REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILIPPINE DREAM COMPANY, INC., *Petitioner,*	**CTA EB CASE NO. 986** (CTA CASE NO. 7700)
	Present:
-*versus*-	*Del Rosario, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla,* *Cotangco-Manalastas, and* *Ringpis-Liban, JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 16 2014 3:05 p.m.

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RESOLUTION

BAUTISTA, J:

On July 25, 2014, the Court *En Banc* promulgated a Decision dismissing the Petition for Review filed on February 27, 2013, stating that:

> "**WHEREFORE**, the Decision of the then Second Division of the Court dated December 6, 2012, as well as the Resolution dated February 6, 2013 are hereby **AFFIRMED** but modified in that the Petition for Review is denied due to lack of jurisdiction as it was filed beyond the prescriptive period, counting from the denial of the protest to the disputed assessment.

SO ORDERED."

Unsatisfied with the Decision, petitioner filed a Motion for Reconsideration on August 22, 2014. Petitioner mainly relies on the fact that the Certificate of Sale of Personal Property over the MV Philippine Dream was issued on October 2, 2007, thus had thirty (30) days to seek nullification of the said auction sale.

Respondent failed to file a Comment, despite due notice thereof. Thus, the Motion for Reconsideration shall now be resolved.

The Court *En Banc* finds no merit in the Motion for Reconsideration.

The main action for the Petition for Review and Amended/Supplemental Petition for Review filed by petitioner with the Court in Division mainly seeks redress on the denial of its protest to the Formal Letter of Demand and Final Assessment Notice. Thus, in the determination of whether or not the Petition for Review was timely filed, the thirty (30) day period shall be counted from the receipt by petitioner of the final denial wherein petitioner's recourse is to elevate the assessment to the Court of Tax Appeals within a period of thirty (30) days. Petitioner failed to elevate the case within the said period, as discussed in the Decision dated July 25, 2014.

Even if the Court *En Banc* based the counting of the period to appeal on the nullification of the auction sale, the filing would still be beyond the prescribed period, as discussed by the Second Division of the Court in the Decision dated December 6, 2012,[1] where it stated that:

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

[1] *Rollo*, CTA Case No. 7700, pp. 49-86

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

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

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

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

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

> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx' (*Emphasis supplied*)

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

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

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

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*.

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

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice