REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

POLYELECTRA CORPORATION, *Petitioner,*	**CTA CASE NO. 8589**
	Members:
- versus -	**DEL ROSARIO**, *Chairperson,* **UY**, *and* **MINDARO-GRULLA**, *JJ.*
COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 19 2015, 9:30 a.m.

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DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed on December 19, 2012 by petitioner Polyelectra Corporation seeking to set aside the Final Decision on Disputed Assessment (FDDA) of respondent Commissioner of Internal Revenue (CIR) on petitioner's protest of the Formal Assessment Notice (FAN) dated June 25, 2010 and the cancellation and withdrawal of the deficiency income tax and value-added tax (VAT) assessments for taxable year 2006 in the aggregate amount of **FIVE MILLION ONE HUNDRED SIXTY FOUR THOUSAND FOUR HUNDRED TWENTY PESOS and 99/100** (₱5,164,420.99).

THE PARTIES

Petitioner is a corporation organized under Philippine law, represented by its President Antonio M. Carandang through a board resolution and may be served with summons, pleadings, notices and other processes of this Honorable Court at 58 Vienne Street, Merville, Parañaque City.[1]

On the other hand, respondent Bureau of Internal Revenue (BIR) through the CIR, is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties. Respondent is being represented by the legal officers of the Legal Division, Revenue Region 8, Makati City, with office address at the 2/F Legal Division, BIR Bldg., No. 313 Se. Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes may be served.[2]

THE FACTS

On February 15, 2008, petitioner received the Letter of Authority No. 00068912[3] dated February 13, 2008 issued by respondent, authorizing the examination of petitioner's books of accounts and other accounting records for taxable year 2006.[4]

On March 15, 2008, respondent issued a second notice to petitioner reiterating the Letter of Authority.[5]

On March 10, 2010, petitioner received a Notice of Informal Conference[6] with computation of tax deficiencies.[7]

As a result of said investigation, petitioner received on June 8, 2010 a Preliminary Assessment Notice (PAN)[8] bearing the same date, with attached annexes described as "Details of Discrepancies"[9] issued by respondent.

On June 25, 2010, petitioner filed its protest[10] against the said PAN and received on the same date the FAN[11] assessing petitioner of the following deficiency taxes for the year 2006:

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI); CTA Docket, p. 464.
[2] Par.2, Admitted Facts, JSFI; CTA Docket, p. 464.
[3] Exhibit "P-1", CTA Docket, p. 328.
[4] Par. 3, Admitted Facts, JSFI; CTA Docket, p. 464.
[5] Par. 4, Admitted Facts, JSFI; CTA Docket, p. 464.
[6] BIR Records, p. 65.
[7] Par. 5. Admitted Facts, JSFI; CTA Docket, p. 465.
[8] Exhibit "R-3", BIR Records, p. 142.
[9] CTA Docket, pp. 348-350.
[10] Exhibit "P-8", CTA Docket, p. 351.

I.	Income Tax	₱673,385.35
II.	Value-Added Tax	4,491,035.64
Total amount due		**₱5,164,420.99**

In a letter dated July 9, 2010, respondent informed petitioner that its protest letter against the PAN was considered as a protest against the FAN.[12]

Respondent sent a letter[13] dated November 9, 2010 to petitioner's corporate officers including its secretary, Maria Aurora Amada C. Gloria, informing them of respondent's denial of petitioner's protest and issuance of the FDDA, a copy of which was attached to said letter.

In a letter dated December 9, 2010[14], petitioner acknowledged receipt of the letter dated November 9, 2010 addressed to its corporate secretary and informed the Regional Director Jaime B. Santiago of its meeting with Revenue Officer Alyasan M. Andig.

On January 20, 2011, petitioner submitted documents to respondent.[15]

On March 2, 2012, respondent sent by registered mail[16] a letter informing petitioner of the report for reinvestigation submitted by Revenue Officer Helalla M. Lao finding no valid document to support the cancellation of the deficiency income tax and VAT.[17]

On July 24, 2012, respondent issued a Preliminary Collection Letter which she sent to petitioner by registered mail under registry receipt No. 2014.[18]

On September 28, 2012, respondent issued a Final Notice Before Seizure[19] which petitioner acknowledged having received on October 15, 2012.[20]

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[11] Exhibit "R-4", BIR Records, pp. 147 to 150.
[12] BIR Records, p. 155.
[13] Exhibit "R-6", BIR Records, p. 177.
[14] BIR Records, p. 187.
[15] BIR Records, p. 213.
[16] Registry Receipt No. 3696.
[17] BIR Records, p. 219
[18] BIR Records, p. 229.
[19] BIR Records, p. 231.
[20] BIR Records, p. 275.

On November 19, 2012, petitioner received a letter dated October 25, 2012 from respondent informing petitioner of the denial of its request for re-investigation and asking petitioner to settle its tax liabilities, within ten (10) days from receipt thereof.[21]

Hence, on December 19, 2012, petitioner filed the instant Petition for Review.

In her Answer,[22] respondent CIR raised the following special and affirmative defenses:

a) The Honorable Court has no jurisdiction to take cognizance of the case on the ground that the Petition for Review was filed out of time;

b) Petitioner was assessed for deficiency income tax, value-added tax and compromise penalty for taxable year 2006, for the reason that during the administrative investigation of its tax case, petitioner failed to substantiate or submit supporting evidence against the BIR findings;

c) Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the disputed PAN dated June 8, 2010 and FAN dated June 25, 2010 were issued to petitioner;

d) Petitioner was assessed for deficiency income tax, value-added tax and compromise penalty for taxable year 2006 within the prescriptive period under Section 222(b) of the 1997 Tax Code;

e) The assessments issued against petitioner for deficiency income tax and value-added tax and compromise penalty, respectively, for taxable year 2006 were made in accordance with law and regulations; and,

f) Assessments are *prima facie* presumed correct and made in good faith.

After the Pre-Trial Conference on November 29, 2013,[23] the parties filed their Joint Stipulations of Facts and Issues[24] on December 26, 2013, After approving the parties' Joint Stipulations of Facts and Issues, the Court issued the Pre-Trial Order[25] on January 30, 2014.

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[21] Par. 12. Admitted Facts, JSFI; CTA Docket, p. 465.
[22] CTA Docket, pp.70-79.
[23] CTA Docket, p. 286.
[24] CTA Docket, p. 464.
[25] CTA Docket, pp. 478 to 485.

Trial ensued, wherein the parties presented their respective evidence. Petitioner presented two (2) witnesses, Angel A. Galang[26] and Antonio M. Carandang[27]and documentary evidence marked as Exhibits "P-1" to "P-21-62", inclusive of submarkings, which the Court admitted in its Resolution dated January 20, 2015,[28] except for Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-9", "P-10", "P-11", "P-18", and "P-19."

Respondent, on the other hand, presented three (3) witnesses: BIR Revenue Officer, Robertson T. Gazzingan;[29] Alyasah M. Andig;[30] and Christian B. Mendoza[31] and documentary evidence, marked as Exhibits "R-1" to "R-11-a", inclusive of their sub-markings, which were admitted in the Resolution dated June 10, 2015.[32]

With the posting of the "Memorandum for Respondent" on July 16, 2015 and for failure of petitioner to file its memorandum, despite notice, the case was submitted for decision on August 12, 2015.[33]

ISSUES

As stipulated by the parties, the following are the issues[34] to be resolved:

1. Whether or not petitioner is liable for P673,385.35, P4,491,035.64 and P7,000.00 (inclusive of increments), as deficiency income tax, value-added tax and compromise penalty, respectively, for taxable year 2006, plus the accrued 25% surcharge for late payment and 20% annual interest from July 30, 2010 until fully paid, pursuant to Sections 248 and 249 of the Tax Code?

2. Whether or not there is a Final Decision on Disputed Assessment with Details of Discrepancies attached to the letter dated November 10, 2012, which was received by petitioner on November 12, 2010?

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[26] Minutes of Hearing dated February 25, 2014, CTA Docket pp. 488 to 492.
[27] *Id.*
[28] CTA Docket, pp. 578 to 579.
[29] Minutes of Hearing dated January 27, 2015, CTA Docket p. 581.
[30] Minutes of Hearing dated March 10, 2015, CTA Docket p. 591.
[31] *Id.*
[32] CTA Docket, pp. 612 to 613.
[33] CTA Docket, p. 623.
[34] CTA Docket, p. 465, JSFI.

3. Whether or not the present petition was filed within the period to appeal?

The foregoing issues boil down to the principal issue of:

"Whether or not petitioner may be held liable for deficiency income tax and VAT in the aggregate amount of ₱5,164,420.99, inclusive of surcharges, interest and penalties for taxable year 2006?"

THE COURT'S RULING

At the outset, the Court deems it necessary to first resolve the issue of whether or not the present petition was filed within the prescribed period.

Pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended and Section 3 of Revenue Regulations No. 12-99,[35] the procedure for the issuance of an assessment and protesting the same is as follows:

First – The CIR or his duly authorized representative makes an initial determination that "there exists sufficient basis to assess the taxpayer";

Second – The BIR issues a PAN, giving the taxpayer fifteen (15) days within which to respond;

Third – If no response is made, the taxpayer is "considered in default," in which case, a FAN/FLD is issued against the taxpayer;

Fourth – The taxpayer may administratively protest the FAN/FLD within thirty (30) days from receipt thereof, stating the facts, applicable law, rules and regulations, or jurisprudence on which the protest is based;

Fifth – The taxpayer shall submit the supporting documents, within sixty (60) days from filing of its protest;

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[35] dated September 6, 1999.

Sixth – The Commissioner or her duly authorized representative has one hundred eighty (180) days to act on the protest;

Seventh – If the protest is denied or the 180-day period has lapsed without a decision being issued, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the decision or from the lapse of the 180-day period.

In the case at bar, records show that on November 12, 2010, petitioner's corporate secretary, Maria Aurora Amada C. Gloria, received a letter dated November 9, 2010 informing petitioner of respondent's denial of petitioner's protest through the issuance of the FDDA, a copy of which was attached to said letter. The contents of the said letter read, as follows:

MS. MARIA AURORA AMADA C. GLORIA
78 Barcelona St., Merville,
Paranaque City

Madam:

This has reference to the deficiency Income Tax, Value-Added Tax and Compromise Penalty in the amounts of P705,207.59, P4,650,851.01 and P7,000.00 respectively, including increments, of POLYELECTRA CORPORATION with registered address at 3rd Floor Delben Bldg., 1090 Ponte cor. Chino Roces Ave., Makati City, covering taxable year 2006 under our Final Decision on Disputed Assessment (FDDA) dated November 09, 2010.

Since there is no information on the subject company's whereabouts, **we hereby inform you as Corporate Secretary** of the company, **about the said FDDA attached herewith**, and you are hereby requested to receive the same in behalf of the subject taxpayer you duly represent. It is also requested that you settle the deficiency tax by accomplishing Payment Form (BIR Form 0605) to a duly authorized agent bank and submit a photocopy of the official receipt together with the duly received payment form to the Assessment Division, located at 3rd Floor, BIR Building, 313 Sen. Gil Puyat Ave., Makati City on or before December 20, 2010.

In case you disagree with our final decision, you may appeal with the Court of Tax Appeals (CTA) or to the Office of the Commissioner of Internal Revenue within thirty (30) days from date of receipt hereof, otherwise this assessment shall become final, executory and demandable.

Your immediate action on the matter is hereby requested.

Very truly yours,

(original signed)
JAIME B. SANTIAGO, CESO V
Regional Director

Petitioner claims, however, that no copy of the FDDA was attached to said letter.

The Court is not persuaded.

On direct examination, respondent's witness, Christian B. Mendoza, an Administrative Assistant I in the Assessment Division who is in charge of the preparation of transmittal and service of mailing of PAN, FAN and letters issued to taxpayers, testified that he attached a copy of the FDDA to the letter sent to petitioner's corporate secretary,[36] to wit:

"18. Q: What happened next after you encoded the documents you received from Reviewer Rain Bacani?

19. Q: **How did you prepare for transmittal and service mailing the letters dated November 09, 2010 with attached FDDA and Details of Discrepancies?**

A: **I directly put the letters dated November 09, 2010 with attached FDDA and Details of Discrepancies to the envelopes and sealed it.**

20. Q: After you sealed the envelopes, what happened next?

A: On November 10, 2010, I forwarded the case docket together with the sealed envelopes to the Administrative Division for mailing. This was evidenced by a stamp mark by the Administrative Division which was marked as Exhibit "R-7-g" for the respondent.

21. Q: **Are you sure that there was an attached FDDA and Details of Discrepancies to the letters dated November 09, 2010?**

A: **Yes sir.**

22. Q: Why is that so?

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[36] CTA Docket, p. 267.

A: **As I have mentioned earlier, I encoded to the records of cases the documents I received from Reviewer Rain Bacani and I am the one who put the letters dated November 09, 2010 with attached FDDA and Details of Discrepancies to the envelopes and sealed it because the same will be send to the corporate officers of Polyelectra Corporation through registered mail.**[37]

Moreover, respondent presented Exhibit "R-7"[38] showing that aside from petitioner's corporate secretary, its other officers were likewise given a copy of the letter dated November 9, 2010 sent through registered mail.

While petitioner made a blanket and general denial of receipt of a copy of the FDDA through its witnesses, Angel Galang[39] and Antonio M. Carandang,[40] it did not bother to call on the witness stand its corporate secretary to refute respondent's claim that a copy of said document was indeed served upon her. Surely, the failure to receive a copy of the FDDA by the corporate secretary cannot, by any evidentiary standard, be made to depend upon the testimonies of persons other than the recipient herself. Hearsay evidence, whether objected to or not, does not have any evidentiary evidence.[41]

Besides, if petitioner did not receive a copy of the FDDA, it should have called the attention of respondent on the matter and, at the very least, requested for a copy as soon as possible. Yet, petitioner's reaction to the November 9, 2010 is too plain to be mistaken as to its tenor:

December 9, 2010

BUREAU OF INTERNAL REVENUE
Revenue Region No. 8 – Makati
Revenue District Office No. 49
North Makati, Makati City

Attention: MR. JANIME B. SANTIAGO
Regional Director

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[37] Exhibit "R-11", Judicial Affidavit of Christian B. Mendoza, CTA Docket, p. 267.
[38] CTA Docket, p. 606.
[39] Exhibit "U", Judicial Affidavit of Angel A. Galang, CTA Docket, p. 301.
[40] Exhibit "V", Judicial Affidavit of Antonio M. Carandang, CTA Docket, p. 320.
[41] *PNOC Shipping and Transport Corporation vs. Honorable Court of Appeals and Maria Efigenia Fishing Corporation,* G.R. No. 107518, October 8, 1998.

Dear Mr. Santiago:

Reference is made to your letter dated November 9, 2010 addressed to our Corporate Secretary, re: alleged internal revenue deficiencies for the year 2006.

Please **be advised that we had arranged a meeting** with your Revenue Officer Alyasan M. Andig as early as November 19, 2010 to explain our position on the matter. To date, however, he is still waiting for the turn-over of our records from the assessment department.

For your information.

Thank you.

Very truly yours,

(original signed)
ANTONIO M. CARANDANG
President

Petitioner's acknowledgement receipt of respondent's letter dated November 9, 2010 (which, as earlier quoted, states that the FDDA was attached thereto) was unconditional and downright unqualified. As earlier noted, if it were true that the FDDA was not incorporated in the November 9, 2010 letter, the ordinary and logical reaction[42] of petitioner would have been to call the attention of respondent on the omission to furnish it with the FDDA. Such expected reaction is simply reasonable considering respondent's *caveat* in its afore-stated letter that states that unless the FDDA is properly appealed, it "shall become final, executory and demandable." As events turned out, while there is nothing in petitioner's December 9, 2010 letter that directly or indirectly denies receipt of a copy of the FDDA, it was only in its petition for review before this Court that petitioner denied receipt of such document.

From the foregoing, the Court is convinced that petitioner indeed received a copy of the FDDA on November 12, 2010. Pursuant to Section 228 of the NIRC of 1997, as amended, petitioner had thirty (30) days from November 12, 2010 or until December 12, 2010 within which to appeal to the CTA. Records show that instead of filing an appeal, petitioner wrote the afore-cited letter dated December 9, 2010 to Regional Director Jaime B. Santiago. More importantly, the present Petition for Review was filed only on December 19, 2012, or almost two (2) years way beyond the 30-day reglementary period to appeal.

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[42] Section 3(v), Rule 131, Rules of Court.

In consequence, since the present Petition for Review was filed out of time, the FDDA had become final, executory and demandable. The Court, therefore, is left with no recourse, but to dismiss the present petition outright for being filed beyond the period set by law, *viz*:

> "The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, **one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal. The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional.**"[43]

With the above conclusion thus reached, the Court finds it unnecessary to discuss the other issues raised for being academic.

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED**, the Final Decision on Disputed Assessment having long become final, executory and demandable.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[43] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice