REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

COUNTRY BANK, RURAL BANK OF BONGABONG, INC.,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10864

Members:

UY, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

MAY 0 5 2023 4:00 pm

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RESOLUTION

For resolution of this Court is petitioner's ***Motion for Reconsideration*** filed on 17 February 2023 seeking reconsideration of the Court's *Resolution* dated 31 January 2023, with respondent's ***Comment (on Petitioner's Motion for Reconsideration)*** filed on 20 March 2023.

On 31 January 2023, the Court promulgated its *Resolution* on respondent's *Motion for Early Resolution of the Issue of Jurisdiction of the Honorable Court* [1] with the following disposition:

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

In its *Motion*, petitioner insists that it is the Letter dated 4 April 2022 that is appealable before the Court, and hence, the 30-day period to file an appeal must be counted from the receipt of such Letter. Petitioner posits that it is such Letter which

[1] Filed on 21 October 2022.

declared with finality the decision not to lift the Warrants of Garnishment ("**WOG**").[2] Citing jurisprudence, petitioner argues that respondent should indicate to the taxpayer in clear and unequivocal language what constitutes their final determination of the disputed assessment in order for the taxpayer to know when its right to appeal accrues[3] so as to avoid it "grope in the dark as to which communication or action from the Bureau of Internal Revenue may be the decision appealable to the tax court."[4]

In his *Comment*, respondent reiterated its arguments in his *Motion for Early Resolution of the Issue of Jurisdiction of the Honorable Court, i.e.,* that the assessment has already become final and executory and is, therefore, no longer appealable before this Court. Respondent once again points out that the Formal Letter of Demand ("**FLD**")/Final Assessment Notice ("**FAN**") was received by Mr. Raul Verian, the branch head of petitioner's bank, on 29 March 2021. Thus, according to respondent, petitioner only had until 28 April 2021, or 30 days from the date of receipt, within which to file its protest against the FLD/FAN. However, petitioner only filed its protest on 14 May 2021.

Respondent further submits, that even assuming the protest was timely filed, the instant *Petition for Review* must nevertheless be dismissed for being not timely filed. Respondent points out to a letter signed by Regional Director ("**RD**") Florante R. Aninag dated 28 June 2021, and another letter of denial from RD Aninag denying petitioner's request to have the warrants of garnishment lifted dated 22 October 2021. According to respondent, petitioner only opted to file the present *Petition for Review* from receipt of the 4 April 2022 letter.

By way of recall, the timeline of correspondences between petitioner and respondent is provided below:

Date	Correspondence
18 March 2021	Date of the FLD/FAN issued by respondent against petitioner.[5]
29 March 2021	Petitioner's branch was given an "advanced photocopy" of the FLD. [6]

[2] Motion for Reconsideration, par. 5.
[3] Id., par. 6.
[4] Id., par. 8.
[5] Annex "L", Petition for Review; Division Docket, p. 49.
[6] *Id.*, par. 4.10.

Date	Correspondence
	Respondent avers that this is the date of receipt of petitioner of the FLD.[7]
14 April 2021	Petitioner alleges to have "officially received" the FLD.[8]
14 May 2021	Petitioner filed its *Protest* against the FLD, addressed to RD Aninag.[9]
28 June 2021	Respondent issues a *Letter* denying petitioner's *Protest* for being allegedly filed out of time.
28 July 2021	Date of issuance of the WOGs.[10]
13 August 2021	Banco de Oro informs petitioner of the WOGs.[11]
16 August 2021	Development Bank of the Philippines informs petitioner of the WOGs.[12]
23 August 2021	Petitioner writes a *Letter* to RD Aninag in response to the 28 June 2021 *Letter.*[13]
31 August 2021	Counsel for petitioner writes a *Letter* addressed to Atty. Abo of RDO 63, requesting for the lifting of the WOGs.[14]
2 November 2021	Petitioner receives a *Letter of Denial* signed by RD Aninag in relation to petitioner's 23 August 2021 and 31 August 2021 *Letters*. The *Letter* is dated 22 October 2021.[15]
26 November 2021	Petitioner writes a *Letter* to RD Aninag for the lifting of the WOGs in response to respondent's 22 October 2021 *Letter.*[16]
18 March 2022	Counsel for petitioner files an *Affidavit-Complaint* before the Presidential Anti-Corruption Commission praying for the removal from service of the involved BIR officers.[17]
21 April 2022	Petitioner received a *Letter* signed by RD Aninag denying with finality its request for lifting of the WOGs. The *Letter* is dated 4 April 2022.[18]
23 May 2022	Petitioner filed its *Petition for Review*.

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[7] *Supra* at note **Error! Bookmark not defined.**.
[8] Petition for Review, par. 4.11.
[9] Annex "M", Petition for Review; Division Docket, pp. 65-66.
[10] Division Docket, pp. 68 and 70.
[11] Annex "N", Petition for Review; Division Docket, p. 67.
[12] Annex "O", Petition for Review; Division Docket, p. 69.
[13] Annex "P", Petition for Review; Division Docket, pp. 71-72.
[14] Annex "Q", Petition for Review; Division Docket, pp. 73-74.
[15] Annex "T", Petition for Review; Division Docket, p. 131.
[16] Annex "U", Petition for Review; Division Docket, p. 132-133.
[17] Annex "S", Petition for Review; Division Docket, pp. 78-85.
[18] Annex "B", Petition for Review; Division Docket, pp. 26-27.

We reiterate the assailed Resolution as to our assent with respondent in his argument that the instant *Petition for Review* is filed out of time.

Again, in *CIR vs. South Entertainment Gallery, Inc.*,[19] the Supreme Court ruled that the 30-day period to appeal before the CTA shall be counted from the receipt of the WDL, or by analogy in this case, the WOG. We quote:

> "...Failure to comply with the **30-day period** would deprive the Court of Tax Appeals of jurisdiction to hear and try the case.
>
> ...On June 22, 2010, a Warrant of Distraint and Levy was issued and served against respondent.
>
> The Warrant of Distraint and Levy on June 22, 2010 constitutes a constructive denial or rejection of respondent's claim in its June 19, 2008 letter. It is petitioner's final decision on respondent's belated protest that is appealable to the Court of Tax Appeals. **Respondent should have filed its appeal to the Court of Tax Appeals <u>within 30 days</u>** from June 22, 2010, or on July 22, 2010, but it failed to do so. Instead, respondent filed a request for withdrawal and cancellation of the Warrant of Distraint and Levy on September 29, 2010, or 99 days from receipt of the Warrant.
>
> ... ...
>
> At any rate, in instances when the Commissioner, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, <u>this Court has considered this as an implied denial</u>. The taxpayer's remedy then was to **appeal to the Court of Tax Appeals <u>within 30 days</u> from the date that it was notified of the warrant** or collection suit.
>
> ... ...
>
> In this case, respondent's request for withdrawal and cancellation of the Warrant of Distraint and Levy was filed on September 29, 2010, or only after **99 days** from receipt of the Warrant. Petitioner does not deny receipt of respondent's reply letter (containing its protest) to the preliminary collection letter. Finally, there was no such categorical statement in the letter-response dated February 3, 2011 of the Bureau of Internal Revenue Regional Director Romulo L. Aguila, Jr..

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[19] G.R. No. 225809, 17 March 2021.

> Parenthetically, the **30-day period to appeal** had long lapsed when respondent filed its petition for review on March 31, 2011. **Respondent's belated request for cancellation and withdrawal of the Warrant did not serve to extend the thirty (30)-day period to appeal**. "A taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals, is a mere statutory right that may be waived or lost, as in this case." Considering that the petition for review was filed way beyond the **30-day prescriptive period**, the Court of Tax Appeals should have **dismissed the appeal on the ground of lack of jurisdiction**.[20]

In *Jowelles Autoparts, Inc. vs. BIR*,[21] the Supreme Court stated:

> ... Since petitioner questioned the validity of the warrant of distraint and/or levy, the period to file an appeal commenced from the date of receipt of said warrant.

We also reiterate our observation in the assailed Resolution:

> In the instant case, petitioner seeks to assail the validity of the WOGs. The WOGs were dated 28 July 2021. Even if such date could not be considered as the date of petitioner's receipt of the WOGs, it was informed as early as 13 August 2021 that the WOGs were issued, and petitioner obtained copies of the WOGs from its banks. In fact, by 31 August 2021, petitioner was able to write a *Letter* to respondent requesting the lifting of the said WOGs.
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> Even if it will be argued that the WOG is not an implied denial considering that it is premised on an erroneous assertion that the BIR may already proceed to collection, it must be underscored that a *Letter* requesting for the lifting of the WOGs has been sent on 31 August 2021, to which a *Letter of Denial* signed by RD Aninag was received on 2 November 2021. Even at the most lenient of interpretations, petitioner should have filed its *Petition for Review* within 30 days from receipt of the *Letter of Denial.*
>
> It bears to emphasize that petitioner wrote respondent twice, on 31 August 2021 and on 26 November 2021, requesting for the lifting of the subject WOGs, despite such procedure not being written and sanctioned in pertinent regulations. Likewise, the *Letters* were denied twice as received by petitioner on 2 November 2021 and 21 April 2022. It is only with the second *Letter of Denial* that petitioner thought of elevating the matter before this Court.

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[20] Emphasis and underscoring supplied; citations omitted.
[21] G.R. No. 243642 (Notice), 21 January 2019.

> Likewise noteworthy is the fact that recourse was first made to the Presidential Anti-Corruption Commission by filing an *Affidavit-Complaint* before the said office praying for the removal from service of the involved BIR officers before the filing of the instant *Petition for Review*.

Petitioner insists that it is the *Letter* dated 4 April 2022 which constitutes their final decision that is appealable before the CTA, hinging its claim on the phraseology employed by respondent in said *Letter*.

The last paragraph of the 4 April 2022 *Letter*, on the other hand, reads:

> In view of the foregoing, your request for lifting of the warrants of garnishment issued by the BIR against your client, the Country Bank, Rural Bank of Bongabong, Inc. is hereby **DENIED WITH FINALITY**. This serves as a demand on your client to pay its tax assessment for TY 2018 which has become final, executory and demandable.

We are unconvinced.

First, we deem it appropriate to reiterate that the WOG constitutes the implied denial of respondent on petitioner's protest applying the *South Entertainment Gallery* case.[22] This has been agreed upon by petitioner itself in its instant Motion.[23]

Second, considering that it is petitioner's admission in its *Comment* against respondent's *Motion for Early Resolution of the Issue of Jurisdiction of the Honorable Court*[24] that it is assailing the validity of the WOG, the 30-day period should be counted from its receipt of the WOG, consistent with the *Jowelles Autoparts* case.[25]

Third, it took petitioner two (2) denials of its request for the lifting of the WOG before it belatedly elevated the matter to the Court.

Fourth, pertinent rules and regulations do not sanction the writing of letters to lift WOGs issued by respondent as part of its remedies of collections.

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[22] G.R. No. 225809, 17 March 2021.
[23] Motion for Reconsideration, par. 4.
[24] Comment/Opposition [to Respondent's Motion for Early Resolution of the Issue of Jurisdiction of the Honorable Court], par. 6 and 10.
[25] G.R. No. 243642 (Notice), 21 January 2019.

Fifth, reliance by petitioner to *Surigao Electric Co., Inc. v. Court of Tax Appeals*[26] is misplaced. In the said case, the Supreme Court even **affirmed the dismissal** of the taxpayer's petition for review for being filed out of time. The Supreme Court discussed:

> A close reading of the numerous letters exchanged between the petitioner and the Commissioner clearly discloses that the letter of demand issued by the Commissioner on April 29, 1963 and received by the petitioner on May 8, 1963 constitutes the definite determination of the petitioner's deficiency franchise tax liability or the decision on the disputed assessment and, therefore, the decision appealable to the tax court. This letter of April 29, 1963 was in response to the communications of the petitioner, particularly the letter of August 2, 1962 wherein it assailed the 4th Indorsement's data and findings on its deficiency franchise tax liability computed at 5% (on the ground that its franchise precludes the imposition of a rate higher than the 2% fixed in its legislative franchise), and the letter of April 24, 1963 wherein it again questioned the assessment and requested for a recomputation (on the ground that the Government could make an assessment only for the period from May 29, 1956 to June 30, 1959). Thus, as early as August 2, 1962, the petitioner already disputed the assessment made by the Commissioner.
>
> Moreover, the letter of demand dated April 29, 1963 unquestionably constitutes the final action taken by the Commissioner on the petitioner's several requests for reconsideration and recomputation. In this letter, the Commissioner not only in effect demanded that the petitioner pay the amount of P11,533.53 but also gave warning that in the event it failed to pay, the said Commissioner would be constrained to enforce the collection thereof by means of the remedies provided by law. **The tenor of the letter, specifically the statement regarding the resort to legal remedies, unmistakably indicates the final nature of the determination made by the Commissioner of the petitioner's deficiency franchise tax liability.** [*Emphasis and underscoring supplied.*]

In the *Surigao Electric* case, which petitioner cited, the tenor of the letter stating that the Commissioner "would be constrained to enforce the collection thereof by means of the remedies provided by law" convinced the Court that such "unmistakably indicates the final nature of the determination made by the Commissioner of the petitioner's deficiency tax liability."

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[26] G.R. No. L-25289, 28 June 1974, 156 PHIL 517-524

Following this pronouncement, this Court does not see why the WOG, which is respondent's **actual enforcement** of its collection of deficiency taxes, should not be construed as having that tenor of finality that is appealable to this Court.

Finally, we quote in the *Surigao Electric* case, the Supreme Court even had the occasion to state:

> To sustain the petitioner's contention that the Commissioner's letter of June 28, 1963 denying its request for further amendment of the revised assessment constitutes the ruling appealable to the tax court and that the thirty-day period should, therefore, be counted from July 16, 1963, the day it received the June 28, 1963 letter, **would, in effect, leave solely to the petitioner's will the determination of the commencement of the statutory thirty-day period, and place the petitioner — and for that matter, any taxpayer — in a position to delay at will and on convenience the finality of a tax assessment.** This absurd interpretation espoused by the petitioner would result in grave detriment to the interests of the Government, considering that taxes constitute its life-blood and their prompt and certain availability is an imperative need. [*Emphasis and underscoring supplied.*]

Accordingly, this Court cannot support petitioner's supposition and let it dictate when the period to appeal is to be counted. An appeal is not a matter of right but is a mere statutory privilege [27] and is a matter of sound judicial discretion.[28] Hence, it is jurisdictional that an appeal must be brought within the prescribed 30-day period.[29]

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[27] *Lepanto Consolidated Mining Corp. vs. Icao*, G.R. No. 196047, 15 January 2014, 724 SCRA 646-660, citing *BPI Family Savings Bank, Inc. vs. Pryce Gases, Inc.*, G.R. No. 188365, 29 June 2011, 653 SCRA 42, 51; *National Power Corporation vs. Spouses Laohoo*, G.R. No. 151973, 23 July 2009, 593 SCRA 564; *Philux, Inc. vs. National Labor Relations Commission*, G.R. No. 151854, 3 September 2008, 564 SCRA 21, 33; *Cu-unjieng vs. Court of Appeals*, 515 Phil. 568 (2006); *Stolt-Nielsen Services, Inc. vs. NLRC*, 513 Phil. 642 (2005); *Producers Bank of the Philippines vs. Court of Appeals*, 430 Phil. 812 (2002); *Villanueva vs. Court of Appeals*, G.R. No. 99357, 27 January 1992, 205 SCRA 537; *Trans International vs. Court of Appeals*, 348 Phil. 830 (1998); *Acme Shoe, Rubber & Plastic Corporation vs. Court of Appeals*, 329 Phil. 531 (1996); and *Ozaeta vs. Court of Appeals*, 259 Phil. 428 (1989).
[28] *Muñoz vs. People*, G.R. No. 162772, 14 March 2008, 572 SCRA 258-270.
[29] *Philippine Dream Company, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 216044 (Notice), August 2020, citing *CIR vs. Villa*, 130 Phil. 3, 7 (1968) and *RCBC vs. CIR*, 524 Phil. 524, 532 (2006).

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice