

EN BANC

CTA EB No. 2770
(CTA Case No. 9922)

Present:

-versus-

DEL ROSARIO, PL,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and,
ANGELES, II.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 28 2024

x ----- x

DECISION

REYES-FAJARDO, J.:

We address the Petition for Review¹ dated June 21, 2023, seeking to overturn the Decision² dated January 23, 2023 and Resolution³ dated May 25, 2023, in CTA Case No. 9922, whereby the Court of Tax Appeals (CTA) in Division dismissed Elta Industries, Inc.'s appeal, for failure to timely elevate the Commissioner of Internal Revenue's Final Decision on Disputed Assessment (FDDA), within thirty (30) days from receipt thereof, as commanded by Section 228 of the 1997 National Internal Revenue Code (NIRC), as

¹ *Rollo*, pp. 1-52.

² Docket (CTA Case No. 9922), pp. 1407-1420.

³ *Id.* at pp. 1499-1502.

Q

amended, in relation to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

The facts follow.

Petitioner Elta Industries, Inc. is a corporation duly organized and existing under Philippine laws. It is a registered taxpayer with the Bureau of Internal Revenue (BIR) under Tax Identification Number 203-690-237-00000, with address at 6363 P. Medina St., Del Pilar, Makati City, Philippines 1230.

Respondent is the duly appointed Commissioner of Internal Revenue, vested by law to implement and enforce the provisions of the NIRC, as amended, and other tax laws. He may be served with summons and other processes of this Court at the 5th Floor, BIR National Office, Agham Road, Diliman, Quezon City.

On May 27, 2010, petitioner received respondent's Letter of Authority (LOA) No. LOA-116-2010-00000026 dated May 14, 2010, authorizing the examination of its books of account and other accounting records for deficiency internal revenue taxes for taxable year ending December 31, 2009 (TY 2009). Attached therein is the checklist of requirements, specifying the documents that must be submitted by petitioner to the BIR under the tax audit examination.

In the letter dated May 14, 2010, respondent requested petitioner to reproduce its accounting records in electronic form, in accordance with Revenue Regulations (RR) No. 16-2006.

On June 8, 2010, petitioner received the BIR's First Notice for the Presentation of Books of Accounts and other Accounting Records dated June 7, 2010, requesting the former to furnish the latter with its manual books of accounts and supporting documents.

On August 16, 2010, petitioner received the BIR's Second and Final Notice for the presentation of Books of Accounts and Other Accounting Records dated August 5, 2010, requesting the former to furnish the latter with its manual books of accounts and supporting documents.

ad

On November 3, 2012, petitioner, through its President, Mr. John Chua, executed a Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code (Waiver), wherein the company consented to the assessment and/or collection of tax or taxes for TY 2009, which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by the Tax Code, provided it was made on or before June 20, 2013.

On May 17, 2013, petitioner received the BIR's Notice for Informal Conference (NIC), with attached computation of tax and details of discrepancies.

On May 30, 2013, petitioner, through its President, Mr. John Chua, executed another Waiver, wherein the company consented again to the assessment and/or collection of tax or taxes for TY 2009, provided it was made on or before December 31, 2013.

On October 14, 2013, petitioner received respondent's Preliminary Assessment Notice (PAN) of even date, containing the proposed deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC), with interest and penalty, for TY 2009, in the aggregate amount of ₱44,353,656.39.

On November 15, 2013, petitioner filed its Reply on the PAN.

On December 3, 2013, petitioner, through its President, Mr. John Chua, executed a third Waiver, wherein for the third time, the company consented to the assessment and/or collection of tax or taxes for TY 2009, provided it was made on or before June 30, 2014.

On December 23, 2013, petitioner received respondent's Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices (FLD/FAN), assessing petitioner for deficiency IT, VAT, EWT, WTC, and their corresponding interest and penalty, pertaining to TY 2009, in the total amount of ₱46,130,521.28, with the following breakdown:

Type	Basic	Interest	Penalty	Total
IT	₱18,987,514.71	₱14,107,983.53	₱50,000.00	₱33,145,498.25
VAT	6,998,869.81	5,507,055.92	50,000.00	12,555,925.73
EWT	165,926.32	138,480.03	16,000.00	320,406.35
WTC	53,864.77	42,826.18	12,000.00	108,690.95
TOTAL				₱46,130,521.28

On January 20, 2014, petitioner protested the FLD/FAN.

On June 30, 2016, petitioner received respondent’s undated FDDA with attached Details of Discrepancies and Assessment Notices, partially denying its protest to the FLD/FAN. The FDDA reduced the total assessment to ₱11,072,039.02, representing assessments for deficiency IT, VAT, EWT, including interests, for TY 2009, broken down as follows:

Type	Basic	Interest	Total
Income tax	₱3,793,661.73	₱4,778,974.42	₱8,572,636.16
VAT	1,065,990.06	1,389,583.75	2,445,573.81
EWT	16,122.55	27,706.50	43,829.05
TOTAL			₱11,072,039.02

In the Details of Discrepancies appended to the FDDA, petitioner was given the option to either appeal the disputed assessments to the Court of Tax Appeals (CTA), or respondent, through a request for reconsideration, within thirty (30) days from receipt thereof.

On July 28, 2016, petitioner filed its request for reconsideration on said FDDA with respondent.

On August 7, 2018, petitioner received respondent’s letter, denying its request for reconsideration to the FDDA.

On September 5, 2018, petitioner filed its Petition for Review before the CTA in Division, docketed as CTA Case No. 9922.

Under Decision⁴ dated January 23, 2023, it was found that on June 30, 2016, petitioner received respondent’s FDDA. Counting thirty (30) days from June 30, 2016, petitioner had until July 30,

⁴ *Supra* note 2.

2016 to seek judicial recourse. By petitioner's belated filing of its Petition for Review on September 5, 2018, the CTA in Division dismissed CTA Case No. 9922 as follows:

WHEREFORE, premises considered, the present *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.⁵

On February 15, 2023, petitioner filed its Motion for Reconsideration,⁶ which was denied by the CTA in Division, *via* Resolution dated May 25, 2023.⁷

On June 22, 2023, petitioner filed a Petition for Review, docketed as CTA EB No. 2770.⁸ It explains that in respondent's FDDA it received on June 30, 2016, respondent gave petitioner the option to assail said FDDA to respondent, or to the CTA in Division, within thirty (30) days from receipt thereof. Taking cue from respondent's statement, it filed a request for reconsideration on the FDDA before respondent on July 28, 2016. On August 7, 2018, it then received respondent's letter, denying its request for reconsideration of the FDDA. Counting thirty (30) days from August 7, 2018, it had until September 6, 2018 to seek judicial redress. Thus, the timely filing of its Petition for Review on September 6, 2018 vested the CTA in Division with jurisdiction over CTA Case No. 9922.

With the CTA in Division's acquisition of jurisdiction over CTA Case No. 9922, petitioner then contends that respondent's deficiency IT, VAT, and EWT assessments per FDDA for TY 2009 are void because: (1) it was based on an expired LOA; (2) it failed to contain a categorical demand for payment; and (3) the BIR's right to assess said taxes are barred by prescription.

On the other hand, respondent failed to interject his comment/opposition on the present petition, despite notice.⁹

⁵ *Id.*

⁶ Docket (CTA Case No. 9922), pp. 1421-1469.

⁷ *Supra* note 3.

⁸ *Supra* note 1.

⁹ Records Verification dated November 8, 2023. *Rollo*, p. 83.

af

Through Resolution dated November 30, 2023, CTA EB No. 2770 was submitted for decision.¹⁰

RULING

The Petition lacks merit.

Section 7(a)(1) of Republic Act (RA) No. 1125,¹¹ as amended by RA No. 9282, acknowledges the CTA's exclusive appellate jurisdiction over respondent's decision on disputed assessments:

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;

...¹²

Section 3(a)(1), Rule 4 of the RRCTA¹³ clarified that the CTA in Division has jurisdiction over respondent's or his authorized representative's decision involving disputed assessments, among others.¹⁴ For the decision of respondent or his duly authorized representatives to be elevated on appeal before the CTA in Division, there must first be a disputed assessment.¹⁵ To properly dispute a final assessment, a valid administrative protest by the taxpayer must

¹⁰ See Notice issued by Theresa G. Cinco-Bactat, Executive Clerk of Court III. *Id.* at p. 84.

¹¹ An Act Creating the Court of Tax Appeals.

¹² Boldfacing supplied.

¹³ A.M. No. 05-11-07-CTA. Revised Rules of the Court of Tax Appeals. RRCTA for brevity.

¹⁴ SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:

(a) Exclusive 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; (Boldfacing supplied)

¹⁵ See *Commissioner of Internal Revenue v. Liguigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.

be made pursuant to Section 228 of the NIRC, as amended, which states:

Section 228. *Protesting of Assessment.* — ...

...

If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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.

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.¹⁶

In turn, the validity of the administrative protest rests upon confluence of two (2) conditions, namely: *first*, it must be filed within 30 days from the receipt of the final assessment; and *second*, it must be in such form and manner as may be prescribed by implementing rules and regulations.¹⁷ Subsection 3.1.4 of RR No. 18-2013, reiterated the period to institute an administrative protest before the BIR, as well as the form and manner thereof, in this wise:

3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

¹⁶ Boldfacing supplied.

¹⁷ See *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper Incorporated*, G.R. No. 239464, May 10, 2021.

(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

Indeed, the taxpayer has 30 days from receipt of the final assessment to file a valid administrative protest. Upon the taxpayer's receipt of the FDDA, it has another 30 days to seek redress with the CTA in Division.

Petitioner received the FLD/FAN on December 23, 2013.¹⁸ Counting 30 days therefrom, petitioner had until January 22, 2014 to file an administrative protest thereto; thus, it timely lodged its administrative protest on the FLD/FAN on January 20, 2014.¹⁹ Said protest, too, contained: (1) a statement seeking reconsideration of the assessment based on its explanations, reconciliation, and documents; (2) the legal and factual grounds in support thereof; and (3) the date of receipt of the undated FLD.²⁰ Therefore, petitioner registered a valid administrative protest against the FLD/FAN, thereby transmuting the assessment to a disputed assessment.

On June 30, 2016, petitioner received respondent's FDDA. Counting 30 days therefrom, petitioner, had, at most, until August 1, 2016²¹ to seek judicial recourse; hence, the Petition for Review in CTA Case No. 9922 was belatedly filed on September 5, 2018, robbing the CTA in Division of jurisdiction over said case.

We are mindful of petitioner's stance that it only filed a request for reconsideration of the FDDA before respondent, based on the option given by the latter. Still, the circumstance invoked cannot negate the dismissal of CTA Case No. 9922. Consider:

¹⁸ Exhibits "P-12" to "P-12-8." Docket, pp. 790-798.

¹⁹ Exhibit "P-13." BIR Records, unpaginated, found between pages 732 and 733 thereof.

²⁰ *Ibid.*

²¹ The last day to appeal, *i.e.*, July 30, 2016, fell on a Saturday.

First. Petitioner received respondent's FDDA on June 30, 2016. The most recent case at that time is *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al. (PAGCOR)*,²² which pronounced:

Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

1. **If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. **A whole or partial denial by the CIR may be appealed to the CTA.** The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.²³

PAGCOR ordained that the taxpayer may only appeal respondent's full or partial denial of its administrative protest with the CTA. Petitioner's request for reconsideration of respondent's FDDA, filed with the latter, is a recourse neither found in the law, nor in the BIR rules and regulations.

Second. Petitioner's request for reconsideration of respondent's FDDA, filed before the latter, did *not* pause the period to appeal with the CTA in Division.

²² G.R. No. 208731, January 27, 2016.

²³ Boldfacing supplied.

9

In *Fishwealth Canning Corporation v. Commissioner of Internal Revenue (Fishwealth)*,²⁴ Fishwealth Canning Corporation (FCC) protested a final assessment sent by the Commissioner of Internal Revenue (CIR) covering TY 1999. On August 4, 2005, FCC received the CIR's FDDA. Instead of appealing said FDDA before the CTA in Division, FCC sought reconsideration thereof before the CIR. In disposing *Fishwealth*, the Supreme Court said:

Since [FCC] received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.²⁵

Once more, respondent's FDDA was received by petitioner on June 30, 2016. The latter then filed a request for reconsideration thereon with the former on July 28, 2016. Taking our cue from *Fishwealth*, the thirty (30)-day period for petitioner to appeal before the CTA in Division, which commenced to run on June 30, 2016, was not immobilized, despite lodgment of said request for reconsideration before respondent. *Ergo*, the Petition for Review in CTA Case No. 9922 was indeed belatedly filed on September 5, 2018.

Third. Respondent erred in insinuating in the FDDA that it may be impugned by way of a request for reconsideration before the latter. This notwithstanding, the State cannot be estopped by the omission, mistake or error of its officials or agents.²⁶

Finally. It has been ruled that a party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.²⁷ Petitioner turned blind to this injunction.

WHEREFORE, the Petition for Review dated June 21, 2023, filed by Elta Industries, Inc. in CTA EB No. 2770 is **DENIED**, for lack

²⁴ G.R. No. 179343, January 21, 2010.

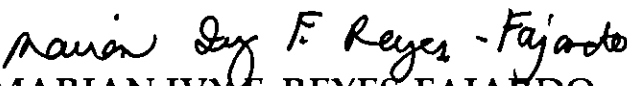
²⁵ Word in brackets supplied. Underscoring in the original.

²⁶ See *Belizario v. Department of Environment and Natural Resources*, G.R. No. 231001, March 24, 2021.

²⁷ See *Herarc Realty Corporation v. The Provincial Treasurer of Batangas*, G.R. No. 210736, September 5, 2018.

of merit. The Decision dated January 23, 2023 and Resolution dated May 25, 2023 in CTA Case No. 9922, are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

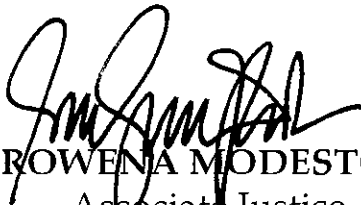
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

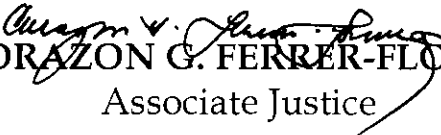

MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
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 before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice