REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ED & F MAN PHILIPPINES INC.,
Respondent.

CTA *EB* NO. 2851
(CTA Case No. 10053)

Present:

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
OCT 03 2024 3:55pm

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DECISION

MODESTO-SAN PEDRO, J.:

Procedural rules are established not just for speed and efficiency but also to protect the various rights and powers provided by law. Ideally, a disregard for the rules protecting a party's rights should not be countered by an equivalent disregard of the rules protecting the opposing party's rights. In practice, however, the Court must occasionally tolerate a bending of the rules, or the merest *pro forma* compliance with them, in order to reach the most just ruling it can render.

The Case

Before the Court is a Petition for Review filed on January 19, 2024, assailing the Decision, dated August 10, 2023 ("Assailed Decision"), and Resolution, dated December 14, 2023 ("Assailed Resolution"), both rendered by this Court's Special First Decision ("Court in Division"), which granted respondent's April 1, 2019 Petition for Review before the Court in Division.

The Parties

Petitioner Commissioner of Internal Revenue has the authority to decide, approve, and grant tax refunds, as vested in him by the *National Internal Revenue Code of 1997, as amended* ("*NIRC*").[1]

Respondent, meanwhile, is a duly registered domestic corporation engaged in the business of buying, selling, and distributing various goods, primarily sugar, which it imports and exports.[2]

The Facts

On March 16, 2010, Regional Director Araceli L. Francisco issued a Termination Letter in light of respondent's payment of the relevant deficiency taxes for Taxable Year ("TY") 2008.[3]

Nevertheless, respondent received a Preliminary Assessment Notice ("PAN") on September 26, 2013, containing a proposed deficiency assessment against it for TY 2008. Respondent replied through a letter, dated October 18, 2013.[4]

A Final Assessment Notice ("FAN") was then issued on August 23, 2013. The same was received on November 6, 2013 by respondent, who did not reply to the same.[5]

Then, on February 14, 2014, a First Notice was issued, requesting respondent to pay the subject deficiency assessment. Respondent replied to this on February 28, 2014, stating that it already paid the taxes in full and that a Termination Letter relative thereto had already been issued. However, in a letter, dated March 15, 2014, respondent was asked to provide proof that it protested the earlier-issued FAN. In its March 25, 2014 letter, respondent insisted that it protested the assessment on October 18, 2013 (when it protested the PAN).[6]

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1 *See* Decision, dated August 10, 2023, p. 2, *Rollo*, p. 44.
2 *Id.*
3 *Id.*
4 *Id.*
5 *See* Decision, dated August 10, 2023, p. 3, *id.* at 45.
6 *See* Decision, dated August 10, 2023, pp. 3-4, *id.* at 45-46.

Unconvinced, Officer-in-Charge Regional Director Myrna S. Leonida ("RD Leonida") issued a Decision on June 5, 2015, declaring the FAN final and unappealable for respondent's failure to protest the same and directing the latter to pay the deficiency assessment. Respondent replied by requesting RD Leonida not to enforce the collection of the assessed taxes. Various letters were then sent to and by respondent, with the end result being that its protests were denied. Among these were a July 31, 2015 letter denying respondent's request for reconsideration of RD Leonida's Decision.[7]

Seeking relief, respondent applied for compromise settlement on December 18, 2015, but this was denied on March 10, 2017.[8]

This prompted respondent to file a second application for compromise settlement on April 10, 2017, and, shortly thereafter, an administrative claim for refund on December 18, 2017. Petitioner granted the second application for compromise settlement on May 31, 2018 but did not act on the administrative claim. As such, respondent filed a second administrative claim for refund on March 29, 2019.[9]

Immediately following the filing of its second administrative claim, respondent filed a Petition for Review before the Court in Division on April 1, 2019.[10]

After a full-blown trial, the Court in Division granted the Petition for Review via the Assailed Decision on August 10, 2023. Petitioner assailed this through a Motion Reconsideration, filed on August 30, 2023,[11] but this was denied by the Court in Division through the Assailed Resolution on December 14, 2023. Significantly, the Assailed Resolution was received by the Office of the Solicitor General ("OSG") on December *19*, 2023, while said issuance was received by the Bureau of Internal Revenue ("BIR") on December *20*, 2023.[12]

Aggrieved, but unable to file a Petition for Review on time, petitioner filed a Motion for Extension of Time to File Petition for Review[13] with this Court on January 3, 2024, asking that he be given an extended period of until January 19, 2024 within which to file a Petition. The Court granted this through a Minute Resolution,[14] dated January 4, 2024, on the condition that the Motion for Extension of Time had been timely filed.

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[7] *See* Decision, dated August 10, 2023, p. 4, *id.* at 46.
[8] *See* Decision, dated August 10, 2023, p. 5, *id.* at 47.
[9] *See* Decision, dated August 10, 2023, pp. 5-6, *id.* at 47-48.
[10] *See* Decision, dated August 10, 2023, p. 6, *id.* at 48.
[11] *See* Resolution, dated December 14, 2023, p. 2, *id.* at 71.
[12] *See* Notice of Resolution, dated December 15, 2023, Division Records, p. 1005.
[13] *Rollo*, pp. 1-4.
[14] *Id.* at 6.

Petitioner finally filed the instant Petition on January 19, 2024. He would follow this up with a Manifestation,[15] filed on January 25, 2024, regarding an error in the Petition's caption, which was noted by the Court in a Minute Resolution,[16] dated January 26, 2024.

The Court later issued a Minute Resolution, dated March 4, 2024, directing respondent to file its comment to the Petition.[17] Respondent complied by filing its Comment (To The Petitioner's Petition for Review dated 18 January 2024) on March 14, 2024, and the case was submitted for study and report through an April 3, 2024 Minute Resolution.[18]

Hence, this Decision.

The Assigned Errors

Petitioner assigns the following errors to the assailed issuances of the Court in Division:[19]

(a) The Court in Division erred when it assumed jurisdiction over respondent's Petition for Review; and
(b) The Court in Division erred in granting said Petition for Review and directing petition to refund the amount sought by respondent.

The Arguments

Petitioner raises the following arguments:

(a) As respondent failed to timely raise a judicial appeal upon its receipt of the July 31, 2015 letter, the assessment became final, unappealable, and beyond the jurisdiction of the Court in Division, especially as an offer of compromise is not a continuation of assessment proceedings;
(b) Petitioner did not violate respondent's right to due process despite the lack of a Letter of Authority ("LOA") underpinning the FAN;
(c) Respondent's immediate filing of a Petition for Review only a few days after its filing of its second administrative refund means it did not exhaust administrative remedies; rendering its Petition for Review dismissible;

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15 *Id.* at 74-76.
16 *Id.* at 143.
17 *Id.* at 144.
18 *Id.* at 181.
19 *See* Petition for Review, p 7, *id.* at 13.

(d) Compromise payments cannot be refunded;
(e) Respondent had no cause of action;
(f) Tax refunds are strictly construed against the taxpayer.

Respondent opposes the above with the following contentions:

(a) The Court in Division correctly assumed jurisdiction over petitioner's judicial claim for refund;
(b) As the subject FAN was based on a mere Letter Notice ("LN") and not a LOA, petitioner violated respondent's right to due process;
(c) Petitioner's right to assess the subject taxes had already prescribed by the time he issued his assessment;
(d) There being no legal basis for the assessment, the compromise amount was erroneously paid and should be refunded;
(e) Despite the short period between petitioner's filing of its administrative claim and its judicial claim, it properly exhausted administrative remedies;
(f) Respondent has a cause of action; and
(g) While tax refunds are, in general, strictly construed against claimants, they must nevertheless conform to substantial justice, equity, and fair play.

The Ruling of the Court

The Petition for Review is bereft of merit.

While the Petition for Review was filed late, the same is excusable

Under *Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals, as amended* ("*RRCTA*"), the procedure for appealing a ruling of the Court in Division before the Court *En Banc* follows that laid down by *Rule 43 of the Rules of Court*:

> (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.

The relevant provision here is *Rule 43, Section 4 of the Rules of Court*, which governs the period for filing applicable appeals:

> SEC. 4. Period of appeal. — *The appeal shall be taken within fifteen (15) days from notice of* the judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of *the denial of petitioner's motion for new trial or reconsideration* duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of docket fee before the expiration of the reglementary period, *the Court of Appeals [or Court of Tax Appeals En Banc] may grant an additional period of* ***fifteen (15) days only*** *within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.*
> (Emphasis and italics supplied)

From the above, and in the context of a properly filed but denied Motion for Reconsideration, the latest that a party can normally file a Petition for Review before the Court *En Banc* is *30 days after its receipt of the Court in Division's Resolution.* A party automatically has 15 days within which to file such a Petition. However, the Court may grant an *additional period*, *i.e.* added to the original period, of 15 days. From the use of the word "additional" in the provision, the two periods must be *contiguous*. The second 15-day period cannot commence, say, 30 days after the expiration of the first 15-day period, effectively giving a party 60 days to file its petition. As such, and to repeat, the period for filing a Petition for Review before the Court *En Banc* in the relevant context is limited to only 30 days from receipt of the Court in Division's Resolution. Any further extension must be based on "the most compelling reason."

A perusal of the Notice of Resolution for the Assailed Resolution shows that the BIR did receive said Resolution on December 20, 2023. However, said Notice of Resolution also bears a stamp marking the Assailed Resolution as having been received by the OSG on December *19*, 2023.

It should be noted here that *both* the OSG *and* the lawyers of the BIR are considered counsel for petitioner. The lawyers of the BIR are merely deputized, following *Rule 110, Section 5 of the Revised Rules of Criminal Procedure, as amended, DOJ Memorandum Circular No. 25*, and *Rule 9, Section 3 of the RRCTA*, but this does not strip the OSG of its status as counsel for the government. Without any formal withdrawal by the OSG, then, it remains as counsel for petitioner, together with and alongside the lawyers of the BIR.

Tellingly, while these were all signed by lawyers of the BIR, petitioner's Motion for Reconsideration[20] before the Court in Division, his Motion for Extension of Time to File Petition for Review,[21] and his Petition for Review[22] all bear the name of Solicitor General Menardo I. Guevarra.

Taking into consideration petitioner's Motion for Extension of Time to File Petition for Review, he had a total of *30 days* from his receipt of the Assailed Resolution within which to file his Petition for Review. As the OSG is his counsel and received it first, petitioner is deemed to have received the Assailed Resolution on December 19, 2023, giving him only until January 18, 2024 within which to file his Petition. He filed on January *19*, 2024. He gave no "compelling reasons" to justify further extending the prescriptive period. Hence, the Petition for Review was filed late.

That said, We do not find it proper to dismiss the case on this ground. A liberal application of procedural rules is the exception, not the norm, and should be resorted to only when buoyed by persuasive reasons or to avoid an injustice not commensurate with the thoughtlessness of non-compliance.[23] However, We find that such a reason to justify a relaxed application of technical rules is present here.

We originally granted the Motion for Extension of Time to File Petition for Review through a Minute Resolution, dated January 4, 2024, the body of which We quote in full here:

> **CTA EB No. 2851 (CTA Case No. 10053)** ***[Commissioner of Internal Revenue vs. ED & F Man Philippines Inc.].*** – The Court resolves to **GRANT** the 'Motion for Extension of Time to File Petition for Review' filed by the petitioner on January 03, 2024. As prayed for, and subject to the condition that the motion for extension is filed on time, petitioner is granted a final and non-extendible period of fifteen (15) days from January 04, 2024, or until **January 19, 2024**, within which to file his Petition for Review.

The above grant was conditioned on the Motion being filed on time. Indeed, it was filed on time, as January 3, 2024 is exactly 15 days from December 19, 2023. However, the granted deadline of January 19, 2024 is *31* days from December 19, 2023, beyond the 30-day period. At most, petitioner should have been granted an extended period of until January 18, 2024 only.

[20] *See* p. 18, Division Records, p. 973.
[21] *See* p. 2, *Rollo*, p. 2.
[22] *See* p. 27, *id.* at 33.
[23] *See Building Care Corporation v. Macaraeg*, G.R. No. 198357, December 10, 2012; *see also Ramirez v. Elomina*, G.R. No. 202661, March 17, 2021.

Considering the above, it may be prudent, in the future, to grant such extensions of time to file petitions only on the conditions that (a) the motion is filed on time; and (b) the granted deadline is no later than 30 days from the party's receipt of the assailed issuance.

Returning to the present case, We find that petitioner cannot be faulted for filing his Petition for Review a day late, given that he filed it within a deadline explicitly granted by the Court *En Banc*. The granted deadline was not compliant with the *Rules of Court*, but this was the Court's mistake, not petitioner's. As he should not be made to suffer for an error not his own, We deem it proper to admit the Petition for Review despite its technical tardiness.

The above liberality, however, cannot save the Petition from its lack of merit, as We shall discuss below.

Petitioner violated respondent's right to due process

Petitioner insists that he did not violate respondent's right to due process despite the absence of a LOA. For him, the LN was enough to establish a contract of agency between him and the auditing Revenue Officer.

We are unconvinced.

Behind petitioner's theories regarding contracts and agency lies a complete silence on the clear mandates of the *NIRC*, *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[24] and *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[25] ("*McDonald's*"). Having failed to show how his arguments refute the aforementioned jurisprudence or the law itself, or at least render these inapplicable to the case at bar, petitioner failed to show how the Court in Division's adherence to these was erroneous. Petitioner remained silent on the issue of properly identifying the examining revenue officers for the taxpayer, as well. We thus see no reason to depart from the Court in Division's conclusion that the assessment was based on an unauthorized audit.

A third silence: petitioner seems to have also ignored the lack of due dates in the FAN. This lack led the Court in Division, following *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[26] and *Republic of the Philippines v. First Gas Power Corporation*,[27] to conclude that

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[24] G.R. No. 222743, April 5, 2017.
[25] G.R. No. 242670, May 10, 2021.
[26] G.R. No. 215957, November 9, 2016.
[27] G.R. No. 214933, February 15, 2022.

respondent's obligation to pay the alleged deficiency taxes never arose. Such conclusion being unchallenged by petitioner, We uphold it here.

In sum, We disagree with petitioner and find no error in the Court in Division's finding that petitioner violated respondent's right to due process.

Whether or not compromise payments can be refunded is irrelevant here, as no valid compromise payment was made

Petitioner argues that the Court in Division should not have granted respondent's prayer for a refund as compromise payments cannot be refunded. The same are nowhere mentioned in the *NIRC* as a valid subject for refund, after all.

The argument misses the point entirely.

As unanimously found by the Court in Division, no compromise agreement was ever perfected by the parties. The Assailed Decision even discusses the absence of a valid compromise agreement at length. As such, the question of whether or not compromise payments can be refunded is irrelevant to the case at bar.

Petitioner is once again silent on the actual issue, however. Save for the bare claim that "[a]ll the elements of a valid compromise had been complied with," he offers nothing to refute the Court in Division's finding. He does not identify said "elements of a valid compromise" and show how all of these were present in the subject agreement. He does not counter the Court in Division's salient points regarding respondent's lack of knowledge and consent regarding the compromise agreement. As such, he leaves the Court in Division's finding untouched.

Given that no compromise agreement was perfected, the amount paid by respondent was not a compromise payment—it was a payment of an assessment which, as discussed above, violated respondent's rights. And given that this case concerns the refund of erroneous payment of alleged deficiency taxes, any argument on the refund of compromise payments has no bearing.

Respondent exhausted administrative remedies

Petitioner claims that respondent failed to exhaust administrative remedies. In particular, when respondent filed its judicial claim a scant three days after filing its administrative claim, it failed to substantially comply with the clear mandate that a taxpayer must seek a refund before the CIR before it can approach the Court.

We unfortunately cannot accept petitioner's argument.

The Supreme Court, in *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[28] ("*Carrier*") as cited in the Assailed Decision, has already decided this issue. There, the High Court decreed that a judicial claim is validly filed so long as an administrative claim was filed earlier, irrespective of the length of the period between them. As such, even an almost simultaneous filing of the administrative and judicial claim must be allowed.

Given that respondent did, indeed, file an administrative claim before it sought relief from the Court, it is deemed to have exhausted administrative remedies. That it filed its judicial claim a mere three days later is irrelevant, at least under prevailing jurisprudence.

We are not completely unsympathetic to petitioner's plight, however. As discussed at length in *Carrier* and the Concurring Opinions accompanying it, the relevant provisions of the *NIRC* are not ideal. While the law provides the two-year prescriptive period for filing judicial claims, it does not provide any periods for the CIR's action on administrative claims. This results in two issues: (a) nothing prevents the CIR from taking an inordinate amount of time to resolve the administrative claims before him, to the detriment of taxpayers; and (b) nothing prevents taxpayers from filing a judicial claim immediately after an administrative claim, effectively depriving the CIR of his power to review claims for refund.

By giving respondent only three days to review its administrative claim, petitioner effectively sidestepped substantial compliance with the requirement of raising claims for refund before the CIR. Unfortunately, such an act is within the parameters of law and jurisprudence, as discussed above. While We cannot let the issue pass unremarked, the issue is, as bemoaned in *Carrier*, "one that can be addressed not by judicial pronouncement, but by appropriate legislation."

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[28] G.R. No. 226592, July 27, 2021.

As such, despite the obvious disregard for petitioner's authority displayed, the Court is constrained to deem respondent to have technically exhausted all administrative remedies before it.

As the assessment was invalid, respondent is entitled to a refund of erroneously paid taxes

The final issue here concerns the assessment against respondent. Petitioner claims that the same has become final and executory given respondent's failure to raise a timely judicial appeal to July 31, 2015 letter. Thus, the Court in Division had no jurisdiction over it and should not have declared the same invalid.

We disagree.

The Court in Division, in the Assailed Resolution, already explained that an assessment made through the violation of a taxpayer's right can never reach finality,[29] citing *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[30] Notably, petitioner raised no argument against this and provided no explanation as to how even a void assessment can become uncontestable despite its nullity. As such, as long as an assessment is void for violation of a taxpayer's right to due process, said taxpayer's right to judicially assail said assessment is seemingly imprescriptible.

The lack of a LOA here, as discussed above, means that the assessment was never valid, made doubly so by the absence of due dates on the FAN. Being void *ab initio*, it could never mature into the finality that would otherwise bar respondent from assailing it or the Court in Division from gaining jurisdiction over it. The argument that the assessment was uncontestable consequently holds no water.

To be clear, the Court understands petitioner's plight. The Court is not unaware of the practice, by various taxpayers, of sidestepping the prescriptive period for judicially assailing assessments. Even after the prescriptive period for a proper judicial protest has lapsed, a number of taxpayers still belatedly challenge these by filing, for example, a Petition assailing a Warrant of Distraint and/or Levy or, as in this case, a judicial claim for refund. By challenging the validity of assessments through such Petitions, taxpayers are thus able to assail said assessments even after failing to timely file direct judicial protest against these. The tactic effectively deprives the CIR of his power once again, this time to review protests against assessments.

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[29] *See* Resolution, dated December 14, 2023, p. 3, *Rollo*, p. 72.
[30] G.R. No. 240729, Resolution, August 24, 2020.

Again, however, such maneuvers are technically allowable. So long as an assessment is void, it cannot gain finality and thus cannot come under the protection, meant for lawfully made assessments, of a prescriptive period. The result seems to be that a taxpayer whose right to due process was violated during the assessment process may challenge the same at any time.

In any event, the issue, of taxpayers challenging null and void assessments after the lapse of the prescriptive period, should not be solved by simply barring taxpayers from raising such challenges. It should be solved by ensuring that the assessment process *does not violate the taxpayer's right to due process in the first place.*

All told, We cannot grant the instant Petition.

ACCORDINGLY, petitioner's Petition for Review, filed on January 19, 2024, is hereby **DENIED** for lack of merit. The Decision, dated August 10, 2023, and the Resolution, dated December 14, 2023, both rendered by the Court in Division in CTA Case No. 10053, are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(*With due respect, I reiterate my CDO in the assailed Decision.*)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(*With due respect, I join the CDO of the Presiding Justice in the Assailed Decision*)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

(*With due respect, I join the CDO of PJ Del Rosario in the assailed Decision*)
HENRY S. ANGELES
Associate Justice

CERTIFICATION

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.

ROMAN G. DEL ROSARIO
Presiding Justice