



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 27, 2020 which reads as follows:

“GR. No. 216044 – Philippine Dream Company, Inc. v. Commissioner of Internal Revenue

Antecedents

On January 6, 2003, Bureau of Internal Revenue (BIR) Regional Director (RD) Jaime B. Santiago (RD Santiago), Revenue Region No. 13, issued Letter of Authority (LOA) No. 00075569¹ to petitioner Philippine Dream Co., Inc. (PDCI) for examination of its financial records for the following alleged tax deficiencies, viz.:

Tax	Amount	Reason	Legal Basis
Value-added Tax (VAT)	P53,686,487.55, inclusive of surcharge and interest	Portion of the total gross receipts for 2002 were not taxed because only VAT returns for the months of January to April 2002 were filed.	Per Section 106(C) of the National Internal Revenue Code (NIRC), VAT was imposed on good/inventories existing as of dated when taxpayer ceased its VAT registration due to cessation of business operations
Expanded Withholding Tax (EWT)	P388,825.60, inclusive of surcharge and interest	Failure to withhold and remit EWT on payments for rental expenses.	Section 57 (B) of the NIR and Revenue Regulation No. 296, as amended.

Under Memorandum dated May 30, 2003,² Revenue Officer Ray O. Bercede reported that the corresponding investigation was not

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¹ Rollo, p. 135.

² *Id.* at 237.

completed for two (2) reasons: a) PDCI failed to submit the requirements despite follow-ups; and b) PDCI's accounting manager made representations that its board of directors reconsidered its decision on closure and opted for a mere temporary shutdown.

On December 19, 2005, RD Santiago issued a Preliminary Assessment Notice to PDCI for its supposed VAT and EWT deficiencies for taxable year 2002. PDCI protested.

By Letter dated March 24, 2006, RD Santiago denied the protest. On the VAT assessment, he firmly ruled that PDCI had already ceased its operations as shown in its tax returns filed from 2002 to 2005. This finding was bolstered by the report of the Maritime Industry Authority (MARINA) that PDCI's operations had already ceased as of August 30, 2003. In view thereof, PDCI's assets were deemed sold and subjected to VAT. As for the EWT assessment, PDCI failed to prove that it remitted withholding taxes on rental payments made.³

Consequently, Formal Letter of Demand and Assessment Notices dated March 31, 2006 were issued to PDCI for payment of the following deficiency taxes, inclusive of interests and surcharges, for taxable year 2002:⁴

Tax	Assessment Notice No.	Total Amount of Deficiency
VAT	80-vat-13-2002-2006-3-74	P53,686,487.55
EWT	80-ewt-13-2002-2006-3-75	388,825.60
Grand Total		P54,075,313.15

PDCI received the notices on April 10, 2006. On May 10, 2006, PDCI interposed its protest⁵ against the VAT assessment, claiming it was not dissolved, nor its properties disposed of, particularly its vessel M/V Philippine Dream. There being no such disposition, it could not have incurred any VATable transaction as a result. It, nonetheless, signified its willingness to pay its tax liabilities, and on this score, prayed that the penalties be waived. On May 18, 2006, it paid the EWT assessment but only in the amount of P301,823.34 including interest.⁶

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³ *Id.* at 155-156.

⁴ *Id.* at 131-134.

⁵ *Id.* at 136-138.

⁶ *Id.* at 59, CTA En Banc Decision.

On November 22, 2006, Revenue District Officer (RDO) Maria Socorro Lozano (RDO Lozano) of RDO No. 80 issued a Preliminary Collection Letter⁷ on PDCI's EWT and VAT liabilities.⁸

On January 4, 2007, PDCI received a Final Notice Before Seizure giving it ten (10) days from notice to settle its tax liabilities, otherwise, a warrant of distraint and/or levy and garnishment shall be issued to enforce collection.⁹

By Letter dated January 15, 2007, PDCI requested RDO Lozano to return the case to BIR Revenue Region No. 13 so it can submit evidence to refute its VAT liability.¹⁰ In reply, RDO Lozano explained that its tax liabilities were due for collection because its period to interpose a protest had expired. RDO Lozano cited as reason therefor PDCI's failure to submit the relevant documents to the investigating officer. She informed PDCI, however, that she will refer the request to the Regional Director for proper action.¹¹

On February 21, 2007, PDCI was served a Warrant of Distraint and/or Levy No. 80-015-07 for its failure to pay its purported tax deficiencies.¹²

In response, PDCI sent a letter dated February 27, 2007 addressed to RD Santiago, reiterating its request to refer back the case to the latter's office so it may be afforded the chance to adduce evidence to dispute the VAT assessment.¹³

Treating the letter as PDCI's request for reconsideration, RD Santiago, under Letter dated April 15, 2007,¹⁴ emphasized that the period to present additional documents in support of its protest had already expired; and that PDCI's existing inventories at the time of its cessation of business were subject to VAT.

In a separate letter, RDO Lozano informed PDCI that RD Santiago already denied its request for reconsideration. Accordingly, under Memorandum dated May 25, 2007, RDO Lozano requested the publication of the Notice of Sale of PDCI's MV Philippine Dream.¹⁵

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⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 142.

¹⁰ *Id.* at 143-144.

¹¹ *Id.* at 151.

¹² *Id.* at 152.

¹³ *Id.* at 140.

¹⁴ *Id.* at 153-154.

¹⁵ *Id.* at 60-61.

On September 21, 2007, PDCI filed a notice of tax amnesty availment under Republic Act No. 9480,¹⁶ informed RDO No. 80 of such availment, and requested the release of its vessel.¹⁷

Acting thereon, RDO No. 80 recommended the cancellation of the auction sale set on September 28, 2007 and referred back the case to the CIR in view of PDCI's tax amnesty application.¹⁸

Under BIR Ruling No. DA-514-2007 dated September 27, 2007 addressed to the RD of Revenue Region No. 13, however, Assistant Commissioner James H. Roldan directed RDO No. 80 to proceed with the auction sale scheduled on September 28, 2007 considering that PDCI's tax amnesty application was defective for non-compliance with the requirements of Republic Act No. 9480 (RA 9480).

Consequently, RDO Emir Abutazil informed PDCI that the auction sale will proceed as scheduled following the aforesaid CIR opinion. PDCI's vessel was eventually sold to Aston Pte. Ltd.¹⁹

On October 31, 2007, PDCI initiated a petition before the Court of Tax Appeals seeking to nullify the Final Notice Before Seizure, Warrant of Dstraint and Levy, and the auction sale, with prayer for restraining order to prevent CIR from taking possession of MV Philippine Dream and turning it over to the winning bidder. Its petition was raffled off to the Second Division of the CTA, entitled *Philippine Dream Company, Inc. v. Bureau of Internal Revenue*, docketed CTA Case No. 7700.²⁰

While the petition was pending, on August 20, 2009, PDCI claimed for refund of the auction sale proceeds supposedly to satisfy what it claims were its illegally assessed tax deficiencies.²¹

Two (2) years later, on October 6, 2009, PDCI amended its petition to include its prayer to nullify the Formal Letter of Demand and Assessment Notice, its claim for refund of illegally assessed tax, and to return to the company its MV Philippine Dream.²²

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¹⁶ An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years.

¹⁷ *Id.* at 218-219.

¹⁸ *Id.* at 261.

¹⁹ *Id.* at 192.

²⁰ *Id.* at 94, 108.

²¹ *Id.* at 97-98.

²² *Id.* at 98, 119.

Ruling of Court of Tax Appeals-Second Division

Under Decision²³ dated December 6, 2012, the CTA-Second Division²⁴ dismissed the petition for lack of jurisdiction. It ruled that since PDCI opted to question the alleged CIR's inaction on its protest, PDCI should have filed its petition within thirty (30) days after the lapse of the one hundred eighty (180) days from date of PDCI's protest. Thus, the petition should have been filed on or before December 6, 2016 and not on October 31, 2017.

The CTA went further to explain that even when the Final Notice Before Seizure was considered as a denial of PDCI's protest and the thirty-day appeal period was reckoned from notice thereof, the appeal was still filed out time. It also refused to allow the petition insofar it questioned the auction sale, again, for having been filed out of time.

In its motion for reconsideration, PDCI insisted that it still had the option to await the decision on its protest before filing the appeal. It, thus, refuted that the Final Notice Before Seizure was a final decision on its protest.

By Resolution²⁵ dated February 6, 2013, the CTA-Second Division denied and ruled that PDCI was already barred from awaiting the denial of its protest before interposing the appeal. For in truth, PDCI already opted to appeal the inaction of the CIR on its protest.

Ruling of the Court of Tax Appeals-En Banc

By Decision dated July 25, 2014 in CTA EB Case No. 986, the CTA *En Banc* affirmed, with modification. It ruled that the Final Notice Before Seizure which PDCI received on January 4, 2007 was deemed a denial of its protest. PDCI, therefore, had thirty (30) days period therefrom or until February 3, 2007 within which to appeal. As it was though, it belatedly filed its appeal on October 31, 2007.²⁶

In its motion for reconsideration, PDCI asserted that the petition should be given due course as it also included the nullification of the auction sale. The thirty (30) day period for appeal should be

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²³ *Id.* at 80.

²⁴ Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla.

²⁵ *Id.* at 123.

²⁶ *Id.* at 56.

reckoned from notice of the certificate of sale on October 2, 2007. Thus, when it filed its petition on October 31, 2007, the same was still within the period.

Under Resolution²⁷ dated December 16, 2014, the CTA *En Banc* denied on ground that the petition insofar as it questioned the auction sale was filed two (2) days late. The reckoning period was September 28, 2007 when PDCI was notified of the auction sale and of the BIR ruling on its defective tax amnesty application.

The Present Petition

Petitioner now seeks to reverse and set aside the foregoing assailed dispositions. It essentially argues that (1) it was appealing the inaction of the CIR which did not render any final decision on its protest (2) the Final Notice Before Seizure is not such final decision and cannot be the basis of appeal to the CTA, (3) it had already paid the EWT, hence, the same should no longer be included in the assessment (4) procedural rules should be liberally applied for the purpose of admitting the petition that was filed only two (2) days late. This should have been the case considering its prayer for nullification of the auction was based on attendant irregularities thereof and the fact that its tax liabilities were already deemed extinguished by its application for tax amnesty.

For its part, the CIR, through the Office of the Solicitor General (OSG) affirms that the Final Notice Before Seizure was already the decision denying the protest; the thirty-day period for appeal should be reckoned from PDCI's receipt thereof. PDCI's requests for referral of the case back to the Office of the Regional Director after its receipt of the aforesaid Final Notice Before Seizure did not toll the running of the thirty-day period for appeal.

Issue

Did PDCI timely file its appeal to the CTA?

Ruling

The petition lacks merit.

Section 228 of the Tax Code provides the taxpayer's remedy to dispute a tax assessment, *viz.*:

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²⁷ *Id.* at 80-84.

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 preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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

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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. (Boldfacing supplied)

In *Lascona Land Co., Inc. v. CIR*,²⁸ the Court declared that the law gives the taxpayer two (2) remedies or modes for disputing a tax assessment, viz.:

x x x In arguing that the assessment became final and executory by the sole reason that petitioner failed to appeal the inaction of the Commissioner within 30 days after the 180-day reglementary period, respondent, in effect, limited the remedy of Lascona, as a taxpayer, under Section 228 of the NIRC to just one, that is — to appeal the inaction of the Commissioner on its protested assessment after the lapse of the 180-day period. This is incorrect.

x x x

x x x

x x x

Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, **it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period.** Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.

It must be emphasized, however, that **in case of the inaction of the CIR on the protested assessment**, while we reiterate - **the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, these options are mutually exclusive and resort to one bars the application of the other.** (Emphasis supplied)

As found by the CTA-Second Division, PDCI mistakenly computed the period of appeal. Having chosen the remedy of appeal against the CIR's supposed inaction on its protest, PDCI should have reckoned its thirty-day period for appeal from the lapse of one hundred eighty (180) days from the time it filed its protest against the Final Letter of Demand and Assessment Notice. Thus, the petition should have been filed on December 6, 2006 and not on October 31, 2007, thus:

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²⁸ 683 Phil. 430, 440-441 (2012).

x x x Records clearly reveal that petitioner received the FLD and FAN on April 10, 2006. Pursuant to Section 228 of the NIRC of 1997, as amended, as well Section 3.1.5 of RR No. 12-99, petitioner had thirty days or until May 10, 2006 to file a protest. In letter dated May 10, 2006, petitioner protested the subject assessments. Petitioner asserts that the protest letter dated May 10, 2006 was filed on the same date. Respondent, however, failed to prove otherwise.

Since petitioner did not submit additional relevant documents in support of its protest, the 180-day period within which respondent should act on the protest should be reckoned from the filing of petitioner's protest on May 10, 2006. Accordingly, respondent had until November 6, 2006 within which to act on the protest. Respondent failed to act on the protest on or before November 6, 2006. Thus, petitioner had thirty days from November 6, 2006 or until December 6, 2006 within which to appeal respondent's inaction before this Court. However, records prove that no appeal was filed before this Court on or before December 6, 2006. The failure of petitioner to appeal the inaction on time rendered the assessment final, executory, demandable, and incontestable.²⁹ x x x (Emphasis supplied)

Notably, PDCI's claim that the CIR did not act on its protest was belied by the latter's subsequent issuances demanding and enforcing payment of the former's tax deficiencies:

1. Preliminary Collection Letter (PCL) issued on November 22, 2006;
2. Final Notice Before Seizure which it received on January 4, 2007;
3. RDO Lozano reply letter dated January 6, 2007
4. Warrant of Dstraint and/or Levy which it received on February 21, 2007
5. RD Santiago's reply denying its motion for reconsideration which it received on April 15, 2007.

Except for the PCL which PDCI denied to have received, all the aforementioned letters were actually received and acknowledged by PDCI. Verily, PDCI cannot deny that the CIR did act on the company's protest.

Following this Court's ruling in *CIR v. Isabela Cultural Corporation*,³⁰ the CTA *En Banc* considered the Final Notice Before Seizure as CIR's action on PDCI's protest and reckoned the thirty-day period for appeal from PDCI's receipt thereof.

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²⁹ *Id.* at 112, CTA-Second Division Decision.

³⁰ 413 Phil. 376 (2001).

x x x

x x x

x x x

The main question that must be resolved is whether or not respondent failed to act on the assessment, giving credence to petitioner's Petition for Review, or was there a final denial from which the prescriptive period shall be tolled.

Based on the review conducted over all the pieces of evidence for this case, the Court En Banc finds that there was indeed a denial by respondent.

On December 21, 2006, respondent issued a Final Notice Before Seizure. x x x

In the case of Commissioner of Internal Revenue v. Isabela Cultural Corporation, which was also cited by the Court in Division, the nature of a Final Notice Before Seizure was discussed extensively. x x x

Thus, applying the above cited case to the present will lead Us to the conclusion that there was a denial in this case.

This negates the allegation of petitioner that there was inaction on the part of the respondent. That being so, petitioner's Petition for Review based on inaction becomes improper. **The correct recourse that petitioner should have done was to dispute the final decision on the assessment with the Court within thirty (30) days upon its receipt of Final Notice Before Seizure.** x x x

The letter that petitioner filed on January 15, 2007, requesting that the case be referred back to Revenue Region No. 13 so that it can adduce evidence did not stop the running of the prescriptive period. Section 228 of the 1997 NIRC, as amended is clear when it stated that upon final denial the only recourse left is to elevate the assessment to the Court of Tax Appeals within a period of thirty (30) days. x x x

Unfortunately, petitioner chose to file a Petition For Review only on October 31, 2007, which was already beyond the period allowed by law.³¹ x x x (Emphasis supplied)

As the Final Notice After Seizure is the final decision on its protest, PDCI's subsequent motions for reconsideration thereafter filed did not toll the running of the thirty-day period for appeal to the CTA.³²

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³¹ *Id.* at 68-71, CTA En Banc Decision.

³² *Fishwealth Canning Corporation v. CIR*, 624 Phil. 518, 522 (2010).

PDCI insists, however, that the thirty-day period should be counted from its receipt of the certificate of sale since the supposed nullity of the auction sale was also raised in the petition. On this score, the CTA ruled that the thirty-day period should be reckoned from PDCI's notice of the adverse BIR ruling allowing the auction sale to proceed.

Section 11 of R.A. No. 1125, as amended, provides that a party adversely affected by a decision or ruling of the CIR may file an appeal with the CTA within thirty days from receipt of such decision or ruling. As it was, PDCI failed to appeal the decision to proceed with the auction sale within this period. The CTA *En Banc*, citing the CTA-Second Division, correctly refused to give course to PDCI's petition, *viz.*:

x x x 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-514-007 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 R.A. No. 1125, as amended by R.A. 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 only filed on October 31, 2007 or two (2) days after the lapse of the thirty-day period to appeal. The belated filing of appeal deprives this Court of any authority to entertain it.**³³ x x x (Emphasis supplied)

In *RCBC v. CIR*,³⁴ the Court ordained that failure to comply with the thirty-day statutory period deprived the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment, thus:

x x x [I]t is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction

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³³ *Id.* at 83, CTA En Banc Resolution.

³⁴ 550 Phil. 316, 324 (2007).

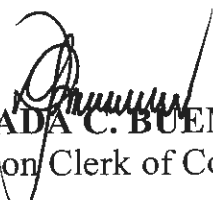
to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals 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.** x x x (Emphasis supplied)

Being a court of special jurisdiction, the Court of Tax Appeals can take cognizance only of such matters as are clearly within its jurisdiction.³⁵ While the right to appeal a decision of the CIR to the Court of Tax Appeals is a statutory remedy, the requirement that appeal must be brought within the prescribed thirty day period is jurisdictional.³⁶

ACCORDINGLY, the petition is **DENIED**. The Decision dated July 25, 2014 and Resolution dated December 16, 2014 of the Court of Tax Appeals in CTA EB Case No. 986 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *file 11/24*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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³⁵ *CIR v. Villa*, 130 Phil. 3, 7 (1968).

³⁶ *RCBC v. CIR*, 524 Phil. 524, 532 (2006).



COCHINGYAN & PERALTA
LAW OFFICES
Counsel for Petitioner
Unit 1202, 139 Corporate Center
139 Valero Street, Salcedo Village
1227 Makati City

Court of Tax Appeals
National Government Center
Diliman, 1101 Quezon City
(CTA EB Case No. 986)
(CTA Case No. 7700)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

LITIGATION DIVISION
BUREAU OF INTERNAL REVENUE
Room 501, 5/F BIR National Office
Building, Agham Road, Diliman
1101 Quezon City

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