21-000364-0014

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10618

PHILIPPINE HYDRO (PH), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

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

COMMISSIONER OF INTERNAL REVENUE
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. KARL KENNY M. RAMO
Bureau of Internal Revenue
Room 703, Litigation Division
BIR National Office Building
BIR Road, Diliman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Sts.
Salcedo Village Makati City

GREETINGS:

You are hereby notified by these presents that on **June 29, 2023**, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 4 , 2023.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special First Division

PHILIPPINE HYDRO (PH), INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10618

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUN 2 9 2023; 3:05PM

x - x

RESOLUTION

MANAHAN, *J.*:

This resolves respondent's **Motion for Reconsideration (Re: Decision Promulgated on 06 March 2023)**[1] posted on March 24, 2023, which was received by this Court on March 30, 2023, seeking the reversal and setting aside of the Court's *Decision* dated March 6, 2023 (Assailed Decision), and the issuance of a new judgment dismissing the case for lack of jurisdiction.

Respondent argues that this Court erred in granting the instant petition notwithstanding the fact that it has no jurisdiction over the case.

Respondent also faulted this Court in finding that he committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing *Subpoena Duces Tecum* (SDT) and Letter of Authority (LOA) No. 211-2021-00000009, and ruling that petitioner has no plain, speedy, and adequate remedy after the issuance of the SDT.

He insists that it is his prerogative to require persons to produce books, papers, records or other data for the purpose of

[1] Docket, CTA Case No. 10618, pp. 529-541.

ascertaining the correctness of the return or in determining the liability of any person for any internal revenue tax.

On the other hand, petitioner, in its *Comment (To Respondent's Motion for Reconsideration dated March 24, 2023)*[2] filed on March 6, 2023, counter-argues that this Court has jurisdiction over the petition. It cited several Administrative Circulars of the Supreme Court relative to the physical closure of the courts and physical reopening of this Court on October 20, 2021.

Petitioner insists that respondent committed grave abuse of discretion amounting to excess or lack of jurisdiction. Petitioner also insists that it has no plain, speedy, and adequate remedy after the issuance of the SDT.

This Court shall determine first whether the instant motion was filed on time.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides that:

> "SECTION 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** by filing a motion for reconsideration or new trial **within fifteen days from the date of receipt of notice of the decision**, resolution or order of the Court in question." *(Emphasis supplied)*

In the instant motion, respondent avers that he received the Assailed Decision on March 9, 2023, which is also the date of respondent's receipt of a copy of said decision.

In accordance with the abovementioned provision of the RRCTA, respondent had fifteen (15) days from receipt of said decision from March 9, 2023, or until March 24, 2023, within which to file his motion for reconsideration. Thus, the filing of respondent's *Motion for Reconsideration (Re: Decision Promulgated on 06 February 2023)* on March 24, 2023 was on time.

As to the jurisdiction over this case, a review of the Supreme Court issuances relative to the physical closure of

---

[2] *Id.* at pp. 544 to 553.

courts due to the COVID-19 pandemic reveals that indeed the instant Petition for Certiorari was timely filed on October 21, 2021.

Pursuant to Supreme Court (SC) Administrative Circular No. 56-2021 dated July 30, 2021, all courts were physically closed from August 2, 2021 and the filing of pleadings was suspended. It was only under SC Administrative Circular No. 83-2021 dated October 18, 2021 that the suspension of the filing of pleadings was lifted and has given the litigants seven (7) calendar days from October 20, 2021 to file their required pleadings. Thus, the filing of petitioner petition for *certiorari* on October 21, 2021 was on time.

Respondent argues that it is within his authority under the Tax Code to require persons to produce books, papers, records or other data for the purpose of ascertaining the correctness of the return or in determining the liability of any person for any internal revenue tax.

In deciding the Assailed Decision, this Court is aware of such respondent's power under Section 5(C) of the 1997 National Internal Revenue Code, as amended.

However, in the instant case, the Court finds that respondent abused such power despite the fact that petitioner had already submitted the requested documents in compliance with the first Letter of Authority (LOA) issued by respondent to petitioner, and the right of the former to assess the covered period has already prescribed, as cited in the disquisition of the Assailed Decision, to wit:

> "Firstly, the period covered under LOA No. LOA-211-2015-00000220 (SN: eLA201100095641) dated September 15, 2015 refers to taxable period from January 1, 2006 to December 31, 2012 while LOA No. LOA-211-2021-00000009 (SN: eLA201900006387) dated February 26, 2021 covers the period from January 1, 2008 to December 31, 2012. Hence, the coverage of the two LOAs were substantially the same.
>
> The required records and documents under the subject SDT No. M-2021-0035 dated July 28, 2021 were already submitted through the Letter dated January 6, 2016 of petitioner in compliance with LOA No. LOA-211-2015-00000220.
>
> xxx xxx xxxx

> Secondly, the right of the respondent to assess petitioner's internal revenue taxes for taxable years 2008 to 2012 had already prescribed when LOA No. LOA-211-2021-00000009 was issued on February 26, 2021.
>
> xxx xxx xxx
>
> In the instant case, there was no indication in either the subject SDT dated July 28, 2021 and LOA No. LOA-211-2021-00000009 dated February 26, 2021 that the tax examination that would be conducted by respondent was the result of any findings of fraud against petitioner. The 3-year period should be applied. The right of the respondent to assess any internal revenue taxes paid during the taxable year 2012 has already prescribed after the taxable year 2015. Thus, the issuance of the subject SDT has no legal basis.
>
> Thirdly, the holding period on petitioner's books of accounts and other accounting records had already lapsed...
>
> xxx xxx xxx
>
> The abovementioned provision refers to the period when any taxpayer is legally mandated to secure its books of accounts and accounting records, which is three (3) years. Again, the subject SDT dated July 28, 2021 and the LOA No. LOA-211-2021-00000009 dated February 26, 2021 indicates that there was no finding of fraud against petitioner.
>
> Hence, petitioner is only mandated to secure its books of accounts and accounting records for a period of 3 years. Petitioner's books of accounts and accounting records for taxable year 2012 may only be kept until the year 2015.
>
> Taking all the cited lapses and violations of the 1997 NIRC, as amended, and its rules and regulations by the respondent, the issuance of the SDT is attended with grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, fulfilling the second requisite for the issuance of the writ of *certiorari.*"

Respondent insists that there was no assessment yet, hence, the continuance of said SDT is necessary so that an assessment may be made where the petitioner can validly assail the assessment. Thus, petitioner has plain, speedy, and adequate remedy after the issuance of the SDT.

Respondent should be aware, as stated in the Assailed Decision, that the continuance of the SDT that may result in another tax examination and subsequent assessment which the petitioner may still protest is not the plain, speedy, and adequate remedy contemplated by law, to wit:

> "The next procedure after the issuance of SDT is the conduct of the tax examination itself. However, to require petitioner to undergo the rigors of another audit and investigation, endure the entire assessment process, and then file a protest against the assessment is not the plain, speedy, and adequate remedy contemplated by law.
>
> xxx xxx xxx
>
> The remedy of protesting an assessment is inadequate. It will not promptly relieve the petitioner from the injurious effects of an audit that was conducted pursuant to an LOA that was issued by respondent with grave abuse of discretion. Indeed, on this point, this Court is emphatic in stressing the reasons why the issuance of the LOA may not be upheld.
>
> First. The BIR sought to investigate petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable years **January 1, 2008 to December 31, 2012**, pursuant to LOA-211-2021-00000009 dated February 26, 2021. Notably, LOA-211-2021-00000009 covers taxable years which **were previously investigated by respondent** pursuant to an earlier LOA, that is, LOA-211-2015-0000020 dated September 15, 2015 which covers taxable **years January 1, 2006 to December 31, 2012**.
>
> Second. LOA-211-2021-00000009 is void as prescription to assess for taxable years January 1, 2008 to December 31, 2012 had already set in when it was issued on February 26, 2021. The BIR has three (3) years to assess a taxpayer pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> xxx xxx xxx
>
> Simply put, the denial of the present Petition for Certiorari will result in a failure of justice as petitioner will be required to the less speedy remedy of going through the tedious and protracted rigors of protesting an assessment in order to have it cancelled on the ground that it is intrinsically invalid for having been issued pursuant to a void LOA and beyond the three (3)-year prescriptive period to assess."

There being no new and substantial arguments propounded by respondent in his motion, the Court finds no compelling reason to reverse the Assailed Decision.

WHEREFORE, respondent's *Motion for Reconsideration (Re: Decision Promulgated on 06 March 2023)* is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice