

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**

Petitioner,

CTA EB NO. 2447

(CTA Case No. 9005)

Present:

-versus-

**DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.**

**JOLLIBEE WORLDWIDE PTE.
LTD.,**

Respondent.

Promulgated:

JAN 10 2023

[Signature]
3:28pm

X- - - - - X

D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review¹ filed by the Commissioner of Internal Revenue (CIR) assailing the Decision and Resolution of the Court of Tax Appeals (CTA) Third Division in CTA Case No. 9005, which cancelled the deficiency assessments for income tax, withholding tax on compensation, and expanded withholding tax for taxable year 2009 against Jollibee Worldwide Pte. Ltd. (Jollibee), and further granting the refund or issuance of a tax credit certificate to Jollibee, in the amount of Php18,483,928.77, representing erroneously collected taxes.

FACTS

The CTA Third Division narrated the antecedents, as follows:

¹ EB docket, pp. 1-12. *an*

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Petitioner [now, respondent] Jollibee Worldwide Pte. Ltd. is a multinational company organized and existing under the laws of Singapore, with license to operate in the Philippines as regional operating headquarters granted by the Securities and Exchange Commission (SEC) on November 29, 2005 with license and registration no. FS200519494. It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number 243-204-387-000 with BIR Certificate of Registration No. 3RC0000732181 dated January 30, 2006. Its registered address is at Jollibee Center Building, San Miguel Avenue, San Antonio, Ortigas Center, Pasig City.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of his office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.

On September 22, 2011, Letter of Authority No. LOA-43A-2011-00000579 was issued by Jonas DP. Amora, OIC – Regional Director of BIR Revenue Region No. 007, Revenue District No. 43A East Pasig, authorizing Revenue Officer (RO) Lilibeth Nazario and Group Supervisor (GS) Maricar Favis to examine the petitioner’s books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009 pursuant to Audit Criteria for Taxable Years 2009 and 2010.

Subsequently, a *Notice of Informal Conference* was issued by Revenue District Office[r] Florante R. Aninag of BIR Revenue District No. 43A East Pasig informing petitioner of the report of investigation on all its internal revenue tax liabilities for CY 2009.

On December 28, 2012, a *Preliminary Assessment Notice* (PAN) was issued by OIC Regional Director Jonas DP. Amora, informing the latter of its deficiency tax liabilities including increments for the year 2009, xxx

xxx

Thereafter, petitioner received the *Formal Letter of Demand* FLD No. 043A-B158-09 with Assessment Notices on January 15, 2013, requesting payment of the tax liabilities including interest in the total amount of **P18,483,928.77**, broken down as follows:

Tax Type	Basic Amount	Interest	Total
Income Tax	5,338,828.72	3,030,699.48	8,369,528.20
Withholding Tax on Compensation	5,479,773.23	3,380,945.02	8,860,718.25
Expanded	775,320.31	478,362.01	1,253,682.32

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Withholding Tax			
TOTAL	11,593,922.26	6,890,006.51	18,483,928.77

On January 25, 2013, petitioner filed a *Reply to the PAN* stating its disagreement with the findings of the BIR in the PAN and the related deficiency tax assessment against petitioner covering TY 2009.

On February 14, 2013, petitioner filed its *Protest Letter to the FAN*, disagreeing with the findings to the deficiency tax assessments of the BIR and requesting for reconsideration and re-investigation of the results of the BIR audit covering the taxable year 2009.

On September 3, 2013, petitioner received the *Final Decision* dated August 28, 2013 issued by Regional Director Jonas DP. Amora, requesting [from] petitioner the payment of the alleged tax deficiency in FLD/FAN No. 043A-B158-09.

Thus, petitioner elevated its administrative appeal to the CIR praying for the cancellation of the deficiency tax assessment for the TY 2009 on October 3, 2013.

On February 4, 2015, petitioner received a *Final Decision* dated January 23, 2015 from respondent denying its appeal against Assessment Notice No. 043A-B158-09 and ordering it to pay the deficiency taxes due plus increments that have accrued thereon until the date of actual payment.

Aggrieved, petitioner filed the instant *Petition for Review* on March 5, 2015.

On March 18, 2015, Revenue Officer Michael R. Nitafan served a *Warrant of Distraint and/or Levy* (WDL) dated March 18, 2015 to petitioner seeking to enforce the collection of the alleged deficiency taxes amounting to P18,483,928.77.

xxx

On August 24, 2015, petitioner filed a *Motion for Leave to Admit Attached Supplemental Petition for Review (with Motion to Defer Pre-Trial Conference)* alleging, among others, that respondent, by way of garnishment, collected from petitioner the amount of P18,483,928.77 on June 4, 2015, xxx. Thus, on August 20, 2015, petitioner filed a letter-request to claim the refund of or issuance of tax credit certificate (TCC) in the amount of P18,483,928.77 representing the taxes collection (*sic*) from petitioner by way of garnishment.

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During the hearing held on August 25, 2015, petitioner's counsel manifested that she received the 

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Resolution dated August 13, 2015 denying petitioner's motion for reconsideration assailing the WDL. However, in view of an intervening event, the alleged garnishment of bank deposit undertaken by the BIR on June 4, 2015, the Court allowed petitioner to file an Amended Petition for Review xxx.²

After trial, the CTA Third Division rendered a Decision, dated August 26, 2020, cancelling the assessments and granting the refund of the amounts garnished, as follows:

WHEREFORE, in light of the foregoing considerations, the instant *Amended Petition for Review* is hereby **GRANTED**.

Accordingly, the Final Assessment Notices, Formal Letter of Demand dated January 15, 2013 for deficiency income tax, withholding tax, and expanded withholding tax for taxable year 2009 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**. The Warrant of Distraint and/or Levy issued by respondent on March 18, 2015 is declared **NULL and VOID**.

Respondent is hereby **ORDERED** to refund or issue a tax credit certificate to petitioner the amount of P18,483,928.77, representing illegally assessed and erroneously collected income tax, withholding tax on compensation and expanded withholding tax for taxable year 2009.

SO ORDERED.³

The CIR's Motion for Reconsideration was later denied in the Resolution dated January 29, 2021, as follows:

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for being filed beyond the reglementary period.

On the other hand, petitioner's prayer for the issuance of a writ of execution is **GRANTED**. Accordingly, let entry of judgment be made in due course, and thereafter, the corresponding Writ of Execution be issued to enforce the Decision dated August 26, 2020.

SO ORDERED.⁴

² Division Decision dated August 26, 2020, EB docket, pp. 13-18.

³ Division Decision dated August 26, 2020, EB docket, p. 28.

⁴ EB docket, p. 44. *am*

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On March 4, 2021, the CIR filed the instant Petition for Review with the Court *En Banc* praying that the Decision and Resolution of the CTA Third Division be reversed and set aside, and also praying that a writ of execution not be issued and that no entry of judgment be made.

On July 23, 2021, respondent Jollibee filed its *Comment/Opposition (Re: Petition for Review dated March 4, 2021)*.⁵

On October 26, 2021, the Court received the parties' No Agreement to Mediate,⁶ thus, the instant case was submitted for decision on January 10, 2022.⁷

ISSUES

The CIR states the following grounds for his Petition for Review:

- I. With all due respect, the Honorable Court in Division erred in ruling that provisions on reglementary periods are strictly applied.
- II. The Honorable Court in Division erred in ruling that respondent Jollibee was denied due process.⁸

CIR's arguments

The CIR states that the CTA, in the exercise of its equity jurisdiction, has the prerogative to relax the application of procedural rules where strong considerations of substantive justice are manifest. The CIR also states that the delayed filing of the Motion for Reconsideration before the CTA Third Division was not meant to be frivolous or dilatory and that the cause of the delay was not entirely attributable to his fault or negligence, and that the relaxation of the rules on reglementary periods would not unjustly prejudice respondent Jollibee.

⁵ EB docket, pp. 59-77.

⁶ EB docket, p. 81.

⁷ EB docket, pp. 83-84.

⁸ Petition for Review, EB docket, p. 4. 

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The CIR also argues that the issuance of the Formal Letter of Demand and Assessment Notices (FLD/FAN) did not violate respondent Jollibee's right to due process. The Preliminary Assessment Notice (PAN) and FLD/FAN were duly served and received, and respondent Jollibee was notified of the assessment and was given ample time and opportunity to protest the findings of the assessment against it.

In addition, petitioner CIR argues that despite the slight infirmity regarding the date of issuance of the FLD/FAN, this does not necessarily result to a violation of due process considering that respondent Jollibee was able to intelligently contest the PAN and FAN, was informed of the factual and legal bases of the assessment and was afforded opportunity to defend itself. In view of the foregoing, the CIR states that respondent Jollibee should be liable to pay the assessed deficiency taxes and the examiner's assessment should be given full weight and credit as there was no violation of due process.

Jollibee's arguments

Respondent Jollibee states that the CIR failed to timely file his Motion for Reconsideration of the CTA Third Division's Decision dated August 26, 2020, thus, said Decision has already become final and executory. Respondent also states that there exists no justifiable and meritorious reason for petitioner CIR's belated filing of his/her Motion for Reconsideration.

Respondent also disagrees with petitioner's contention that respondent Jollibee will not be unjustly prejudiced if the rules on reglementary periods will be relaxed. Respondent Jollibee avers that since petitioner CIR filed the Petition for Review before the CTA *En Banc*, respondent is now constrained to await the *En Banc*'s decision to finally settle the issues in this case, instead of being able to receive the refund or TCC granted by the CTA Third Division.

Even assuming that the CIR's Motion for Reconsideration was timely filed, the instant Petition for Review deserves scant consideration because the CTA Third Division did not err in holding that the assessments are void because of violation of respondent Jollibee's right to due process. *an*

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Respondent also states that it is entitled to its claim for refund in the amount of Php18,483,928.77, representing payment for illegally assessed and collected tax.

RULING OF THE COURT

The Petition for Review is denied.

The CTA Third Division correctly denied CIR's Motion for Reconsideration for being filed beyond the reglementary period.

The Revised Rules of the Court of Tax Appeals (RRCTA) provides for the period within which to file a motion for reconsideration or new trial, as follows:

Rule 15

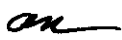
Motion for Reconsideration or New Trial

Section 1. *Who may and when to file motion.* – Any aggrieved party may seek reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

Thus, the reckoning point of the fifteen (15)-day period to file the motion for reconsideration is from the date of receipt of the notice of the decision.

The Supreme Court has emphasized the significance of the rules of procedures and the rules prescribing the time to do specific acts:

Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies, the adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules.

Corolarilly, "rules prescribing the time for doing specific acts or for taking certain proceedings are considered 

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absolutely indispensable to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory.”⁹ (*Emphasis in the original*)

The CIR alleged in his Motion for Reconsideration before the CTA Third Division that the Decision dated August 26, 2020 was received on October 10, 2020¹⁰, which was a Saturday. The CTA Third Division disregarded this allegation in view of the evidence on record, *to wit*:

A perusal of the records of the case shows that the *Notice of Decision* issued by the Court on September 3, 2020 and the assailed Decision attached thereto were received by respondent [CIR] on October 7, 2020. Thus, counting fifteen (15) days therefrom, respondent [CIR] had until October 22, 2022, within which to seek reconsideration of the assailed Decision dated August 26, 2020. However, respondent [CIR] belatedly filed the instant Motion for Reconsideration on October 26, 2020, or four (4) days after the last date prescribed by the rules for filing the same, or until October 22, 2020.¹¹

Indeed, the Notice of Decision¹² clearly shows that it was received by the Legal Division of Revenue Region No. 7B East NCR on October 7, 2020. Thus, the CTA Third Division correctly ruled that the CIR’s motion for reconsideration was filed out time.

In the subject Petition for Review, the CIR now prays for the relaxation of the application of procedural rules in view of strong considerations of substantive justice.¹³

While it is true that the Supreme Court may relax the application of procedural rules for the greater interest of substantial justice, it must be pointed out that:

...resort to a liberal application, or suspension of the application of procedural rules remains the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. It can only be upheld

⁹ *Ng Ching Ting v. Philippine Business Bank, Inc.*, G.R. No. 224972, July 9, 2018, citing *Fortich v. Corona*, G.R. No. 131457, November 17, 1998, and *Laguna Metts Corporation v. Court of Appeals, et al.*, G.R. 185220, July 27, 2009 Resolution.

¹⁰ Division docket, CTA Case No. 9005, Vol. 3, p. 1283.

¹¹ Division Resolution dated January 29, 2021, EB Docket, p. 41.

¹² Division docket, CTA Case No. 9005, Vol. 3, p. 1265.

¹³ Petition for Review, EB docket, pp. 4-7. 

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“in proper cases and under justifiable causes and circumstances.”¹⁴

In the Petition for Review, petitioner CIR states that the Court “in the exercise of its equity jurisdiction, has the prerogative to relax the application of procedural rules where strong considerations of substantive justice are manifest”.¹⁵ Petitioner further states that “the delayed filing of the Motion for Reconsideration was not meant to be frivolous or dilatory and that the cause of the delay was not entirely attributable to the fault or negligence of the petitioner.”¹⁶ Unfortunately, these are not compelling or justifiable causes and circumstances which would warrant the relaxation of the rules on reglementary periods.

The Supreme Court has held that while rules of procedure are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are for the prevention of needless delays and are necessary to the orderly and speedy discharge of judicial business.¹⁷ After all, rules of procedure do not exist for the convenience of litigants, and they are not to be trifled with lightly or overlooked by the mere expedience of invoking “substantial justice.”¹⁸

Considering that the CIR’s motion for reconsideration was filed out of time, the Decision dated August 26, 2020 and Resolution dated January 29, 2021 in CTA Case No. 9005, have become final and executory. Finality of judgment becomes a fact upon the lapse of the reglementary period to appeal if no appeal is perfected.¹⁹ The failure of a party to perfect an appeal within the period fixed by law renders final the decision sought to be appealed.

Even if we brush aside the procedural lapse in the motion for reconsideration before the CTA Third Division, the subject Petition for Review is still denied. We affirm the findings of the CTA Third Division that the FLD/FAN were issued in violation of respondent Jollibee’s right to due process, as follows:

¹⁴ *Ng Ching Ting v. Philippine Business Bank, Inc.*, G.R. No. 224972, July 9, 2018.

¹⁵ Petition for Review, EB docket, pp. 4-5.

¹⁶ Petition for Review, EB docket, p. 7.

¹⁷ *Dr. Lorna Villa v. Heirs of Enrique Altavas*, G.R. No. 162028, July 14, 2008.

¹⁸ *Heirs of Antonio Feraren v. Court of Appeals*, G.R. No. 159328, October 5, 2011.

¹⁹ *City of Manila represented by Mayor Gemiliano C. Lopez, Jr. v. Hon. Court of Appeals*, G.R. No. 100626, November 29, 1991. *om*

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In the instant case, petitioner [Jollibee] received a copy of the PAN on January 10, 2013. Therefore, respondent [CIR] should have granted petitioner [Jollibee] a period of fifteen (15) days from said date or until January 25, 2013 to protest or respond to the PAN. As a corollary, it is only after the lapse of the said period that respondent [CIR] may issue the FLD or FAN. Contrary to respondent [CIR]'s stand, the said 15-day period is reckoned from the date of actual receipt of the PAN by petitioner [Jollibee], and not the date of issuance of the PAN.

Therefore, the Court finds that the FAN and FLD were prematurely issued and received by petitioner [Jollibee] on January 15, 2013, or five days after petitioner [Jollibee] received the PAN. Respondent [CIR], in failing to await the lapse of the fifteen (15) day period, correspondingly disregarded the mandatory due process requirement laid down under RR No. 12-99. As a consequence, petitioner [Jollibee] was denied of its right to due process.

It is well-settled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is tantamount to denial of due process. As a result, the assessments issued in this case are void, and all the proceedings and order emanating from there are likewise void. As a rule, a void assessment bears no valid fruit.²⁰

Thus, the Warrant of Dstraint and/or Levy issued by petitioner CIR on March 18, 2015 is null and void. Likewise, the amount of Php18,483,928.77 garnished by petitioner CIR from respondent Jollibee's bank account was not legally due to the government. Hence, the refund of the amount of Php18,483,928.77 is in order.

WHEREFORE, the Petition for Review is **DENIED**. The Decision dated August 26, 2020 and Resolution dated January 29, 2021 in CTA Case No. 9005 are **AFFIRMED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

²⁰ Decision dated August 26, 2020, EB docket, p. 25.

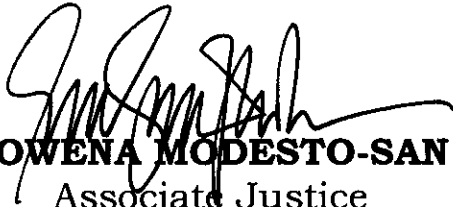
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

(ON OFFICIAL BUSINESS)
CORAZON G. FERRER-FLORES
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