REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILIPPINE DREAM COMPANY, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 986
(CTA CASE NO. 7700)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, JJ.

Promulgated:

JUL 25 2014 4:30pm

x -- x

DECISION

BAUTISTA, J:

The Case

Before the Court *En Banc* is a Petition for Review[1] to reverse and set aside the Decision of the then Second Division of the Court ("Court in Division") dated December 6, 2012,[2] as well as the Resolution dated February 6, 2013,[3] pursuant to Section 2 of Rule 4[4]

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[1] *Rollo*, CTA EB Case No. 986 (CTA Case No. 7700), pp. 1-45.
[2] Penned by Associate justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova concurring, while Associate Justice Cielito N. Mindaro-Grulla was on leave; *Rollo*, pp. 49-86, *Annex "A."*
[3] Id., pp. 87-94.
[4] RULE 4 - JURISDICTION OF THE COURT

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SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

and Section 4(b) of Rule 8[5] of the Revised Rules of the Court of Tax Appeals.[6]

The Parties[7]

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal place of business at Cebu Yacht Club, Mactan Export Processing Zone, Lapu-Lapu City.

Respondent Commissioner of Internal Revenue ("CIR") is the duly appointed head of the Bureau of Internal Revenue ("BIR"). She is vested with authority to administer all laws pertaining to internal revenue taxes. She may be served with summons and other court processes at Room 501, Fifth Floor, BIR National Office Building, Diliman, Quezon City.

The Facts

As stated in the Decision dated December 6, 2012,[8] the factual antecedents of this case are as follows:

> "On January 6, 2003, Letter of Authority (LOA) No. 2000 00075569 was issued against petitioner for the examination of its books of accounts and other accounting records for all internal revenue taxes for taxable years 2000, 2001, and 2002 on account of petitioner's retirement or cessation of business operations.
>
> On December 19, 2005, a Preliminary Assessment Notice was issued against petitioner, signed by Regional Director Jaime B. Santiago of Revenue Region No. 13, for alleged deficiency EWT and VAT in the amounts of Php377,279.19 and Php52,160,263.95, respectively, for

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(1) Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

[5] RULE 8 - PROCEDURE IN CIVIL CASES
SEC. 4. *Where to appeal; mode of appeal.* -

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

[6] *Rollo*, CTA EB Case No. 986, p. 4.

[7] *Id.*, p. 50.

[8] *Id.*, pp. 49-86.

taxable year 2002. Petitioner filed a protest letter on January 27, 2006.

In a letter dated March 24, 2006, Regional Director Santiago replied to petitioner's protest letter dated January 27, 2006. In said letter, Regional Director Santiago noted, among others, that for the year 2002, petitioner filed VAT returns for the months of January to April only; that the VAT returns filed for years 2003-2004 were merely filed for the sake of compliance and do not show any results of business operations or activities of petitioner; that income tax returns for years 2003 to 2004 were also filed only for compliance purposes; that there were no returns filed for years 2003 to 2005 for expanded and compensation withholding taxes; that no returns were filed for year 2005 for VAT; that no annual registration fees were paid for years 2003 and onwards. Regional Director Santiago also stated that on the basis of the Report dated June 21, 2005 made by Maritime Industry Authority (MARINA) that petitioner had ceased operations as of August 30, 2003, the Order of MARINA dated July 29, 2005 directing petitioner to explain its renewal of the Certificate of Inspection and Passenger Safety Certificate, and the Order of MARINA dated August 19, 2005 finding the vessel unseaworthy and hazardous to other navigating vessels, petitioner had ceased operations and thus, the existing assets of petitioner as of the cessation of its operation should be considered as deemed sold.

Subsequently, FLD and FAN Nos. 80-EWT-13-2002-2006-3-75 and 80-VAT-13-2002-2006-3-74, all dated March 31, 2006, were issued against petitioner for alleged deficiency EWT and VAT in the amounts of Php388,825.60 and Php53,686,487.55, respectively, for taxable year 2002 inclusive of interest and fifty percent (50%) surcharge. Petitioner received said FLD and FAN on April 10, 2006.

In a letter dated May 10, 2006, petitioner protested the FLD and FAN stating, among others, that petitioner did not permanently cease its operations and as such, Section 106(C) of the National Internal Revenue Code (NIRC) of 1997, does not apply. While petitioner manifested its willingness to pay the VAT assessment on sales and the EWT assessment on rentals, petitioner protested the VAT assessment on the alleged disposition of its property and equipment arising from its purported dissolution.

On May 18, 2006, petitioner paid the alleged withholding tax assessment in the amount of Php301,823.34, consisting of the basic EWT assessment of Php180,618.95 and interest of Php121,204.39.

On November 22, 2006, a Preliminary Collection Letter signed by Revenue District Officer Maria Socorro O. Lozano of RDO No. 80 was issued against petitioner for the collection of petitioner's internal revenue tax liabilities consisting of EWT and VAT in the amounts of Php388,825.60 and Php53,686,487.55, respectively, for taxable year 2002.

On December 21, 2006, a Final Notice Before Seizure signed by Revenue District Officer Lozano was issued against petitioner, which the latter received on January 4, 2007.

In a letter dated January 15, 2007, addressed to Revenue District Officer Socorro Lozano, petitioner, through counsel, requested that its case be referred back to BIR Revenue Region No. 13. Petitioner attached to said letter additional documents to prove that it is still the owner of M/V Philippine Dream and that its importation is exempt from VAT.

Subsequently, Revenue District Officer Lozano wrote a letter to petitioner dated January 26, 2007, informing the latter that the entire docket of the case was referred to RDO No. 80 on November 21, 2006 for the enforcement of collection, but petitioner's request will nevertheless be referred to the Regional Director of Revenue Region No. 13. Said letter was received by petitioner on February 8, 2007.

On January 29, 2007, a Warrant of Distraint and/or Levy No. 80-015-07 signed by Revenue District Officer Lozano was issued against petitioner. Petitioner received said Warrant of Distraint and/or Levy on February 21, 2007.

On February 8, 2007, a Notice of Tax Lien signed by Revenue District Officer Lozano was issued, informing MARINA that petitioner is under obligation to pay the Government of the Republic of the Philippines the sum of Php54,075,313.15 as internal revenue tax, surcharge, and interest for the year 2002.

Petitioner wrote a letter to Regional Director Santiago dated February 27, 2007, reiterating the request that the case be referred back to RR No. 13, which letter was received by Regional Director Santiago on March 1, 2007.

On March 8, 2007, petitioner's counsel received a copy of the Notice of Levy on Real Property dated March 5, 2007 issued by Revenue District Officer Lozano to MARINA.

On May 7, 2007, petitioner received a letter dated April 15, 2007 from Regional Director Santiago that treated petitioner's letter dated February 27, 2007 as a request for reconsideration of the action taken by the BIR in availing of the summary remedies under the NIRC of 1997, as amended, in the collection of final and executory tax assessment.

In a letter dated May 17, 2007, Revenue District Officer Lozano informed petitioner that Regional Director Santiago's letter to petitioner dated April 15, 2007 was the response to petitioner's request for reconsideration of the action taken by respondent in availing of the summary remedies under the NIRC in the collection of final and executory tax assessment by allowing petitioner a chance to adduce evidence that the vessel M/V Philippine Dream is still an asset of petitioner. Said letter likewise states that since the legal issues raised have already been resolved, the denial of petitioner's request for reconsideration is deemed final.

In a Memorandum dated May 25, 2007 addressed to respondent CIR through the Regional Director, Revenue

District Officer Lozano requested an authority to publish the Notice of Sale of the levied properties registered in the name of petitioner.

In a letter dated September 14, 2007, the Bureau of Customs (BOC), through District Collector Ricardo R. Belmonte, informed the Revenue District Officer of RDO No. 80 that the BOC has a current lien on M/V Philippine Dream in the amount of Php12,020,250.00.

On September 21, 2007, petitioner availed of the Tax Amnesty Program under Republic Act (RA) No. 9480 by paying the amnesty tax amounting to Php100,000.00 and filing a Notice of Availment of Tax Amnesty Payment Form (BIR Form No. 0617), Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, Auditor's Opinion dated September 14, 2007, and Financial Statements as of December 31 , 2005.

In a Memorandum dated September 21, 2007 addressed to the Revenue District Officer of RDO No. 80, District Collection Supervisor Rosa Maria R. Jingco recommended that the scheduled auction sale be cancelled since petitioner has availed of the Tax Amnesty Program and requested that the case be returned to the Regional Director (Attention: The Chief, Collection Division) for transmittal to respondent CIR for the final disposition of the case.

In the 1st Indorsement dated September 21, 2007, Revenue District Officer Lozano forwarded the docket of the case to the Regional Director, stating that petitioner availed of the Tax Amnesty Program under RA No. 9480 and inviting the attention of the Regional Director to the attached Memorandum of Collection Supervisor Jingco.

In a letter dated September 25, 2007, petitioner informed Revenue District Officer Emir Abutazil of RDO No. 80 of its availment of the Tax Amnesty Program under RA No. 9480, and requested the release of M/V Philippine Dream.

In BIR Ruling No. DA-514-2007 dated September 27, 2007 addressed to the Regional Director of RR No. 13, Assistant Commissioner (BIR Legal Service) James H. Roldan found that petitioner availed of the Tax Amnesty Program and paid the amount of Php100,000.00 based on its authorized capital stock of Php14,177,600.00 without considering its networth. According to Assistant Commissioner Roldan, there is no point wherein the BIR can determine whether petitioner has in fact complied with the said program. Assistant Commissioner Roldan further opined that notwithstanding the payment of Php100,000.00, representing five percent (5%) amnesty tax based on petitioner's subscribed capital, petitioner is deemed not to have complied fully with the provisions of RA No. 9480 and consequently, RDO No. 80 is not prevented from proceeding with the scheduled auction sale on September 28, 2007.

In a letter dated September 27, 2007, Revenue District Officer Abutazil informed petitioner that RDO No. 80 will still proceed with the scheduled auction sale pursuant to BIR Ruling No. DA-514-2007 issued by Assistant Commissioner Roldan. Petitioner received the letter dated September 27, 2007 and the copy of BIR Ruling No. DA-514-2007 on September 28, 2007.

On September 28, 2007, the BIR Collection Office proceeded with the auction sale of M/V Philippine Dream.

On October 31, 2007, petitioner filed a Petition for Review with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction.

xxx [I]n a Resolution dated December 5, 2007, the Court granted said Motion to Suspend Collection of Taxes, subject to the filing of a GSIS bond or a bond from other reputable surety company duly accredited by the Supreme Court in the amount equivalent to Php108,150,626.30.

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During the scheduled Pre-Trial Conference on August 27, 2009, petitioner manifested that M/V Philippine Dream was taken out of Philippine jurisdiction; that it would not be possible for petitioner to take possession of the same; and that there is a need to amend the Petition for Review. Thus, upon motion of petitioner, the proceedings were held in abeyance and petitioner was granted a period of thirty (30) days from August 27, 2009 or until September 26, 2009 within which to file an Amended Petition for Review and/or Supplemental Petition for Review xxx.

On August 20, 2009, petitioner filed with respondent a claim for refund or credit in the amount of Php59,710,200.00, representing the value of M/V Philippine Dream sold to the winning bidder and illegally collected by respondent.

On October 6, 2009, petitioner filed a Motion to Admit Amended/Supplemental Petition for Review as well as its Amended/Supplemental Petition for Review.

In its Amended/Supplemental Petition for Review, petitioner prays for this Court to annul and set aside the following: (a) the FLD and FAN Nos. 80-EWT-13-2002-2006-3-75 and 80-VAT-13-2002-2006-3-74 dated March 31, 2006; (b) the Final Notice Before Seizure dated December 21, 2006; (c) the Warrant of Distraint and/or Levy No. 80-015-07 dated January 29, 2007; (d) the Notice of Levy on Real Property for being issued by respondent with grave abuse of discretion; and (e) the auction sale conducted by the BIR Collection Office, RDO No. 80 on September 28, 2007 for failure of the Auction Committee to comply with the jurisdictional requirements of the sale and the provisions of the NIRC of 1997, as amended and RMO No. 33-02, and considering further that petitioner had already availed of the Tax Amnesty Program under RA No. 9480. Petitioner likewise prays for this Court to order the return of M/V Philippine Dream to petitioner or, in the alternative, grant petitioner's claim for refund of the illegally assessed and collected tax by ordering respondent to deliver the proceeds of the auction sale to petitioner in the amount of Php59,710,200.00.

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The parties failed to submit their Joint Stipulation of Issues.

The following issues, however, were raised by petitioner in its Amended/Supplemental Petition for Review:

'1. Whether or not the assessment in question has become final and executory.

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On the other hand, in her Pre-Trial Brief, respondent raised the following issues:

'1. Whether the assessments have become final and unappealable due to petitioner's failure to submit all relevant documents within sixty (60) days from filing of the protest.

xxx xxx xxx.'

On December 6, 2012, the Court issued a Decision,[9] dismissing the Petition for Review and the Amended/Supplemental Petition for Review, by stating:

"**WHEREFORE**, the Petition for Review filed on October 31, 2007 and the Amended/Supplemental Petition for Review filed on October 6, 2009 by petitioner Philippine Dream Company, Inc. are hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED."

Not satisfied with the Decision, petitioner filed a Motion for Reconsideration, to which the Court issued a Resolution upholding the Decision dated December 6, 2012, stating that:

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

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[9] *Id.*, pp. 49-86.

SO ORDERED."

Thus, petitioner filed on February 27, 2013 the current Petition for Review with the Court *En Banc*.

Hence, this Decision.

The Issues

Based on the "Memorandum"[10] filed by petitioner, the issues of the case are as follows:

"**IV. STATEMENT OF ISSUES**

1. Whether or not the Court of Tax Appeals has jurisdiction over the Petition;
2. Whether or not Petitioner's availment of the tax amnesty under Republic Act No. 9480 and the consequent payment of the amnesty tax effectively settled all tax liabilities of the Petitioner;
3. Whether or not the vessel M/V Philippine Dream is real property;
4. Whether or not Respondent's representatives violated the provisions of the Tax Code and RMO No. 33-02 in conducting the public auction of the vessel;
5. Whether or not the Respondents representatives committed grave abuse of authority and/or discretion in levying and auctioning the vessel M/V Philippine Dream; and
6. Whether or not the value of the vessel collected by the respondent is tax erroneously paid or illegally collected, which must be refunded to the Petitioner."

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[10] *Id.*, pp. 259-300.

As for the "Memorandum (for Respondent),"[11] filed by respondent, the issues raised were as follows:

"-I-

WHETHER THE HONORABLE COURT OF TAX APPEALS HAS JURISDICTION OVER THE CASE; and

-II-

WHETHER PETITIONER IS LIABLE FOR DEFICIENCY EWT AND VAT FOR TAXABLE YEAR 2002 IN THE RESPECTIVE AMOUNTS OF P53,686,487.55 AND P388,825.60 FOR TAXABLE YEAR 2002."

The Ruling of the Court En Banc

Before delving into the other issues presented by the parties in this case, there is a need to determine whether or not this Court has jurisdiction over the case.

In this regard, the Court *En Banc* must answer in the negative, as explained below.

Petitioner anchors its claim that the Petition for Review, filed on October 31, 2007 before the Court in Division, is well within the period prescribed by law, since a final decision as mandated by Section 3.1.6 of Revenue Regulation No. 12-99 was never issued.[12] As there was no final decision on the motion for reconsideration of its denial of its protest to the disputed assessment issued on March 31, 2006, petitioner chose to file a Petition for Review based on the alleged inaction by respondent on October 31, 2007.

Petitioner avers that contrary to the Decision dated December 6, 2012 and Resolution dated February 6, 2013, the Final Notice Before Seizure should not be considered as a final decision, as contemplated under Section 3.1.6 of RR No. 12-99. To further this theory, petitioner cites respondent's correspondence, pointing out that these clearly

[11] *Id.*, pp. 302-322.
[12] *Id.*, pp. 267-268.

show that the Final Notice Before Seizure was not intended to be a final decision which petitioner could appeal to the Court.[13]

Respondent on the other hand maintains that the Court in Division did not acquire jurisdiction in this case, as the Petition for Review filed by petitioner was beyond the prescribed period. Also, respondent avers that petitioner did not comply with the requirements under the Tax Amnesty Law. In addition, respondent states that petitioner has outstanding tax liabilities, and that it was given sufficient time to present its side during the administrative proceedings, which it failed to do so. Thus, the assessment has became final and executory.

After a thorough perusal of the records of the case, the Court *En Banc* finds no merit in the Petition for Review filed by petitioner.

In the Decision dated December 6, 2012, the Court in Division explained:

> "Section 228 of the NIRC of 1997, as amended, provides for the procedure in issuing tax assessments as well as in protesting the same, thus:
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> xxx xxx xxx
>
> Relative to the foregoing, Revenue Regulations (RR) No. 12-99, more particularly, Section 3.1.5 provides for the administrative remedies available to taxpayer in cases where protests against assessments issued are filed before the Commissioner of Internal Revenue's duly authorized representatives. Section 3.1.5 is quoted hereunder:
>
> xxx xxx xxx
>
> Based on the foregoing, in case the CIR or his duly authorized representative fails to act on the disputed assessment within 180 days from the submission of documents, a taxpayer can either: (1) appeal to the Court of Tax Appeals within thirty (30) days after the expiration of the 180-day period; or (2) wait the final decision of the CIR on the disputed assessment and appeal such final

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[13] *Id.*, p. 269.

> decision to the Court of Tax Appeals within thirty days after receipt of a copy of such decision. The failure of a taxpayer to appeal from an assessment on time will render the assessment final, executory, and demandable. Consequently, the taxpayer is precluded from disputing the correctness of the assessment."[14]

The main question that must be resolved is whether or not respondent failed to act on the assessment, giving credence to petitioner's Petition for Review, or was there a final denial from which the prescriptive period shall be tolled.

Based on the review conducted over all the pieces of evidence for this case, the Court *En Banc* finds that there was indeed a denial by respondent.

On December 21, 2006, respondent issued a Final Notice Before Seizure.[15] In the said notice, respondent stated that:

> "xxx In this connection, we would like to inform you that we are again giving you the **last opportunity to make the necessary settlement** of the above stated tax liability within ten (10) days from receipt of this notice. **Should we fail to hear from you within this period, this Office, much to our regret, will be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account.** Simultaneously, to protect the interest of the government, your case will be referred to the Legal Division for the filing of appropriate judicial action." (*Emphasis supplied*)

In the case of *Commissioner of Internal Revenue v. Isabela Cultural Corporation*,[16] which was also cited by the Court in Division,[17] the nature of a Final Notice Before Seizure was discussed extensively. As quoted:

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[14] *Id.*, pp. 73-75.
[15] *Records*, CTA Case No. 7700, p. 1459, *Annex* "G."
[16] G.R. No. 135210, July 11, 2001, 361 SCRA 71.
[17] *Rollo*, CTA EB Case No. 986, pp. 78-80.

"Petitioner maintains that this Final Notice was a mere reiteration of the delinquent taxpayer's obligation to pay the taxes due. It was supposedly a mere demand that should not have been mistaken for a decision on a protested assessment. Such decision, the commissioner contends, must unequivocally indicate that it is the resolution of the taxpayer's request for reconsideration and must likewise state the reason therefor.

Respondent, on the other hand, points out that the Final Notice Before Seizure should be considered as a denial of its request for reconsideration of the disputed assessment. The Notice should be deemed as petitioner's last act, since failure to comply with it would lead to the distraint and levy of respondent's properties, as indicated therein.

We agree with respondent. In the normal course, the revenue district officer sends the taxpayer a notice of delinquent taxes, indicating the period covered, the amount due including interest, and the reason for the delinquency. If the taxpayer disagrees with or wishes to protest the assessment, it sends a letter to the BIR indicating its protest, stating the reasons therefor, and submitting such proof as may be necessary. That letter is considered as the taxpayer's request for reconsideration of the delinquent assessment. After the request is filed and received by the BIR, the assessment becomes a disputed assessment on which it must render a decision. That decision is appealable to the Court of Tax Appeals for review.

Prior to the decision on a disputed assessment, there may still be exchanges between the commissioner of internal revenue (CIR) and the taxpayer. The former may ask clarificatory questions or require the latter to submit additional evidence. However, the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review.

Indisputably, respondent received an assessment letter dated February 9, 1990, stating that it had delinquent taxes due; and it subsequently filed its motion

> for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the CIR additional documents on April 18, 1990. The next communication respondent received was already the Final Notice Before Seizure dated November 10, 1994.
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> In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a *final* notice prior to seizure of property. The letter itself clearly stated that respondent was being given 'this LAST OPPORTUNITY' to pay; otherwise, its properties would be subjected to distraint and levy. How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?"

Thus, applying the above cited case to the present will lead Us to the conclusion that there was a denial in this case.

This negates the allegation of petitioner that there was inaction on the part of respondent. That being so, petitioner's Petition for Review based on inaction becomes improper. The correct recourse that petitioner should have done was to dispute the final decision on the assessment with the Court within thirty (30) days upon its receipt of the Final Notice Before Seizure.

Where the wordings of the ruling signify a final determination on petitioner's tax deficiencies and there being a clear instruction for petitioner to file an appeal and not a motion for reconsideration, then the matter is ripe for judicial review.[18]

The letter that petitioner filed on January 15, 2007,[19] requesting that the case be referred back to Revenue Region No. 13 so that it can adduce evidence did not stop the running of the prescriptive period.

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[18] *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*, CTA EB No. 223, July 5, 2007.
[19] *Records*, CTA Case No. 7700, p. 1460, *Annex* "H."

Section 228[20] of the 1997 NIRC, as amended is clear when it stated that upon final denial the only recourse left is to elevate the assessment to the Court of Tax Appeals within a period of thirty (30) days.

Again, this was discussed by the Court in Division when it cited the case of *Fishwealth Canning Corporation v. Commissioner of Internal Revenue:*[21]

> "In the case of Fishwealth Canning Corporation vs. Commissioner of Internal Revenue if the taxpayer's filing of **a Motion for Reconsideration of the CIR's Final Decision on Disputed Assessment does not toll the 30-day period to appeal to the CTA**, then it is with more reason that herein petitioner's failure to elevate its protest with the respondent CIR cannot toll the period to appeal to the CTA." (*Emphasis supplied*)

Unfortunately, petitioner chose to file a Petition for Review only on October 31, 2007, which was already beyond the period allowed by law.

In the eyes of the Court, the following actions taken by respondent only further emphasize the finality of its denial:

1. Issuance on January 29, 2007 of a Warrant of Distraint and/or Levy was issued against petitioner, which it received on February 21, 2007;[22]

2. The receipt by petitioner on March 8, 2007 of a Notice of Levy on Real Property dated March 5, 2007 issued by the Revenue District Officer to MARINA;[23] and

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[20] SEC. 228. *Protesting of Assessment.* –

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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 receipt 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.' (*Emphasis supplied*)

[21] G.R. No. 179343, January 21, 2010, 610 SCRA 524.

[22] *Records*, CTA Case No. 7700, p. 1460, *Annex* "E."

[23] *Id.*, p. 1460, *Annex* "J."

3. A correspondence issued by respondent on May 17, 2007 stating that petitioner failed to seasonably protest the assessment.[24]

Each of these issuances point back to the Final Notice Before Seizure as the clear cut denial by respondent. Yet it was only on October 31, 2007 when petitioner deemed it proper to file its Petition for Review.

In *Surigao Electric Co., Inc. v. Court of Tax Appeals,*[25] the Supreme Court reminds the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues.

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue,*[26] the Court considered the language used and the tenor of the letter sent to the taxpayer as the final decision of the CIR, taking into consideration that the CIR stated that the failure to settle tax liabilities will result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice.

In the case of *Allied Banking Corporation v. Commissioner of Internal Revenue,*[27] CIR issued a demand letter requiring the immediate payment of the deficiency tax. The Court in that case held that the demand letter was clear in that it was the final decision of the CIR.

Taking all the circumstances as a whole, the theory advanced by petitioner cannot be given serious credence.

Even if there was no denial and we assess this case on the basis of inaction, the dismissal based on lack of jurisdiction will still stand. As discussed by the Decision dated December 6, 2012,[28] the Court in Division held that:

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[24] *Id.*, p. 1460, *Annex* "K."
[25] *Surigao Electric Co., Inc. v. Court of Tax Appeals*, G.R. No. L-25289, June 28, 1974, 57 SCRA 523.
[26] G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[27] G.R. No. 175097 , February 5, 2010, 611 SCRA 692.
[28] *Rollo*, CTA EB Case No. 986, pp. 73-85.

> "Records clearly reveal that petitioner received the FLD and FAN on April 10, 2006. Pursuant to Section 228 of the NIRC of 1997, as amended, as well as Section 3.1.5 of RR No. 12-99, petitioner had thirty days or until May 10, 2006 to file a protest. In a letter dated May 10, 2006, petitioner protested the subject assessments. Petitioner asserts that the protest letter dated May 10, 2006 was filed on the same date. Respondent, however, failed to prove otherwise.
>
> Since petitioner did not submit additional relevant documents in support of its protest, the 180-day period within which respondent should act on the protest should be reckoned from the filing of petitioner's protest on May 10, 2006. Accordingly, respondent had until November 6, 2006 within which to act on the protest. Respondent failed to act on the protest on or before November 6, 2006. Thus, petitioner had thirty days from November 6, 2006 or until December 6, 2006 within which to appeal respondent's inaction before this Court. However, records prove that no appeal was filed before this Court on or before December 6, 2006."

When a Petition for Review is filed outside the prescriptive period allowed by law, the Court has no recourse but to dismiss it, as it does not acquire jurisdiction over the said matter.

As emphasized by the Decision on December 6, 2012,[29] which stated that:

> "Since the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, the failure to perfect the appeal renders the judgment or ruling subject of appeal final and executory and beyond the power of this Court to review.
>
> Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*."

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[29] *Id.*, pp. 73-85.

Thus, the Court *En Banc* has no choice but to dismiss this Petition for Review.

WHEREFORE, the Decision of the then Second Division of the Court dated December 6, 2012, as well as the Resolution dated February 6, 2013 are hereby **AFFIRMED** but modified in that the Petition for Review is denied due to lack of jurisdiction as it was filed beyond the prescriptive period, counting from the denial of the protest to the disputed assessment.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO with separate concurring opinion
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE DREAM COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 986
(CTA CASE NO. 7700)

Members:

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 25 2014 4:30pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the opinion of the majority which affirmed (with modification) the assailed Decision and Resolution of the Court in Division.

Records show that petitioner received the Final Notice Before Seizure dated December 31, 2006 on January 4, 2007. Applying ***Commissioner of Internal Revenue vs. Isabela Cultural Corporation,***[1] wherein the Supreme Court categorically held that a final demand from the Bureau of Internal Revenue (BIR) reiterating the immediate payment of a tax deficiency previously made is tantamount to a denial of the taxpayer's request for reconsideration and that such letter amounts to a final decision on a disputed

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[1] G.R. No. 135210, July 11, 2001.

assessment and is thus appealable to this Court, petitioner had thirty (30) days from January 4, 2007 or until February 3, 2007 within which to file an appeal before this Court. Since the appeal was filed only on October 31, 2007, the Court in Division has no jurisdiction over the petition for review.

Considering that in our judicial hierarchy, the Supreme Court reigns supreme, all courts, tribunals and administrative bodies exercising quasi-judicial functions are obliged to conform to its pronouncements.[2]

In *Isabela*, the Supreme Court considered the Final Notice Before Seizure as the Commissioner of Internal Revenue's (CIR) final act regarding the taxpayer's request for reconsideration; that the content and tenor of the Final Notice Before Seizure supported the theory that it was the CIR's final act regarding the request for reconsideration; and, that the very title expressly indicated that it was a final notice prior to seizure of property.

By way of *obiter dictum*, however, I wish to state that a revisit of *Isabela* seems appropriate.

Revenue Regulations (RR) No. 12-99 and RR No. 18-2013 state that a taxpayer has the option to await the final decision of the CIR or his duly authorized representative on a disputed assessment and appeal such **final decision** to this Court within thirty (30) days after the receipt of a copy of such decision. RR No. 12-99 and RR No. 18-2013 also provide that the decision of the CIR or his duly authorized representative on a taxpayer's protest shall state the **(i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void**, and (ii) **that the same is his final decision.**

There is nothing in the Final Notice Before Seizure in *Isabela* as well the Final Notice Before Seizure issued by the Revenue District Officer in the present case which indicates that they are the final decisions of the CIR or her duly authorized representative that are appealable to this Court. Both notices merely reiterate the BIR's demand for the settlement of the tax liability.

In ***Surigao Electric Co., Inc. vs. The Honorable Court of Tax Appeals and Commissioner of Internal Revenue,***[3] the Supreme Court

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[2] *Development Bank of the Philippines v. NLRC*, March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948 *cited in* the Concurring Opinion of Sandoval–Gutierrez, J., *Raul L. Lambino v. The Commission on Elections*, G.R. No. 174153, October 25, 2006.
[3] G.R. No. L-25289, June 28, 1974.

emphasized the rationale behind the requirement to state in clear and categorical language that the CIR's letter is her final decision on the protest, *viz.*:

> "Prescinding from all the foregoing, **we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment**, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this *indicium* indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, **the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues**. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer **grope in the dark and speculate as to which action constitutes the decision appealable to the tax court**. Of greater import, **this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action**." (Emphases supplied)

In the interest of justice and fair play, the CIR or his duly authorized representative should categorically state in a letter issued to the taxpayer that the same is the final decision on the protest; otherwise, the taxpayer would be left in the dark as to which action of the CIR or her duly authorized representative is the final decision that is appealable to this Court. In other words, the CIR or her duly authorized representative must clearly indicate that the action constitutes the final decision on the disputed assessment so that taxpayer will know when the period to file an appeal to this Court commences.

ROMAN G. DEL ROSARIO
Presiding Justice