REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

J. MARKETING CORPORATION, Petitioner,	CTA CASE NO. **10426**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 19 2024 8:50 AM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner J. Marketing Corporation's (**petitioner**'s/**JMC**'s) "Motion for Reconsideration"[1] (**MR**) filed on 10 July 2023, without respondent Bureau of Internal Revenue's (**respondent**'s/**BIR**'s) comment despite due notice.[2]

In the present MR, petitioner seeks the reversal of the Court's Decision in the above-captioned case dated 19 June 2023[3] (**assailed Decision**) and once again prays for this Court to order respondent to issue the Certificate of Tax Delinquencies/Tax Liabilities (**CTD**) and Acceptance Payment Form (**APF**) in its favor. According to petitioner, if respondent issues the same, it may be considered to have fully complied with all the conditions set forth in Republic Act (**RA**) No. 11213, otherwise known as the "Tax Amnesty Act"[4] (**TAA**).

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1 Division Docket, pp. 595-605.
2 *Per* Records Verification dated 30 August 2023, Division Docket, p. 608.
3 Division Docket, pp. 559-594.
4 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2017 AND PRIOR YEARS WITH

The dispositive portion of the assailed Decision[5] reads:

> ...
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> **WHEREFORE**, in light of the foregoing considerations, the present Petition for Review filed by petitioner J. Marketing Corporation on 21 December 2020 is hereby **DISMISSED** for being time-barred and for lack of merit.
>
> **SO ORDERED.**
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> ...

Firstly, petitioner argues that there is no basis for the sixty (60)-day period within which to assail the decision, final order or resolution since allegedly there is no decision, final order or resolution to speak of in this case due to respondent's inaction on its various follow-up letters, *i.e.*, (1) "Request for [Anti-Red Tape Authority (**ARTA**)] Obedience" dated 03 March 2020[6], (2) "Final Request for [Notice of Issuance of Authority to Cancel Assessment (**NIATCA**)]-Issuance" dated 06 June 2020[7], (3) "Request for CTD-Release/APF-Signature" dated 28 July 2020[8], (4) "Very Last Opportunity Before Suits (CTD & APF)" dated 04 August 2020[9] and (5) "Motion for Speedy Resolution" dated 23 September 2020[10], filed after receiving respondent's Letter dated 07 February 2020[11] (**Second Denial Letter**).

Petitioner insists that, since respondent failed to act on its various follow-up letters above for the immediate release of the requested CTD and APF despite the then looming deadline under the TAA, there was no other plain, speedy or adequate remedy other than the filing of the present Petition for Review with the Court of Tax Appeals (**CTA**).

Secondly, petitioner maintains that it has established a clear legal right to the issuance of the requested CTD and APF. This assertion is founded on the substantial submission of relevant documents while the TAA was still in effect. According to petitioner, these documents, collectively deemed sufficient proof of availment, include the Tax

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RESPECT TO ESTATE TAX, OTHER INTERNAL REVENUE TAXES, AND TAX ON DELINQUENCIES.

5 Supra at note 3.
6 Exhibit "P-12", Division Docket, pp. 82-87, with Annex "A".
7 Exhibit "P-13", id., pp. 88-91.
8 Exhibit "P-14", id., pp. 92-96.
9 Exhibit "P-15", id., pp. 97-100.
10 Exhibit "P-16", id., pp. 101-105.
11 Exhibit "P-11", id., pp. 80-81.

Amnesty Return[12] (**TAR**) (or BIR Form No. 2118-DA) and APF[13] (or BIR Form No. 0621-DA) with Authorized Agent Bank (**AAB**)-validated deposit slip[14] for the subject expanded withholding tax (**EWT**), along with the Notice of Informal Conference[15] (**NIC**). Petitioner further notes that, under Section 5(A)(4)[16], in relation to Section 3(D)[17], of Revenue Regulations (**RR**) No. 4-2019[18] (or the TAA's Implementing Rules and Regulations [**IRR**]), the NIC should be sufficient in cases of applications for tax amnesty on delinquencies concerning unremitted withholding taxes.

Petitioner reiterates that respondent denied its request for the issuance of a CTD and APF, based on the specious reasoning that under RR No. 4-2019, the coverage of the TAA is limited to tax delinquencies with assessment notices or similar documents issue on or before the regulation's effective date. Furthermore, in issuing Revenue Memorandum Circular (**RMC**) No. 57-2019[19], respondent effectively imposed additional conditions for availing of the tax amnesty instead of

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[12] Exhibit "P-8", Division Docket, pp. 74-77.

[13] Exhibit "P-9", id., p. 78.

[14] Exhibit "P-10", id., p. 79.

[15] Exhibit "P-1", Division Docket, pp. 26-33.

[16] SEC. 5. *Manner of Availment of Tax Amnesty on Tax Delinquencies.* — Any person, whether natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall file, within one (1) year from the effectivity of these Regulations, an application therefor in accordance with the procedures set forth below.

A. **DOCUMENTARY REQUIREMENTS** — The taxpayer shall submit the following:

1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA, Annex "A"), completely and accurately accomplished and made under oath;
2. Acceptance Payment Form (APF) (BIR Form No. 0621-DA, Annex "B") duly validated by the Authorized Agent Banks (AABs) or APF duly stamped "received" with accompanying bank deposit slip duly validated by the concerned AABs or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs):
3. Certificate of Tax Delinquencies/Tax Liabilities issued by concerned BIR offices (Annex "C"); and
4. In case of applications under Section 3(A)(2) of these Regulations, a copy of the assessment found in the FAN/FDDA: Provided that, **in cases of applications under Section 3(D)**, either delinquent account or not, with or without FAN/FDDA, the Preliminary Assessment Notice (PAN)/**Notice for Informal Conference or equivalent document is sufficient.** (Emphasis in the original text and supplied)

[17] SEC. 3. *Coverage.* — All persons, whether natural or juridical, with internal revenue tax liabilities covering taxable year 2017 and prior years, may avail of Tax Amnesty on Delinquencies within one (1) year from the effectivity of these Regulations, under any of the following instances:

...

D. **Withholding tax liabilities of withholding agents arising from their failure to remit withheld taxes.** (Emphasis supplied)

[18] *Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act," Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.*

[19] *Clarifies Certain Issues on Tax Amnesty on Delinquencies under Revenue Regulations No. 4-2019 which Implemented Title IV of Republic Act No. 11213 or the Tax Amnesty Act.*

merely clarifying certain issues on tax amnesty delinquencies. Petitioner once again asserts that the TAA does not impose a cut-off date of 24 April 2019 or such condition that the assessment notices must have become final and executory on or before 24 April 2019.

Thirdly, petitioner reasserts that it is a ministerial duty on the part of respondent to issue a CTD and sign an APF in its favor for the taxable year (**TY**) 2016, even if the assessment notices or similar documents are issued after the effectivity of RR No. 4-2019[20]. Based on this premise, petitioner insists that respondent 'unlawfully neglected to perform an act mandated by law' when it took him or her forty-five (45) days reckoned from the filing of petitioner's "Request for Signature" dated 23 September 2019[21] to issue his or her Letter dated 22 October 2019[22] (**First Denial Letter**), stating that it is not qualified to apply for tax amnesty since the NIC[23] was issued after the effectivity of RR No. 4-2019 pursuant to RMC No. 57-2019.[24]

Accordingly, petitioner now argues, for the first time, that pursuant to Sections 9(b)(1)[25] and 10[26] of RA No. 11032[27], or the ARTA, its

[20] Supra at note 18.
[21] Exhibit "P-2", Division Docket, pp. 34-48, with attachments.
[22] Exhibit "P-5", id., pp. 59-61.
[23] Exhibit "P-1", supra at note 15.
[24] Supra at note 19.
[25] SEC. 9. *Accessing Government Services.* — The following shall be adopted by all government offices and agencies:

...

(b) Action of Offices. —

(1) **All applications or requests submitted shall be acted upon by the assigned officer or employee within the prescribed processing time stated in the Citizen's Charter which shall not be longer than three (3) working days in the case of simple transactions and seven (7) working days in the case of complex transactions from the date the request and/or complete application or request was received.**

For applications or requests involving activities which pose danger to public health, public safety, public morals, public policy, and **highly technical application, the prescribed processing time shall in no case be longer than twenty (20) working days or as determined by the government agency or instrumentality concerned, whichever is shorter.** (Emphasis supplied)

[26] SEC. 10. *Automatic Approval or Automatic Extension of License, Clearance, Permit, Certification or Authorization.* — **If a government office or agency fails to approve or disapprove an original application or request for issuance of license, clearance, permit, certification or authorization within the prescribed processing time, said application or request shall be deemed approved**: *Provided*, That all required documents have been submitted and all required fees and charges have been paid. **The acknowledgement receipt together with the official receipt for payment of all required fees issued to the applicant or requesting party shall be enough proof or has the same force and effect of a license, clearance, permit, certification or authorization under this automatic approval mechanism.** (Emphasis supplied)

[27] AN ACT PROMOTING EASE OF DOING BUSINESS AND EFFICIENT DELIVERY OF GOVERNMENT SERVICES, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9485,

application for the issuance of a CTD and APF should have been deemed approved after respondent failed to act within the twenty (20)-day prescribed processing time when it took him or her 45 days issue the First Denial Letter.[28]

Petitioner thereafter highlights that the legislature anticipated the possibility of "official inaction willful neglect and unreasonable delay in the performance of official duties" in the implementation of the TAA. This foresight is evident in Section 20 of the TAA, which stipulates "[t]hat the Authority to Cancel Assessment shall be issued by the [BIR] in favor of the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission to the [BIR] of the [APF] and the [TAR]. Otherwise, the duplicate copies, stamped as received, of the [APF], and the [TAR] shall be deemed as sufficient proof of availment".

Lastly, petitioner submits that there was unreasonable delay or inaction on the part of respondent in how he or she handled its request for the issuance of a CTD and APF such that it was deprived of the chance to avail of the benefits of the TAA.

As previously mentioned, respondent did not file a comment to petitioner's MR despite due notice.

We resolve.

After due consideration of petitioner's arguments, this Court finds the instant MR[29] bereft of merit. A careful perusal thereof readily reveals that it mostly contains a mere rehash or reiteration of the issues and arguments raised in its Petition for Review[30], which the Court already considered, passed upon and exhaustively discussed in the assailed Decision[31]. There were no substantial arguments raised in the MR that would warrant this Court's reconsideration.

OTHERWISE KNOWN AS THE ANTI-RED TAPE ACT OF 2007, AND FOR OTHER PURPOSES.

28 Exhibit "P-5", supra at note 22.

29 Supra at note 1.

30 Division Docket, pp. 6-107, with exhibits.

31 Supra at note 3.

In *Shangri-la International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[32], the Supreme Court held that it is incumbent upon petitioner-movant to raise substantially plausible matters to warrant the relief sought, thus:

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> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired cause of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.[33]
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> ...

Nevertheless, if only to put petitioner's mind at rest, We will discuss the salient points upon which the conclusions of this Court were anchored.

THE SIXTY (60)-DAY REGLEMENTARY PERIOD UNDER RULE 65 OF THE RULES OF COURT (ROC), AS AMENDED, IS APPLICABLE SINCE THE INSTANT PETITION FOR REVIEW IS ACTUALLY A SPECIAL CIVIL ACTION FOR *MANDAMUS*.

As explained in the assailed Decision, since petitioner alleged in its Memorandum that a Petition for *Certiorari* under Rule 65 is the correct remedy[34] and asked for *mandamus*[35], as likewise prayed for in its Petition for Review[36], specifically to mandate the issuance of the requested CTD and APF under RA No. 11213 or the TAA, this Court found ample basis to treat the instant Petition for Review as a special civil

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32 G.R. No. 159938, 22 January 2007.
33 Citation omitted.
34 Part I, Arguments/Discussions, Memorandum, Division Docket, pp. 237-241.
35 Prayer, id., pp. 254-255.
36 Prayer, Petition for Review, supra at note 30, p. 24.

action of *mandamus* under Section 3[37], Rule 65[38] of the Rules of Court (**ROC**), as amended.

Since the instant Petition for Review is treated as a Petition for *Mandamus* involving a special tax law, *i.e.*, RA No. 11213 or the TAA, that falls under the "other matters" jurisdiction of the CTA, its timeliness is governed by Section 4[39], Rule 65 of the ROC, as amended, which provides that all Rule 65 petitions must be filed not later than sixty (60) days from notice of judgment, order or resolution.

In this case, petitioner failed to demonstrate compliance with the 60-day reglementary period for filing a Petition for *Mandamus*. The petition does not specify the necessary dates to determine whether it falls within the prescribed period. Considering the respondent's Second Denial Letter[40], which is the last correspondence the petitioner received from the respondent on 07 February 2020, it is evident that the Petition for Review, filed on 21 December 2020, was indeed submitted beyond the 60-day reglementary period. Consequently, the instant Petition for Review is subject to dismissal for being filed out of time.

PETITIONER HAS NO CLEAR LEGAL RIGHT TO THE ISSUANCE OF CERTIFICATE OF TAX DELINQUENCIES/TAX LIABILITIES (CTD) AND ACCEPTANCE PAYMENT FORM (APF).

Contrary to petitioner's contention, petitioner failed to establish a clear legal right to the issuance of a CTD and an APF since there was

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37 Sec. 3. *Petition for mandamus.* — **When** any tribunal, corporation, board, **officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office**, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, **and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner**, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphasis supplied)

38 **CERTIORARI, PROHIBITION AND MANDAMUS.**

39 Sec. 4. *When and where to file the petition.* -The petition shall be filed not later than **sixty (60) days from notice of the judgment, order or resolution**. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion. (Emphasis supplied)

40 Exhibit "P-11", supra at note 11.

yet no tax delinquency or liability that could be the subject of tax amnesty on delinquencies under the TAA.

It bears repeating that petitioner received the NIC[41] on 03 September 2019; thus, indicating that the tax investigation had not advanced to the point of issuing an assessment notice by that date. As a result, no assessment notice could have had become final and executory against it and, as such, no deficiency tax could have had been due from petitioner. It thus follows that petitioner's tax liabilities for TY 2016, totalling ₱316,752,601.28 as mentioned in the NIC, were not yet delinquent as of RR No. 4-2019[42]'s effectivity date, *i.e.*, on 24 April 2019. Based on this finding, We concluded that these tax liabilities cannot be the subject of tax amnesty on delinquencies under the TAA.

We find no merit in petitioner's argument that the aforesaid tax liabilities fall under those that pertain to unremitted taxes withheld, which is one of those mentioned in RMC No. 57-2019[43] that are exempt from the requirement that only tax delinquencies and assessments that have become final and executory on or before RR No. 4-2019 took effect, *i.e.*, on 24 April 2019, can be the subject of tax amnesty on delinquencies.

Unfortunately for petitioner, it failed to realize that respondent's finding of deficiency withholding taxes does not automatically lead to the conclusion, nor does it suggest, that it initially withheld taxes and subsequently failed to remit them. Said finding alone does not establish whether petitioner has any unremitted withholding taxes. It should be emphasized again that the procedure performed by respondent, which involves comparing the amounts claimed as expenses against income payments subjected to withholding taxes, is intended solely to identify which expenses were not properly subjected to withholding taxes.

THE ISSUANCE OF A CERTIFICATE OF TAX DELINQUENCIES/ TAX LIABILITIES (CTD) AND AN ACCEPTANCE PAYMENT FORM (APF) IS A *DISCRETIONARY* FUNCTION OF RESPONDENT, NOT A MINISTERIAL ONE.

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41 Exhibit "P-1", supra at note 15.
42 Supra at note 18.
43 Supra at note 19.

Based on the relevant provisions of RR No. 4-2019[44] (or the TAA's IRR), the law imposes a duty upon the concerned BIR officers to evaluate whether a CTD and an APF may be issued. Such duty includes determining who is qualified to avail of the tax amnesty under the TAA, which is a discretionary function and not merely a ministerial one.

Accordingly, respondent cannot be compelled by *mandamus* to issue in petitioner's favor the requested CTD and APF, since the determination of the latter's entitlement to avail of the tax amnesty on delinquencies under the TAA is a discretionary function. It goes without saying that respondent did not commit grave abuse of discretion in refusing to issue the same as, indeed, petitioner is not qualified to avail of the said tax amnesty on delinquencies.

Since petitioner's additional arguments, namely: (1) that its application for the issuance of a CTD and APF should have been deemed approved given that respondent failed to act within the twenty (20)-day prescribed processing time under the RA No. 11032 or the ARTA (in issuing the First Denial Letter[45] only 45 days after the filing of petitioner's "Request for Signature" dated 23 September 2019[46]) and (2) that the submission of the TAR[47], the APF[48], the AAB-validated deposit[49] slip and the NIC[50] should be deemed sufficient proof of availment are anchored on the erroneous premise that the issuance of the requested CTD and APF is a ministerial function, this Court finds both arguments to be unmeritorious.

All told, this Court finds no compelling reason to reconsider or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration", filed on 10 July 2023, is **DENIED** for lack of merit.

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44 Supra at note 18.
45 Exhibit "P-5", supra at note 22.
46 Exhibit "P-2", supra at note 21.
47 Exhibit "P-8", supra at note 12.
48 Exhibit "P-9", supra at note 13.
49 Exhibit "P-10", supra at note 14.
50 Exhibit "P-1", supra at note 15.

x - x

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice