

REPUBLIC OF THE PHILIPPINES  
*Court Of Tax Appeals*  
QUEZON CITY

**FORMER SECOND DIVISION**

LA FLOR DELA ISABELA, INC.,  
*Petitioner,*

**C.T.A. CASE NO. 7709**

Members:

-versus-

CASTAÑEDA, Chairperson,  
UY, and  
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL  
REVENUE,

*Respondent.*

**Promulgated:**

**JUN 09 2010**

✓ 4:05 p.m.

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**DECISION**

**PALANCA-ENRIQUEZ, J.:**

While the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty (30) days is jurisdictional. Thus, since the 30-day period within which to file an appeal is jurisdictional, failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same (*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, 491 SCRA 221).



### **THE CASE**

This is a Petition For Review (With Prayer for the Issuance of an Order to Suspend Collection of Taxes and Restrain the Enforcement of Warrant of Dstraint and/or Levy) filed by La Flor Dela Isabela, Inc., (hereafter “petitioner”) praying: (1) to declare null and void the assessment imposing deficiency income, value added tax, withholding tax on compensation, expanded withholding tax and compromise agreement totaling to P10,460,217.23, inclusive of increments, for taxable year ending December 31, 1999, or in the alternative, to approve and accept petitioner’s application for Tax Amnesty pursuant to RA 9480; and (2) to declare null and void the undated Warrant of Dstraint and/or Levy issued by respondent.

### **THE PARTIES**

Petitioner La Flor is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at KM 14, West Service Road, South Superhighway, Merville, Parañaque City.

Respondent, on the other hand, is the public officer authorized under the NIRC to examine the books of accounts of any taxpayer and to assess and collect the correct amount of tax, with office address at the BIR, National Office Building, BIR Road, Diliman, Quezon City.



### THE FACTS

The facts, as stipulated by the parties, are as follows:

“1.3. On 06 September 2000, BIR issued a Letter of Authority for the examination of the books of accounts of La Flor “for all internal revenue taxes for the period January 1, 1999 to December 31, 1999”.

1.4. On 02 October 2002, La Flor executed another waiver extending until 30 June 2003 the right of Respondent to issue deficiency tax assessments. The waiver was notarized on 04 November 2002. It appears that the same was accepted by respondent on 02 October 2002.

1.5. On 08 April 2003, Petitioner received a Preliminary Assessment Notice dated 19 March 2003.

1.6. On 11 April 2003, Petitioner executed another waiver extending until 31 December 2003 the right of Respondent to issue deficiency tax assessments. The said waiver was notarized on the same date and was submitted to the Large Taxpayers Audit and Investigation Division II on 14 April 2003. There is no date of acceptance of the waiver by Respondent. However, there appears a date of 11 April 2003 at the right side of the signature of Asst. Commissioner Edwin R. Abella, the then Asst. Commissioner for Large Taxpayer's Service.

1.7. On 04 November 2004, Petitioner executed another waiver extending until 30 June 2005 the right of Respondent to issue deficiency tax assessments.

1.8. On 21 March 2005, Petitioner received a Formal Letter of Demand with attached deficiency tax assessments demanding the payment of deficiency income tax (Assessment No. LTAID II IT-99-00077), value-added tax (Assessment No. LTAID II VT-99-00091), withholding tax on compensation (Assessment No. LTAID II WC-99-00019), expanded withholding tax (Assessment No. LTAID II WE-99-00054) and for compromise penalty (Assessment

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No. LTAID II CP-99-00020) all dated 14 March 2005 (collectively referred to as “Assessments”).

1.9. On 30 March and 12 April 2005, Petitioner filed its protest and supplemental protest to the Assessments.

1.10. On 09 July 2007, Petitioner received the Final Decision of Disputed Assessments from the BIR ruling that Petitioner is liable for deficiency taxes totaling P10,460,217.23, details to wit:

| Tax Type                         | Basic               | Surcharge         | Interest            | Compromise Penalty | Total                |
|----------------------------------|---------------------|-------------------|---------------------|--------------------|----------------------|
| Income Tax                       | 1,715,402.28        |                   | 2,487,333.31        | 25,000.00          | 4,227,735.59         |
| Value Added Tax                  | 201,789.86          |                   | 343,042.76          | 16,000.00          | 560,832.62           |
| Withholding Tax-<br>Compensation | 1,779,719.99        |                   | 3,025,520.59        | 25,000.00          | 4,830,238.58         |
| Withholding Tax-<br>Expanded     | 69,337.14           | 399,445.39        | 239,627.91          | 108,000.00         | 816,410.44           |
| Compromise Penalty               |                     |                   |                     | 25,000.00          | 25,000.00            |
| <b>Total</b>                     | <b>3,766,247.27</b> | <b>399,445.39</b> | <b>6,095,524.57</b> | <b>199,000.00</b>  | <b>10,460,271.23</b> |

1.11. On 8 October 2007, Petitioner filed an application for tax amnesty pursuant to Republic Act No. 9480.

1.12. On 18 October 2007, Petitioner filed an application for compromise agreement pursuant to Section 204 of the Tax Code.”

The parties further stipulated the following facts:

“2.1. BIR examiners would always require taxpayers to submit Waiver of the Statute of Limitation wherein taxpayers will agree to extend the right of respondent to issue deficiency tax assessment if the examiners cannot finish their audit within the 3-year prescriptive period.

2.2. On 28 May 2002, Petitioner executed a Waiver of the Statute of Limitation wherein it agreed to extend the right of respondent to issue deficiency tax assessment and the collection of deficiency taxes due to 31 December 2002.

2.3. On 06 January 2004, Petitioner executed a Waiver of the Statute of Limitation wherein it agreed to

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extend the right of respondent to issue deficiency tax assessment and the collection of deficiency taxes due to 31 December 2004.

2.4. Respondent issued an undated Warrant of Distrainment and/or Levy with No. 116-07-006 demanding Petitioner to pay P10,261,217.23 to settle the Assessments.”

On February 11, 2008, respondent filed his answer.

On February 7, 2008, petitioner filed an “Urgent Motion (For the Issuance of a Restraining Order)” and on February 21, 2008, a “Supplemental Motion (For the Issuance of a Restraining Order)”. In a Resolution dated April 2, 2008, the Court granted the motions, subject to the filing of an acceptable surety bond in the amount double the alleged tax liability of petitioner in the total amount of P20,920,434.46.

On October 8, 2008, petitioner manifested that it cannot post the required surety bond as it failed to secure the consent of its stockholders to guaranty or act as surety to the surety bond. Thus, for failure of petitioner to post the required surety bond, the Resolution dated April 2, 2008 was lifted and set aside, and petitioner’s “Urgent Motion (For the Issuance of a Restraining Order)” and “Supplemental Motion (For the Issuance of a Restraining Order)” were both denied in a Resolution dated October 14, 2008.



Petitioner presented Amelita Gutierrez, as witness, and documentary evidence, marked as *Exhibits "A" to "KK"*, which were all admitted by the Court, in a Resolution dated January 27, 2009.

On the other hand, respondent manifested that he will not present any evidence. Thereafter, both parties were granted thirty (30) days, within which to file their simultaneous memoranda.

Both parties having filed their respective "Memorandum", the case was deemed submitted for decision on June 22, 2009.

Hence, this decision.

### ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

#### I

WHETHER OR NOT THE ASSESSMENTS AND THE WARRANT HAVE LEGAL AND FACTUAL BASES.

#### II

WHETHER OR NOT THE ASSESSMENTS AND THE WARRANT WERE ISSUED IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

#### III

ON THE ASSUMPTION THAT THE ASSESSMENT AND THE WARRANT HAVE LEGAL AND FACTUAL BASES, WHETHER OR NOT THE RIGHT OF RESPONDENT TO ISSUE THE ASSESSMENTS



AGAINST PETITIONER HAD ALREADY PRESCRIBED  
AT THE TIME PETITIONER RECEIVED THEM.

IV

WHETHER OR NOT THE WAIVER OF THE STATUTE  
OF LIMITATION EXECUTED BY PETITIONER ON 28  
MAY 2002 EXTENDING THE RIGHT OF RESPONDENT  
TO ISSUE DEFICIENCY TAX ASSESSMENTS  
AGAINST PETITIONER UNTIL 31 DECEMBER 2002 IS  
VALID.

V

WHETHER OR NOT THE WAIVER OF THE STATUTE  
OF LIMITATION EXECUTED BY THE PETITIONER ON  
02 OCTOBER 2002 EXTENDING THE RIGHT OF  
RESPONDENT TO ISSUE DEFICIENCY TAX  
ASSESSMENTS AGAINST PETITIONER UNTIL 30  
JUNE 2003 IS VALID.

VI

WHETHER OR NOT THE WAIVER OF THE STATUTE  
OF LIMITATION EXECUTED BY THE PETITIONER ON  
11 APRIL 2003 EXTENDING THE RIGHT OF  
RESPONDENT TO ISSUE DEFICIENCY TAX  
ASSESSMENTS AGAINST PETITIONER UNTIL 31  
DECEMBER 2003 IS VALID.

VII

WHETHER OR NOT THE WAIVER OF THE STATUTE  
OF LIMITATION EXECUTED BY THE PETITIONER ON  
06 JANUARY 2004 EXTENDING THE RIGHT OF  
RESPONDENT TO ISSUE DEFICIENCY TAX  
ASSESSMENTS AGAINST PETITIONER UNTIL 31  
DECEMBER 2004 IS VALID.

VIII

WHETHER OR NOT THE ASSESSMENTS AND THE  
WARRANT HAVE THE FORCE AND EFFECT OF LAW.



IX

ON THE ASSUMPTION THAT THE ASSESSMENTS AND THE WARRANT WERE VALIDLY ISSUED, WHETHER OR NOT PETITIONER'S AVAILMENT OF THE TAX AMNESTY PROGRAM OF THE GOVERNMENT UNDER REPUBLIC ACT NO. 9480 DID NOT EXONERATE PETITIONER FROM THE DEFICIENCY INCOME AND VALUE ADDED TAX FOR TAXABLE YEAR 1999.

**THE COURT'S RULING**

We deny the petition.

We first address the procedural question on the timeliness of the filing of the instant petition with this Court.

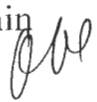
*Section 228 of the NIRC of 1997, as amended, provides:*

“SEC. 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: Provided, however, That a pre-assessment notice shall not be required in the following cases:

xxx                      xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. 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. 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.”

The above-quoted provision expressly provides that the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals (CTA), within thirty (30) days from receipt of said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. Or, in case the decision was rendered by a duly authorized representative of the Commissioner, the taxpayer may elevate his protest to the Commissioner, within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, in which case, the latter's decision shall not be considered final, executory and demandable, and the protest shall be decided by the Commissioner (*Section 3.1.5 of Revenue Regulations 12-99*).

Records show that petitioner received the Final Decision on Disputed Assessment dated June 1, 2007, on July 9, 2007 (*Exhibit "I"*).

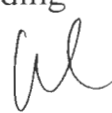


From July 9, 2007, petitioner has thirty (30) days, or until August 8, 2007, within which to appeal said Final Decision to this Court, pursuant to *Section 228 of the NIRC of 1997, as amended*, or to elevate his protest to the Commissioner, as provided in *Section 3.1.5. of Revenue Regulations 12-99*.

However, instead of appealing the Final Decision on Disputed Assessment dated June 1, 2007 to this Court, or instead of elevating its protest to the Commissioner, petitioner availed of the tax amnesty pursuant to *RA 9480*, for the assessed income and VAT deficiencies, and likewise filed an application for compromise, for the assessed withholding tax deficiencies, on October 8, 2007 and October 18, 2007, respectively.

Considering that it was only on November 29, 2007, or more than three (3) months way beyond the 30-day reglementary period to appeal to the CTA, that petitioner filed a Petition for Review with this Court, the Final Decision on Disputed Assessment dated June 1, 2007 had become final, executory, and demandable.

Pursuant to *Section 228 of the NIRC of 1997, as amended*, petitioner's failure to appeal the Final Decision on Disputed Assessment dated June 1, 2007 to this Court, within the statutory period, rendered the disputed assessment final, executory and demandable, thereby precluding

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it from interposing the defense of legality or validity of the assessment (*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, Ibid*). The assessment ceases to be a disputed assessment, and the same can no longer be contested by means of a disguised protest (*Marcos II vs. Court of Appeals, 273 SCRA 67*). Likewise, petitioner cannot appeal the undated Warrant of Distrainment and Levy, as it was issued pursuant to a Final Decision on Disputed Assessment which had already become final, executory and demandable. Petitioner cannot now question the validity of the assessments in the guise of requesting the cancellation of the undated Warrant of Distrainment and Levy. Thus, in the case of *Commissioner of Internal Revenue vs. Concepcion (22 SCRA 1061-1062)*, the Supreme Court ruled:

“For subsequently, in *Republic v. Lim Tian Teng Sons & Co. Inc.*, the above doctrine was reaffirmed categorically in this language: ***'Taxpayer's failure to appeal to the Court of Tax Appeals in due time made the assessment in question final, executory and demandable.*** And when the action was instituted on September 2, 1958 to enforce the deficiency assessment in question, it was already barred from disputing the correctness the assessment or invoking any defense that would reopen the question of his tax liability on the merits. Otherwise, the period of thirty days for appeal to the Court of Tax Appeals would make little sense.' ***Once, the matter has reached the stage of finality in view of the failure to appeal, it logically follows,*** in the appropriate language of Justice Makalintal, in *Morales v. Collector of Internal Revenue*, ***that it 'could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy.'***” (*Emphasis supplied*)



In the case of *Ker & Company, Ltd. v. Court of Tax Appeals* (4 SCRA 160, 163), the Supreme Court ruled that while the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty (30) days is jurisdictional. Thus, since the 30-day period within which to file an appeal is jurisdictional, failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same (*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, Supra*). Settled is the rule that jurisdiction over the subject matter in a judicial proceeding is conferred by the sovereign authority, which organizes the court; it is given only by law and in the manner prescribed by law (*Hasegawa, Kazuro vs. Kitamura, Minoru, 538 SCRA 261*). Either party nor this Court cannot extend the period provided by law, thus, failure to comply with the mandatory statutory period would divest this Court of jurisdiction to issue a valid judgment over the assessment.

The Court of Tax Appeals, being a court of special jurisdiction can only take cognizance of such matters as are clearly within its jurisdiction. Section 7 of RA 9282, otherwise known as an *Act Expanding the Jurisdiction of the Court of Tax Appeal*, 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;

xxx xxx.”

The law limits the jurisdiction of this Court to decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. Hence, this Court has no jurisdiction to entertain and determine the correctness of an assessment that had attained finality, as such assessment ceases to be a disputed assessment. Accordingly, the legality and validity of said assessment can no longer be the subject of a judicial inquiry in this Petition for Review.

Well-settled is the rule that the right to appeal is not a natural right or a 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. The party who seeks to avail of the same must comply with the



requirements of the rules. Failing to do so, leads to the loss of the right to appeal (*Producers Bank of the Phil. vs. Court of Appeals*, 381 SCRA 185).

Since the disputed assessments had long become final, executory, and non-appealable, this Court has no jurisdiction to entertain the present petition.

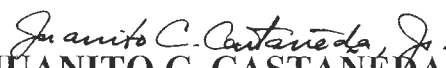
In view of the foregoing, this Court deems it no longer necessary to discuss the other issues raised, for being moot and academic.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED**.

**SO ORDERED.**

  
**OLGA PALANCA-ENRIQUEZ**  
Associate Justice

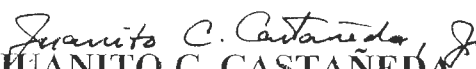
**WE CONCUR:**

  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice

  
**ERLINDA P. UY**  
Associate Justice

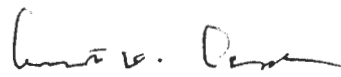
## ATTESTATION

I attest 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's Division.

  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice  
Chairperson

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

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.



**ERNESTO D. ACOSTA**

Presiding Justice