REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILIPPINE NATIONAL OIL COMPANY (PNOC), Petitioner,	**C.T.A. CASE NO. 7930**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER SIXTO S. ESQUIVIAS IV of the BUREAU OF INTERNAL REVENUE (BIR), Respondent.	**Promulgated:** AUG 24 2009; 11:05am

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RESOLUTION

This resolves: (1) petitioner's **"Motion to Admit Attached Petition for Review"** filed on May 20, 2009; (2) respondent's "**COMMENT (RE: Motion to Admit Attached Petition for Review)**" filed on July 22, 2009; and (3) petitioner's **"REPLY TO COMMENT (Dated 22 July 2009)"** filed on August 6, 2009.

In the said Motion to Admit Petition for Review and Reply to Comment of respondent, petitioner seeks to admit its Petition for Review on the ground that the merits and novelty of petitioner's case justify the tempering of the strict application of the reglementary period to appeal provided in Section 228 of National Internal Revenue Code (NIRC) of 1997, as amended. The petitioner received the Formal Assessment Notice dated January 15, 2008 of the Bureau of Internal Revenue (BIR) on January 16, 2008, assessing the petitioner of deficiency value-added tax (VAT) for the year 2003. Consequently, petitioner filed a letter of protest with the

Commissioner of Internal Revenue (CIR) through the BIR Assessment Division, Rev. Region No. 8 on February 13, 2008, but the latter failed to act on the said protest within 180 days. Hence, on August 7, 2008, petitioner filed with the Department of Justice a Petition for Review of the BIR's Formal Assessment, in accordance with Presidential Decree No. 242.[1] However, on January 15, 2009 petitioner received from the Office of the Secretary of Justice its resolution dated December 5, 2008 dismissing the petition for lack of jurisdiction. In its letter dated January 19, 2009 petitioner requested legal assistance with the Office of Solicitor General (OSG) being its legal counsel, in filing the appropriate pleading with the proper court.

Petitioner avers that the instant motion does not impute any negligence or laxity on the performance of any government agency but merely cites the inherent difficulty in the thorough preparation of the instant petition, due to the heavy workload of the OSG. This difficulty is aggravated by the fact that the instant case involves a study of documents and records that are, by its nature, complicated and requires the knowledge of someone adept in the subject of taxation so as to masterfully present petitioner's case. Moreover, the petitioner invokes that it be given a fair chance to present its case, free from the constraint of technicalities. Being a government-owned and controlled corporation, the petitioner has always been dutiful in its mandate and has contributed billions of pesos to the coffers of the National Government (NG) to arrest the fiscal problem of the country.

In his Comment, the respondent opposes petitioner's motion and argues that this Court has no jurisdiction over the Petition for Review on account of prescription.

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[1] "Prescribing The Procedure For Administrative Settlement or Adjudication of Disputes, Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, Including Government-Owned or Controlled Corporations, and For Other Purposes."

It cited the provisions of *Section 228 of the National Internal Revenue Code of 1997, Section 7 of Republic Act No. 9282, Section 3(a)(2), Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals*, as well as the Supreme Court's ruling in *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue (G.R. No. 168498, June 16, 2006)*.

The respondent further argues that the tax assessments made by revenue examiners are presumed correct and made in good faith absent any showing that it is otherwise. The tax law gave petitioner the tools by which it can attempt to rebut the deficiency VAT assessment, but it failed to observe the procedure clearly laid down the legislature and interpreted by the Supreme Court.

In its Reply, petitioner argues that it cannot be considered tardy in elevating its case against public respondent to an appellate court for petitioner utilized the 30-day period for filing a Petition for Review with the Department of Justice, pursuant to Presidential Decree No. 242. Immediately after the DOJ dismissed its Petition for Review, the petitioner sought the legal assistance of the Office of the Solicitor General (OSG) in the preparation of the Petition for Review with this Court. Thus, petitioner cannot be accused of sleeping on or neglecting to exercise its right to appeal.

Moreover, petitioner argues that the Formal Assessment Notice was made only on January 15, 2008, a year after BIR's authority to make the assessment lapsed in January 2007. Therefore, under Section 203 of the Tax Code, respondent's right to assess deficiency taxes is already barred by the statute of limitations.

Hence, if only its petition could be given due course by this Court, petitioner can show by clear and sufficient evidence, the unlawfulness of the assessment and collection of alleged deficiency value added tax. Moreover, the disposition on the merits of the instant petition would finally settle the issue of whether petitioner's income from advances and loans it extended to its subsidiaries for the year 2003 is subject to value added tax, which undeniably would have a strong impact in the final transactions of those government-owned and controlled corporations that extend financial assistance to their subsidiaries, like petitioner.

After considering the arguments of both parties, the Court resolves to deny the instant motion.

Section 228 of the National Internal Revenue Code of 1997 provides:

> "Sec. 228. Protesting of Assessment –
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> x x x
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> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty 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 the said decision, or from the lapse of the one hundred eighty (180) - day period; otherwise the decision shall become final, executory and demandable".

Rule 8, Section 3 (a) of The Revised Rules of the Court of Tax Appeals likewise provides:

> "Sec. 3. Who may Appeal; period to file petition-
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> "(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the

> Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes."

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.[2]

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."

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[2] *Gachon, et al. vs. Devera, et al.*, G.R. No. 116695 June 20, 1997.

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.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice