REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

EMPIRE AUTOMATION PHILIPPINES, INC. *Petitioner*,	**CTA CASE NO. 10470**
	Members: **RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 16 2023 4:00 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Mandamus,[1] filed by petitioner Empire Automation Philippines, Inc. against respondent Commissioner of Internal Revenue ("CIR"), seeking to compel the Bureau of Internal Revenue ("BIR") to accept its application for Tax Amnesty under Republic Act No. 11213 or the Tax Amnesty Act covering its tax liabilities for Expanded Withholding Tax (EWT), Fringe Benefit Tax, and Final Withholding Tax (FWT) in the aggregate amount of ₱1,458,165.09.

The Parties

Petitioner is a domestic corporation primarily engaged in the business of security systems integration.[2] Its principal office is located at the 11th floor, SyCip Law Center, 105 Paseo de Roxas, Makati City.[3]

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1 *See* Petition for Mandamus, Records, pp. 6-24.
2 *Ibid.*
3 *Ibid.*

Meanwhile, respondent is the chief official of the BIR tasked with enforcement of internal revenue laws. He may be served with notices, orders, and other processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

The Facts

On 16 August 2019, petitioner received a Formal Assessment Notice (FAN) with attached Details of Discrepancies, dated 14 August 2019, informing petitioner of its alleged deficiency tax liabilities for taxable year 2016 with the following details:[5]

	Income Tax	VAT	EWT	Fringe Benefit Tax	FWT	DST
Basic Tax	₱2,538,698.37	₱2,233,398.74	₱17,344.92	₱559,025.52	₱309,170.58	₱300,345.00
Interest	894,178.26	884,548.28	6,964.58	224,467.89	124,142.58	122,244.53
Surcharge	0.00	0.00	0.00	139,756.38	77,292.64	75,086.25
Compromise	0.00	0.00	0.00	0.00	0.00	0.00
Total	**₱3,432,876.63**	**₱3,117,947.02**	**₱24,309.50**	**₱923,249.79**	**₱510,605.80**	**₱497,675.78**

On 12 September 2019, petitioner filed its Protest Letter, dated 9 September 2019, for income, VAT, and DST deficiencies.

Meanwhile, with respect to EWT, FBT, and FWT deficiency, petitioner waived its right to file a valid protest and stated that it will avail of the remedies provided in the Tax Amnesty Act.[6]

Subsequently, on 30 September 2019, petitioner filed an ***Application and Request Letter*** dated 26 September 2019 for tax amnesty.[7] In the said application, petitioner attached the following: (1) Sworn Statement; (2) Duly Paid Documentary Stamp Tax (BIR Form 2000); (3) Duly paid Certification Fee (BIR Form 0605); (4) Draft of Certificate of Delinquency for signature; (5) Tax Amnesty Return (BIR Form 2118-DA); (6) Acceptance Payment Form (BIR Form 0621-DA); (7) Copies of the Assessment Notices; and (8) Copy of Protest Letter.

On various instances, petitioner requested for the issuance of a Certificate of Delinquency/Tax Liability for the EWT, Fringe Benefit, and FWT.

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[4] *Ibid.*
[5] Exhibit "P-2-A", *id.*, pp. 66-78.
[6] Exhibit "P-4-B", *id.*, pp. 84-100.
[7] Exhibit "P-5", *id.*, pp. 101-103.

On 17, October 2019, petitioner received an *Acknowledgment Letter, dated 1 October 2019*,[8] issued by OIC-Chief of Collection Division of BIR RR No. 8-A, informing petitioner that its *Application and Request Letter* had been endorsed to their Legal Division for legal opinion/resolution.

On 25 October 2019, petitioner received another *Acknowledgment Letter*[9] from the Revenue District Officer of BIR RDO No. 47 informing petitioner of the endorsement of its *Application and Request Letter* to the Legal Division for opinion on whether petitioner is qualified to avail of the Tax Amnesty Program.

On 6 November 2019, petitioner submitted a *Follow-Up Letter*[10] to respondent, reiterating that it is qualified to avail the Tax Amnesty on Delinquency and requesting that the relevant amnesty documents be signed and released to petitioner. On 28 November 2019, petitioner received a *Response Letter*[11] from Regional Director of BIR RR No. 8A, stating that petitioner's *Follow-Up Letter* would be forwarded to RDO No. 47 for consolidation with the tax docket, for evaluation, and for appropriate action. On even date, petitioner received a *Response Letter*,[12] informing petitioner that its *Follow-Up Letter* had been forwarded to the Chief Legal Division for consolidation and appropriate action.

On 11 February 2020, petitioner sent a *Request for Acceptance Payment Form (APF) Signature*[13] to have the APF approved by the Revenue Officers. Again, on 13 February 2020, petitioner sent a *Formal Demand to Sign APF*[14] to respondent demanding that the APF be signed within twenty-four (24) hours upon its receipt. On 17 February 2020, petitioner furnished respondent with a *Final Notice Before Suits*[15] as a final reminder to the revenue officers to that they are required by law to sign the APF.

On 27 February 2020, petitioner filed the APF to the Authorized Agent Bank even without the signature of the Revenue District Officer and the corresponding delinquent tax in the amount of ₱885,541.02 representing basic taxes for EWT, FBT, and FWT.

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[8] Exhibit "P-8-A", *id.*, pp. 127-128.
[9] Exhibit "P-8-B", *id.*, p. 129.
[10] Exhibit "P-9", *id.*, pp. 130-132.
[11] Exhibit "P-10-A", *id.*, pp. 133-134.
[12] Exhibit "P-10-B", *id.*, pp. 135-136.
[13] Exhibit "P-11", *id.*, pp. 137-140.
[14] Exhibit "P-12-A", *id.*, pp. 141-147.
[15] Exhibit "P-12-B", *id.*, pp. 148-147.

On 2 March 2020, petitioner filed a *Compliance Letter for R.A. No. 11213*[16] with the BIR, stating that the tax amnesty shall become final and irrevocable upon compliance with the Tax Amnesty Act and payment of corresponding tax on delinquency.

On 6 March 2020, petitioner filed a *Request to Issue Authority to Cancel Assessment (ATCA)*[17] as soon as the Application for Tax Amnesty had been approved or deemed approved due to BIR's inaction.

On 12 March 2020, petitioner received a *Response Letter*[18] from Revenue District Office of RDO No. 47, informing petitioner that the *Request for APF Signature and Final Notice Before Suits* had been forwarded to the Legal Division for Consolidation.

On 2 July 2020, petitioner received a *Response Letter dated 14 June 2020*[19] from respondent's Collection Division, denying petitioner's request for ATCA. According to said letter, a Certificate of Tax Delinquency/Tax Liability must first be issued.

On 24 July 2020, petitioner filed a *Request for Reconsideration* with the BIR.[20]

On 25 September 2020, petitioner filed a *Notice of Deemed Approved TAD Application* with the BIR.[21]

Claiming inaction, petitioner filed the instant Petition for Mandamus on 19 February 2021.

The Issue

The sole issue submitted for this Court's resolution is as follows:

> Whether respondent may be compelled by mandamus to accept petitioner's application for tax amnesty.

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[16] Exhibit "P-13-A", *id.*, pp. 154-173.
[17] Exhibit "P-13-B", *id.*, pp. 174-177.
[18] Exhibit "P-14", *id.*, pp. 178-178.
[19] Exhibit "P-15", *id.*, pp. 179-181.
[20] Exhibit "P-16", *id.*, pp. 182-192.
[21] Exhibit "P-17", *id.*, pp. 193-208.

Arguments of the Parties

Petitioner's Arguments[22]

Petitioner primarily argues that the BIR gravely abused its discretion in denying its application for Tax Amnesty and refusing to issue Certificate of Delinquency/ Tax Liability, signed Acceptance Payment Form, and Authority to Cancel Assessment. It insists that it is qualified for the tax amnesty program in its payment of withholding taxes.

Petitioner also argues that it is the ministerial duty of the BIR to accept the tax amnesty application of petitioner as long as it complies with the requirements of the ***Tax Amnesty Act***.

The Ruling of the Court

The instant Petition for Review lacks merit.

Petitioner failed to show that it timely filed the Petition for Review

Section 4, Rule 65 of the Rules of Court provides that a petition for mandamus must be filed not later than sixty (60) days from notice of the judgment, order, or resolution:

> "RULE 65
> *Certiorari*, Prohibition, Mandamus
>
> SECTION 4. *When and where petition filed.* — The petition shall be filed **not later than sixty (60) days from notice of the judgment, order or resolution.** In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
>
> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the **acts or omissions of a quasi-judicial agency**, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

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22 Petition for Mandamus, *id.*, pp. 14-24.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days." (Emphasis, Ours.)

The present Petition for Mandamus is bereft of allegations on the timeliness of the petition. It did allege that the petition was filed not more than sixty (60) days from notice of the judgment, order, or resolution.

Assuming that the judgment, order, or resolution of respondent being assailed is the *Response Letter dated 14 June 2020*, the 60-day period shall be counted from petitioner's receipt on 2 July 2020. Counting sixty (60) days therefrom, petitioner had until 31 August 2020 to file the petition. Thus, the present petition filed on 19 February 2021 was clearly filed out of time.

On this ground, alone, dismissal of the petition is in order.

Even granting that the present petition was timely filed, the same still lacks merit, as will be discussed below.

The acceptance of the application of tax amnesty and the issuance of Certificate of Delinquency/ Tax Liability, signed Acceptance Payment Form, and Authority to Cancel Assessment is *not a ministerial* function of respondent.

A writ of mandamus may be issued when the following requisites concur: (1) petitioner must show a clear legal right to the act demanded; (2) respondent must have the duty to perform the act because the same is mandated by law; (3) respondent unlawfully neglects the performance of the duty enjoined by law; (4) the act to be performed is ministerial, not discretionary; and (5) there is no other plain, speedy, and adequate remedy in the ordinary course of law.[23]

In the present case, petitioner claims that the acceptance of the application of tax amnesty, issuance of Certificate of Delinquency/Tax Liability, issuance of a signed Acceptance Payment Form, and issuance of Authority to Cancel Assessment are ministerial functions of respondent.

Respondent is mistaken.

[23] Philippine Statistics Authority (formerly National Statistics Office) and Philippine Statistics Authority-Legazpi City v. Clarilyn Ferolino, G.R. No. 238021, 14 June 2021.

A writ of mandamus may be issued only if the act pertains to a ministerial duty and not a discretionary one as held in ***Danilo A. Lihaylihay v. The Treasurer of the Philippines Roberto C. Tan, et al.***[24] ***(Lihaylihay Case)***, to wit:

> "A writ of *mandamus may issue in either of two (2) situations: first, 'when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, 'when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled.'*
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> The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.
>
> **Petitioner's legal right must have already been clearly established. It cannot be a prospective entitlement that is yet to be settled**. In *Lim Tay v. Court of Appeals*, this Court emphasized that '[m]andamus will not issue to establish a right, but only to enforce one that is already established.' In *Pefianco v. Moral*, this Court underscored that a writ of *mandamus 'never issues in doubtful cases.'*
>
> Respondents must also be shown to have actually neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully neglect" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.
>
> **The duty subject of mandamus must be ministerial rather than discretionary**. A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:
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>> [M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.
>
> This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Sanson v. Barrios*:
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>> Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal

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[24] G.R. No. 192223, 23 July 2018.

> authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. . . . *Mandamus will not lie to control the exercise of discretion of an inferior tribunal . . ., when the act complained of is either judicial or quasi-judicial.*
>
> . . . *It is the proper remedy when the case presented is outside of the exercise of judicial discretion.*

Mandamus, too, will not issue unless it, is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law." This is a requirement basic to all remedies under Rule 65, i.e., certiorari, prohibition, and mandamus."
(Emphasis, Ours.)

The ***Lihaylihay Case*** defines a function as discretionary as: "when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others."

To this Court's mind, the determination of who are qualified to avail of the tax amnesty, which includes issuance of Certificate of Delinquency/Tax Liability, signed Acceptance payment Form, and Authority to Cancel Assessment, all involve respondent's discretionary duties and not merely a ministerial one. Indeed, such discretion is guided by the rules and regulations of respondent as found in ***R.A. No. 11213, Rev. Regs. No. 4-2019,***[25] and ***RMC No. 57-2019.***[26]

<u>There was a plain, speedy, and adequate remedy.</u>

Another element for mandamus to prosper is that there must be no other plain, speedy, and adequate remedy in the ordinary course of law. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.[27]

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[25] Implements the rules and regulations of the Tax Amnesty Act, providing for the guidelines on the processing of Tax Amnesty Application on Tax Delinquencies

[26] Clarifies certain issues on Tax Amnesty on Delinquencies pursuant to the provisions of Tax Amnesty Act.

[27] Tagle v. Equitable PCI Bank, et al., G.R. No. 172299, 22 April 2008.

A plain, speedy and adequate remedy is available in the present case.

Sections 19 and 20, Chapter 4, Book VII, of the Administrative Code of 1987 (Executive Order EO No. 292, Series of 1987), read:

> "SECTION 19. Appeal.— Unless otherwise provided by law or executive order, **an appeal from a final decision of the agency may be taken to the Department head**.
>
> SECTION 20. Perfection of Administrative Appeal.— (1) **Administrative appeals under this Chapter shall be perfected within fifteen (15) days after receipt of a copy of the decision complained of by the party adversely affected, by filing with the agency which adjudicated the case a notice of appeal**, serving copies thereof upon the prevailing party and the appellate agency, and paying the required fees.
>
> (2) If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.
>
> (3) The agency shall, upon perfection of the appeal, transmit the records of the case to the appellate agency."
> (Emphasis, Ours)

The foregoing provisions govern the appellate procedure concerning a final decision[28] of an agency,[29] which necessarily includes a bureau, such as respondent,[30] to the Department head, which in turn refers to the Secretary of Finance.[31] Particularly, the appeal must be made within fifteen (15) days from receipt of a copy of the final decision of the agency concerned. Such appeal shall be perfected by filing a notice of appeal with the said agency.

In the present case, petitioner failed to file an appeal on the supposed decision of respondent being assailed. Thus, the present Petition for Mandamus is not proper.

WHEREFORE, premises considered, the instant Petition for Mandamus is hereby **DISMISSED.**

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[28] The term "decision" means "the whole or any part of the final disposition, not of an interlocutory character, whether affirmative, negative, or injunctive in form, of an agency in any matter . . ." as defined in Section 2 (8), Chapter 1, Book VII, of the Administrative Code of 1987.

[29] The term "agency" includes "any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to make rules, issues licenses, grant rights or privileges, and adjudicate cases . . ." as defined in Section 2 (1), Chapter 1, Book VII, of the Administrative Code of 1987.

[30] The Revenue Operations Group of the Department of Finance is composed, *inter alia*, of the BIR *see* to Section 16 (1) (a), Chapter 4, Title II, Book IV, of the Administrative Code of 1987].

[31] Section 4, Chapter 1, Title II, Book IV of the Administrative Code of 1987.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

(*Please see Concurring Opinion.*)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

EMPIRE AUTOMATION PHILIPPINES INC.,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10470

Members:

RINGPIS-LIBAN, *Chairperson and*
MODESTO-SAN PEDRO, JJ.

Promulgated:
JUN 16 2023
4:00 p.m.

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CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the *ponencia* that Respondent's determination of who are qualified to avail of the tax amnesty is not a ministerial duty but a discretionary one. Thus, the Court cannot compel Respondent to approve the Tax Amnesty Application of Petitioner, as prayed for in the instant "Petition for Mandamus".

I am of the opinion however that this Court can compel Respondent to act on the said application and decide to approve or deny the request for amnesty. It must be emphasized that as of date, Respondent has not yet acted on Petitioner's Tax Amnesty Application even after about three and a half (3 ½) years after its filing. This practice is unjust and inequitable for it leaves Petitioner hanging with no remedy in sight.

From all the foregoing, I vote to **DENY** the Petition for Mandamus for lack of merit.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice