REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE ELECTRIC CORPORATION, Petitioner,	CTA CASE NO. 8793
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 19 2018 10:22 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

Impugned in petitioner's Motion for Reconsideration is the Decision dated October 10, 2017, the *fallo* of which reads as follows:

> **WHEREFORE**, the instant Petition for Review filed by petitioner Philippine Electric Corporation on April 4, 2014, is hereby **DISMISSED**, for lack of jurisdiction.
>
> **SO ORDERED.**[1]

Petitioner opines that the Court erred in declaring that its judicial appeal was filed out of time. Citing jurisprudence,[2] it explains that the counting of the 30-day period to file an appeal before this Tribunal is reckoned from its receipt of the Warrant of Distraint and Levy (WDL) on March 7, 2014. Therefore, it has until April 7, 2014 to file

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[1] Docket, p. 2197.
[2] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004; and *Commissioner of Internal Revenue vs. Hambrecht & Quist, Philippines, Inc.,* G.R. No. 169225, November 17, 2010.

the instant petition. In other words, the instant petition was seasonably filed on April 4, 2014 vesting the Court with competence to hear its case.

Petitioner further points out that the Waivers it executed did not adhere to the mandatory provisions of RMO No. 20-90 and RDAO No. 5-01 as: 1) Ms. Marquez was not an authorized signatory of petitioner to execute the subject Waivers; 2) Ms. Marquez did not personally appear before the notary public who notarized the subject waivers; and 3) the first Waiver has no date of acceptance by respondent. Consequently, the waivers did not validly extend respondent's right to assess petitioner. Hence, the assessments he issued are time-barred by virtue of Section 203 of the NIRC, as amended. On this account, respondent's WDL based on the subject assessments has no leg to stand on, thus, must be cancelled and set aside.

On the other hand, no comment/opposition was interposed by respondent despite notice.[3]

Petitioner's Motion must fail.

Evidently, the issues raised by petitioner in his *Motion for Reconsideration* are the very same points it raised in its previous pleading, all of which have already been determined and passed upon by the Court in the impugned Decision of October 10, 2017. However, if only to put petitioner's mind to rest, the salient points of the impugned Decision shall be discussed anew.

Section 228 of the NIRC, as amended, as implemented by then RR No. 12-99 mandates *inter alia,* that a taxpayer must seek judicial intervention before the CTA within thirty (30) days from receipt of the final decision on disputed assessment (FDDA) rendered by respondent's or his authorized representative. Failure to do so shall make the assessment final, executory and unappealable.

The record shows that petitioner received the FDDA dated February 5, 2013 rendered by OIC Assistant

[3] Records verification report dated December 8, 2017.

Commissioner - Large Taxpayer's Service (LTS) Misajon on April 12, 2013. Counting thirty days from April 12, 2013, petitioner had until May 13, 2013 to institute its appeal before the CTA. By petitioner's belated filing of the instant petition on April 4, 2014, or way beyond the thirty (30)-day period enunciated in Section 228 of the NIRC, as amended, the Court is bereft of any authority to hear the present controversy. Consequently, we are left with no other recourse but to dismiss the case *ex mero motu* on the strength of Section 1, Rule 9 of the Rules of Court.[4]

WHEREFORE, petitioner's Motion for Reconsideration dated November 7, 2017 is **DENIED**. The impugned Decision of October 10, 2017 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[4] **Section 1.** *Defenses and objections not pleaded.* — xxx when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, xxx the court shall dismiss the claim.