CTA Form No. 8

19-000337-0057

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10123

FRIENDLYCARE FOUNDATION, 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. LIEZL G. BOHOL
Bureau of Internal Revenue-Revenue Region No. 7B-East NCR
25th Floor, Legal Division, The Podium West Tower
ADB Avenue, Ortigas Center, Mandaluyong City

MATA-PEREZ TAMAYO & FRANCISCO
Unit 1002, One Corporate Plaza,
845 A. Arnaiz Avenue, Legazpi Village
1229 Makati City

GREETINGS:

You are hereby notified by these presents that on **May 30, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 31, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FRIENDLYCARE FOUNDATION, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10123

Members:

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

Promulgated:
MAY 30 2024 1:50PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Friendlycare Foundation, Inc. (**petitioner**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8

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[1] Filed on 19 July 2019, Division Docket, Volume I, pp. 10-25.

[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.

in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It prays that judgment be rendered ordering the cancellation of respondent's deficiency income tax (**IT**) and value-added tax (**VAT**) assessments against petitioner in the total amount of ₱10,308,826.94 (inclusive of interest) for taxable year (**TY**) 2014.[4]

PARTIES TO THE CASE

Petitioner is a nonstock, nonprofit corporation duly organized and existing under the laws of the Republic of the Philippines.[5] It is registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification Number (**TIN**) 203-360-529-000.[6] It holds its principal office at 710 Shaw Blvd., Mandaluyong City.[7] It is primarily engaged in providing a wide range of health services.[8]

Respondent, on the other hand, is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed 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**). He or she holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City.[9] In this case, respondent is primarily represented in this case by the Legal Division of BIR Revenue Region No. 7B-East NCR[10], located in 25F The Podium West Tower, ADB Avenue, Ortigas Center, Mandaluyong City.[11]

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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:
(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 Prayer, Petition for Review, Division Docket, Volume I, p. 20.

5 Exhibit "P-1", id., Volume II, p. 507.

6 Exhibit "P-15", id., p. 769.

7 Id.

8 Id.

9 Paragraph 1, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., p. 421.

10 Id.

11 See Notice of Change of Address dated 09 November 2020, id., p. 495.

FACTS OF THE CASE

On 02 June 2016, the BIR issued a Letter of Authority (**LOA**) with Reference No. LOA-041-2016-00000338[12] (SN: eLA201500016245) through then Regional Director (**RD**) of Revenue Region No. 007-Quezon City, Alfredo V. Misajon (**Misajon**). The LOA authorized Revenue Officer Christian Oliver de Dios (**RO De Dios**) and Group Supervisor Sofia Gallenero (**GS Gallenero**), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period 01 January 2014 to 31 December 2014.

On 29 September 2017, petitioner received a Preliminary Assessment Notice[13] (**PAN**) with Details of Discrepancies dated 28 September 2017, informing it of its alleged IT, VAT and Expanded Withholding Tax (**EWT**) deficiencies amounting to ₱17,187,237.10, inclusive of interest. On 13 October 2017, petitioner filed its Reply thereto.[14]

Thereafter, on 23 October 2017, petitioner received a Formal Letter of Demand with Details of Discrepancies and Assessment Notices[15] (**FLD/FAN**), all issued by the BIR on even date. The FLD/FAN demanded payment of the same deficiencies as stated in the PAN, this time amounting to ₱17,422,772.62 (as adjusted for incremental interest).

On 21 November 2017, petitioner filed a Protest against the FLD/FAN, requesting for reinvestigation with a commitment to submit the pertinent supporting documents.[16]

On 29 November 2018, petitioner received a Final Decision on Disputed Assessment[17] (**FDDA**) with attached Details of Discrepancies, both dated 26 November 2018, signed by then RD Marina C. De Guzman (**RD De Guzman**), directing petitioner to pay an alleged deficiency IT, EWT and VAT in the amount of ₱10,366,086.95, including surcharges and interest broken down as follows:

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12 Exhibit "P-3", id., p. 522.
13 Exhibit "P-9", id., pp. 541-545.
14 Exhibit "P-10", id., pp. 546-557.
15 Exhibit "P-11", id., pp. 603-610.
16 Exhibit "P-12", id., pp. 611-623.
17 Exhibits "P-2" and "P-2-a", id., pp. 517-521.

Tax Type	Basic Tax Due	Interest	Total Amount Due
IT	₱1,730,812.49	₱1,122,894.24	₱2,853,706.73
VAT	4,405,956.73	3,049,163.48	7,455,120.21
EWT	33,731.28	23,528.73	57,260.01
Total	**₱6,170,500.50**	**₱4,195,586.45**	**₱10,366,086.95**

Unsatisfied, on 21 December 2018, petitioner filed a Request for Reconsideration with respondent, contesting the findings contained in the FDDA.[18]

Petitioner continued to await respondent's decision upon its Request for Reconsideration. It claims that, in the *interim*, on 16 July 2019, it paid the EWT component of the assessment in the amount of ₱57,260.01, *via* BIR's eFiling and Payment System (**eFPS**).[19] As such, only the remaining items of assessment, *i.e.*, IT and VAT, totaling ₱10,308,826.94, remain as the subject of its eventual Petition for Review.

Over respondent's continued inaction, petitioner filed the present petition on 19 July 2019.[20] The case was initially raffled to this Court's Second Division.

PROCEEDINGS BEFORE THIS COURT

On 05 August 2019, the Court served Summons[21] on respondent.

On 21 October 2019, following two extension periods that the Second Division granted[22], respondent filed his or her Answer.[23] In the Answer, respondent essentially interposed that petitioner is liable for both deficiency IT and VAT, proffering factual and legal bases therefor. Respondent likewise highlighted that tax assessments are to be presumed correct in accordance with the presumption of regularity in an RO's conduct of an investigation.[24]

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18 Exhibit "P-13", id., pp. 679-688.
19 Par. 18, III. Statement of Facts, Petition for Review, id., Volume I, p. 14.
20 Supra at note 1.
21 Division Docket, Volume I, p. 35.
22 See Orders dated 23 August 2019 and 24 September 2019, id., pp. 40 and 44, respectively.
23 Id., pp. 45-51.
24 Id.

The Pre-Trial Conference was initially set on 21 November 2019 through a Notice of Pre-Trial Conference dated 24 October 2019.[25] However, on 07 November 2019, petitioner moved to defer the Pre-Trial Conference, citing time constraints in preparing its voluminous exhibits for its Pre-Trial Brief.[26] On 11 November 2019, the Court granted the same and reset the Pre-Trial conference to 05 December 2019.[27]

On 19 November 2019, respondent this time moved to reset the Pre-Trial Conference anew, as the handling counsel was going to be on leave on the date when the Pre-Trial Conference was reset.[28] On 27 November 2019, the Court again moved the Pre-Trial Conference to 30 January 2020.[29]

Ahead of the schedule for the Pre-Trial Conference, on 24 January 2020, petitioner filed its Pre-Trial Brief[30] through registered mail. Meanwhile, on 27 January 2020, respondent submitted his or her Pre-Trial Brief.[31]

On 30 January 2020, when the case was called for Pre-Trial Conference, the parties manifested their intent to have the case mediated.[32] In line with the agreement of the parties, and pursuant to Parts I.1.A[33] and II[34] of A.M. No. 11-1-5-SC-PHILJA or the Interim

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25 Id., pp. 53-54.
26 See Motion to Defer Pre-Trial Conference, id., pp. 55-58.
27 See Order dated 11 November 2019, id., p. 60.
28 See Motion to Reset Pre-Trial Conference, id., pp. 70-72.
29 See Order dated 27 November 2019, id., p. 73.
30 Id., pp. 246-255.
31 Id., pp. 75-77.
32 See Minutes of the Hearing and Order, both dated 30 January 2020, id., Volume II, pp. 412 and 413, respectively.
33 I. *Coverage*
I.1. The following cases may be referred to mediation:
A. *Cases within the jurisdiction of the Divisions*
1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC), or other laws administered by the Bureau of Internal Revenue (BIR);
2. Inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case the inaction shall be deemed a denial upon the lapse of said period[.]
34 II. *Referral to Mediation*
The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.

Guidelines for Implementing Mediation in the Court of Tax Appeals, referred the case to the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**), ordering the parties to appear before it on 18 February 2020.[35] However, the parties decided not to have their case mediated by the PMC-CTA.[36] In its Resolution dated 09 June 2020[37], the Court noted the same, and set the case for Pre-Trial anew on 22 June 2020.

On 22 June 2020, the Pre-Trial Conference proceeded as scheduled.[38] On 21 July 2020, the parties submitted their Joint Stipulation of Facts and Issues[39] (**JSFI**). A Pre-Trial Order[40] was then issued on 03 August 2020, marking the termination of the Pre-Trial.

Meanwhile, on 25 September 2020, respondent submitted the Judicial Affidavit of RO Angelic G. Quitoriano (**RO Quitoriano**).[41]

On 05 October 2020, trial ensued with petitioner offering the testimony of its lone witness, Teresita Panganiban (**Panganiban**), petitioner's President, who was to testify through her Judicial Affidavit.[42]

On the witness stand, Panganiban identified the several exhibits she had referred to in her Judicial Affidavit. These exhibits mainly dealt with the documents and issuance BIR issued to petitioner over the course of its examination of the latter's books, from the LOA to the FDDA. She also testified on the documents allegedly supporting petitioner's position as a charitable nonstock and nonprofit entity exempt from IT and VAT (upon its transactions). She also testified as to the events that transpired prior to the filing of petitioner's claim and her role in the latter's participation in the proceedings leading to the eventual issuance of the

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A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

35 See Resolution dated 30 January 2020, Division Docket, Volume II, p. 415.
36 See No Agreement to Mediate dated 28 February 2020, id., p. 416.
37 Id., p. 418.
38 See Minutes of the Hearing and Order, both dated 22 June 2020, id., pp. 419 and 420, respectively.
39 Id., pp. 421-426.
40 Id., pp. 429-433.
41 See Compliance dated 23 September 2020, id., pp. 435-436.
42 See Minutes of the Hearing and Order, both dated 05 October 2020, id., pp. 488 and 489, respectively.

FDDA against petitioner. She also discussed petitioner's position on the alleged IT and VAT deficiencies and described the supporting documentation petitioner possesses in support thereof. Her testimony aligned with petitioner's stance that its tax-exempt status was established through BIR's issuance of a tax exemption ruling in its favor, while the BIR questioned the lack of renewal or revalidation of the same. In relation to this, she confirmed that the BIR had since released a Certificate of Tax Exemption in *lieu* of their renewed/revalidated ruling. According to Panganiban, the same remained pending for release after they have submitted petitioner's amended Articles of Incorporation pursuant to the BIR's requirement (communicated to petitioner during the renewal process) that the said Articles must contain a non-inurement clause providing that no part of petitioner's net income shall inure to the benefit of any private individual.[43]

As respondent's counsel did not appear, *per* oral motion of petitioner's counsel, the Second Division deemed Panganiban's cross-examination as waived, thereby deeming her testimony complete and terminated accordingly.[44]

On 28 October 2020, respondent transmitted the entire BIR Records for the present case, consisting of one docket with 1,405 pages.[45] The Second Division noted the same in its Resolution dated 03 November 2020.[46]

On 16 November 2020, petitioner filed its Formal Offer of Documentary Exhibits (**FOE**).[47] Respondent failed to file any comment thereon.[48] In its Resolution dated 15 February 2021[49], the Second Division admitted all but one of petitioner's offered exhibits. In particular, the offered Exhibit "**P-14**"[50] was denied admission as petitioner failed to present the document's original or certified true copy for comparison.

[43] Exhibit "P-22", id., pp. 813-831.
[44] Supra at note 42.
[45] See Compliance dated 28 October 2020, Division Docket, Volume II, p. 490.
[46] See Minute Resolution dated 03 November 2020, id., p. 487.
[47] Id., pp. 501-506.
[48] See Records Verification dated 17 December 2020, id., p. 833.
[49] Id., pp. 835-836.
[50] BIR RR7 Ruling No. RR7-003-254 dated 25 September 2002.

On 04 March 2021, in an attempt to remedy the denial, petitioner filed a "Motion for Partial Reconsideration (Re: Resolution dated February 15, 2021) [**MPR**] and Motion to Allow Petitioner to Serve Request for Admission"[51] pursuant to Section 1[52], Rule 26[53] of the 2019 Revised Rules of Civil Procedure.[54] Respondent, once again, failed to comment on either motion.[55]

Thereafter, on 27 July 2021, the Second Division granted the latter of petitioner's motions. Considering that petitioner had already furnished respondent a copy of the subject "Request for Admission" (as part of the attached annexes accompanying petitioner's 04 March 2021 motions), the Second Division accordingly ordered respondent to submit a sworn statement (admitting the genuineness of Exhibit "**P-14**") within fifteen (15) days.[56] However, respondent failed to comply.[57]

Based on the foregoing, in its Resolution dated 10 March 2022[58], the Second Division granted petitioner's abovementioned MPR and admitted the remaining Exhibit "**P-14**".[59] With respondent failing to submit the requested sworn statement, the genuineness of the aforementioned Exhibit was deemed admitted, in accordance with Section 2[60], Rule 26[61] of the 2019 Revised Rules of Civil Procedure.[62]

Meanwhile, numerous circumstances led to the extended postponement of respondent's turn to present witnesses. Initially set

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51 Division Docket, Volume II, pp. 837-841.

52 SEC. 1. *Request for Admission.* — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.

53 *Admission by Adverse Party.*

54 A.M. No. 19-10-20-SC.

55 See Records Verification dated 08 July 2021, Division Docket, Volume II, p. 854.

56 See Resolution dated 27 July 2021, id., pp. 856-857.

57 See Records Verification dated 03 February 2022, id., p. 862.

58 Id., pp. 864-865.

59 Supra at note 50.

60 SEC. 2. *Implied Admission.* — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) calendar days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny those matters.

61 Supra at note 53.

62 Supra at note 54.

after the Second Division acts upon petitioner's FOE[63], the Court held the schedule in abeyance until after petitioner's above motions shall have already been resolved.[64] Subsequent thereto, the Second Division deferred the new schedule[65] on multiple instances, primarily on account of respondent's counsel's urgent health matters.[66]

On 25 January 2023, RO Quitoriano finally took the witness stand as respondent's sole witness.[67]

RO Quitoriano testified, by way of her Judicial Affidavit[68], on what transpired during the audit and assessment of petitioner and identified the relevant documents the BIR issued during the conduct thereof. She mentioned that she took over the investigation pursuant to a Memorandum of Assignment (**MOA**) issued after the original RO had resigned. She attested to preparing a Memorandum Report and RO's Audit Report that led to the issuance of the PAN against petitioner. She further confirmed that the FDDA was issued based on the equivalent documents she prepared during the reinvestigation of petitioner's case, to which she was assigned anew by another MOA.[69]

On cross-examination, RO Quitoriano confirmed that she was not among the officers authorized in the LOA initially issued for petitioner's TY 2014 audit. She clarified further that in taking over the investigation as the previous RO had resigned, no new LOA bearing her name was issued (though the BIR did issue a MOA for the purpose). No re-direct examination followed.[70]

On 02 February 2023, respondent filed his or her FOE comprised of Exhibits "**R-1**" through "**R-25-A**"[71], with petitioner filing its comment thereon on 17 February 2023.[72]

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63 See Resolution dated 15 February 2021, supra at note 49.
64 See Resolution dated 27 July 2021, supra at note 56.
65 See Resolution dated 10 March 2022, supra at note 58.
66 See Order dated 27 April 2022, Notice of Resetting dated 15 June 2022, Notice of Hearing dated 31 August 2022, and Resolution dated 27 September 2022, Division Docket, Volume II, pp. 871-873 and 884.
67 See Minutes of the Hearing and Order, both dated 25 January 2023, id., pp. 885 and 886-887, respectively.
68 Exhibit "R-25", id., pp. 437-446.
69 Id.
70 Supra at note 67.
71 Division Docket, Volume II, pp. 889-893.
72 Comment/Opposition (Re: Respondent's Formal Offer of Evidence/Exhibits dated February 2, 2023), id., pp. 894-898.

In the Resolution dated 12 April 2023[73], except for "**R-25**"[74] and "**R-25-A**"[75], pertaining to RO Quitoriano's Judicial Affidavit and her signature therein, respectively, the Second Division denied all of respondent's offered exhibits (as the corresponding marked exhibits were absent from the case's records). The same Resolution ordered the parties to file their respective memoranda.

Later, on 18 May 2023, petitioner filed its Memorandum.[76] Respondent, however, failed to file one.[77]

On 29 May 2023, pursuant to Administrative Circular (**AC**) No. 01-2023 dated 23 May 2023[78], the instant case was transferred from the CTA's Second Division to its First Division. The latter then submitted the case for decision on 02 June 2023.[79]

ISSUE

As the parties so stipulated during the Pre-Trial, the following issue was submitted for this Court's determination —

> WHETHER PETITIONER FRIENDLYCARE FOUNDATION, INC. IS LIABLE FOR DEFICIENCY INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) FOR TAXABLE YEAR (TY) 2014.[80]

ARGUMENTS

In support of its petition, petitioner argues the assessment for TY 2014 (for deficiency IT and VAT) is null and void as the RO that conducted the examination of its books was not clothed with the requisite authority granted by a valid LOA. Petitioner highlights that the investigation was thus carried out in violation of its right to due process.

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73 Id., pp. 900-901.
74 Judicial Affidavit of RO Angelic Quitoriano.
75 Signature of RO Angelic Quitoriano.
76 Division Docket, Volume II, pp. 902-924.
77 See Records Verification dated 29 May 2023, id., p. 925.
78 Reorganizing the Divisions of the Court.
79 See Minute Resolution dated 02 June 2023, Division Docket, Volume II, p. 926.
80 See Joint Stipulation of Facts and Issues (JSFI), id., p. 422.

Moreover, petitioner avers that the FLD/FAN issued is similarly null and void for being a mere reproduction of the earlier issued PAN (as it bears the same principal amounts and was only updated with additional interest). Petitioner further attacks the validity of the FLD/FAN in saying that it lacked due dates in the ANs, thereby failing to impute a definite amount of tax liability and a demand for its payment.

Finally, petitioner explained that it could not be held liable for deficiency IT, as it was a nonstock, nonprofit charitable corporation that was exempted by law from IT, while it could not have been liable for deficiency VAT as its medical services were allegedly VAT-exempt.

Meanwhile, respondent argues that in the absence of any irregularities in their performance of duties, the investigating ROs' findings shall stand. Respondent points out that the ROs' assessments, as approved by their superiors, enjoy the presumption of correctness and regularity, while the burden to overturn such presumption falls on petitioner. According to respondent, petitioner had failed to do so.

As to petitioner's alleged IT deficiency, respondent denounces the invoked tax exemption, highlighting that petitioner was noncompliant with the requirements to avail such exemption when it allegedly failed to apply for a current Tax Exemption Ruling (**TER**) for the pertinent TY.

On the other hand, as to petitioner's alleged VAT deficiency, respondent disagrees that the transactions that gave rise to the deficiency did not actually qualify as VAT-exempt as the subject services were supposedly rendered by professionals. Respondent emphasizes that such are excluded from the coverage of the exemption in Section 109(1)(G)[81] of the NIRC of 1997, as amended.

RULING OF THE COURT

Before delving into the merits of the case, We shall first resolve whether this Court has jurisdiction over the instant petition.

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[81] SEC. 109. *Exempt Transactions*. — ...

...

(G) Medical, dental, hospital and veterinary services except those rendered by professionals[.]

THE COURT OF TAX APPEALS (CTA) HAS NO JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[82] Section 7(a)(1) of Republic Act (**RA**) No. 1125[83], as amended by RA 9282[84], provides:

> ...
>
> **Sec. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **<u>Decisions</u> of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.][85]
>
> ...

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[86]

The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the NIRC of 1997, as amended, in part, reads as follows:

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82 *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.

83 AN ACT CREATING THE COURT OF TAX APPEALS.

84 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), 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.

85 Italics in the original text, emphasis and underscoring supplied.

86 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

...

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 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 <u>receipt</u> of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[87]

...

The afore-quoted Section 228 is implemented by Revenue Regulations (**RR**) No. 12-99[88], as amended by RR No. 18-2013[89], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides the taxpayer's options on disputed assessments, to wit:

...

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

...

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[87] Italics in the original text, emphasis and underscoring supplied.

[88] 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.

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

Sec. 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 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 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. ...

...

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or **<u>(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision</u>.** 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.
>
> **If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may <u>either</u>: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.**
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.[90]
>
> ...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[91] (**PAGCOR**) and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[92], 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:

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90 Italics in the original text, emphasis and underscoring supplied.

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

92 Supra at note 82.

1. **If the protest is wholly or partially denied by the CIR <u>or</u> 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 in the following wise:

> ...
>
> 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.**[93]
>
> ...

Based on the foregoing provisions and jurisprudence, in cases where the CIR's duly authorized representative denies a taxpayer's protest, the latter is given two (2) alternative remedies. The aggrieved taxpayer may either:

(1) appeal to the CTA within 30 days from the date of receipt of the representative's decision; or,

(2) to elevate its protest through a request for reconsideration to the CIR, within the same 30-day period, otherwise referred to as an "administrative appeal".

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93 Supra at note 91; Emphasis supplied.

When the taxpayer opts for the latter of the two remedies above, and its administrative appeal is not acted upon by the CIR within a 180-day period **counted from the filing of the protest**, the concerned taxpayer may then either:

(1) appeal to the CTA within 30 days after the expiration of the 180-day period; or,

(2) **await the final decision of the CIR on the disputed assessment**, and appeal such final decision to the CTA within 30 days from receipt of a copy thereof.

Revisiting the facts of the instant case, below are the pertinent dates in determining whether petitioner's appeal to this Court (through its Petition for Review) was timely made:

Date	Event
23 October 2017	Petitioner received the FLD/FAN dated 23 October 2017.[94]
21 November 2017	Respondent's duly authorized representative received petitioner's "Protest to the Final Assessment Notice" dated 21 November 2017, requesting for reconsideration of the FLD/FAN, filed within the 30-day reglementary period reckoned from petitioner's receipt of the FLD/FAN.[95]
20 May 2018	**End of the 180-day period from the receipt of petitioner's protest.**
19 June 2018	**End of the 30-day period to file a judicial appeal (of the inaction) before this Court.**
29 November 2018	Petitioner received the FDDA with attached Details of Discrepancies, both dated 26 November 2018.[96]
21 December 2018	Petitioner elevated the FDDA to the CIR *via* administrative appeal (through a Request for Reconsideration), within the 30-day reglementary period.[97]
19 July 2019	**Petitioner filed a Petition for Review before this Court.**[98]

94 Supra at note 15.
95 Supra at note 16.
96 Supra at note 17.
97 Supra at note 18.
98 Supra at note 1.

In this case, petitioner opted to file an administrative appeal, through a Request for Reconsideration on the FDDA[99], before respondent CIR on 21 December 2018. On the belief that it was granted a fresh 180-day period from 21 December 2018, petitioner claimed that such period lapsed on 19 June 2019. Thus, counting 30 days therefrom, petitioner alleged that its Petition for Review filed on 19 July 2019 was filed within the reglementary period.

To be clear, the 180-day period referred to in Section 228 of the NIRC of 1997, as amended, and in Section 3.1.4 of RR No. 12-99[100], as amended by RR No. 18-2013[101], is confined only to the period within which either the CIR or his or her duly authorized representative may act on the initial protest against the FLD/FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option (after the 180-day period expires) is to **wait for the CIR's decision before elevating its case to the CTA**. In other words, when a taxpayer opts to file an administrative appeal, the CIR is *not* given a fresh or separate 180-day period within which to decide the administrative appeal.

Consistent with the foregoing rules and the ruling in *PAGCOR*, petitioner could have already filed its Petition for Review before this Court within 30 days from the lapse of the 180-day period, or until **19 June 2018**; or within 30 days from receipt of the FDDA on 29 November 2018, or until **29 December 2018** (as the FDDA already served as the denial of its protest).

Unfortunately, petitioner opted to *still* file an administrative appeal against the FDDA before respondent CIR. Then, without waiting for any action from respondent CIR, petitioner filed the instant Petition for Review before this Court on 19 July 2019.

In the case of *Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. Commissioner of Internal Revenue*[102], the Supreme Court declared categorically that there is no new or separate 180-day period granted to the CIR to act on the administrative appeal, to wit:

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99 See note at 18.
100 Supra at note 88.
101 Supra at note 89.
102 G.R. No. 258101 (Resolution), 19 April 2022; Citations omitted and emphasis supplied.

> ...
>
> As correctly ruled by the CTA *EB*, Section 228 of Republic Act (RA) No. 8424, or the National Internal Revenue Code, as amended (hereafter, Tax Code) unmistakably provides that the one hundred eighty (180)-day period should be reckoned from the "submission of documents," which in this case was on 19 September 2016. Perforce, the statutory 180-day period lapsed on 18 March 2017. From such point, petitioner had thirty (30) days, or until 17 April 2017, to elevate the case to the CTA. However, it filed its Petition only on 2 June 2017, which is beyond the reglementary period provided by the law. Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner on Internal Revenue (respondent), including the option of elevating the protest to the respondent himself through a request for reconsideration. **However, nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.** As aptly observed by the CTA *EB*, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. Necessarily, taxpayers must exercise their rights in the manner and within the periods provided by statute and the pertinent regulations. **"It bears to stress that the perfection of an appeal within the statutory period is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review."**
>
> ...

The Court *En Banc* echoed the foregoing declarations in the case of *Larry E. Segaya/Les Engineering and Construction v. Commissioner of the Bureau of Internal Revenue*[103] where We stated:

> ...
>
> In determining the timeliness of an appeal from the inaction of the CIR, a plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended, reveals that there is only **one (1) "180-day period" of inaction** to speak of which shall be counted <u>from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation) and not from the date when the decision of the CIR's authorized representative was appealed to the CIR</u>.

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103 CTA EB No. 2526, 13 December 2022; Emphasis and underscoring in the original text and italics supplied.

> *There is nothing in Section 228 of the NIRC of 1997, as amended and RR No. 12-99, as amended, which provides for a separate 180-day period for the CIR's representative to act on the protest and another 180-day period for the CIR to decide the appeal on the decision rendered by the CIR's authorized representative for the purpose of computing the 30-day period within which to appeal to the CTA.*
>
> What is clear is that in case there is inaction on the part of the CIR on an administrative appeal, the options of the taxpayer is to (1) appeal to the CTA within thirty (30) days from the expiration of the 180-day period (counted from the filing of the protest if the protest is a request for reconsideration or from the submission of supporting documents if the protest is a request for reinvestigation) or (2) await the decision of the CIR (which decision may be issued even after the lapse of the 180-day period) and then file an appeal with the CTA within thirty (30) days from receipt of the decision.
>
> ...

Likewise, in *Commissioner of Internal Revenue v. Ritegroup, Incorporated*[104], We consistently ruled that:

> ...
>
> Nevertheless, it must be stressed that the 180-day period referred to in Section 228 of the NIRC of 1997 is confined only the period within which either the CIR or his/her duly authorized representative may act on the initial **protest against** the FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to await for the CIR's decision before it can elevate the case to this Court. In other words, upon filing of an administrative appeal, the concerned taxpayer is not given a fresh or separate 180-day period.
>
> Even RR No. 12-99 does not provide for a fresh or separate 180-day period for the CIR to decide the appealed decision of the latter's duly authorized representative. **A plain reading of Section 228 of the NIRC of 1997 and Section 3.1.5 of RR No. 12-99 reveals that there is only one (1) 180-day period to speak of.**
>
> ...

As can be gleaned from the foregoing pronouncements, there is a **<u>singular 180-day period</u>**, *i.e.*, the period counted from the filing of the protest or the submission of the required documents.

[104] CTA EB Case Nos. 1686 & 1687, 25 March 2019; Emphasis in the original text and supplied.

Accordingly, if an authorized representative of the CIR denies the protest within the 180-day period and the taxpayer appeals to the CIR, the CIR only has the **remainder of the 180-day period within which to act.** If the same period lapses with no action from the CIR, the taxpayer can appeal to this Court within **30 days after the lapse of the said remaining period.** It also follows that if the taxpayer **waits for the decision of the CIR's representative and the same is issued after the lapse of the 180-day period**, the same may be appealed to this Court. In the latter case, **the 180-day period is no longer a consideration** and the only remedy for the taxpayer is **to wait for the CIR's decision before elevating its case to the CTA, if the same is not favorable.**

Considering that the 180-day period has already lapsed by the time respondent issued the FDDA on 26 November 2018, there is no longer any appealable inaction on the part of respondent. It is only after respondent CIR acts on petitioner's administrative appeal that petitioner could file an appeal before this Court.

Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint.[105] Thus, the limits of this Court's jurisdiction is unaffected by petitioner's erroneous interpretation of the law. In *Glynna Foronda-Crystal v. Aniana Lawas Son*[106], the Supreme Court aptly stated - "[**i**]**n law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution**". In thus losing our authority to review the subject deficiency assessment, this Court sees no relevant need to further tackle the parties' other issues as these will not change the outcome of the case.

WHEREFORE, the foregoing premises considered, the present Petition for Review filed by petitioner Friendlycare Foundation, Inc. on 19 July 2019 is hereby **DISMISSED** for lack of jurisdiction.

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105 *Editha Padlan v. Elenita Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.

106 G.R. No. 221815, 29 November 2017.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

<u>CERTIFICATION</u>

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