

FIRST DIVISION

[G.R. No. 179343, January 21, 2010]

**FISHWEALTH CANNING CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

The Commissioner of Internal Revenue (respondent), by Letter of Authority dated May 16, 2000,^[1] ordered the examination of the internal revenue taxes for the taxable year 1999 of Fishwealth Canning Corp. (petitioner). The investigation disclosed that petitioner was liable in the amount of P2,395,826.88 representing income tax, value added tax (VAT), withholding tax deficiencies and other miscellaneous deficiencies. Petitioner eventually settled these obligations on August 30, 2000.^[2]

On August 25, 2000, respondent reinvestigated petitioner's books of accounts and other records of internal revenue taxes covering the same period for the purpose of which it issued a subpoena *duces tecum* requiring petitioner to submit its records and books of accounts. Petitioner requested the cancellation of the subpoena on the ground that the same set of documents had previously been examined.

As petitioner did not heed the subpoena, respondent thereafter filed a criminal complaint against petitioner *for violation of Sections 5 (c) and 266 of the 1997 Internal Revenue Code*, which complaint was dismissed for insufficiency of evidence.^[3]

Respondent sent, on August 6, 2003, petitioner a Final Assessment Notice of **income tax** and **VAT deficiencies** totaling P67,597,336.75 for the taxable year 1999,^[4] which assessment petitioner contested by letter of September 23, 2003.^[5]

Respondent thereafter issued a Final Decision on Disputed Assessment dated August 2, 2005, which petitioner received on August 4, 2005, denying its letter of protest, apprising it of its **income tax** and **VAT liabilities** in the amounts of "P15,396,905.24 and P63,688,434.40 [*sic*], respectively, for the taxable year 1999,"^[6] and requesting the immediate payment thereof, "inclusive of penalties incident to delinquency." Respondent added that if petitioner disagreed, it may appeal to the Court of Tax Appeals (CTA) "within thirty (30) days from date of receipt hereof, otherwise our said deficiency income and

value-added taxes assessments shall become final, executory, and demandable."^[7]

Instead of appealing to the CTA, petitioner filed, on September 1, 2005, a Letter of Reconsideration dated August 31, 2005.^[8]

By a Preliminary Collection Letter dated September 6, 2005, respondent demanded payment of petitioner's tax liabilities,^[9] drawing petitioner to file on October 20, 2005 a Petition for Review^[10] before the CTA.

In his Answer,^[11] respondent argued, among other things, that the petition was filed out of time which argument the First Division of the CTA upheld and accordingly dismissed the petition.^[12]

Petitioner filed a Motion for Reconsideration^[13] which was denied.^[14] The Resolution denying its motion for reconsideration was received by petitioner on October 31, 2006.^[15]

On November 21, 2006, petitioner filed a petition for review before the CTA En Banc^[16] which, by Decision^[17] of July 5, 2007, held that the petition before the First Division, as well as that before it, was filed out of time.

Hence, the present petition,^[18] petitioner arguing that the CTA En Banc erred in holding that the petition it filed before the CTA First Division as well as that filed before it (CTA En Banc) was filed out of time.

The petition is bereft of merit.

Section 228 of the 1997 Tax Code provides that an assessment

x x x 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. (underscoring supplied)

In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.

Since petitioner 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.

On petitioner's final contention that it has a meritorious case in view of the dismissal of the above-mentioned criminal case filed against it for violation of the 1997 Internal Revenue Code,^[19] the same fails. For the criminal complaint was instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.^[20]

WHEREFORE, the petition is **DISMISSED**.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] CTA En Banc *rollo*, p. 60.

[2] *Id.* at 61-68.

[3] *Id.* at 77-78.

[4] CIR records, pp. 148-155.

[5] *Id.* at 140-142.

[6] *Rollo*, p. 15; CTA En Banc *rollo*, pp. 42-46.

[7] *Id.* at 46.

[8] *Id.* at 79-81; CTA 1st Division *rollo*, pp. 5, 87.

[9] *Id.* at 47.

[10] CTA 1st Division *rollo*, pp. 1-12.

[11] *Id.* at 79-92.

[12] *Id.* at 229-233.

[13] *Id.* at 234-239.

[14] *Id.* at 253-254.

[15] *Id.* at 252.

[16] CTA En Banc *rollo*, pp. 3-23.

[17] Penned by CTA Associate Justice Juanito C. Castañeda, Jr. with the concurrence of Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez. *Id.* at 400-416.

[18] *Rollo*, pp. 9-39.

[19] *Id.* at 29-34.

[20] *Vide Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, 368 Phil. 714, 727 (1994).