REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILMAY PROPERTY, INCORPORATED,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8764

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
SEP 07 2018 8:49 Am

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RESOLUTION

MANAHAN, *J.:*

This resolves respondent Commissioner of Internal Revenue (CIR)'s Motion for Reconsideration, filed on June 7, 2018, with the Comment (on the Motion for Reconsideration dated June 4, 2018) filed on July 16, 2018 by petitioner Philmay Property, Inc. (Philmay).

Respondent assails the Court's Decision dated May 23, 2018, which disposed of the case as follows:

> **WHEREFORE**, the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for the FY ending June 30, 2009 covering deficiency income tax in the amount of Php37,808,329.60, deficiency VAT in the amount of Php73,126,969.85 and deficiency EWT in the amount of Php43,315,685.33 are **CANCELLED AND WITHDRAWN** while the deficiency DST is **PARTIALLY UPHELD**.
>
> Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWO HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED EIGHTY-ONE PESOS AND TWENTY FOUR CENTAVOS (Php276,381.24)** representing deficiency DST for the FY ending June 30, 2009, inclusive of the 25% surcharge 20% deficiency interest and 20% delinquency interest

imposed under Sections 248(A)(3) and 249(B)(C) of the NIRC, computed as follows:

Basic Deficiency DST	Php 52,353.99
25% Surcharge	13,088.50
20% Deficiency Interest (07/05/09 to 12/31/17)	
(P52,353.99 x 20% x 8.4904110 years)	88,901.38
Subtotal	Php 154,343.87
20% Delinquency Interest (1/17/14 to 12/31/17)	
(P154,343.87 x 20% x 3.9534247 years)	122,037.37
Total	Php **276,381.24**

In addition, petitioner is hereby **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the amount of Php154,343.87 (basic tax plus 25% surcharge plus 20% deficiency interest) computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.[1]

Meanwhile, on July 13, 2018, petitioner filed its Manifestation, that it has paid the amount of Php285,109.06 as computed in the Court's Decision.

In his motion, respondent argues that the Preliminary Collection Letter (PCL) is the CIR's final decision, and is an outright denial of the taxpayer's protest. As such, the issuance of the PCL dated August 15, 2013, which was received by Philmay on September 25, 2013, constitutes the final decision of the Bureau of Internal Revenue (BIR) on the taxpayer's protest. Within thirty (30) days from receipt of the PCL, the taxpayer should have filed an appeal or a petition for review before the Court of Tax Appeals (CTA). However, Philmay only filed its Petition for Review on February 13, 2014 which is beyond the 30-day period to appeal. On this ground, the CIR argues that the assessments have become final and executory and that the CTA has no jurisdiction.

Respondent also argues that his right to assess has not yet prescribed considering that after re-investigation, petitioner was found "to have over-declared its Cost of Service- Salaries and Wages and Operating Expenses, resulting to substantial

[1] Decision dated May 23, 2018, p. 45.

[under]declaration of taxable income by more than 30%, failed to declare and pay the corresponding Value-Added Tax, Documentary Stamp Tax and Expanded Withholding Tax of several consummated sales, rental from leased properties and re-acquired properties, and failed to declare and pay the corresponding Value-Added Tax for its loans payable."[2] That these findings constitute *prima facie* evidence of a false, if not fraudulent return, which warrants the application of the ten-year prescriptive period under Section 222(a) of the 1997 National Internal Revenue Code, as amended (NIRC).

Respondent also argues that petitioner was duly informed of the facts and law upon which the assessments were based, and that petitioner failed to impugn the validity of the subject assessments.

On the other hand, petitioner states that the arguments raised by the CIR are mere reiterations of the arguments already presented before the CTA. Petitioner argues that it did not receive any letter from respondent from the time it filed its protest until it received the subject PCL. Petitioner also states that the PCL was issued without taking into account petitioner's protest considering that the PCL did not make any reference at all to petitioner's protest. Further, its protest cannot be found in the BIR Records which bolsters its argument that the BIR did not consider its protest in issuing the PCL.

In the alternative, petitioner posits that its Petition for Review may be considered as an appeal from the inaction of the respondent on the ground that the PCL cannot be considered as the final decision of the CIR. It is as if respondent did not render any decision at all, which is tantamount to a denial of the protest through respondent's inaction. Under such argument, petitioner states that it timely filed its protest on May 23, 2013; that it submitted its supporting documents on July 18, 2013; that respondent's 180-day period to act on the protest lapsed on January 14, 2014; and, that petitioner timely filed its petition for review on February 13, 2014, which is within the 30-day period to appeal.

With respect to the assessment, petitioner argues that respondent failed to justify the application of the ten-year prescriptive period since respondent failed to present any evidence to prove falsity or fraud; that the evidence presented

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[2] Motion for Reconsideration, filed on June 7, 2018, p. 5.

by petitioner clearly show that there was neither underdeclaration of petitioner's sales, receipts, or income, nor any overstatement of petitioner's deductions.

The motion is denied.

After a careful review of the respondent's Motion for Reconsideration and the arguments raised in the previous pleadings and resolved in the assailed Decision, the Court finds no cogent reason to reverse nor modify its conclusions. It is true that the arguments raised by respondent are a mere rehash of those previously raised and resolved before this Court.

Anent the timeliness of petitioner's appeal, the Court finds that, in the instant case, the PCL was issued without taking into account petitioner's protest considering that the PCL did not make any reference to petitioner's protest. Thus, it was after petitioner requested the revocation of the PCL, through letters dated October 7[3] and 11,[4] 2013 that respondent became aware of petitioner's protest. It was in response to these letters that respondent issued the December 19, 2013 Letter[5], which reiterated the enforcement of collection thru summary remedies on the ground that the assessments have become final, executory and demandable. Based on these circumstances, it was the December 19, 2013 Letter which is considered as the final decision appealable to the Court of Tax Appeals (CTA).

With respect to respondent's argument that the ten-year prescriptive period should apply, the Court reiterates that nowhere in the notices issued to petitioner was it indicated that the ten-year period shall apply. Further, respondent failed to present any evidence, documentary or testimonial, with respect to any alleged finding of fraud which would justify the application of the ten-year period.

With respect to the items of assessment, respondent did not raise any specific item nor point to specific errors of the Court which would justify reconsideration of the Court's findings.

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[3] Petitioner's Formal Offer of Evidence (FOE), Folder 9, Exhibit "P-41".
[4] Petitioner's FOE, Folder 9, Exhibit "P-42"; BIR Records, Exhibit "R-4", pp. 406-405.
[5] Petitioner's FOE, Folder, 9, Exhibit "P-43"; BIR Records, Exhibit "R-6", p. 415.

WHEREFORE, the Commissioner of Internal Revenue's Motion for Reconsideration filed on June 7, 2018 is **DENIED** for lack of merit.

Petitioner's Manifestation filed on July 13, 2018 regarding its payment of Php285,109.06 is **NOTED** without further action.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice