REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2354** **(CTA Case No. 9678)**
-versus-	**Present:** **Del Rosario,** *P.J.,* **Castañeda, Jr.,** **Uy,** **Ringpis-Liban,** **Manahan,** **Bacorro-Villena,** **Modesto-San Pedro,** **Reyes-Fajardo,** *and* **Cui-David,** *JJ*
FIRST FAR EAST DEVELOPMENT CORPORATION, Respondent.	**Promulgated:** FEB 2 8 2022 2:12pm

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) to seek nullification of the Decision[1] dated June 4, 2020 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the 1990 tax assessments issued against petitioner for income tax, expanded withholding tax, and value-added tax in the aggregate amount of P24,357,722.32, are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

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[1] Rollo, CTA EB Case No. 2354, pp. 15-28.

and the Resolution[2] dated September 28, 2020 (assailed Resolution) of the same First 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 (Re: Decision promulgated 4 June 2020)** filed on June 30, 2020 is **DENIED** for lack of merit.
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> **SO ORDERED.**"

THE PARTIES

Petitioner CIR is a public officer with authority under the National Internal Revenue Code (NIRC) of 1997, as amended to examine taxpayer's tax liabilities, issue tax assessments, and evaluate and decide protests relative thereto. He may be served with summons and other court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent First Far East Development Corporation is a domestic corporation registered with the Bureau of Internal Revenue (BIR), with business address at BPI Building, 6768 Ayala Avenue corner Paseo de Roxas, Makati City 1226 as shown in its Certificate of Registration No. 9RC0000310751, issued by Revenue District Office No. 47, Makati City.[4]

THE FACTS

The facts of the case as found by the Court are as follows:

> "On March 6, 1992, respondent[5] issued against petitioner[6] Letters of Authority Nos. 0001567 and 0001568 for the purpose of investigating the latter's 1990 internal revenue taxes.
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> As a result of such investigation, petitioner received from respondent a Preliminary Assessment Notice (PAN).
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> Thereafter, respondent issued the Demand Letter dated May 20, 1993, with attached details of computation, together with Assessment Notice Nos.: (a) FAS 2-90-93-002290 for deficiency

[2] Rollo, pp. 29-30.
[3] Decision, p. 2.
[4] Ibid. p. 1.
[5] Petitioner CIR herein.
[6] Respondent First Far East Development Corporation herein.

IT in the amount of P20,461,695.08; (2) FAS 2-90-93-002291 for EWT in the amount of P12,361.54; and (3) FAS 2-90-93-002292 VAT in the amount of P3,883,665.70 or a total of P24,357,722.31. These Assessment Notices were received by petitioner on May 25, 1993.

On June 21, 1993, petitioner filed a letter-protest against the said tax assessments, with a request for reinvestigation. It was followed by another protest on December 3, 1993.

On October 9, 2007, petitioner filed a supplemental protest dated October 5, 2007, praying for the cancellation of the 1990 tax assessments on ground of prescription.

On August 17, 2017, petitioner received respondent's Decision dated August 9, 2017 denying its protest."[7]

On September 5, 2017, respondent filed a Petition for Review before the Court in Division, docketed as CTA Case No. 9678, entitled "*First Far East Development Corporation vs. Commissioner of Internal Revenue.*"[8]

On December 13, 2017, petitioner filed his Answer[9] to the Petition for Review.

On May 7, 2018, the parties submitted their Joint Stipulations of Facts and Issues (JSFI) before the Court in Division.[10]

As agreed upon by the parties, the issue as stated in the Joint Stipulations of Facts and Issues presented before the Court in Division is: ***"Whether or not respondent's right to collect the deficiency income tax, expanded withholding tax and value added tax (VAT) for 1990 in the aggregate amount of Twenty Four Million Three Hundred Fifty Seven Thousand Seven Hundred Twenty Two (sic) (P24, 357,722.32) has prescribed."***

On May 29, 2018, the Court in Division issued the Pre-Trial Order.[11]

Trial thereafter ensued wherein both parties presented their respective evidence.

[7] Decision, pp. 2-3. Citations omitted.
[8] Docket, pp. 10-18.
[9] Ibid., pp. 61-67.
[10] Ibid., pp. 130-133.
[11] Ibid., pp. 154-160.

Respondent submitted its Memorandum[12] on February 21, 2019, while petitioner filed his Memorandum[13] on March 4, 2019. Meanwhile, on March 7, 2019, respondent filed its "Supplemental Memorandum."[14]

In the Resolution[15] dated March 14, 2019, the Court in Division deemed the case submitted for decision.

On June 4, 2020, the Court in Division rendered the assailed Decision.[16]

On June 30, 2020, the CIR filed a "Motion for Reconsideration."[17]

On September 28, 2020, the Court in Division issued the questioned Resolution.[18]

On October 19, 2020, the CIR filed before the Court *En Banc* this Petition for Review.[19]

In the Resolution[20] dated November 19, 2020, respondent was directed by the Court *En Banc* to file its comment in this case.

On December 7, 2020, respondent filed its "Comment/Opposition (to: Petition for Review)."[21]

In the Resolution[22] dated January 5, 2021, the Court noted respondent's "Comment (On Petition for Review)" and ordered the parties to personally appear before Mediation Staff Assistant of Philippine Mediation Center- Court of Tax Appeals (PMC-CTA) on February 8, 2021 at 1:30 p.m., with or without the presence of their counsels for purposes of deciding whether or not they would agree to enter into mediation.

On February 8, 2021, the Court *En Banc* received PMC-CTA Form 6- No Agreement to Mediate[23] stating that the parties decided not to have their case mediated by the Philippine Mediation Center Unit- CTA.

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[12] Ibid., pp. 243-251.
[13] Ibid., pp. 254-261.
[14] Ibid., 262-263.
[15] Ibid., p. 265.
[16] Ibid., pp. 271-284.
[17] Ibid., pp. 285-291.
[18] Ibid., pp. 304-305.
[19] Rollo, pp. 1-10.
[20] Ibid., pp. 32-33.
[21] Ibid., pp. 34-35.
[22] Ibid., pp. 37-38.
[23] Ibid., p. 39.

On March 1, 2021, the Court *En Banc* issued a Resolution[24] noting PMC-CTA Form No. 6- No Agreement to Mediate. Accordingly, the instant case was deemed submitted for decision.

THE ISSUE

The main issue in this case is ***Whether or not the Court in Division erred when it cancelled the deficiency income tax, expanded withholding tax and VAT assessments issued against respondent.***

THE ARGUMENTS

Petitioner CIR contends the right to collect deficiency taxes from respondent corporation has not yet prescribed; that petitioner's right to collect taxes may be suspended when a taxpayer requests for reinvestigation which is granted by the CIR; that valid assessment notices were sent and received by respondent; that a request for reinvestigation was filed on June 21, 1993; that a Notice of Hearing was sent by the BIR to respondent on April 5, 1994; that the said Notice of Hearing required respondent to present documentary evidence in support of the protest and to cross-examine the investigating officer; that respondent's request for reinvestigation was impliedly granted by the CIR by the actions of the petitioner; and that respondent failed to dispute the audit findings of the CIR.

On the other hand, respondent states that the arguments and discussions of petitioner are mere reiterations of his arguments written in the Motion for Reconsideration and Memorandum filed before the Court in Division. Hence, respondent prayed that the Court dismiss the Petition for Review for being devoid of merit.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On June 18, 2020, petitioner received the Decision of the Court in Division. On June 30, 2020, petitioner filed a Motion for Reconsideration of the said Decision. On September 28, 2020, the Court in Division issued the assailed Resolution denying petitioner's motion. Said Resolution was received by petitioner on October 5, 2020.

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[24] Ibid., pp. 41-42.

From receipt of the said Resolution on October 5, 2020, petitioner has until October 20, 2020 within which to file the Petition for Review. On October 19, 2020, petitioner filed the instant Petition for Review.[25] Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

After a careful review of the CIR's arguments and the records of the case, the Court *En Banc* finds that the Court in Division is correct when it ruled that the 1990 tax assessments issued against petitioner for income tax, expanded withholding tax and value-added tax in the aggregate amount of P24,357,722.32, should be cancelled and withdrawn. The Court *En Banc* notes that the arguments presented by the CIR are a mere rehash, in fact, quoted verbatim, of the arguments he offered in his Motion for Reconsideration before the Court in Division.

Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments and will elucidate the conclusions of the Court in Division.

Whether or not the Court in Division erred in cancelling the subject assessments

Petitioner insists that he granted respondent's request for reinvestigation thru the Notice of Hearing issued on April 5, 1994. Hence, the period to assess and collect the subject taxes has not yet prescribed.

Contrary to petitioner's claim, the Court *En Banc* holds that petitioner can no longer collect the subject taxes because his right to collect has already prescribed.

Section 203 of the NIRC of 1977,[26] as amended by Presidential Decree No. 1994[27] provides for a three-year period within which an assessment may be conducted by the BIR, to wit:

> "SEC. 203. Period of Limitation upon assessment and collection. – Except as provided in the succeeding section, **internal revenue taxes shall be assessed within three years after the return was filed,** and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of

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[25] Rollo, p. 1.
[26] Now Section 203 of the NIRC of 1997, as amended.
[27] Took effect on January 1, 1986.

such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphases supplied)*

Based on the above-cited rule, the government is mandated to assess internal revenue taxes within three (3) years after the return was filed. Hence, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.

In the present case, respondent was assessed for deficiency income tax, expanded withholding tax and value-added tax for taxable year 1990. Respondent received the assessment notices on May 25, 1993. It filed on June 21, 1993 a protest letter on the assessments <u>with a request for reinvestigation</u>. Said protest was followed by another protest on December 3, 1993. Then, on October 9, 2007, it filed a supplemental protest praying for the cancellation of the tax assessments on the ground of prescription. Thereafter, on August 17, 2017, respondent received the CIR's Decision denying its protest.

Petitioner insists that the prescriptive period was validly extended when he granted the request for reinvestigation thru the Notice of Hearing dated April 5, 1994 mailed to petitioner. However, there was no clear evidence to verify that a Notice of Hearing was indeed issued, mailed to respondent and received by respondent corporation.

Section 224 of the NIRC of 1977,[28] as amended by Presidential Decree No. 1994, provides as follows:

"SEC. 224. Suspension of running of statute.- **The running of the statute of limitations provided in Sections 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding on court for collection, in respect or any deficiency, shall be suspended** for the period during which the Commissioner of Internal Revenue is prohibited from making the assessment of beginning distraint or levy or a proceeding in court and for sixty days thereafter; **when the taxpayer requests for a re-investigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That if the taxpayer informs the Commissioner of any change in address, the statute will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no

[28] Now Section 223 of the NIRC of 1997, as amended.

> property could be located; and when the taxpayer is out of the Philippines." *(Emphases supplied)*

Hence, the running of the three (3)-year period to collect shall be suspended when the taxpayer requests for reinvestigation and the CIR grants the same.

The Court *En Banc* adopts with approval the ruling of the Court in Division in the assailed Decision, when it ruled as follows:

> "Respondent insists that he granted such request for reinvestigation *via* the Notice of Hearing dated April 5, 1994 mailed to petitioner. Respondent's claim is however inaccurate if not untrue. His own witness Attorney Ariel Crispin D. Ante could not even declare with certainty that the said Notice of Hearing of April 5, 1994 was sent or mailed to and received by petitioner. Worse, he was not competent to testify on the matter as the mailing of the said notice was not within his province for it was the function of the General Services Division of the BIR. *Xxx xxx*
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> xxx xxx xxx
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> To prove fact of mailing, it is essential to present the registry receipt and the Registry return card issued by the Postmaster of the Bureau of Posts bearing the signature of the recipient taxpayer or its duly authorized representative signifying receipt of the subject mail matter.
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> A certification issued by the Postmaster that the subject mail matter was indeed sent could have saved the day for respondent who also failed to adduce the same. The Court is not inclined to give credence to the self-serving documentations adduced by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing.
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> Simply said, the Court cannot take hook-line and sinker respondent's claim that the Notice of Hearing was mailed to, and received by petitioner, without the required proof to establish the same. With this finding, the three (3)-year prescriptive period for collection under Section 223(c) of the NIRC of 1986 was not suspended, insofar as the subject 1990 tax assessments, embodied in Demand Letter dated May 30, 1993 and Assessment Notice

Nos. FAS 2-90-93-002290, FAS 2-90-93-002291, and FAS 2-90-93-002292, in the total amount of P24,357,722.32, are concerned.

Counting three (3) years from the receipt of the said assessments by petitioner, i.e., on May 25, 1993, the three (3)-year period to collect the same ended on May 25, 1996. Correspondingly, the assessed taxes may no longer be collected on the ground of prescription.

Significantly, a Memorandum was issued by the Chief of the BIR's Appellate Division, Angel G. Pasion, concurred by Marissa O. Cabreros, OIC-Assistant Commissioner, recommending the cancellation of the subject assessments on ground of prescription, the pertinent portions of which reads as follows:

> **On March 25, 2009 the Chief, Appellate Division, based on the existing records of the office showing that the Notice of Hearing was actually forwarded the General Services Division for mailing on April 5, 1994, requested for the certification/proof of mailing to ascertain whether said Notice of Hearing was indeed received by FFEDC or its counsel. The OIC-Chief, General Services Division (GSD) of this Bureau, in a letter dated April 16, 2009 informed our office that they cannot issue the requested certification for the reason that the Mailing Section of the General Services had been merged with the printing Section. The logbook which serves as proof that the said document was actually mailed was lost in the process of the merging of the afore-cited Sections.** (Pls. see attached letter of the OIC-Chief, GSD on page 1006, Dkt.)
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> Having no other evidence on record to prove that the request for reinvestigation filed by FFEDC was granted by the Commissioner on his duly authorized representative, this Office, has no other recourse but to concur with the observation of the Assistant Commissioner, Collection Service, that the right of the BIR to collect has indeed prescribed.
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> In view of all the foregoing, it is the considered opinion of this Office that the right of the government to collect from FFEDC the aggregate amount of P24,357,722,32 as deficiency income, value-added and expanded withholding

> taxes for the taxable year 1990 and covered by Assessment Notice Nos. FAS-2-90-93-002290, FAS-2-90-93-002291 and FAS-2-90-93-002292 all dated May 20, 1993, may be cancelled on the ground of prescription.
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> Accordingly, the Assistant Commissioner, Legal Service may now issue the corresponding Authority to Cancel Assessment (ATCA) pursuant to II (4) of Revenue Delegation Authority Order No. 6-2001 dated September 27, 2001, xxx."[29]

In view of the foregoing discussions, it is clear that petitioner cannot collect the subject deficiency taxes because there was no competent evidence to prove that indeed respondent's request for reinvestigation was granted by the CIR. Thus, the three-year prescriptive period for collecting from petitioner the deficiency taxes for taxable year 1990 has prescribed.

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[30]

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and assailed Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED for lack of merit**. Accordingly, for being void, the subject assessments issued against First Far East Development Corporation for taxable year 1990 for deficiency taxes are **CANCELLED** and **SET ASIDE**.

Consequently, petitioner CIR is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from respondent corporation.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[29] Decision, pp. 8-13. Citations omitted.
[30] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
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