REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE DREAM COMPANY, INC.,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7700

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
DEC 06 2012
2:45 p.m.

x- x

DECISION

CASTAÑEDA, JR., J.:

This case involves a Petition for Review and an Amended/Supplemental Petition for Review filed by petitioner Philippine Dream Company, Inc.

Petitioner appeals the inaction of respondent Commissioner of Internal Revenue (CIR) on petitioner's motion for reconsideration of the denial of its protest to the Formal Letter of Demand (FLD) and Assessment Notices (FAN) Nos. 80-EWT-13-2002-2006-3-75 and 80-VAT-13-2002-2006-3-74 issued on March 31, 2006 by Revenue Region No. 13-Cebu City, finding petitioner liable for deficiency value-added tax (VAT) and expanded withholding tax (EWT) in the amounts of Php53,686,487.55 and Php388,825.60, respectively, for taxable year 2002.

Petitioner also seeks the reversal, setting aside, and annulment of the following: (a) Final Notice Before Seizure dated December 21, 2006; (b) Warrant of Distraint and/or Levy No. 80-015-07 dated January 29, 2007; (c) Notice of Levy on Real Property dated March 5, 2007; and (d) Auction Sale conducted by the Collection Office of the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 80 on September 28, 2007. Petitioner likewise prays for this Court to order the return of the M/V Philippine Dream to petitioner or, in the alternative, to grant petitioner's claim for refund of the illegally assessed and collected tax by ordering respondent to deliver the proceeds of the auction sale to petitioner in the amount of Php59,710,200.00.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal place of business at Cebu Yacht Club, MEPZ, Lapu-Lapu City.[1]

Respondent CIR is the duly appointed head of the BIR. She is vested with authority to administer all laws pertaining to internal revenue taxes. She may be served with summons and other court processes at Room 501, Fifth Floor, BIR National Office Building, Diliman, Quezon City.[2]

On January 6, 2003, Letter of Authority (LOA) No. 2000 00075569 was issued against petitioner for the examination of its books of accounts and other accounting records for all internal revenue taxes for taxable years 2000,

---

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 535.
[2] Par. 2, *id.*

2001, and 2002 on account of petitioner's retirement or cessation of business operations.[3]

On December 19, 2005, a Preliminary Assessment Notice was issued against petitioner, signed by Regional Director Jaime B. Santiago of Revenue Region No. 13, for alleged deficiency EWT and VAT in the amounts of Php377,279.19 and Php52,160,263.95, respectively, for taxable year 2002.[4] Petitioner filed a protest letter on January 27, 2006.

In a letter[5] dated March 24, 2006, Regional Director Santiago replied to petitioner's protest letter dated January 27, 2006. In said letter, Regional Director Santiago noted, among others, that for the year 2002, petitioner filed VAT returns for the months of January to April only; that the VAT returns filed for years 2003-2004 were merely filed for the sake of compliance and do not show any results of business operations or activities of petitioner; that income tax returns for years 2003 to 2004 were also filed only for compliance purposes; that there were no returns filed for years 2003 to 2005 for expanded and compensation withholding taxes; that no returns were filed for year 2005 for VAT; that no annual registration fees were paid for years 2003 and onwards. Regional Director Santiago also stated that on the basis of the Report dated June 21, 2005 made by Maritime Industry Authority (MARINA) that petitioner had ceased operations as of August 30, 2003, the Order of MARINA dated July 29, 2005 directing petitioner to explain its renewal of the Certificate of Inspection and Passenger Safety Certificate, and the Order of MARINA dated August 19, 2005 finding the vessel unseaworthy and

---

[3] Exhibit "1", BIR Records, p. 33.
[4] Exhibit "6", *id.*, p. 101.
[5] Exhibit "7", *id.*, pp. 118 to 119.

hazardous to other navigating vessels, petitioner had ceased operations and thus, the existing assets of petitioner as of the cessation of its operation should be considered as deemed sold.[6]

Subsequently, FLD and FAN Nos. 80-EWT-13-2002-2006-3-75 and 80-VAT-13-2002-2006-3-74, all dated March 31, 2006, were issued against petitioner for alleged deficiency EWT and VAT in the amounts of Php388,825.60 and Php53,686,487.55, respectively, for taxable year 2002[7], inclusive of interest and fifty percent (50%) surcharge. Petitioner received said FLD and FAN on April 10, 2006.[8]

In a letter[9] dated May 10, 2006, petitioner protested the FLD and FAN stating, among others, that petitioner did not permanently cease its operations and as such, Section 106(C) of the National Internal Revenue Code (NIRC) of 1997, does not apply. While petitioner manifested its willingness to pay the VAT assessment on sales and the EWT assessment on rentals[10], petitioner protested the VAT assessment on the alleged disposition of its property and equipment arising from its purported dissolution.[11]

On May 18, 2006, petitioner paid the alleged withholding tax assessment in the amount of Php301,823.34, consisting of the basic EWT assessment of Php180,618.95 and interest of Php121,204.39.[12] gr

---

[6] Par. 11, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 537.
[7] Par. 3, *id.*, p. 536; Exhibits "B", "B-1", "B-2", and "C", docket (Volume II), pp. 841 to 845; Exhibits "8", "8-a", "8-b", and "8-c", BIR Records, pp. 120 to 124.
[8] Par. 3, Exhibit "U", docket (Volume I), p. 465.
[9] Exhibit "D", docket (Volume II), pp. 846 to 848.
[10] *Id.*, p. 848.
[11] *Id.*, p. 847.
[12] Exhibits "GG" and "GG-1", BIR Records, pp. 149 to 150; Transcript of Stenographic Notes (TSN), May 16, 2011 Hearing, pp. 28 to 31.

On November 22, 2006, a Preliminary Collection Letter[13] signed by Revenue District Officer Maria Socorro O. Lozano of RDO No. 80 was issued against petitioner for the collection of petitioner's internal revenue tax liabilities consisting of EWT and VAT in the amounts of Php388,825.60 and Php53,686,487.55, respectively, for taxable year 2002.

On December 21, 2006, a Final Notice Before Seizure[14] signed by Revenue District Officer Lozano was issued against petitioner, which the latter received on January 4, 2007.[15]

In a letter dated January 15, 2007, addressed to Revenue District Officer Socorro Lozano, petitioner, through counsel, requested that its case be referred back to BIR Revenue Region No. 13.[16] Petitioner attached to said letter additional documents to prove that it is still the owner of M/V Philippine Dream and that its importation is exempt from VAT.[17]

Subsequently, Revenue District Officer Lozano wrote a letter to petitioner dated January 26, 2007, informing the latter that the entire docket of the case was referred to RDO No. 80 on November 21, 2006 for the enforcement of collection, but petitioner's request will nevertheless be referred to the Regional Director of Revenue Region No. 13.[18] Said letter was received by petitioner on February 8, 2007.[19]

---

[13] Exhibit "9", BIR Records, p. 165.
[14] Par. 4, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 536; Exhibit "10", BIR Records, p. 166; Exhibit "G", docket (Volume II), p. 852.
[15] Par. 6, Exhibit "U", docket (Volume I), p. 466.
[16] Par. 5, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 536; Exhibit "H", docket (Volume II), p. 853 to 854; Par. 7, Exhibit "U", docket (Volume I), p. 466.
[17] Exhibits "H-1" and "H-4", docket (Volume II), pp. 855, 859 to 860.
[18] Par. 6, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 536; Exhibit "I", docket (Volume II), p. 861.
[19] Par. 8, Exhibit "U", docket (Volume I), pp. 466 to 467.

On January 29, 2007, a Warrant of Distraint and/or Levy No. 80-015-07) signed by Revenue District Officer Lozano was issued against petitioner.[20] Petitioner received said Warrant of Distraint and/or Levy on February 21, 2007.[21]

On February 8, 2007, a Notice of Tax Lien[22] signed by Revenue District Officer Lozano was issued, informing MARINA that petitioner is under obligation to pay the Government of the Republic of the Philippines the sum of Php54,075,313.15 as internal revenue tax, surcharge, and interest for the year 2002.

Petitioner wrote a letter to Regional Director Santiago dated February 27, 2007, reiterating the request that the case be referred back to RR No. 13, which letter was received by Regional Director Santiago on March 1, 2007.[23]

On March 8, 2007, petitioner's counsel received a copy of the Notice of Levy on Real Property dated March 5, 2007 issued by Revenue District Officer Lozano to MARINA.[24]

On May 7, 2007, petitioner received a letter dated April 15, 2007 from Regional Director Santiago that treated petitioner's letter dated February 27, 2007 as a request for reconsideration of the action taken by the BIR in

---

[20] Par. 7, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 536; Exhibit "12", BIR Records, p. 171.
[21] *Id.*; Par. 9, Exhibit "U", docket (Volume I), p. 467.
[22] Exhibit "11", BIR Records, p. 172.
[23] Par. 8, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 536; Par. 10, Exhibit "U", docket (Volume I), p. 467; Exhibit "F", docket (Volume II), pp. 850 to 851.
[24] Par. 9, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 537; Exhibit "J", docket (Volume II), p. 862.

availing of the summary remedies under the NIRC of 1997, as amended, in the collection of final and executory tax assessment.[25]

In a letter[26] dated May 17, 2007, Revenue District Officer Lozano informed petitioner that Regional Director Santiago's letter to petitioner dated April 15, 2007 was the response to petitioner's request for reconsideration of the action taken by respondent in availing of the summary remedies under the NIRC in the collection of final and executory tax assessment by allowing petitioner a chance to adduce evidence that the vessel M/V Philippine Dream is still an asset of petitioner. Said letter likewise states that since the legal issues raised have already been resolved, the denial of petitioner's request for reconsideration is deemed final.

In a Memorandum[27] dated May 25, 2007 addressed to respondent CIR through the Regional Director, Revenue District Officer Lozano requested an authority to publish the Notice of Sale of the levied properties registered in the name of petitioner.

In a letter[28] dated September 14, 2007, the Bureau of Customs (BOC), through District Collector Ricardo R. Belmonte, informed the Revenue District Officer of RDO No. 80 that the BOC has a current lien on M/V Philippine Dream in the amount of Php12,020,250.00.

On September 21, 2007, petitioner availed of the Tax Amnesty Program under Republic Act (RA) No. 9480[29] by paying the amnesty tax amounting to Php100,000.00 and filing a Notice of Availment of Tax

---

[25] Par. 10, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 537; Exhibit "K", docket (Volume II), pp. 863 to 864.
[26] Exhibit "12-a", BIR Records, p. 190.
[27] Exhibit "12-b", BIR Records, p. 191.
[28] Exhibit "24", BIR Records, p. 208.
[29] Par. 12, Stipulation of Facts, Joint Stipulation of Facts, docket (Volume II), p. 537.

Amnesty[30], Tax Amnesty Return (BIR Form No. 2116)[31], Tax Amnesty Payment Form (BIR Form No. 0617)[32], Statement of Assets, Liabilities and Networth (SALN)[33] as of December 31, 2005, Auditor's Opinion[34] dated September 14, 2007, and Financial Statements[35] as of December 31, 2005.

In a Memorandum[36] dated September 21, 2007 addressed to the Revenue District Officer of RDO No. 80, District Collection Supervisor Rosa Maria R. Jingco recommended that the scheduled auction sale be cancelled since petitioner has availed of the Tax Amnesty Program and requested that the case be returned to the Regional Director (Attention: The Chief, Collection Division) for transmittal to respondent CIR for the final disposition of the case.

In the 1st Indorsement[37] dated September 21, 2007, Revenue District Officer Lozano forwarded the docket of the case to the Regional Director, stating that petitioner availed of the Tax Amnesty Program under RA No. 9480 and inviting the attention of the Regional Director to the attached Memorandum of Collection Supervisor Jingco.

In a letter[38] dated September 25, 2007, petitioner informed Revenue District Officer Emir Abutazil of RDO No. 80 of its availment of the Tax Amnesty Program under RA No. 9480, and requested the release of M/V Philippine Dream.

---

[30] Exhibit "N-5", docket (Volume II), p. 891.
[31] Exhibit "N", docket (Volume II), p. 871.
[32] Exhibit "N-1", docket (Volume II), p. 872.
[33] Exhibit "N-2", docket (Volume II), p. 873.
[34] Exhibit "N-3", docket (Volume II), pp. 874 to 875.
[35] Exhibit "N-4", docket (Volume II), pp. 876 to 890.
[36] Exhibit "HH-1", BIR Records, p. 233.
[37] Exhibit "HH", BIR Records, p. 234.
[38] Exhibit "X", docket (Volume II), pp. 926 to 927.

In BIR Ruling No. DA-514-2007[39] dated September 27, 2007 addressed to the Regional Director of RR No. 13, Assistant Commissioner (BIR Legal Service) James H. Roldan found that petitioner availed of the Tax Amnesty Program and paid the amount of Php100,000.00 based on its authorized capital stock of Php14,177,600.00 without considering its networth. According to Assistant Commissioner Roldan, there is no point wherein the BIR can determine whether petitioner has in fact complied with the said program. Assistant Commissioner Roldan further opined that notwithstanding the payment of Php100,000.00, representing five percent (5%) amnesty tax based on petitioner's subscribed capital, petitioner is deemed not to have complied fully with the provisions of RA No. 9480 and consequently, RDO No. 80 is not prevented from proceeding with the scheduled auction sale on September 28, 2007.

In a letter[40] dated September 27, 2007, Revenue District Officer Abutazil informed petitioner that RDO No. 80 will still proceed with the scheduled auction sale pursuant to BIR Ruling No. DA-514-2007[41] issued by Assistant Commissioner Roldan. Petitioner received the letter dated September 27, 2007 and the copy of BIR Ruling No. DA-514-2007 on September 28, 2007.[42]

On September 28, 2007, the BIR Collection Office proceeded with the auction sale of M/V Philippine Dream.[43] JL

---

[39] Exhibit "26", BIR Records, pp. 239 to 241; Exhibit "M-1", docket (Volume II), pp. 868 to 870.
[40] Exhibit "M", docket (Volume II), p. 867.
[41] *Supra*, note 39.
[42] Par. 13, Exhibit "U", docket (Volume I), p. 468.
[43] Exhibit "P", docket (Volume II), p. 894; Par. 14, Exhibit "U", docket (Volume I), p. 468.

On October 31, 2007, petitioner filed a Petition for Review with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction.[44]

This Court treated petitioner's prayer for the issuance of a temporary restraining order and/or preliminary injunction as a "Motion to Suspend Collection of Taxes" under Section 11 of RA No. 1125, as amended by RA No. 9282. Thus, in a Resolution[45] dated December 5, 2007, the Court granted said Motion to Suspend Collection of Taxes, subject to the filing of a GSIS bond or a bond from other reputable surety company duly accredited by the Supreme Court in the amount equivalent to Php108,150,626.30.

On December 26, 2007, respondent filed her Answer[46] to the Petition for Review and raised the following Special and Affirmative Defenses:

> "12. The Petition for Review is filed out of time.
>
> 12.1 Petitioner filed its protest to the assessment before the Office of the Regional Director, Revenue Region No. 13, Cebu City, on May 12, 2006. On January 4, 2007, petitioner received a copy of the Final Notice Before Seizure. Petitioner filed its Motion for Reconsideration of the issuance of the Final Notice Before Seizure on February 27, 2007. Regional Director Jaime Santiago, denied the protest on April 15, 2007. Therefore, petitioner has thirty (30) days from April 15, 2007, within which to file the instant petition. The subject petition was filed only on October 31, 2007. Clearly, it is filed out of time.
>
> 12.2 The Petition for Review fails to state a cause of action. The February 21, 2007 Warrant of Distraint and/or Levy is not a decision of the Commissioner of Internal Revenue of petitioner's Motion for Reconsideration of the Decision of the Regional Director of Revenue Region No. 13, Cebu City. The Warrant of Distraint and/or Levy is signed only by the Regional District Officer of RDO No. 13, Cebu City

---

44 Docket (Volume I), pp. 1 to 28.
45 *Id.*, pp. 90 to 93.
46 *Id.*, pp. 101 to 110.

who, under Revenue Regulations No. 12-99 is not the duly delegated authority to deny the Motion for Reconsideration."

On January 10, 2008, this Court issued a Notice of Pre-Trial Conference[47], notifying the parties that the case is set for Pre-Trial Conference on February 14, 2008 and ordering the parties to file their Pre-Trial Briefs.

On February 1, 2008, respondent filed her Pre-Trial Brief[48]. Petitioner failed to file its Pre-Trial Brief but instead filed an Urgent Motion for Cancellation of Hearing[49] on February 13, 2008, praying for the resetting of the Pre-Trial Conference on the ground that a compromise settlement is on-going between the parties pursuant to Section 204(A) of the NIRC of 1997, as amended. The Pre-Trial Conference was reset to April 24, 2008.[50]

During the hearing on April 24, 2008, counsel for petitioner was granted fifteen (15) days from said date to file the parties' Joint Stipulation of Facts and Issues. Respondent's counsel was also granted a period of ten (10) days from receipt of Court's Resolution approving the Joint Stipulation of Facts and Issues within which to file a Motion to Dismiss; while petitioner was given fifteen (15) days within which to comment thereto. Respondent was also given a period of ten (10) days to file her Reply to said Comment.[51]

For three (3) consecutive times, petitioner requested an extension of time to file the Joint Stipulation of Facts. On its third request, this Court

---

[47] *Id.*, p. 114.
[48] *Id.*, pp. 123 to 129.
[49] *Id.*, pp. 132 to 133.
[50] Resolution dated February 29, 2008, *id.*, p. 141.
[51] Minutes of the April 24, 2008 Hearing, *id.*, p. 142.

granted petitioner until June 20, 2008 within which to file the Joint Stipulation of Facts and Issues.[52]

On June 19, 2008, petitioner filed an Urgent Motion to Cite and Punish Respondent in Contempt of Court and to Suspend Filing of Joint Stipulation of Facts and Issues[53] on the ground that M/V Philippine Dream was prematurely released and delivered to Aston Pte. Ltd. pending the decision of this Court on the case. On August 5, 2008, respondent filed an Opposition with Omnibus Motion[54] arguing that petitioner, despite six extensions, failed to file a bond within the prescribed period after the Court granted its prayer for the suspension of collection of tax and that petitioner requested three extensions of time to file Joint Stipulation of Facts but still failed to file the same.

On August 14, 2008, petitioner filed its Reply[55] thereto, admitting that the required bond pursuant to the Resolution of this Court dated December 5, 2007 has not been filed based allegedly on reasonable ground and/or just cause.

In a Resolution[56] dated August 26, 2008, the Court denied petitioner's Urgent Motion to Cite and Punish Respondent in Contempt of Court and to Suspend Filing of Joint Stipulation of Facts and Issues and recalled and set aside its Resolution dated December 5, 2007 suspending the collection of taxes.

---

[52] Order dated June 12, 2008, *id.*, p. 156.
[53] *Id.*, pp. 165 to 168.
[54] *Id.*, pp. 177 to 184.
[55] *Id.*, pp. 187 to 190.
[56] *Id.*, pp. 192 to 195.

On December 3, 2008, respondent filed a Manifestation and Motion to Dismiss[57] on the ground of failure to prosecute. On December 17, 2008, petitioner filed its Comment and/or Opposition.[58] In a Resolution[59] dated February 18, 2009, this Court denied respondent's Motion to Dismiss and set the Pre-Trial Conference on March 12, 2009. After a number of resetting, the Pre-Trial Conference was reset to August 27, 2009[60] with warning to petitioner that the Petition for Review will be dismissed should it again fail to appear on said date. On August 24, 2009, petitioner filed its Pre-Trial Brief.[61]

During the scheduled Pre-Trial Conference on August 27, 2009, petitioner manifested that M/V Philippine Dream was taken out of Philippine jurisdiction; that it would not be possible for petitioner to take possession of the same; and that there is a need to amend the Petition for Review. Thus, upon motion of petitioner, the proceedings were held in abeyance and petitioner was granted a period of thirty (30) days from August 27, 2009 or until September 26, 2009 within which to file an Amended Petition for Review and/or Supplemental Petition for Review. The Court noted respondent's manifestation that she will be filing an Amended Answer to the Amended Petition for Review.[62]

On August 20, 2009, petitioner filed with respondent a claim for refund or credit in the amount of Php59,710,200.00[63], representing the value of M/V

---

[57] *Id.*, pp. 198 to 203.
[58] *Id.*, pp. 209 to 212.
[59] *Id.*, pp. 214 to 217.
[60] *Id.*, p. 239.
[61] Docket, pp. 240 to 247.
[62] Minutes of the August 27, 2009 Hearing, *id.*, p. 251; Resolution dated September 3, 2009, *id.*, p. 253
[63] Exhibit "T", docket (Volume II), pp. 902 to 906.

Philippine Dream sold to the winning bidder and illegally collected by respondent.

On October 6, 2009, petitioner filed a Motion to Admit Amended/Supplemental Petition for Review[64] as well as its Amended/Supplemental Petition for Review.[65]

In its Amended/Supplemental Petition for Review, petitioner prays for this Court to annul and set aside the following: (a) the FLD and FAN Nos. 80-EWT-13-2002-2006-3-75 and 80-VAT-13-2002-2006-3-74 dated March 31, 2006; (b) the Final Notice Before Seizure dated December 21, 2006; (c) the Warrant of Distraint and/or Levy No. 80-015-07 dated January 29, 2007; (d) the Notice of Levy on Real Property for being issued by respondent with grave abuse of discretion; and (e) the auction sale conducted by the BIR Collection Office, RDO No. 80 on September 28, 2007 for failure of the Auction Committee to comply with the jurisdictional requirements of the sale and the provisions of the NIRC of 1997, as amended and RMO No. 33-02, and considering further that petitioner had already availed of the Tax Amnesty Program under RA No. 9480. Petitioner likewise prays for this Court to order the return of M/V Philippine Dream to petitioner or, in the alternative, grant petitioner's claim for refund of the illegally assessed and collected tax by ordering respondent to deliver the proceeds of the auction sale to petitioner in the amount of Php59,710,200.00.[66]

---

[64] Docket (Volume I), pp. 259 to 264.
[65] *Id.*, pp. 273 to 305.
[66] Prayer, Amended/Supplemental Petition for Review, *id.*, pp. 303 to 304.

In an Order[67] dated October 12, 2009, this Court granted petitioner's Motion to Admit Amended/Supplemental Petition for Review, admitted petitioner's Amended/Supplemental Petition for Review, and granted respondent a period of ten (10) days from notice within which to file her Answer.

On December 1, 2009, respondent filed her Answer[68] to the Amended/Supplemental Petition for Review and raised the following Special and Affirmative Defenses:

> "15. Respondent notes the manner of presentation of the supplemental Petition for Review of petitioner as contrary to the provisions of the Rules of Court.
>
> 15.1 Rule 7, Parts of a Pleading, Section 2(a) of the Rules of Court reads as follows:
>
> 'SEC. 2. *The body.* – The body of the pleading sets forth its designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading.
>
> *(a) Paragraphs.* – **The allegations in the body of a pleading shall be divided into paragraphs so numbered as to be readily identified, each of which shall contain a statement of a single set of circumstances so far as that can be done with convenience. A paragraph may be referred to by its number in all succeeding pleadings**. (Emphasis supplied)'
>
> 15.2 Petitioner's apparent omission of numbering on its paragraphs deliberately contravenes the above quoted rule to the prejudice of respondent. It is rather cumbersome to identify a long set of unnumbered paragraphs for the purpose of making denials and admissions. Whether it is by design or accident, the manner in which petitioner advances its cause through its pleadings utilizes a tactic that does not necessarily

---

[67] Docket (Volume I), p. 408.
[68] *Id.*, pp. 420 to 434.

delve in to the issues at hand and handicaps respondent in drafting his Answer thereto.

15.2 It may well be significant to highlight at this point that the Rules of Court were created and designed for the purpose of securing a just, speedy and inexpensive disposition of every action and proceeding. Violating Rule 7, Section 2(a) of the Rules of Court is contrary to the spirit of the rules no matter how trivial it might appear to be.

16. Respondent repleads the admissions and denials and Special and Affirmative Defenses of his Answer to petitioner's original Petition for Review as part of his Answer to the amended Petition for Review.

17. Respondent hereby repleads the above admissions and denials as part of his Special and Affirmative Defenses.

18. Availment of tax amnesty is a partial surrender of the right of the State to collect taxes in connection with the exercise of is [sic] inherent power to tax and it is incumbent upon the applicant to prove the veracity of availment.

18.1 pursuant [sic] to Section 6 of R.A. No. 9480 in relation to Department Order No. 29-07 dated 15 August 2007, it is incumbent upon petitioner to submit the original or certified true copies of the following documents:

(a) Acceptance of Payment Form which must be signed by the branch manager, in case of payment through an authorized agent bank;

(b) Notice of Availment;

(c) Statement of Assets, Liabilities and Net Worth which does not show understatement of net worth as of 31 December 2005 to the extent of 30% or more;

(d) Tax Amnesty Return; and

(e) Full payment of the amnesty tax payable.

18.2 The availment of Tax Amnesty *per se* does not extinguish all the liabilities of petitioner arising from the assessment because extinguishment takes place only after faithful compliance with the requirements of RA No. 9480. Section 4 of Republic Act No. 9480 (Tax Amnesty Act of 2007) reads as follows: *ge*

> 'SEC. 4. *Presumption of Correctness of the SALN.* – The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents; *Provided*, **That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of the government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration.**' *(Emphasis supplied)*

18.3 While it is true that amnesty is an act of forgiveness, the proviso under Section 4 of R.A. No. 9480 qualifies this act of forgiveness via an investigation to determine whether or not the taxpayer is a penitent errant worthy of compassion. To ignore this proviso would result in an absurd situation where the State purveyor of compassion and mercy, would be made a fool, if later on it discovers that the taxpayer has duped its benefactor. Hence, total extinguishment of liabilities should not ensue after the availment of Tax Amnesty *per se*.

19. Collection by respondent to satisfy petitioner's deficiency tax liabilities is not a product of undue haste and has in fact undergone procedures taking into consideration the taxpayer's right to due process.

19.1 Petitioner received a first notice of List of Requirements from Revenue District Office No. 80 via registered mail concerning documentary requirements for assessment by virtue of Letter of Authority No. 2000 00075569.

19.2 Petitioner received a second notice of List of Requirements from Revenue District Office No. 80 via registered mail concerning documentary requirements for assessment by virtue of Letter of Authority No. 2000 00075569.

19.3 Petitioner received a 'Post Reporting Notice (Amended)' concerning the finding of deficiency Value-Added Tax (VAT) in the aggregate amount of P58,065,654.25 and Expanded Withholding Tax (EWT) *Jc* in the aggregate amount of P415,423.57 for taxable years 2000, 2001 and 2002.

19.4 According to a Memorandum addressed to the Revenue District Officer of RDO No. 80 and prepared by Revenue Officer Ray O. Bercede, the following information were ascertained after verification:

> '1. Vat payments for the period January to April 2002 per ITS were already taken into considerations in the amended post reporting notice.
>
> 2. Upon verifications on the financial statements the company incurred heavy losses for the year 2000 and 2001 which eventually leads to the closure of the business operation effective 2003 and the undersigned RO found no material tax consequence on the financial statements for the said period.
>
> 3. Amended Post Reporting Notice was sent to taxpayer on September 15, 2005 and received by taxpayer on even date.
>
> Upon receipt of the original post reporting notice taxpayer requested for reconsideration, reinvestigation and additional time to reconcile the discrepancy. In the meantime while waiting for their reconciliation, an amended post reporting was sent to taxpayer and still the taxpayer failed to refute the findings after giving them ample time as requested.'

19.5 On 19 December 2005, a Preliminary Assessment Notice (PAN) was issued against petitioner for deficiency VAT in the aggregate amount of P52,160,263.95 and EWT in the aggregate amount of P377,279.19 for taxable year 2002.

19.6 Petitioner received a reply letter dated 24 March 2006 denying petitioner's protest on the PAN. According to the said reply letter:

> 'You alleged per protest that the company did not cease operations, hence, the vessel & other assets cannot be treated as deemed sale and thus, not taxable under value added tax. However, per further verifications made per review and per

queries made in the Integrated Tax System of BIR showed that VAT returns filed for year 2002 were only up to April, and VAT returns filed for years 2003-2004 were merely filed for the sake of compliance and does not show any results of the business operations or activities of the company. Likewise, income tax returns for years 2003-2004 were filed for compliance purposes only. In addition, there were no returns filed for years 2003-2005 for expanded & compensation withholding taxes; no returns filed for years 2005 for value-added tax; and no annual registration fees were paid for years 2003 & onwards. Such activities should be considered as business operations of the corporation has been rebutted by a report dated June 21, 2005 of the Maritime Industry Authority (MARINA) of cessation of operations as of August 30, 2003 and the order dated July 29, 2005 of same MARINA, directing MV Philippine Dream to explain its renewal of the 'Certification of Inspection' and 'Passenger Safety Certificate' and finally, the order dated August 19, 2005 finding the vessel unseaworthy and hazardous to other navigating vessels and directing removal and transfer.

Considering the expanded withholding tax assessment, our stand stays the same for you failed to support your allegations that the company remitted withholding taxes on rental payments made.'

19.7 A Formal Letter of Demand dated 31 March 2006 with attached Assessment Notice Nos. 80-vat-13-2002-2006-3-74, 80-ewt-13-2002-2006-3-75 and Details of Discrepancies was issued to petitioner for deficiency VAT in the aggregate amount of P53,686,487.55 and EWT in the aggregate amount of P54,075,313.15 [sic] for taxable year 2002.

19.8 A Preliminary Collection Letter dated 22 November 2006 was issued to petitioner for satisfaction of deficiency VAT in the aggregate amount of P53,686,487.55 and EWT in the aggregate amount of P388,825.60.

19.9 Petitioner failed to reply to the Preliminary Collection Letter. Hence, a Final Notice Before Seizure dated 21 December 2006 was sent to petitioner communicating that 'we would like to inform you that we are again giving you the last opportunity to make the necessary settlement of the above stated tax liability within ten (10) days from receipt of this notice. Should we fail to hear from you within this period, this Office, much to our regret, will be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account. x x x'

19.10 On 08 February 2007, a Notice of Tax Lien was sent informing petitioner that it is under obligation to pay the Government of the Republic of the Philippines the sum of P54,075,313.15 as internal revenue tax, surcharge and interest per assessment notice nos. 80-vt-13-2002-2006-3-74 [sic] and 80-ewt-13-2002-2006-3-75 for taxable year 2002 exclusive of increments incident to delinquency and costs.

19.11 On 21 February 2009, a Warrant of Distraint and/or Levy was served upon petitioner due to continuing failure to pay its VAT and EWT deficiencies for taxable year 2002.

20. Petitioner has been given ample opportunity to present its side in the administrative proceedings. However, it failed to file relevant supporting documents to buttress its protest. Thus, in no way did Revenue District Officer Maria Socorro Lozano commit grave abuse of discretion.

20.1 Section 228 of the NIRC of 1997 tells us that an assessment 'may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.' Petitioner's failure to file relevant supporting documents is inimical to the protest it filed. Without said documents, the protest will not prosper.

20.2 The Warrant of Distraint and/or Levy served to petitioner on 21 February 2007 is not a decision of respondent on petitioner's Motion for Reconsideration of the Decision of the Regional Director of Revenue Region No. 13, Cebu City. The said Warrant of Distraint and/or Levy was signed only by the Regional Director of RDO

No. 13, Cebu City who, under Revenue Regulations No. 12-99, is not the duly delegated authority to deny the Motion for Reconsideration.

20.3 As mentioned above in respondent's reply to petitioner's PAN, petitioner has ceased operations. This is evident upon examination of the BIR-Taxpayer Accounting System Return Period Summary List, that VAT returns filed for year 2002 were only up to April, and VAT Returns filed for years 2003-2004 were merely filed for the sake of compliance and does not show any results of the business operations or activities of the company. Income tax returns for years 2003-2004 were filed for compliance purposes only. In addition, there were no returns filed for years 2003-2005 for expanded & compensation withholding taxes; no returns filed for years 2005 for value added tax; and no annual registration fees were paid for years 2003 and onwards.

21. Assistant Commissioner James H. Roldan did not commit grave abuse of discretion in rendering the ruling in DA-514-2007. A ruling supported by law, rules and jurisprudence is not tantamount to grave abuse of discretion. Ultimately, a difference in interpretation between the taxing entity and the taxpayer holds no ill will just because it disfavors the latter.

21.1 Tax amnesty is akin to exemption so it comes as no surprise that availment thereof is like a camel passing through the eye of a needle. This statement finds truth in the case of *People vs. Castaneda*:

> 'A tax amnesty, much like a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority.'

21.2 In arriving at a ruling, ACIR Roldan cited the statute and the implementing revenue regulations in support thereof. As the agency clothed by the legislature to wield the awesome power of taxation, it is the unpopular duty of the BIR to collect taxes and for humanitarian reasons, filter the deserving applicants for tax amnesty from the unqualified.

> 22. All told, it appears that petitioner has no cause of action. It may be well to recall the words of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands'*:
>
> > 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments." *(Citations omitted)*

On December 16, 2009, petitioner filed its Reply[69] to respondent's Answer.

Meanwhile, on December 8, 2009, this Court issued a Notice of Pre-Trial Conference[70] notifying the parties of the scheduled Pre-Trial Conference on January 21, 2010 and requiring the parties and their counsels to be present at the Pre-Trial Conference and to submit their respective Pre-Trial Brief. Respondent filed its Pre-Trial Brief[71] on January 12, 2010.

During the scheduled Pre-Trial Conference on January 21, 2010, counsel for petitioner was given a period of fifteen (15) days from January 21, 2010 or until February 5, 2010 within which to submit the parties' Joint Stipulation of Facts and Issues.[72] The parties filed their Joint Stipulation of Facts[73] on February 19, 2010. In a Resolution[74] dated February 24, 2010, this Court approved the parties' Joint Stipulation of Facts.

During trial, the parties presented and formally offered their respective witnesses and documentary evidence.

---

[69] *Id.*, pp. 445 to 450.
[70] *Id.*, p. 436.
[71] *Id.*, pp. 452 to 457.
[72] Minutes of the January 21, 2010 Hearing, *id.*, p. 460.
[73] Docket (Volume II), pp. 535 to 539.
[74] *Id.*, p. 542.

The case was submitted for decision on July 23, 2012[75], taking into consideration petitioner's Memorandum[76] filed on July 16, 2012 and considering the Report[77] dated July 19, 2012 of the Records Division that no memorandum has been filed by respondent. Respondent filed a motion for leave to admit attached memorandum on September 20, 2012, which the Court denied via Resolution dated October 16, 2012.

The parties failed to submit their Joint Stipulation of Issues.

The following issues[78], however, were raised by petitioner in its Amended/Supplemental Petition for Review:

> "1. Whether or not the assessment in question has become final and executory.
>
> 2. Whether or not respondent's representatives committed abuse of authority and/or discretion in levying and auctioning the vessel M/V Philippine Dream.
>
> 3. Whether or not respondent's representatives violated the provisions of the Tax Code and RMO No. 33-02 in the public auction of the vessel.
>
> 4. Whether or not Petitioner's availment of the tax amnesty under Republic Act No. 9480 and the consequent payment of the amnesty tax effectively settled all tax liabilities of petitioner.
>
> 5. Whether or not the vessel M/V Philippine Dream is a real property.
>
> 6. Whether or not the value of the vessel collected by the respondent is tax erroneously paid or illegally collected, which must be refunded to petitioner."

---

[75] Resolution dated July 23, 2012, docket (Volume III), p. 001228.
[76] *Id.*, pp. 001180 to 001225.
[77] *Id.*, p. 001227.
[78] Issues, Amended/Supplemental Petition for Review, docket (Volume I), p. 283.

On the other hand, in her Pre-Trial Brief, respondent raised the following issues[79]:

> "1. Whether the assessments have become final and unappealable due to petitioner's failure to submit all relevant documents within sixty (60) days from filing of the protest.
>
> 2. Whether petitioner complied with the requirements for availment of tax amnesty under Republic Act No. 9480."

The first issue raised by both parties is whether or not the subject assessments have become final and executory.

Petitioner claims that the subject assessments have not become final and executory since its Petition for Review was timely filed before this Court. Petitioner alleges that on April 10, 2007, it submitted all relevant documents in support of its Motion for Reconsideration; that from April 10, 2007, respondent has 180 days or until October 10, 2007 within which to decide the case; that respondent has not decided the case on October 10, 2007; that petitioner has thirty (30) days from October 10, 2007 or until November 10, 2007 within which to appeal the denial of its Motion for Reconsideration by inaction of respondent before this Court.

On the other hand, respondent claims that the Petition for Review was filed out of time since petitioner had thirty days from April 15, 2007, the date when Regional Director Santiago issued the letter denying petitioner's Motion for Reconsideration, within which to file the Petition for Review. Since the Petition for Review was filed only on October 31, 2007, respondent argues that it was filed out of time.

This Court finds no merit on the parties' respective arguments. *Jc*

---

[79] Docket (Volume I), p. 455

Section 228 of the NIRC of 1997, as amended, provides for the procedure in issuing tax assessments as well as in protesting the same, thus:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) 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." *(Emphasis supplied)*

Relative to the foregoing, Revenue Regulations (RR) No. 12-99, more particularly, Section 3.1.5 provides for the administrative remedies available to a taxpayer in cases where protests against assessments issued are filed before the Commissioner of Internal Revenue's duly authorized representatives. Section 3.1.5 is quoted hereunder:

> "3.1.5 Disputed Assessment. — **The taxpayer or his duly authorized representative may protest**

administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. **If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.**

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of ge

> **the said decision, otherwise, the assessment shall become final, executory and demandable.**
>
> **In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable**: *Provided, however,* that **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory, and demandable, in which case, the protest shall be decided by the Commissioner**.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable." *(Emphasis supplied)*

Based on the foregoing, in case the CIR or his duly authorized representative fails to act on the disputed assessment within 180 days from the submission of documents, a taxpayer can either: (1) appeal to the Court of Tax Appeals within thirty (30) days after the expiration of the 180-day period; or (2) await the final decision of the CIR on the disputed assessment and appeal such final decision to the Court of Tax Appeals within thirty days after receipt of a copy of such decision.[80] The failure of a taxpayer to appeal from an assessment on time will render the assessment final, executory, and demandable. Consequently, the taxpayer is precluded from disputing the correctness of the assessment. *Je*

---

[80] *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144.

Records clearly reveal that petitioner received the FLD and FAN on April 10, 2006. Pursuant to Section 228 of the NIRC of 1997, as amended, as well as Section 3.1.5 of RR No. 12-99, petitioner had thirty days or until May 10, 2006 to file a protest. In a letter dated May 10, 2006, petitioner protested the subject assessments. Petitioner asserts that the protest letter dated May 10, 2006 was filed on the same date.[81] Respondent, however, failed to prove otherwise.

Since petitioner did not submit additional relevant documents in support of its protest, the 180-day period within which respondent should act on the protest should be reckoned from the filing of petitioner's protest on May 10, 2006.[82] Accordingly, respondent had until November 6, 2006 within which to act on the protest. Respondent failed to act on the protest on or before November 6, 2006. Thus, petitioner had thirty days from November 6, 2006 or until December 6, 2006 within which to appeal respondent's inaction before this Court. However, records prove that no appeal was filed before this Court on or before December 6, 2006. The failure of petitioner to appeal the inaction on time rendered the assessment final, executory, demandable, and incontestable.

Even if the thirty-day period to appeal is reckoned from the issuance of the final decision denying petitioner's protest, still petitioner's appeal was filed out of time.

---

[81] Par. 5, Exhibit "U", docket (Volume I), pp. 465 to 466.

[82] *Fil-Hispano Holdings Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 343, June 12, 2008, *citing Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 76, June 22, 2006.

The Court notes that on November 22, 2006, a Preliminary Collection Letter[83] signed by Revenue District Officer Lozano of RDO No. 80 was issued against petitioner. *Records do not show, however, whether petitioner received said Collection Letter.*

However, it is clear from the records that on January 4, 2007, petitioner received a Final Notice Before Seizure dated December 21, 2006 signed by Revenue District Officer Lozano.[84] Relevant portions of the Final Notice Before Seizure are quoted below:

> "On 11/22/06, this Office sent you a letter requesting the settlement of the above account. However, despite the considerable length of time given to you, we have not been favored with any reply.
>
> In this connection, we would like to inform you that we are again giving you the last opportunity to make the necessary settlement of the above stated tax liability within ten (10) days from receipt of this notice. Should we fail to hear from you within this period, this Office, much to our regret, will be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account. Simultaneously, to protect the interest of the government, your case will be referred to the Legal Division for the filing of appropriate judicial action.
>
> Please give this matter your preferential attention.
>
> Very truly yours,
>
> (Signed)
> Maria Socorro O. Lozano
> Revenue District Officer"

Established is the rule that a demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment and that the determination on whether or not a demand letter is final is

[83] *Supra*, note 13.
[84] *Supra*, note 14.

conditioned upon the language used or the tenor of the letter being sent to the taxpayer.[85]

In the case of **Commissioner of Internal Revenue vs. Isabela Cultural Corporation**[86], the Supreme Court categorically held that a final demand from the BIR reiterating the immediate payment of a tax deficiency previously made, is tantamount to a denial of the taxpayer's request for reconsideration and that such letter amounts to a final decision on a disputed assessment and is thus appealable to this Court. Relevant portions of said decision are quoted below:

> "The Final Notice Before Seizure sent by the Bureau of Internal Revenue (BIR) to respondent reads as follows:
>
> > 'On Feb. 9, 1990, [this] Office sent you a letter requesting you to settle the above-captioned assessment. To date, however, despite the lapse of a considerable length of time, we have not been honored with a reply from you.
> >
> > In this connection, we are giving you this LAST OPPORTUNITY to settle the adverted assessment within ten (10) days after receipt hereof. Should you again fail, and refuse to pay, this Office will be constrained to enforce its collection by summary remedies of Warrant of Levy of Road Property, Distraint of Personal Property or Warrant of Garnishment, and/or simultaneous court action.
> >
> > Please give this matter your preferential attention.
> >
> > Very truly yours,
> >
> > ISIDRO B. TECSON, JR.
> > Revenue District Officer
> >
> > By: ...

[85] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, The Court of Tax Appeals, and the Court of Appeals*, G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[86] G.R. No. 135210, July 11, 2001, 515 SCRA 556.

(Signed)
MILAGROS M. ACEVEDO
Actg. Chief Revenue Collection Officer'

xxx xxx xxx

(I)n the normal course, the revenue district officer sends the taxpayer a notice of delinquent taxes, indicating the period covered, the amount due including interest, and the reason for the delinquency. If the taxpayer disagrees with or wishes to protest the assessment, **it sends a letter to the BIR indicating its protest, stating the reasons therefor, and submitting such proof as may be necessary. That letter is considered as the taxpayer's request for reconsideration of the delinquent assessment**. After the request is filed and received by the BIR, **the assessment becomes a disputed assessment on which it must render a decision. That decision is appealable to the Court of Tax Appeals for review.**

Prior to the decision on a disputed assessment, there may still be exchanges between the commissioner of internal revenue (CIR) and the taxpayer. The former may ask clarificatory questions or require the latter to submit additional evidence. However, **the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review.**

Indisputably, respondent received an assessment letter dated February 9, 1990, stating that it had delinquent taxes due; and it subsequently filed its motion for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the CIR additional documents on April 18, 1990. The next communication respondent received was already the Final Notice Before Seizure dated November 10, 1994.

In the light of the above facts, **the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent**, who received no other response to its request. Not only was the Notice the only response received; **its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a *final* notice prior to seizure of property. The letter itself clearly stated that respondent was being given 'this LAST OPPORTUNITY' to pay; otherwise, its properties would be subjected to distraint and levy. How then could it have**

> **been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?**" *(Emphasis supplied)*

In the instant case, although the tenor of the Final Notice Before Seizure dated December 21, 2006 signified a character of finality which is tantamount to a denial of petitioner's protest, petitioner failed to file an appeal before this Court. Instead, on January 15, 2007, petitioner wrote a letter to Revenue District Officer Lozano requesting that its case be referred back to BIR Revenue Region No. 13.

In this regard, Section 3.1.5 of RR 12-99 implementing Section 228 of the NIRC of 1997, as amended, provides that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from receipt of the final decision of the CIR's duly authorized representative, the latter's decision shall not be considered final, executory, and demandable. Pursuant thereto, a final decision of the CIR's duly authorized representative shall not be considered as final, when a protest (request for reconsideration of the final decision of respondent CIR's authorized representative) is filed before respondent CIR herself, and not with the authorized representative of the CIR. In the present case, since petitioner did not elevate its protest or file a request for reconsideration with respondent CIR within the thirty-day period, the Final Notice Before Seizure dated December 21, 2006 is considered as the final decision which is appealable to this Court. Petitioner's letter dated January 15, 2007 to Revenue District Officer Lozano did not toll the running of the thirty-day period to appeal the Final Notice Before Seizure dated December 21, 2006 to this Court.

In the case of **Fishwealth Canning Corporation vs. Commissioner of Internal Revenue**[87] if the taxpayer's filing of a Motion for Reconsideration of the CIR's Final Decision on Disputed Assessment does not toll the 30-day period to appeal to the CTA, then it is with more reason that herein petitioner's failure to elevate its protest with the respondent CIR cannot toll the period to appeal to the CTA.

Considering that it was only on October 31, 2007 or 270 days way beyond the thirty-day reglementary period to appeal to this Court that petitioner filed a Petition for Review with this Court, the Final Notice Before Seizure dated December 21, 2006, which is the final decision on the subject assessments, had become final, executory, and demandable.

In **Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue**[88], the Supreme Court held that the 30-day period within which to file an appeal with this Court is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessments, that such period is not merely directory but mandatory, and it is beyond the power of the courts to extend the same. Relevant portion of said decision is quoted below:

> "Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. Also, **petitioner's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment** ge

---

[87] G.R. No. 179343, January 21, 2010, 610 SCRA 524.
[88] G.R. No. 168498, April 24, 2007, 522 SCRA 144.

> **and prescription of the Government's right to assess**." *(Emphasis supplied)*

Similarly, in the case of **Commissioner of Internal Revenue vs. Raul M. Gonzalez, *et al.***[89], the Supreme Court held that a taxpayer's failure to file a petition for review with the CTA within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.

Moreover, the jurisdictional character of the period to appeal to the CTA was again highlighted by the Supreme Court in the recent case of **Team Pacific Corporation vs. Josephine Daza in her capacity as Municipal Treasurer of Taguig**[90], We quote:

> "To our mind, TPC's erroneous availment of the wrong mode of appeal and direct resort to this Court instead of the CTA both warrant the dismissal of the petition at bench. **The rule is settled that the perfection of an appeal in the manner and within the period fixed by law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.**" *(Emphasis supplied)*

This Court recognizes, however, that in the Petition for Review and the Amended/Supplemental Petition for Review, petitioner also sought the nullification of the auction sale conducted by respondent after petitioner availed of the Tax Amnesty Program under RA No. 9480 pursuant to this Court's jurisdiction to review by appeal "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue".

---

[89] G.R. No. 177279, October 13, 2010, 633 SCRA 139.
[90] G.R. No. 167732, July 11, 2012.

The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds but also covers other cases arising under the NIRC or related laws administered by the BIR.[91] Section 7(a)(1) of RA No. 1125, as amended by Section 7 of RA No. 9282, provides:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphasis supplied)*

Still, it bears stressing that before this Court can exercise its jurisdiction to rule on decisions of the CIR on other matters arising under the NIRC or other laws administered by the BIR, this Court has to determine whether the appeal was filed on time.

Section 11 of RA No. 1125, as amended by RA No. 9282, states that:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule

---

[91] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 214.

> 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx" *(Emphasis supplied)*

As borne by the records of this case, the auction sale of petitioner's M/V Philippine Dream was conducted on September 28, 2007, during which, petitioner was also provided a copy of BIR Ruling No. DA-514-2007 dated September 27, 2007 signed by Assistant Commissioner Roldan ruling that RDO No. 80 can still proceed with the scheduled auction sale notwithstanding petitioner's payment of Php100,000.00 representing the 5% amnesty tax.

Pursuant to Section 11 of RA No. 1125, as amended by RA No. 9282, petitioner had thirty (30) days from September 28, 2007 or until October 29, 2007[92] within which to seek the nullification of both the ruling issued by Assistant Commissioner Roldan and the auction sale of M/V Philippine Dream. However, the Petition for Review was filed only on October 31, 2007 or two (2) days after the lapse of the thirty-day period to appeal. The belated filing of the appeal deprives this Court of any authority to entertain it.

Since the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, the failure to perfect the appeal renders the judgment or ruling subject of appeal final and executory and beyond the power of this Court to review.[93]

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It

---

[92] The 30th day, October 28, 2007, fell on a Sunday.
[93] *Supra*, note 91.

can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*.[94]

Proceeding from the foregoing, this Court has no option but to apply Section 11 of RA No. 1125, as amended by RA No. 9282. Thus, notwithstanding petitioner's availment of the Tax Amnesty Program under RA No. 9480, this Court has no jurisdiction to nullify the ruling issued by Assistant Commissioner Roldan and the auction sale conducted on September 28, 2007 as it has no authority to entertain the Petition for Review for being filed out of time.

WHEREFORE, the Petition for Review filed on October 31, 2007 and the Amended/Supplemental Petition for Review filed on October 6, 2009 by petitioner Philippine Dream Company, Inc. are hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

---

[94] *Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Appeals*, G.R. No. L-23988, January 2, 1968, 22 SCRA 3, citing *US vs. De la Santa*, 9 Phil. 22.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice