REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

SARANGANI RESOURCES CORPORATION,
Respondent.

CTA EB No. 1098
(CTA Case No. 8105)

Present:

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

Promulgated:

APR 28 2015 3:28 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is petitioner's Petition for Review seeking the nullification of the Decision and subsequent resolution of the Special First Division of this Court, rendered on June 28, 2013 and November 8, 2013, respectively.

The Facts

The facts, as found by the Division, are as follows:

> "Petitioner Sarangani Resources Corporation [now, respondent] is a domestic corporation organized for the purpose of and engaged in the acquisition of real property, subdivision business; ownership,

development, construction and operation of resorts, golf courses, hotels, beach houses, tennis courts and other structure for tourism purposes on acquired real estate; improvement, development and management of acquired real estate and the construction and alteration on any lands owned, held or occupied buildings and other structures; sale, lease mortgage or disposition of lands or interest therein and in buildings and other structures; production and sale of agricultural products; and the operation of plants, mills, depots, factories and machineries of all kinds for the manufacture of articles of all kinds on the manufacture of which agricultural products are used. Petitioner's office address is located at Cannery Housing, Cannery Site, Polomolok, South Cotabato.

On the other hand, respondent [now, petitioner] is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), authorized to review protests on deficiency tax assessment. She holds office at the 5th Floor, BIR National Office Building, Diliman, Quezon City.

In May of 2007, petitioner was furnished a copy of Letter of Authority No. 00057657, authorizing Revenue Officer Adia P. Macasindi supervised by Revenue Officer Evelyn T. Mallillin of Revenue District Office No. 111, Koronadal City to conduct an examination of petitioner's books of accounts and other accounting records for verification of its tax liabilities for the calendar year ending 31 December 2005.

During the audit period, petitioner submitted to respondent, through Myrna L. Bernardo, OIC-Revenue District Officer of Revenue District Office No. 111, the relevant documents pursuant to the various letter requests of the latter.

On July 15, 2008, petitioner received a Notice for Initial Conference together with a schedule of tax deficiency and the details of discrepancies based upon the investigation conducted by the revenue officer.

On November 12, 2008, petitioner received a copy of the Preliminary Assessment Notice (PAN) issued by Mamapok G. Diro, Assistant Regional Director of Revenue Region No. 18, stating therein that after investigation it was found that petitioner has deficiency income and value-added taxes for calendar year 2005 amounting to P3,049,115.31, broken down as follows: P2,831,888.64 as income tax payable and P217,226.67 as value-added tax payable.

On November 26, 2008, Carlos S. Baldostamon, Jr., the President of petitioner, submitted two (2) letters both dated November 21, 2008 to Mamapok G. Diro, assistant Regional Director of respondent, requesting a reconsideration and an extension of time within which to file in writing its explanation and to submit all relevant documents supporting its protest.

On December 8, 2008, petitioner received a letter from Esmeralda M. Tabule, Regional Director of BIR Revenue Region No. 18, denying the request for reconsideration and the request for an extension of time to file its written explanation.

On December 22, 2008, petitioner received a Formal Letter of Demand(FLD) and Assessment Notice (FAN), with the Details of Discrepancies all dated December 1, 2008 issued by the Regional Director assessing petitioner with a total collectible amount of P1,402,000.00, corresponding to compromise penalties for calendar year 2005, to wit:

xxx

On December 22, 2008, petitioner received another Formal Letter of Demand and Assessment Notice, with Details of Discrepancies all dated December 2, 2008, from respondent, through Esmeralda M. Tabule, assessing petitioner for its tax deficiencies amounting to P1,664,546.43, broken down as follows:

xxx

Petitioner was made liable for a total amount of P3,066,546.43, including compromise penalties.

On January 21, 2009, petitioner protested the foregoing assessment by filing a letter-protest addressed to respondent, through Esmeralda M. Tabule, Regional Director of BIR Revenue Region No. 18, Cotabato City.

On March 19, 2009, petitioner submitted all the relevant documents in support of its protest.

Petitioner received from Regional Director Atty. Marcelinda Omila-Yap a Decision dated July 15, 2009, partially granting the protest of petitioner, together with the attached Recomputation of Tax Liabilities showing a reduction of tax due to P1,465,113.20, detailed as follows:

xxx

> On August 28, 2009, petitioner filed its letter addressed to respondent Commissioner, requesting reconsideration of the Decision issued by Atty. Marcelinda Omila-Yap, pursuant to Section 3.1.5 of Revenue Regulations No. 12-99, which provides, among others, the procedure in elevating taxpayers' protest to the BIR Commissioner within thirty (30) days from date of receipt of the final decision of the BIR Commissioner's duly authorized representative.
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> On October 15, 2009, petitioner submitted relevant documents in support of its letter dated August 28, 2009.
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> Due to the inaction of respondent on the said request for reconsideration, petitioner filed on May 13, 2010 the instant Petition for Review praying that the assessment of deficiency income tax, VAT, and compromise penalties in the aggregate amount of P1,465,113.20, covering taxable year 2005, be cancelled and withdrawn.
>
> On July 16, 2010, respondent filed her Answer alleging the following defenses: xxx"[1] (*Citations omitted*)

Trial ensued, after which, the Special First Division promulgated the assailed Decision, which disposed of the case, as follows:

> "WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby PARTIALLY GRANTED. The assessments for deficiency income tax and value-added tax issued by respondent against petitioner for taxable year 2005 are hereby AFFIRMED with some modifications. Accordingly, petitioner is hereby ORDERED to PAY respondent the modified amount of P403,468.34, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	Basic	25% Surcharge	Total
Income Tax	P235,021.09	P58,755.27	P293,776.36
VAT	87,753.58	21,938.40	109,691.98
Total Tax Due	**P322,774.67**	**P80,693.67**	**P403,468.34**

> Moreover, petitioner is ORDERED to PAY (a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax of P235,021.09 and value-added tax of P87,753.58

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[1] *Rollo*, EB Case No. 1098, pp. 26-32.

> computed from April 15, 2006 and January 25, 2006, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of 20% *per annum* on the total amount of P403,468.34 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from July 29, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> The compromise penalty of P92,000.00 is hereby CANCELLED as there is no compromise agreement between the parties."[2]

Petitioner CIR and respondent Sarangani Resources Corporation both filed Motions for Partial Reconsideration which were denied in the Special First Division's November 8, 2013 Resolution.[3]

Petitioner CIR received the Special First Division's Resolution on November 27, 2013, and after an extension[4] was granted, timely filed the instant Petition for Review before the CTA *En Banc* on December 26, 2013.[5]

On January 21, 2014, respondent Sarangani Resources filed a Manifestation that it has fully paid, on December 16, 2013, its tax liabilities (P1,691,923.57) for taxable year 2005 in accordance with the Decision dated June 28, 2013.[6]

On March 6, 2014, the CTA received respondent Sarangani Resources' Comment (On Petition for Review dated 20 December 2013), which was posted on February 27, 2014.[7]

The CTA *En Banc* resolved to give due course to the petition, through the Resolution dated March 31, 2014, and ordered the parties to submit their memoranda within thirty (30) days.[8]

The instant case was submitted for decision considering respondent Sarangani Resources' memorandum filed on May

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[2] *Rollo*, p. 56.
[3] *Rollo*, pp. 58-69.
[4] *Rollo*, p. 6.
[5] *Rollo*, p. 7.
[6] *Rollo*, pp. 73-78.
[7] *Rollo*, pp. 85-94.
[8] *Rollo*, pp. 97-98.

12, 2014, and petitioner CIR's memorandum filed on May 27, 2014.

Issues

Petitioner CIR raises the following issues:

1. Whether the Honorable Court is correct in partially granting respondent's claimed deductions.

2. Whether respondent is liable for deficiency VAT assessment on its interest income.

Ruling of the Court

At the outset, the Court *En Banc* sees the need to examine the timeliness of the appeal before the CTA Special First Division. Settled is the rule that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[9] The right to appeal is not part of due process but a mere statutory privilege that has to be exercised only in the manner and in accordance with the provisions of law.[10]

While the timeliness of the appeal is not raised as an issue in the instant petition nor in the Division below, the Court *En Banc* is not precluded from reviewing the same. Thus, the Supreme Court has clarified that "where prescription, **lack of jurisdiction** or failure to state a cause of action clearly appear from the complaint filed with the trial court, the action may be dismissed *motu proprio* by the Court of Appeals, **even if the case has been elevated for review on different grounds**. Verily, the dismissal of such cases appropriately ends useless litigations.[11]

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[9] *Commissioner of Internal Revenue vs. Fort Bonifacio Developmet Corporation*, G.R. No. 167606, August 11, 2010.
[10] *Arnulfo A Aguilar vs. Court of Appeals, Civil Service Commission and Commission on Elections*, G.R. No. 172986, October 2, 2009.
[11] *George Katon vs. Manuel Palanca Jr., et al.*, G.R. No. 151149, September 7, 2004.

The timeliness of respondent Sarangani Resources' appeal before the CTA Division must be reviewed in light of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "Sec. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> Within a period to be prescribed by the implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing forms and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> <u>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 said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.</u>" (*Underscoring ours*)

Corollary thereto, Section 3.1.5 of Revenue Regulations No. 12-99[12] provides:

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[12] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

> "3.1.5 Disputed Assessment. – The taxpayer or his duly authorized representative may protest administratively against the aforesaid letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
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> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
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> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes the submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
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> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
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> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt

> of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
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> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable." (*Underscoring ours*)

Pursuant to the above provisions, the Commissioner of Internal Revenue (CIR) or her duly authorized representative has 180 days from the date of submission of the supporting documents to decide the protest filed by a taxpayer. If the CIR or her duly authorized representative failed to act on the disputed assessment within the 180-day period from the date of submission of documents, the taxpayer can either: (1) file a petition for review with the Court of Tax Appeals (CTA) within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision.[13] These options are mutually exclusive and resort to one bars the application of the other.[14]

In the instant case, records show that respondent Sarangani Resources received a copy of the Formal Letter of Demand (FLD) on December 22, 2008. On January 21, 2009, respondent filed a protest letter to the FLD. On March 19,

[13] *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012, citing *RCBC vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.
[14] *Id.*

2009, respondent submitted all the relevant documents in support of its protest. Therefore, the CIR or her duly authorized representative had 180 days from March 19, 2009 or until September 15, 2009 to decide the protest.

On July 15, 2009, Regional Director Yap rendered a decision partially granting respondent Sarangani Resources' protest, which decision was received by respondent on July 29, 2009. Respondent elevated its protest to the CIR on August 28, 2009, pursuant to Section 3.1.5 of RR No. 12-99. When respondent elevated its protest, the CIR had only the remaining 18 days of the 180-day period or until September 15, 2009, within which to decide the protest. From September 15, 2009, respondent had until October 15, 2009 to appeal to the CTA.

However, respondent did not appeal to the CTA upon the lapse of the 180-day period on September 15, 2009, nor within the 30-day period therefrom. Instead, respondent submitted additional documents on October 15, 2009 and counted another 180-day period from October 15, 2009 for the CIR to decide its appeal. Within thirty (30) days from the lapse of the new 180-day period on April 23, 2010, respondent Sarangani Resources filed a Petition for Review with the CTA Division to appeal the inaction of the CIR. Specifically, respondent filed the Petition for Review on May 13, 2010.

It must be stressed that Section 228 of the NIRC of 1997, as amended, provides only for <u>one</u> 180-day period for the CIR or her authorized representative to decide the protest. Thus, RR No. 12-99, which implements Section 228, does not provide for a fresh or separate 180-day period for the CIR to decide the appealed decision of her authorized representative.

A plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99 reveals that there is only <u>one</u> "180-day period" which shall be counted <u>from the date of submission of the relevant supporting documents</u>. The date of submission of the relevant supporting documents, as expressly provided in Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99, shall be <u>within sixty (60) days from the filing of the protest</u>. There is no mention in either Section 228 of the NIRC of 1997, as amended, nor in Section 3.1.5 of RR No. 12-99, that upon appeal to the CIR of the decision of her duly authorized representative, the taxpayer may submit additional documents or that the taxpayer is given a fresh period of 60 days to submit such additional supporting documents.

As such, respondent Sarangani Resources erred in counting a new 180-day period from October 15, 2009 for the CIR to decide on the appealed decision of her authorized representative. When the decision of the CIR's authorized representative was appealed to the CIR, the running of the 180-day period should still be counted from March 19, 2009, the date when respondent submitted the relevant supporting documents in support of its protest.

Considering that the 180-day period expired on September 15, 2009, pursuant to Section 228 of the NIRC of 1997, as amended, respondent Sarangani Resources had thirty (30) days, or until October 15, 2009 to appeal to the CTA. Records show that respondent filed the Petition for Review in CTA Case No. 8105 only on May 13, 2010, or two hundred and ten (210) days beyond the last day to file the petition for review. Since the Petition for Review with the CTA was filed way beyond the 30-day reglementary period, the CTA Special First Division had no jurisdiction to entertain the Petition for Review in CTA Case No. 8105, and should thus have been dismissed for lack of jurisdiction.

The other issues raised will no longer be discussed for being moot.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The Decision and Resolution of the Special First Division, dated June 28, 2013 and November 8, 2013, respectively, are **REVERSED** and **SET ASIDE**. The Petition for Review filed by respondent Sarangani Resources Corporation in CTA Case No. 8105 is **DISMISSED** for having been filed out of time.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice