

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

**FILIPINAS PALMOIL PLANTATIONS,
INC.,**

Petitioner,

CTA EB CASE NO. 550

(CTA Case No. 6429)

-versus-

Present:

ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

AUG 23 2010

As Appointed
1:00 p.m.

X-----X

DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court en banc under Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, of the Decision¹ dated March 31, 2009, rendered by this Court's former Second Division² in CTA Case No. 6429, and its Resolution³ dated October 06, 2009.

¹ En banc Docket, pp. 24-48.

² Penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justice Erlinda P. Uy and Associate Justice Olga Palanca-Enriquez.

³ En banc Docket, pp. 50-55. *C*

Petitioner Filipinas Palmoil Plantations, Inc. ("**FPPI**") seeks reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated March 31, 2009:

*"**WHEREFORE**, the instant Petition for Review is **DISMISSED** for being filed beyond the reglementary period under Section 228 of the NIRC of 1997 in relation (to) Section 11 of RA 1125, as amended.*

SO ORDERED."

Resolution dated October 06, 2009:

*"**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.*

SO ORDERED."

The facts as narrated by this Court's former Second Division are undisputed:

"Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of the Philippine law, with principal office located at 7th Floor, Citibank Center, Paseo de Roxas, Makati City.

It is engaged in the business of cultivating, developing, operating, maintaining oil plantations and other agricultural lands, and harvesting oil palm and other agricultural crops thereon, and is a value-added tax (VAT) taxpayer registered with the Bureau of Internal Revenue (BIR) as such in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997 with VAT Registration/Taxpayer Identification No. 000-317-036.

On the other hand, respondent is the Commissioner of Internal Revenue duly appointed to perform the duties of his office, including, among others, the power to act upon and render final decisions on the protest against internal tax

assessments, and holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes.

On December 4, 1998, petitioner was served with Letter of Authority No. 141790 dated December 2, 1998, whereby Revenue Officers Noli M. Perez and Lisa Tomameng were authorized to examine petitioner's books of accounts and other accounting records for VAT for the period from January 1, 1996 to December 31, 1996.

On separate dates, the BIR issued three notices addressed to petitioner, wherein petitioner was required to submit the following documents: books of accounts, sales and purchase journals, subsidiary sales and purchase books, sales receipts/invoices, purchase invoices, inventory list, schedule stating the name of seller/suppliers, schedule of input taxes claimed and all other pertinent documents and records relative to the period under audit.

On May 20, 1999, petitioner executed a WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE (waiver), which will expire on December 31, 1999.

On October 22, 1999, the BIR issued a Pre-Assessment Notice covering the VAT liabilities for the year 1996 of petitioner.

On December 2, 1999, the BIR received from petitioner a letter dated November 24, 1999 from petitioner, requesting for a reinvestigation or review of the finding of the BIR.

On December 6, 1999, petitioner executed another Waiver to expire on December 31, 2000.

On May 25, 2000, petitioner received from the respondent Assessment Notice No. 104-97-00013-35 and Formal Letter of Demand both dated April 19, 2000 assessing Petitioner for deficiency VAT for taxable year 1996 in the amount of ₱ 2,306,226.38 (inclusive of interest) broken down as follows:

Value-Added Tax	
VAT Sales per audit	₱ 529,224,459.03
Add: Other income per income statement	<u>4,480,109.00</u>
Total Vatable Income	₱ 533,704,568.03
	=====

Output Tax	₱ 53,370,456.80
Less: Input Tax Per Audit	<u>2,096,947.42</u>

VAT Due	₱ 51,273,509.38
Less: VAT Payments	<u>49,879,984.60</u>
Deficiency VAT	₱ 1,393,524.78
Add: Interest from 1.21.97 to 4.30.00	<u>912,701.60</u>
Total VAT Due and Payable	₱ 2,306,226.38
	=====

The above deficiency VAT allegedly arose due to the following:

- (i) Unrecorded Vatable Sales amounting to ₱896,315.27 on the ground that said amount was not subjected to VAT; and
- (ii) Disallowance of input tax claimed amounting to ₱855,882.35 on the ground that total allowable input taxes per source document amounted only to ₱2,096,947.42 while per return total input claimed was ₱ 2,952,829.77.

On June 16, 2000, within the 30-day period within which to formally protest any deficiency tax assessment, petitioner filed with the Office of the Acting Regional Director of Revenue Region No. 17 (Butuan City) its protest letter dated June 5, 2000 pursuant to then Section 229 of the NIRC, as amended, specifying the factual and legal bases of the protest against the aforesaid assessment, requesting the reinvestigation of the deficiency VAT assessment therein, and enclosing a copy of petitioner's letter to one of its major customers granting its request for a higher discount due to the very poor quality of crude palm oil and copies of the only available sales invoices (#s 577 and 578).

In the said protest letter, petitioner, in part, stated-

1. Unrecorded vatable sales

xxxx

We have enclosed a copy of our letter to one of our major customers granting their request for a higher discount due to the very poor quality of the CPO and copies of the only available sales invoices (#s577 and 578) with the adjusted discounts reflected including the corresponding adjusting entries.

Our problem, however, is we lost some of our records during the transfer of our office from Makati City to Quezon City. Thus, we have been unable to produce all the other sales invoices

which will account for the entire amount of the supposed unrecorded sales.

xxxx

Our accountant presented all the original documents pertaining to the company's money placements to prove that part of other income shown in the income statement was already subjected to final withholding tax. However, it seems that this was not considered in the assessment.

2. Unsupported input tax claimed

Only the transactions of the Manila office, which constitutes a small number of transactions, had no support for the same reason that records were lost. However, we submitted all the supports for the Agusan transactions plus a summary of the Manila office transactions. However, it seems that the entire assessment for deficiency covered transactions of both offices.

xxxx

On December 20, 2000, the BIR received from the petitioner another letter dated December 19, 2000, which were written by way of a supplemental protest to the above-stated June 5, 2000 protest letter, arguing that the Formal Letter of Demand dated April 19, 2000 was already barred by prescription, pursuant to Sections 203 and 222(b) of the NIRC of 1997.

On January 4, 2001, after reinvestigation pursuant to the protest letter dated June 5, 2000, petitioner received from the respondent Assessment Notice No. 104-97-00013-35 dated December 18, 2000 assessing Petitioner for deficiency VAT for taxable year 1996 in the amount of ₱2,369,262.94 (inclusive of interest) broken down as follows:

Value-Added Tax	
VAT Sales per audit	₱ 529,224,459.03
Add: Other income per	
Income Statement	4,480,109.00
Total Vatable Income	₱ 533,704,568.03
	=====
Output Tax	₱ 53,370,456.80 <

DECISION

Less: Input Tax per Audit	P 2,096,947.42	
Additional input tax per investigation	69,048.48	2,165,995.90
VAT Due		₱ 51,204,460.90
Less: VAT Payments		49,879,984.60
Deficiency VAT		₱ 1,324,476.30
Add: Interest from 1.21.97 to 12.31.00		1,044,786.64
Total VAT Due and Payable		₱ 2,369,262.94
		=====

The above deficiency VAT allegedly arose due to the following:

- (i) Unrecorded Vatable Sales amounting to ₱896,315.27 on the ground that the said amount was not subjected to VAT; and
- (ii) Disallowance of input tax claimed amounting to ₱786,833.87 on the ground that total allowable input taxes per source document amounted only to ₱2,165,995.90 while per return total input claimed was ₱2,952,829.77.

Said Assessment Notice No. 104-97-00013-35 dated December 18, 2000, together with a Formal Demand Letter, also dated December 18, 2000 were released and sent by mail on December 22, 2000.

It must be noted that the Assessment Notice No. 104-97-00013-35 dated December 18, 2000 raise the same issues and findings, except that in the latter notice the BIR allowed input tax in the amount of ₱69,048.48.

On January 27, 2001, petitioner received a letter dated December 27, 2000 from Mr. Danilo Duncano, Acting Regional Director of Revenue Region No. 17-Butuan City, informing petitioner that the case has become final and demandable and was already forwarded to the respondent, and that any further action and/or protest regarding the case should already be addressed to the same. (Emphasis supplied)

On February 28, 2001, respondent received a letter from petitioner referring to the above-stated letter of Mr. Duncano.

On March 11, 2002, petitioner received from respondent a Final Notice Before Seizure (FNBS) dated January 23, 2002, demanding petitioner to pay the deficiency VAT assessment for the taxable year 1996 in the total amount of ₱2,369,262.94. ↵

DECISION

On March 21, 2002, petitioner also received from the respondent a Warrant of Dstraint and/or Levy dated January 31, 2002 seeking to enforce collection measures for the deficiency VAT assessment for the taxable year 1996 in the total amount of ₱2,369,262.94.

On the same date, petitioner was informed by the Philippine National Bank, Agusan Del Sur Branch, that a Warrant of Garnishment dated January 31, 2002 was issued by the respondent against the deposit of petitioner in said Bank.

On April 10, 2002, the instant PETITION FOR REVIEW WITH MOTION FOR SUSPENSION OF COLLECTION OF TAX was filed with this Court."

On January 7, 2003, this Court's former Second Division issued a Resolution⁴ ordering respondent to cease and desist from enforcing the Warrant of Dstraint and/or Levy and the Warrant of Garnishment.

After trial on the merits, this Court's former Second Division rendered the assailed Decision⁵, stating among others that the return filed by petitioner is a false return as defined in **Aznar v. CTA**, 58 SCRA 519 (1974). Thus, the assessment within the ten (10) year period after the discovery of falsity will apply and not the three (3) year period after the last day prescribed by law for the filing of the return. Also, this Court's former Second Division held that the assessment has become final, executory and demandable considering that the petitioner failed to appeal within thirty (30) days from receipt of the letter dated December 27, 2000 of the Acting Regional Director of Revenue Region

⁴ Second Division Docket, pp. 103-104.

⁵ Supra Note 1. 

DECISION

No. 17-Butuan City which constitutes as the Final Disposition and not the Final Notice Before Seizure (FNBS).

Not satisfied, petitioner filed a Motion for Reconsideration⁶ which was denied in a Resolution⁷ dated October 06, 2009. Hence, petitioner filed the instant Petition for Review with the following assignment of errors:

- 1. WITH ALL DUE RESPECT, THE CIRCUMSTANCES IN THIS CASE AND THE PRINCIPLES OF SUBSTANTIAL JUSTICE AND EQUITY WARRANT THE RELAXATION OF THE RIGID APPLICATION OF PROCEDURAL RULES AND THE ALLOWANCE OF FPPI'S APPEAL.**
- 2. WITH ALL DUE RESPECT, THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN RULING THAT THE SUBJECT ASSESSMENTS ARE NOT YET BARRED BY PRESCRIPTION.**
- 3. WITH ALL DUE RESPECT, THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN NOT RULING THAT FPPI IS NOT LIABLE FOR THE DEFICIENCY TAXES ASSESSED AGAINST IT."**

We find no reversible error.

Suffice it to say that the instant petition involves the assessment made by respondent against petitioner for the taxable year 1996. When the demands to pay proved to be futile, respondent tried to enforce collection for the deficiency VAT assessment in the total

⁶ En banc Docket, pp. 126-141.

⁷ Supra, Note 3. 

DECISION

amount of ₱2,369,262.94, through a Warrant of Dstraint and/or Levy. Thereafter, petitioner was informed by the Philippine National Bank, Agusan Del Sur Branch that a Warrant of Garnishment was issued against petitioner's deposit account. Hence, petitioner filed before this Court a Petition for Review with Motion for Suspension of Collection of Tax which was raffled to this Court's former Second Division. This Court's former Second Division held that petitioner filed a false return and that the assessment has become final, executory and demandable.

Section 228⁸ of the National Internal Revenue Code (NIRC), as amended, provides that a taxpayer has thirty (30) days from receipt of the decision of the protest, or from the lapse of the one hundred eighty (180) - day period to appeal before this Court. Otherwise the decision of the Commissioner of Internal Revenue or his duly authorized representative shall become final, executory and demandable.

⁸ SEC. 228. Protesting of Assessment.-xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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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 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.

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In the same vein, Section 3.1.5 of Revenue Regulation No. 12-99⁹, states that if the taxpayer fails to elevate his protest to the Commissioner of Internal Revenue within thirty (30) days from receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall be final, executory and demandable.

Consequently, within thirty (30) days from the final decision of the Commissioner's duly authorized representative, petitioner has the option to either appeal to this Court by way of a petition for review or

⁹ 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 (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

xxx xxx xxx

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 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 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.

←

elevate to the Commissioner of Internal Revenue its protest. Otherwise, the final decision of the Commissioner's duly authorized representative shall be final, executory and demandable.

Records disclose that on May 25, 2000, petitioner received from respondent the Assessment Notice No. 104-97-00013-35 and Formal Letter of Demand both dated April 19, 2000, assessing petitioner for deficiency VAT for taxable year 1996 in the amount of P2,306,226.38 (inclusive of interest). On June 16, 2000, petitioner filed with the Office of the Acting Regional Director of Revenue Region No. 17 (Butuan City) its first protest letter dated June 5, 2000 within the 30-day period. Petitioner submitted other documents and requested for a reinvestigation.

On December 20, 2000, the BIR received from petitioner another letter dated December 19, 2000¹⁰ which was written by way of a supplemental protest (2nd protest) to the June 5, 2000 protest letter, arguing that the Formal Letter of Demand dated April 19, 2000 was already barred by prescription, pursuant to Sections 203 and 222(b) of the NIRC of 1997.

After reinvestigation pursuant to the protest letter dated June 5, 2000, petitioner received from respondent the Assessment Notice No. 104-97-00013-35 dated December 18, 2000 assessing petitioner for

¹⁰ Exhibit "C" ◀

deficiency VAT for taxable year 1996 in the amount of P2,369,262.94⁹ (inclusive of interest). This protest was denied upon receipt by petitioner on January 27, 2001, of a letter¹¹ from Mr. Danilo Duncano, Acting Regional Director of Revenue Region No. 17-Butuan City, informing that the case has become final and demandable and that it was forwarded to the Commissioner of Internal Revenue, and that any further action and/or protest regarding the case should likewise be addressed to the Commissioner of Internal Revenue.

Based on the facts, from January 27, 2000, petitioner had until February 26, 2001 to appeal to this Court by way of a petition for review or elevate to the Commissioner of Internal Revenue its third protest. Failure to do so would render the decision final, executory and demandable. **Petitioner failed to avail of both remedies.** Consequently, the decision of the Acting Regional Director of Revenue Region No. 17-Butuan City has become final, executory and demandable.

As aptly found by this Court's former Second Division:

"Petitioner failed to exercise its right to bring the matter before this Court within the reglementary period upon receipt of the letter of Mr. Duncano dated December 27, 2000. Being a final disposition by the BIR, the same would have been a proper subject of an appeal. The period of thirty (30) days to appeal the adverse decision on petitioner's protest had already lapsed when the instant petition was filed with this Court (raffled to the second Division) only on April 10, 2002.

¹¹ Exhibit "D" 4

On the other hand, when petitioner elevated its protest to the Commissioner of Internal Revenue, it was again filed out of time. It should be noted that it was on January 27, 2001 when petitioner received Mr. Duncano's letter. Accordingly, petitioner has thirty (30) days from January 27, 2001 or until February 26, 2001 to elevate his case to the Commissioner. It was only on February 28, 2001 that the Commissioner of Internal Revenue received a letter from petitioner referring to the letter of Mr. Duncano dated December 27, 2000.

Clearly, petitioner failed to avail of its right to bring the matter before this Court within the reglementary period upon receipt of the decision stating that the case has become final and demandable and was forwarded to the Commissioner of Internal Revenue, which constituted the final determination on petitioner's protest. Being a final disposition, the same would have been a proper subject for appeal had petitioner filed the same within the reglementary period.

Instead of filing a petition for review, petitioner filed a letter of protest (3rd protest) which was received by the Commissioner of Internal Revenue on February 28, 2001. However, petitioner had only until February 26, 2001 to elevate to the Commissioner of Internal Revenue its protest. Said letter protest to the CIR was filed outside the thirty (30) day period. Evidently, it was filed out of time. Concomitantly, said belated protest does not change the fact that the assessment had become final, executory and demandable.

Petitioner's stubborn insistence that the thirty (30) day period should not have commenced on January 27, 2001 which is a Saturday 6

(the day petitioner received Mr. Duncano's letter) but rather on the next succeeding business day, or on January 29, 2001, deserves scant consideration. It is so only if the last day for doing an act required or permitted by law falls on a Saturday, Sunday or a legal holidays where the time shall not run until the next working holiday and not on the day of the act or event from which the designated period of time begins in accordance with Section 1 Rule 22 of the Revised Rules Of Court¹². We will no longer belabor the obvious.

In **Commissioner of Internal Revenue v. Bank of the Philippine Islands**,¹³ the Supreme Court held that -

"Even if we considered the December 10, 1988 letter as a protest, BPI must nevertheless be deemed to have failed to appeal the CIR's final decision regarding the disputed assessments within the 30-day period provided by law. The CIR, in his May 8, 1991 response, stated that it was his "final decision . . . on the matter." BPI therefore had 30 days from the time it received the decision on June 27, 1991 to appeal but it did not. Instead it filed a request for reconsideration and lodged its appeal in the CTA only on February 18, 1992, way beyond the reglementary period. BPI must now suffer the repercussions of its omission."

In **Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue**,¹⁴ the Supreme Court held that this 30-day period within which to file an appeal is jurisdictional and failure to comply

¹² Section 1. How to compute time.- In computing any period of time prescribed or allowed by these Rules, or by order of the Court, or by any applicable statute, the day of the act or event which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

¹³ G.R. No. 134062. April 17, 2007.

¹⁴ G.R. No. 168498. April 24, 2007.

therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments; such period is **not merely directory but mandatory** and it is beyond the power of the courts to extend the same.

We quote:

"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 and prescription of the Government's right to assess.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. Section 7 of Republic Act (R.A.) No. 9282, amending R.A. No. 1125, otherwise known as the Law Creating the Court of Tax Appeals, 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 or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

Also, Section 3, Rule 4 and Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals 6 state: 4

RULE 4
Jurisdiction of the Court

xxx xxx xxx

SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(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;

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action:

Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

xxx xxx xxx

RULE 8
Procedure in Civil Cases

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SECTION 3. Who May Appeal; Period to File Petition. — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the

Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (n)

From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. **The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.**

In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.

In the instant case, the Commissioner failed to act on the disputed assessment within 180 days from date of submission of documents. Thus, petitioner opted to file a petition for review before the Court of Tax Appeals. Unfortunately, the petition for review was filed out of time, i.e., it was filed more than 30 days after the lapse of the 180-day period. Consequently, it was dismissed by the Court of Tax Appeals for late filing. Petitioner did not file a motion for reconsideration or make an appeal; hence, the disputed assessment became final, demandable and executory."

This now brings us to the crux of the matter as to whether this Court's former Second Division erred in finding that petitioner filed a false return. If petitioner did file a false return, the 10-year prescriptive period shall be in effect. Otherwise, the Assessment Notice No. 104-97-00013-35 and Formal Letter of Demand both dated April 19, 2000 or the subsequent assessment made after reinvestigation, Assessment Notice No. 104-97-00013-35 and Formal Demand Letter, both dated December 18, 2000, made after the three-year prescriptive period, have prescribed.

Petitioner claims that it did not conceal anything from the CIR as it submitted all the pertinent documents and records relative to the period of audit and that the unrecorded amount of P896,315. 27 was an honest belief that this amount refer to rebates deductible from the computation of its gross sales.

Petitioner points out that had it really filed a false VAT return, the CIR would have assessed it 50% penalty but the CIR did not. Hence, this appears as an admission on the part of the CIR that the VAT Return is not a false return. Likewise, petitioner argues that reliance in the Aznar case is misplaced as it does not establish a hard and fast rule that every deviation from the truth necessarily brings a particular return

under the coverage of Section 222¹⁵ of the NIRC and that it should not be given a sweeping application in all cases.

We are not persuaded.

In the Aznar Case, a false return merely implies a deviation from the truth or fact, whether intentional or not. We agree that the Aznar Case should not be given a sweeping application in all cases as not every mistake or deviation from the truth necessarily brings a particular return under the coverage of Section 222 of the NIRC. However, inconsistencies in representation, non-recording of transactions, violation of the NIRC and among other factors as the circumstances would warrant should be put into consideration.

Petitioner claims to have lost some of its records, yet in its appeal to this Court, petitioner presented additional evidence which it could have easily presented in the administrative level. Likewise, petitioner appears to have violated the invoicing requirements of Section 108(a) of the NIRC. These circumstances convince us to apply the Aznar Case. Thus, we find the pertinent ruling of the Decision of this Court's former Second Division to be correct.

¹⁵ Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

We quote:

"In its protest letter dated June 5, 2000 or at the administrative level, petitioner made the following explanations in regard to the said "unrecorded vatable sales"-

xxx. You would note, therefore, that the supposed unrecorded sales occurred only in January with transactions for the rest of the year found in order.

We have enclosed a copy of our letter to one of our major customers granting their request for a higher discount due to the very poor quality of the CPO and copies of the only available sales invoices (#s 577 and 578) with the adjusted discounts reflected including the corresponding adjusting entries.

Our problem, however, is we lost some of our records during the transfer of our office from Makati City to Quezon City.xxx.

Notwithstanding such explanation, petitioner, in this appeal was able to present and offer additional documentary evidence, viz: pages 4, 14, and 21 of petitioner's supposed general ledger for the year 1996, to prove that the said unrecorded sales had been adjusted or reversed in petitioner's financial records.

This cannot be allowed.

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Suffice it to state, however, that the said sales invoices are inadequate to establish the fact of recording of the transactions therein indicated.

For one thing, said sales invoices failed to comply with the invoicing requirements under Sec. 108 (a) of the NIRC, as amended by not indicating petitioner's VAT registration number or Tax identification Number. Thus, said invoices are invalid.

For another, to be considered as "recorded", it must be shown that the transactions are reflected on ALL the books of accounts required to be kept by the taxpayer xxx xxx.

Thus, for a sale to be considered as recorded, the taxpayer must present not only the sales invoices, but also the journal, ledger, and subsidiary sales journal. <

DECISION

Furthermore, it is of no moment that there are, in sales invoices nos. 577 and 578, supposed "adjusting entries", since such entries are not in its proper place. Accounting entries are recorded in the above-stated books of accounts, not in the sales invoices.

xxx xxx xxx

Thus, having failed to refute the finding of "unrecorded vatiable sales" by the BIR, such finding stands. Correspondingly, the sales and the VAT thereon were never reflected in the VAT quarterly return of petitioner for the first quarter of 1996. Such being the case, such return is a false return as defined in Aznar."

Indeed, there was a false return. The non-recording and non-compliance with the invoicing requirements puts the instant case under the coverage of Section 222 of the NIRC¹⁶. CIR's non- assessment of the 50% penalty for filing a false return is of no consequence.

Corollary, the assessments and formal demand have not prescribed and that the Decision of the Acting Regional Director of Revenue Region No. 17-Butuan City on petitioner's protest thereon has become final, executory and demandable. But unfortunately, the instant petition for review was filed out of time, i.e., it was not filed within 30 days after the receipt of said decision.

We find it unnecessary to discuss the third assignment of error for being moot.

¹⁶ Ibid.

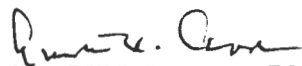
In fine, we find no cogent reason to reverse the findings of this Court's former Second Division.

WHEREFORE, the instant petition is **DENIED**. The Decision of this Court's former Second Division in CTA Case No. 6429, dated March 31, 2009, and its Resolution dated October 6, 2009, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice

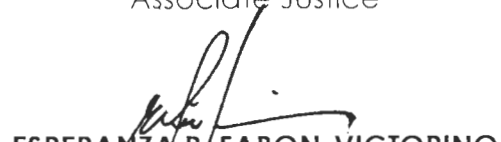

JUANITO C. CASTANEDA, JR.
Associate Justice

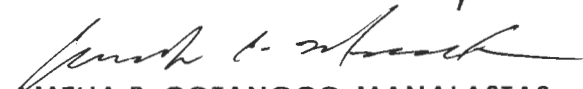

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice

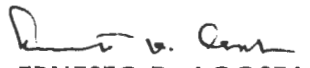

OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.


ERNESTO D. ACOSTA
Presiding Justice