Result/Assessment Notices, declaring that petitioner is still liable for income tax, VAT, EWT, WTC, FT, and DST, in the total amount of P890,996,459.00, for the year 2009, the details of which are broken down as follows:

Assessment No.	Type of Tax	Amount
IT-116-LOA-00000076-09-16-418	Income tax	P794,335,529.70
VT-116-LOA-00000076-09-16-419	VAT	70,233,417.98
WE-116-LOA-00000076-09-16-420	EWT	25,612,805.55
WC-116-LOA-00000076-09-16-421	WTC	103,475.25
DS-116-LOA-00000076-09-16-1043	DST	711,230.53
Total Deficiency Assessment		**P890,996,459.00**

On January 19, 2017, PECO filed a Petition for Review[5] before the Court in Division, docketed as CTA Case No. 9523, entitled *Panay Electric Company, Inc. vs. Commissioner of Internal Revenue.*

On April 26, 2017, the CIR filed his Answer,[6] interposing the following defenses, to wit: (1) the waivers executed by PECO are valid and effectively extended the period of assessment; (2) even assuming but without conceding that the CIR failed to strictly comply with Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 5-2001, the waiver remains valid as upheld by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*,[7] (3) PECO is liable to pay the assessment for deficiency income tax, VAT, EWT, WTC, and DST for taxable year 2009; (4) the assessed deficiency withholding as penalty to petitioner does not fall within the ambit of the period of limitation provided in Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended; and (5) tax assessments by examiners are presumed correct and made in good faith, and the taxpayer has the duty to prove otherwise.

The parties submitted the following issues[8] for resolution of the Court in Division:

> "I. Whether or not the period to assess petitioner with deficiency taxes for the year 2009 have already prescribed; and
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> II. Whether or not petitioner is liable for deficiency income tax, value added tax, expanded withholding tax, withholding tax on compensation, and documentary stamp tax, including interest and penalties for the year 2009."

[5] Docket, CTA Case No. 9523, pp. 10-50.
[6] Ibid., pp. 323-338.
[7] G.R. No. 212825, December 7, 2015.
[8] Docket, p. 370.

On June 1, 2020, the Court in Division rendered the assailed Decision. On October 16, 2020, the Court in Division rendered the questioned Resolution.

Aggrieved, the CIR filed before the Court *En Banc* this Petition for Review[9] on November 23, 2020.

On December 17, 2020, PECO filed its "Comment and Opposition (to the Petition for Review dated November 23, 2020."[10]

On January 14, 2021, the Court *En Banc* issued a Resolution referring the instant case to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for initial appearance on March 15, 2021.[11]

On March 17, 2021, the Court *En Banc* received PMC-CTA Form 6- No Agreement to Mediate, stating that the parties decided not to have their case mediated by the PMC-CTA. [12]

In the Resolution dated June 2, 2021,[13] the Court gave due course to this Petition for Review. In view thereof, the instant case was deemed submitted for decision.

On October 27, 2021, the Court *En Banc* received the parties' "Joint Motion for Approval of Compromise Agreement"[14] stating that for the purpose of avoiding and putting an end to a protracted, expensive and mutually prejudicial litigation, the parties have agreed to amicably settle the instant case.

On December 16, 2021, the Court *En Banc* noted the parties' "Joint Motion for Approval of Compromise Agreement" and ordered the parties to submit the original or certified true copy of the Judicial Compromise agreement and the National Evaluation Board (NEB) Approval or the Certificate of availment, both within fifteen (15) days from notice.[15]

On March 2, 2022, the Court *En Banc* received petitioner's "Compliance", submitting the original copy of the Judicial Compromise Agreement.

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[9] Rollo CTA EB Case No. 2372, pp. 6-22, with Annexes.
[10] Ibid., pp. 67-76.
[11] Ibid., pp. 78-79.
[12] Ibid., p. 82.
[13] Ibid pp. 82-83.
[14] Ibid., pp. 84-88.
[15] Ibid., pp. 103-106.

On April 4, 2022, the Court issued a Resolution ordering the parties to submit the original or certified true copy of the Certificate of Availment within ten (10) days from notice.

THE ISSUE

The main issue in this case is whether or not the Court in Division erred in granting Panay Electric Company's Petition for Review, declaring the Assessment Notices for taxable year 2009 as null and void.

THE ARGUMENTS

The CIR contends that the Court in Division erred in ruling that the assailed waivers were invalid; that RDAO No. 05-01 prescribes the form to be used in executing Waivers of Statute of Limitations; that a reading of RDAO No. 05-01 Annex "A" shows that the prescribed form of the Waivers do not require the indication of the nature and amount of tax due; that at the time of the execution of the subject waivers, the assessment was still at the investigatory stage and no Preliminary Assessment Notice has yet been issued by the BIR; that it would be impossible for petitioner to identify what the nature of PECO's tax liabilities nor the amounts pertaining thereto, as the audit investigation of PECO's books of accounts was still pending; that the inclusion of the phrase "all internal revenue tax liabilities for the year 2009" is sufficient and substantial compliance of the requirement that the waivers should indicate the nature and amount of tax due; and that the Court in Division erred in ruling that the subject assessment did not indicate a definite due tax.

On the other hand, PECO argues that the CIR's failure to timely file a motion for reconsideration of the Decision of the Court in Division is a ground for dismissal of its Petition for Review before this Court; that the Decision dated June 1, 2020 has attained finality, thus the CIR may no longer question the merits of the case before this Court; that the waivers are void because they failed to indicate the kind and amount of taxes to be assessed; that the assailed waivers are invalid, thus the prescriptive period to assess was never extended; and that the assessments are void because the tax liability remains indefinite.

THE RULING OF THE COURT *EN BANC*

After consideration, the Court *En Banc* finds that the CIR's opportunity to appeal has already lapsed since the assailed Decision has become final and executory for failure of the CIR to file a motion for reconsideration in accordance with the rules.

The CIR's right to appeal is a statutory privilege that must be exercised in the manner provided by law.

Sections 1 and 3, Rule 8 of the Revised Rules of the Court of Tax Appeals provide:

> SECTION 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
>
> SECTION 3. *Who may appeal; period to file petition.*- (a) xxx
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> xxx xxx.
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or a 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 motion and the payment of the full amount of the docket and other lawful fees and deposit of 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.

The records of this case show that the CIR received a copy of the Decision on June 2, 2020 at 12:24 p.m.[16]

Based on the above-mentioned provisions, the CIR had fifteen (15) days from June 2, 2020 or until June 17, 2020 within which to file his motion for reconsideration.

On June 18, 2020, the CIR filed before the Court in Division a "Motion for Reconsideration" dated June 18, 2020.[17]

Hence, the CIR's right to appeal has already lapsed. A party who fails to question an adverse decision by not filing a motion for reconsideration within

[16] Ibid. p. 1415.
[17] Docket, pp. 1446-1453.

the period prescribed by the rules loses its right to do so, since the decision as to him, becomes final and binding.

In *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,*[18] the Supreme Court ruled that:

> "It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.
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> The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, when it appears from the pleadings or evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim."

Since the assailed Decision of the Court in Division has become final and executory, the Court *En Banc* cannot exercise appellate jurisdiction to review the decision. Accordingly, the Court *En Banc* must deny the instant petition.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED for lack of jurisdiction**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[18] G.R. No. 185666, February 04, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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 Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice