REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LA FLOR DELA ISABELA, INC., Petitioner,	C.T.A. EB No. 672 (C.T.A. CASE NO. 7709)
	Members:
- versus -	ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 02 2012 RoApolinario 2:00 p.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review filed on September 7, 2010, petitioner La Flor Dela Isabela, Inc. assails the (1) Decision dated June 9, 2010, which dismissed its petition for cancellation of assessments issued by respondent Commissioner of Internal Revenue (CIR), and the (2) Resolution dated August 4, 2010, which denied its Motion for Reconsideration, for lack of merit.

The appeal stemmed from the Petition for Review filed by petitioner before the Court in Division praying for the cancellation of assessments for deficiency income tax, value added tax (VAT), withholding tax on compensation, expanded withholding tax (EWT), and compromise penalty for taxable year 1999 in the total amount of P10,460,217.023, and for the cancellation of the undated Warrant of Distraint and/or Levy (WDL), both issued by respondent against petitioner.

The facts pertinent to the present action are as follows, viz.:

Petitioner is a duly organized and existing domestic corporation with office address at Km. 14, West Service Road, South Superhighway, Merville, Parañaque City.

Respondent, on the other hand, is the public officer authorized to decide tax disputes, cancel and abate tax liabilities pursuant to Section 204(B) of the National Internal Revenue Code (NIRC), as amended by R.A. No. 8424, also known as the "Tax Reform Act of 1997." She holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On September 6, 2000, respondent issued a Letter of Authority for the examination of the books of account of petitioner for "all internal revenue taxes for the period January 1, 1999 to December 31, 1999."

On May 28, 2002, petitioner executed a Waiver of the Statute of Limitation to extend respondent's period to assess and collect deficiency tax until December 1, 2002. But before this Waiver lapsed, petitioner executed a second Waiver on October 2, 2002 effective until June 30, 3003. Although accepted by respondent on the same day, it was notarized only on November 4, 2002.

On April 8, 2003, petitioner received respondent's Preliminary Assessment Notice (PAN) dated March 19, 2003.

On April 11, 2003, petitioner executed its third Waiver of prescription of respondent's right to assess and collect tax due until December 31, 2003. It was notarized on the same date and submitted to the Large Taxpayers Audit and Investigation Division II on April 14, 2003. Admittedly, no date of acceptance by respondent is indicated in the Waiver but the signature of the accepting officer Asst. Commissioner for Large Taxpayer's

Service Edwin R. Abella appears to have been affixed on April 11, 2003.

On January 6, 2004, petitioner executed its fourth Waiver giving respondent until December 31, 2004 to make an assessment. Before this Waiver lapsed, petitioner executed its fifth and final Waiver on November 4, 2004, effective until June 30, 2005.

On March 21, 2005, petitioner received a Formal Letter of Demand (FLD) dated March 14, 2005 with attached deficiency tax assessments, to wit, Assessment No. LTAID II IT-99-00077 for deficiency income tax (IT), Assessment No. LTAID II VT-99-00091 for value-added tax (VAT), Assessment No. LTAID II WC-99-00019 for withholding tax (WT) on compensation, Assessment No. LTAID II WE-99-00054 for expanded withholding tax (EWT), and Assessment No. LTAID II CP-99-00020 for compromise penalty.

On March 30, 2005, petitioner filed its protest against respondent's FLD. It was followed by a Supplemental Protest Letter on April 12, 2005.

Two years later, or on July 9, 2007, petitioner received respondent's Final Decision on Disputed Assessments (FDDA) dated June 1, 2007, indicating its deficiency taxes in the total amount of P10,460,217.23.

On October 8, 2007, petitioner filed an application for tax amnesty under Republic Act (R.A.) No. 9480. Ten days later or on October 18, 2007, petitioner filed an application for compromise agreement pursuant to Section 204 of the Tax Code.

On November 23, 2007, petitioner received an undated Warrant of Distraint and/or Levy (WDL) issued by respondent.

Aggrieved, petitioner filed a Petition for Review before the Court in Division on November 29, 2007, assailing respondents' issuance of FDDA and WDL.

On June 9, 2010, the Former Second Division of the Court dismissed the Petition for Review on the grounds that it was filed out of time and the questioned assessments have become final and executory. The dispositive portion of the Decision reads as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby DISMISSED.
>
> SO ORDERED."

On July 6, 2010, petitioner moved for a reconsideration of the foregoing decision, but it was denied for lack of merit in the Resolution dated August 04, 2010.

Within the extended period granted by the Court *En Banc* on August 24, 2010, petitioner filed the instant Petition for Review on September 7, 2010, basically reiterating its arguments before the Court in Division, and earlier, before respondent via protest letters assailing the assessment issued against it.

Petitioner insists that the disputed assessment is null and void as it was issued beyond the mandatory 3-year prescriptive period for assessment. Being defective, it never became final and executory to become the basis for issuance of WDL which must as well be declared null and void.

While it is true that petitioner executed several Waivers of the Statute of Limitation purportedly to extend the period for assessment and collection of the alleged tax deficiencies, the same were invalid as all failed to comply with the requisites mandated in Section 222(b) of the NIRC and Revenue Memorandum Circular (RMC) No. 06-05. Being invalid, these Waivers produced no legal effect as to extend the 3-year prescriptive period for assessment and collection of taxes due rendering the FLD dated March 14, 2005 as well as the subsequently issued WDL, null and void.

Petitioner exclaims that the issue in the instant appeal filed under Section 7 of Republic Act (R.A.) No. 1125 is not the "correctness" but the "validity" or "legality" of the issuance of the assessment and the WDL considering that the Waivers, being defective, did not produce any legal effect.

To bolster its position that a null and void Waiver of Statute of Limitations will not produce any legal effect as to stop the running of the 3-year prescriptive period to assess, petitioner cites the case of *Philippine Journalists, Inc. vs. Commissioner of*

Internal Revenue. [1] In the said case, the Supreme Court allegedly invalidated the Warrant of Distraint and/or Levy (WDL) issued by respondent notwithstanding the taxpayer's failure to protest the assessment within the mandated period of 30 days. The same with the Waiver executed by the taxpayer therein found to be incomplete and defective therefore did not prevent the running of the 3-year prescriptive period to assess.

In the instant case, petitioner claims that it filed its VAT Returns for the first quarter of 1999 on April 26, 1999. The 3-year prescriptive period to assess VAT for the first quarter of 1999 thus expired on April 25, 2002. However, the First Waiver was executed more than a month later on May 28, 2002. Since the first Waiver was defective, it follows that the second Waiver executed on October 02, 2002 did not as well extend the period to assess VAT. As to the third Waiver executed on April 11, 2003, the parties stipulated that no date of acceptance by respondent was indicated therein rendering the same invalid pursuant to RMC No. 06-05. On the other hand, the fourth Waiver dated January 06, 2004 was executed six days after the expiration of the third Waiver on December 31, 2003. Moreover, it was accepted by the Chief of the Large Taxpayers Audit and

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[1] G.R. No. 162852, December 16, 2004.

Investigation Division of the BIR who had no authority to act the way it did in behalf of respondent. Necessarily, the following fifth and final Waiver executed on November 04, 2004 was also null and void. Since the Waivers were infirm, they did not stop the running of the 3-year prescriptive period to assess.

Petitioner opines that in ruling that once an assessment has become final and executory, the taxpayer no longer has recourse to question a WDL eventually issued, is a dangerous precedent. It will inspire respondent to indiscriminately and arbitrarily issue time-barred deficiency tax assessments in the hope that the taxpayer will not protest or timely file an appeal rendering the said time-barred assessment legal and binding.

Assuming that the subject assessment indeed became final and executory, still the Court in Division erred when it failed to consider that petitioner availed of the tax amnesty program of the government on October 08, 2007. Compliance with all the requirements provided it immunity against payment of the alleged tax liabilities pursuant to Section 6(a) of R.A. No. 9480. Since petitioner's alleged deficiency assessment is for taxable year 1999, and not covered by the exceptions, it is eligible to avail of the benefits and immunities provided under the said law.

Lastly, petitioner posits that it cannot be held liable for compromise penalty absent its concurrence considering that it is consensual in nature.

In lieu of Comment, respondent manifested that it would merely adopt her stance in her Opposition to petitioner's Motion for Reconsideration filed with the Court in Division on July 13, 2010.

Respondent maintains that petitioner's appeal was filed out of time rendering the subject assessments final and executory. Contrary to petitioner's claim, all the Waivers it executed complied with the requirements set forth in RMO No. 20-90. They were duly signed and accepted on a specified date by respondent or her duly authorized officials, with definite expiration dates, and copy furnished petitioner. According to respondent, petitioner is estopped from assailing the validity of the Waivers as instead of appealing the FDD dated June 01, 2007, it sequentially filed applications for tax amnesty under Republic Act (R.A.) No. 9480 on October 08, 2007 and for compromise agreement pursuant to Section 204 of the Tax Code on October 18, 2007. Significantly, both were denied by respondent. By virtue of the action taken, petitioner is deemed to have accepted the validity of the subject assessments and it can no longer take a diametrically opposed stance.

Respondent also points out that petitioner impugned the validity of the Waivers only after its applications for tax amnesty and compromise agreement were denied. In the meantime, the subject assessments became final and executory due to petitioner's failure to seasonably appeal to the Court. Thus, the amount being collected are considered as accounts receivable or assets of the government precluding petitioner from availing the benefits under R.A. No. 9480 and compromise agreement under Section 204 of the 1997 Tax Code.

Petitioner cannot as well question at this point the subject assessments in the guise of an appeal against the Warrant of Distraint and/Levy, after the said assessments have already become final and executory. Finally, the issues raised herein have already been extensively discussed and passed upon by the Court in Division in the assailed Decision.

On November 17, 2010, the Court *En Banc* gave due course to the instant Petition and directed the parties to submit their respective memoranda. However, in lieu of the required pleading, petitioner filed a Manifestation dated December 28, 2010, adopting the arguments in its Petition for Review. On the other hand, respondent failed to file a memorandum, despite receipt of the Court's directive. Hence, the instant petition was submitted for decision without respondent's memorandum on February 02, 2011.

The guiding provision is Section 228 of the National Internal Revenue Code, as amended, which is hereby reproduced for easy reference, to wit:

> "Section 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:
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> x x x x x x x x x
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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 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."

Unequivocal from the foregoing provision that if a protest is not acted upon by respondent within 180 days from submission of supporting documents, the taxpayer adversely affected by such inaction may **appeal to the CTA within 30 days** from the lapse of the 180-day period.[2]

There is no disagreement that petitioner received a Formal Letter of Demand (FLD) with attached deficiency tax assessments on March 21, 2005, to which it timely filed a protest on March 30, 2005 in accord with Section 228 of the Tax Code. On April 12, 2005 or within 60 days from the filing of the protest, petitioner filed a Supplemental Protest Letter submitting additional documents in support of the protest. From April 12, 2005, respondent had 180 days or until October 9, 2005, within which to act on the protest. Respondent however failed giving birth to petitioner's right to assail such inaction before the CTA within 30 days or until November 8, 2005 via a Petition for Review. But for unknown reason, petitioner slept on its right

[2] Commissioner of Internal Revenue vs. First Express Pawnshop, G.R. Nos. 172045-46, June 16, 2009.

and sought relief from the Court only on November 29, 2007 or more than two (2) years beyond the reglementary period provided under the law, precluding the Court from entertaining the same for want of jurisdiction.

The 30-day period to appeal set by Section 228 of the NIRC, as amended, should be reckoned from October 9, 2005, when the 180-day period for respondent to act on the protest lapsed without any decision having been rendered and not from July 9, 2007, when petitioner received the FDDA dated June 1, 2007 indicating deficiency taxes of P10,460,217.23. It could not be any other way as it would give respondent an infinite period to act on a protest brought before her in blatant disregard of the time frame explicitly provided by law and willful oversight of orderly administration of justice.

Even granting for argument's sake that the 30-day period to appeal commenced to run on July 9, 2007, or the day when petitioner received the FDDA dated June 1, 2007, still the Petition for Review before the Court in Division was filed beyond the 30-day period to appeal on November 29, 2007.

As to the petitioner's additional defense that the five Waivers of Statute of Limitation it executed were all invalid for failure to comply with the formal requisites, hence, did not toll the running of the three year prescriptive period to assess and collect the alleged tax liabilities, the record is most telling.

The first Waiver of Statute of Limitation was executed by petitioner on May 28, 2002, extending respondent's period to effect assessment and collection of tax liabilities of petitioner until December 1, 2002. It was signed and accepted by Assistant Commissioner for Large Taxpayers Service Edwin R. Abella on June 21, 2002 and notarized on the same day.

Before the first waiver expired, petitioner executed the second on October 2, 2002 extending respondent's period to assess/collect until June 30, 3003. It was again signed indicating acceptance by the same Assistant Commissioner Edwin R. Abella on same day but notarized on November 4, 2002.

After, petitioner received the PAN dated March 19, 2003 on April 8, 2003, it executed its third waiver on April 11, 2003 effective until December 31, 2003. It was notarized on even date, copy furnished the Large Taxpayers Audit and Investigation

Division (LTAID – II Excise Tax) through Roderick T. Mercurio on April 14, 2003. Although respondent admitted that no date of acceptance was indicated in the waiver, an examination of the document shows that same Assistant Commissioner Edwin R. Abella acknowledged acceptance on April 11, 2003.

The fourth waiver was executed by petitioner on January 6, 2004, giving respondent until December 31, 2004 to make an assessment. Before this waiver lapsed, petitioner executed its fifth and final Waiver on November 4, 2004, effective until June 30, 2005, the acceptance of which was acknowledged by then DCIR for special Concerns Group, OIC, Large Taxpayers Service and now Commissioner of Internal Revenue Kim S. Jacinto-Henares, the herein respondent on November 11, 2004.

All these show compliance with the requirements for the validity of the cited Waivers of Statute of Limitations, receipt of a copy of each was never refuted by petitioner, who presented them as part of its evidence. A Waiver of Statute of Limitations is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. [3]

Being valid, the cited waivers are binding upon the parties and effectively served the purpose for which they were executed – to extend respondent's period to assess and collect taxes due from petitioner. Note that before the last waiver expired, respondent issued a Formal Letter of Demand (FLD) dated March 14, 2005 with attached deficiency tax assessments which petitioner received on March 21, 2005.

Ironically, petitioner claims that it is not assailing the correctness but only the validity of the WDL issued by respondent. But in its original Petition for Review filed with the Court in Division, petitioner prayed that the assailed assessment issued by respondent be cancelled for being null and void. Precisely, the Court *a quo* ruled that it was valid and issued within the 3-year prescriptive period set by law. Given the foregoing, the WDL, subsequently issued for the purpose of collecting the assessment that has attained finality, must necessarily be valid.

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[3] Philippine Journalists, Inc., v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

Assuming *in gratia argumenti* that petitioner is challenging the WDL and not the assessment, the result will remain unchanged. Petitioner should not be allowed to circumvent Section 228 of the NIRC, as amended. For to give due course to the instant Petition even if not seasonably filed will allow petitioner to indirectly impugn the subject assessment which has become final and executory. What petitioner cannot do directly, it cannot do indirectly.[4]

To reiterate, the failure of a taxpayer 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 the said taxpayer from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess. Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes.[5]

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[4] Alvarez vs. PICOP Resources, Inc., G.R. No. 162243, December 03, 2009 and PICOP Resources, Inc. vs. Alvarez, G.R. No. 164516 and Reyes vs. Paper Industries Corp., G.R. No. 171875.

[5] Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, Secretary of Justice, L. M. Camus Engineering Corporation (Represented By Luis M. Camus And Lino D. Mendoza), G.R. No. 177279, October 13, 2010.

WHEREFORE, the Petition for Review dated September 07, 2010, filed by petitioner La Flor Dela Isabela, Inc., is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Justice