REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE NATIONAL OIL COMPANY,
Petitioner,

- versus-

COMMISSIONER SIXTO S. ESQUIVIAS IV of the BUREAU OF INTERNAL REVENUE,
Respondent,

CTA EB No. 587
(CTA Case No. 7930)

Present:

Acosta, *P.J.*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:
JUN 0 2 2011 [illegible] 10:00 a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* is the *Resolution*, dated January 5, 2010, of the CTA First Division denying petitioner's Motion for Reconsideration. The assailed *Resolution* states, as follows:

> "From the foregoing, it is clear that the arguments raised by petitioner in its *Motion* are mere reiteration of its averments mentioned in its *Motion to Admit Petition for Review* filed on May 20, 2009, and its *Reply to Comment (Dated 22 July 2009)* filed on August 6, 2009 which have been passed upon and addressed in the assailed Resolution. Thus, finding no compelling reason to warrant

> the reversal of the assailed Resolution, the *Motion* is hereby DENIED.
>
> WHEREFORE, the Motion for Reconsideration filed by petitioner is hereby DENIED for lack of merit."[1]

Petitioner received the assailed *Resolution* on January 14, 2010, and therefore had fifteen (15) days or until January 29, 2010 within which to file an appeal to the CTA *En Banc*. The petition for review was timely filed on January 28, 2010.

The Facts[2]

Petitioner is a government-owned and controlled corporation under Presidential Decree No. 344, as amended, which is mandated to promote the development and utilization of energy sources to ensure the country's self-sufficiency in energy. In 2003, it has five (5) subsidiaries, all of which were engaged in the exploration, exploitation and development of energy resources pursuant to the mandate of petitioner's charter.

When necessity arises and when its subsidiaries are unable to secure funds from banks and other financing institutions due to the absence of credit facility, petitioner utilizes its own credit facility to secure funds on behalf of its subsidiaries. Petitioner extends the same as advances to its subsidiaries to address the latter's various operational and capital expenditures of its energy projects.

On January 16, 2008, petitioner received the Formal Assessment Notice (issued by the BIR Revenue Region No. 8, Makati City) dated January 15, 2008. The said assessment (Assessment No. VT-18531-03-08-0206) sought to collect from the petitioner deficiency value added tax (VAT) for the year 2003 in the total amount of One Hundred Fourteen Million Fifty-Two Thousand Six Hundred Twenty-Three

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[1] *Rollo*, C.T.A. EB Case No. 587, p. 21.
[2] *Rollo*, pp. 3-6.

Pesos and Eighty-Seven Centavos (P114,052,623.87), inclusive of fifty percent (50%) surcharge and interest from January 2, 2004 to February 18, 2008.

Petitioner filed its Letter-Protest dated February 13, 2008 against the said assessment on the following grounds: (1) the BIR is barred from making the assessment because the alleged VAT deficiency was for the fiscal year 2003; (2) PNOC did not file a false or fraudulent tax return; and (3) the interest income earned by the PNOC from advances or loans it extends to its subsidiaries is not among the transactions subject to VAT mentioned by the Tax Code.

The BIR, however, failed to act on the Formal Protest filed by the petitioner.

On August 7, 2008, or prior to the expiration of the 30-day period counted from the lapse of the 180-day period, petitioner filed with the Department of Justice (DOJ) a Petition for Review of BIR's Formal Assessment dated January 15, 2008, in accordance with Presidential Decree No. 242. Said Presidential Decree prescribes the procedure for administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including GOCCs.

On January 15, 2009, petitioner received the Resolution issued by the DOJ dismissing the said petition for lack of jurisdiction, holding that the issues raised in the petition fall within the jurisdiction of the CTA pursuant to Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282.

On May 20, 2009, petitioner filed with the CTA its Motion to Admit Attached Petition for Review to assail the subject assessment of deficiency VAT for 2003 and prayed for the liberal interpretation of the prescribed reglementary period to appeal.

On August 24, 2009, the CTA First Division promulgated a Resolution, which denied petitioner's Motion to Admit Petition for Review for lack of merit and dismissed the Petition for Review for being filed out of time. The pertinent portions of which read:

> "In the instant case, it is undisputed that the Petition for Review was only filed in May 20, 2009, or after a lapse of about nine (9) months after the 180-day period to file Petition for Review has expired due to inaction of the said formal protest by the respondent. Moreover, petitioner has not shown any valid explanation why it initially filed a Petition for Review before the DOJ, instead of this Court as provided in the Tax Code. If there was such a mistake, the same has not been shown in the motion to be excusable as to warrant the liberal interpretation of the prescribed rules of procedure.
>
> WHEREFORE, the Motion to Admit petitioner's Petition for Review filed on May 20, 2009 is hereby DENIED for lack of merit, and the Petition for Review is hereby DISMISSED for being filed out of time."[3]

Petitioner filed a Motion for Reconsideration of the *Resolution* dated August 24, 2009. On January 5, 2010, the CTA First Division rendered the assailed *Resolution* denying petitioner's Motion for Reconsideration.

Issue

As ground for its appeal, petitioner raises a single ground, to wit:

> "The 1st Division erred in not giving due course to petitioner's Petition for Review and in not applying the liberal application of the reglementary period to appeal provided in Section 228 of the NIRC, as amended."[4]

Ruling of the Court

The Court is not persuaded.

It is a matter of record that petitioner filed its letter-protest on February 13, 2008, contesting respondent's assessment for deficiency VAT. Applying the periods

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[3] *Rollo*, p. 115.
[4] *Rollo*, p. 6 and 165.

provided in Section 228 of the 1997 Tax Code, as amended, respondent had 180 days or until August 11, 2008 to resolve the protest. Counting thirty (30) days from the lapse of the 180 days, petitioner had until September 10, 2008 to file its appeal with the Court of Tax Appeals.

Petitioner filed its Motion to Admit Attached Petition for Review only on May 20, 2009 or nearly nine (9) months after the period when it should have filed its appeal with the CTA. Petitioner's appeal was clearly filed beyond the prescriptive period and was properly dismissed.

Petitioner now comes before the Court and asks for the liberal application of the rules of procedure on the ground that the issue involved is novel and that petitioner's right against unreasonable examination, investigation and unlawful assessment must be upheld.[5]

It has been settled that the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules.[6] While the Courts have relaxed the governing periods of appeal in order to serve substantial justice, the same has only been done in exceptional cases.[7] A perusal of the records will reveal that the instant case is not one that will justify a relaxation of the rules.

Petitioner submits that the issue whether or not the interest income on advances received by a parent from its subsidiaries /affiliates is subject to VAT, is a novel issue which has not been resolved.[8] This Court disagrees. In the case of *Lapanday Foods Corp. vs. Commissioner of Internal Revenue*[9], we ruled:

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[5] *Rollo*, pp. 13-14 and 172.
[6] *Apex Mining Co., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 122472, October 20, 2005.
[7] *Ibid.*
[8] *Rollo*, p. 172.
[9] C.T.A. EB Case No. 367 (C.T.A. Case No. 7097), January 29, 2009.

> "Furthermore, the loan assistance provided by petitioner to its affiliates, being incidental to its business, is deemed a transaction 'in the course of trade and business'. The phrase 'in the course of trade and business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto (*Value Added Tax, Mamalateo, p. 82 [2007]).* 'Incidental' means depending upon or appertaining to something else primary; something necessary appertaining to, or depending upon another, which is termed the principal; something incidental to the main purpose (*Black's Law Dictionary, 6th ed. p. 763*).
>
> Considering the foregoing, We hold that the income generated by petitioner from the loans granted to its affiliates is subject to VAT, pursuant to Section 105, in relation to Section 108 of the NIRC of 1997, as amended.
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> x x x
>
> Pursuant to the above ruling of the Supreme Court, petitioner's income from loans extended to its affiliates is subject to VAT. Whether petitioner has realized profit or not is insignificant, as long as the petitioner has provided financial assistance or services for a fee, remuneration or consideration, such service rendered is subject to VAT."

Clearly, interest income received by a parent company from loans or advances it has granted to its subsidiaries/affiliates is subject to VAT.

Tax assessments made by revenue examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[10]

Petitioner submits further that its delay in filing the petition for review before the CTA was due to its mistake in filing its appeal before the DOJ pursuant to P.D. 242.

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[10] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007; citing *Sy Po vs. Court of Appeals*, G.R. No. L-81446, August 18, 1988.

We agree with the ruling of the CTA First Division in its *Resolution* dated August 24, 2009, to wit:

> "As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory.
>
> In *United Pulp and Paper Co., Inc. vs. United Pulp and Paper Chapter-Federation of Free Workers* (*G.R. No. 141117, March 25, 2004*), the Supreme Court held that: '(R)ules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard in the correct form and manner, at the prescribed time in a peaceful though adversarial confrontation before a judge whose authority litigants acknowledge. Public order and our system of justice are well served by a conscientious observance of the rules of procedure, particularly by government officials and agencies.'
>
> In the instant case, it is undisputed that the Petition for Review was only filed in May 20, 2009, or after a lapse of about nine (9) months after the 180-day period to file Petition for Review has expired due to inaction of the said formal protest by the respondent. Moreover, petitioner has not shown any valid explanation why it initially filed a Petition for Review before the DOJ, instead of this Court as provided in the Tax Code. If there was such a mistake, the same has not been shown in the motion to be excusable as to warrant the liberal interpretation of the prescribed rules of procedure."[11]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

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[11] *Rollo*, pp. 151-152.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
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.

ERNESTO D. ACOSTA
Presiding Justice