22-000380-0051

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10947

WELTEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. RAMON B. LORENZO
ATTY. ROWELL B. VICENTE
ATTY. NORHAISAH A. CALBE
Bureau of Internal Revenue - Revenue Region No. 6
5th Floor, BIR Building I, Solana Street
Intramuros, Manila

ATTY. ALQUIN B. MANGUERA
Unit 707, Tower I, Mezza Residences I
Aurora Boulevard corner Araneta Avenue
Quezon City

GREETINGS:

You are hereby notified by these presents that on **August 7, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 8, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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WELTEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10947

Members:

DEL ROSARIO, *P.J., Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

AUG 07 2025 11:00AM

x- -x

RESOLUTION

CUI-DAVID, J.:

This resolves respondent's *Motion for Reconsideration (Re: Decision dated 30 April 2025)*, filed on May 28, 2025, with petitioner's *Opposition/Comment (Re: Motion for Reconsideration)*, filed on June 4, 2025. Respondent prays for the reversal and setting aside of the Court's Decision dated April 30, 2025 (assailed *Decision*), which states:

> **WHEREFORE**, premises considered, the present *Petition for Review* is **GRANTED**.
>
> Accordingly, the Formal Letter of Demand with Assessment Notices dated December 15, 2020 and the Warrant of Distraint and/or Levy dated October 14, 2021 are **CANCELLED** and **SET ASIDE**. Further, the Decision dated May 24, 2022 of respondent's authorized representative, Atty. Jethro M. Sabariaga, finding petitioner liable for deficiency income tax and value-added tax in the amount of ₱4,448,294.05 inclusive of increments for taxable year 2011, is **REVERSED** and **SET ASIDE**.
>
> Respondent is **ORDERED to REFUND** in favor of petitioner the amount of ₱229,400.36, representing the garnished amount.

> Consequently, respondent or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from collecting the amount of ₱4,448,294.05 from petitioner.
>
> **SO ORDERED.**

At the outset, the Court notes that respondent's motion was filed out of time and merely reiterates arguments previously raised and already considered in the assailed *Decision.*

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> SEC. 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall **file a motion for reconsideration** or new trial **within fifteen days from the date he received notice of the decision**, resolution or order **of the Court in question**. (Emphasis supplied)

The Supreme Court has declared that the reckoning point for computing reglementary periods and determining the finality of a decision is the date of service on the Office of the Solicitor General (OSG),[1] as the principal counsel, and not on any deputized lawyer.[2] This principle was clearly articulated in *Baldovino-Torres v. Torres,*[3] where the Supreme Court affirmed its earlier rulings on the matter:

> In the case of *National Power Corporation v. National Labor Relations Commission* (*NAPOCOR*), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG**. In holding so, the Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.

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1 *Republic v. Viaje, et al.*, G.R. No. 180993, January 27, 2016 [Per J. Reyes, Third Division], citing *National Power Corporation v. National Labor Relations Commission, et al.*, G.R. Nos. 90933–61, May 29, 1997 [Per J. Romero, Second Division].

2 *Baldovino-Torres v. Torres, et al.*, G.R. No. 248675, July 20, 2022 [Per J. Inting, Third Division]; *Commissioner of Customs v. Court of Tax Appeals, et al.*, G.R. No. 132929, March 27, 2000 [Per J. Mendoza, Second Division]; *National Power Corporation v. National Labor Relations Commission, et al.*, G.R. Nos. 90933–61, May 29, 1997 [Per J. Romero, Second Division].

3 G.R. No. 248675, July 20, 2022 [Per J. Inting, Third Division].

> The *NAPOCOR* case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals,* where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**
>
> In the same vein, the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017. Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. **The counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG and not by the public prosecutor.** This is because the public prosecutor acted as a mere representative of the OSG which, in turn, retained supervision and control over the former. (Emphasis supplied; Citations omitted)

A government lawyer deputized by the OSG is merely a representative, while the OSG retains supervision and control over the deputized counsel.[4] Thus, copies of court orders or decisions served on a deputized counsel are not binding until they are received by the OSG, as the principal counsel.

In this case, petitioner erroneously counted the fifteen (15)-day period to file a motion for reconsideration from May 13, 2025, the date when the BIR's deputized counsel received the assailed *Decision.*[5] However, the records show that the OSG received the assailed *Decision* earlier on May 7, 2025.[6]

Accordingly, the 15-day reglementary period to appeal should be reckoned from May 7, 2025, when the OSG received the assailed *Decision.* Thus, the deadline to move for reconsideration was May 22, 2025.

However, petitioner filed the instant motion only on May 28, 2025. Consequently, the assailed *Decision* became *ipso facto* final due to petitioner's failure to perfect an appeal within the prescribed period.

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4 *Baldovino-Torres v. Torres, et al.*, G.R. No. 248675, July 20, 2022 [Per J. Inting, Third Division]; *Commissioner of Customs v. Court of Tax Appeals, et al.*, G.R. No. 132929, March 27, 2000 [Per J. Mendoza, Second Division]; *National Power Corporation v. National Labor Relations Commission, et al.*, G.R. Nos. 90933–61, May 29, 1997 [Per J. Romero, Second Division].

5 Division Docket, p. 483.

6 *Id.*

It is well-settled that the failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional.[7] As such, the Court loses jurisdiction to review the assailed *Decision*, thereby foreclosing petitioner's right to challenge it.

Even if the motion was timely filed, the same lacks merit. Respondent insists that the Court lacks jurisdiction over the instant *Petition for Review* because the assessment had already become final, executory, and demandable due to petitioner's alleged failure to file a protest within thirty (30) days from receipt of the Final Assessment Notice and Formal Letter of Demand (FAN/FLD).

However, this argument hinges on the presumption that the FAN/FLD was validly served on petitioner. Petitioner has consistently challenged the validity of the alleged service, specifically asserting that the individual who purportedly received the FAN/FLD, Raezhell Quevada, was neither an officer, employee, nor an authorized representative of the company.

More significantly, respondent failed to present any competent witness to validate the alleged service or to identify the individual who received the assessment notices. In the absence of valid and proper service of the FAN/FLD, the 30-day period to file a protest under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, did not commence to run. Consequently, the Court finds that the assessment never attained finality and that the *Petition for Review* was timely filed.

As to the issue of prescription, petitioner argues that the right to assess had already prescribed, as the assessment was issued only in 2020, well beyond the three (3)-year prescriptive period, and long after December 31, 2015, the deadline set in the parties' waiver extending the period to assess.

Respondent, however, invokes the ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended, arguing that petitioner filed a false return due to a purported 38.69% underdeclaration of income.

[7] *Brual v. Contreras, et al.*, G.R. No. 205451, March 7, 2022 [Per J. Hernando, Second Division].

The 10-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended, applies only in cases involving a false or fraudulent return with intent to evade tax, or where no return is filed. A false return, as recent jurisprudence holds, involves a deliberate or willful misstatement.

As emphasized in *Mcdonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*,[8] a return can only be considered "false" for purposes of Section 222(a) if the misstatement or omission was deliberate or willful.

Here, respondent merely cites a discrepancy arising from third-party matching data, without presenting any detailed audit findings, supporting documents, or testimonies from the revenue officers who conducted the investigation. Neither did respondent offer any evidence to show that petitioner had willful intent to evade taxes. A bare allegation of underdeclaration, unsupported by clear and convincing evidence, is insufficient to shift the burden of proof or justify the application of the extended prescriptive period. Accordingly, the ordinary three-year prescriptive period applies.

While the parties executed a waiver extending the assessment period until **December 31, 2015**, the assessment was issued only on **December 15, 2020**, well beyond the extended period. Thus, respondent's right to assess has clearly prescribed.

Given the foregoing, the Court finds that the assessment was both *issued beyond the prescriptive period* and *not validly served*. Consequently, the assessment is void, and the Warrant of Distraint and/or Levy based thereon is likewise null and void.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Re: Decision dated 30 April 2025)* is **DENIED** for being filed out of time.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[8] G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].

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WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice