Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MISNET, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 210604

Present:

CARPIO, *J., Chairperson,*
PERLAS-BERNABE,
CAGUIOA,*
REYES, J. JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

03 JUN 2019

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DECISION

REYES, J. JR., *J.*:

This resolves the Petition for Review on *Certiorari* from the Decision[1] dated July 15, 2013 and Resolution[2] dated December 9, 2013 of the Court of Tax Appeals (CTA) *En Banc*, in CTA EB Case No. 915.

On November 29, 2006, petitioner received a Preliminary Assessment Notice (PAN)[3] from respondent Commissioner of Internal Revenue (CIR) stating that after examination, there was an alleged deficiency in taxes for taxable year 2003 amounting to ₱11,329,803.61, representing the expanded withholding tax (EWT) and final withholding VAT. Petitioner filed a letter-protest on the PAN.

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* On wellness leave.

1 Penned by Associate Justice Caesar A. Casanova, with Associate Justices Roman G. Del Rosario (Presiding Justice), Juanito C. Castañeda, Jr., Lovell R. Bautista; Erlinda P. Uy, Esperanza R. Fabon-Victorino; Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban; concurring; *rollo*, pp. 521-536.

2 Id. at 33-34.

3 Id. at 50

Thereafter, on January 23, 2007, petitioner received a Formal Assessment Notice (FAN)[4] which states that petitioner's tax deficiency for the year 2003, amounted to ₱11,580,749.31, inclusive of ₱25,000.00 Compromise Penalty. Thus:

Expanded Withholding Tax (EWT)	₱ 1,781,873.55
Final Withholding of VAT	9,773,875.76
SUBTOTAL	11,555,749.31
Add: Compromise Penalty	25,000.00
TOTAL	₱ 11,580,749.31

On February 9, 2007, petitioner paid the amount of ₱2,152.41 for certain undisputed assessments.[5] On the same day, petitioner administratively protested the FAN by filing a request for reconsideration.[6] The CIR acknowledged receipt of the payment and the protest letter and informed the petitioner that its tax docket had been forwarded to Revenue District Officer (RDO) No. 049, North Makati.[7] On May 28, 2007, the CIR informed petitioner that Revenue Officer (RO) Josephine L. Paralejas has been authorized to verify the documents relative to its request for reinvestigation and reiterated the previous assessment of petitioner's deficiency taxes for taxable year 2003 in the amount of ₱11,580,749.31.[8] On June 1, 2007, petitioner sent a letter to RO Josephine L. Paralejas reiterating its protest to the PAN and the FAN.

On April 28, 2008, the CIR again wrote a letter to petitioner informing it that it found additional deficiency taxes due.[9] On May 8, 2008, petitioner protested this letter.

On March 28, 2011, petitioner received an Amended Assessment Notice reflecting an amended deficiency EWT after reinvestigation. On the same date, petitioner received a Final Decision on Disputed Assessment (FDDA) stating that after reinvestigation, there was still due from petitioner the amount of ₱14,564,323.34, representing deficiency taxes, broken down as follows:

Expanded Withholding Tax (with Interest)	₱ 430,716.17
Final Withholding of VAT (with 25% Surcharge & Interest)	14,108,607.17
Compromise Penalty	25,000.00
TOTAL	₱ 14,564,323.34

4 Id. at 54-56
5 Id. at 61.
6 Id. at 63.
7 Id. at 64.
8 Id. at 67.
9 Id. at 68.

This FDDA was received by petitioner on March 28, 2011.[10]

On April 8, 2011, petitioner filed a letter-reply[11] to the Amended Assessment Notice and FDDA, which was received by the CIR on April 11, 2011. On May 9, 2011, the CIR sent a letter[12] to petitioner which states in part that petitioner's letter-reply dated April 8, 2011 produced no legal effect since it availed of the improper remedy.[13] It should have appealed the final decision of the CIR to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said Decision, otherwise, the assessment became final, executory and demandable.[14]

On May 27, 2011, petitioner filed a Petition for Relief from Judgment[15] with respondent Commissioner arguing that it was not able to file its proper appeal of the FDDA due to its mistake and excusable negligence as it was not assisted by counsel. On June 29, 2011, petitioner received a Preliminary Collection Letter[16] dated June 22, 2011, which is deemed a denial of petitioner's Petition for Relief.[17]

On July 26, 2011, petitioner filed a Petition for Review[18] docketed as CTA Case No. 8313, with the Court of Tax Appeals which was raffled to the First Division. Meanwhile, the CIR filed a Motion to Dismiss the petition on the ground of lack of jurisdiction – arguing that the assessment against petitioner has become final, executory and demandable for its failure to file an appeal within the prescribed period of thirty (30) days.

In a Resolution dated March 27, 2012,[19] the CTA 1st Division granted CIR's Motion to Dismiss. Petitioner filed a Motion for Reconsideration[20] of the March 27, 2012 Resolution. On June 27, 2012, petitioner received from CTA 1st Division a Resolution dated June 22, 2012[21] denying its Motion for Reconsideration.

On July 12, 2012, petitioner filed a Petition for Review (CTA EB Case No. 915) with the CTA *En Banc*.

In a Decision dated July 15, 2013, the CTA *En Banc* dismissed petitioner's Petition for Review on the ground of lack of jurisdiction as the lapse of the statutory period to appeal rendered the subject deficiency taxes final, executory and demandable.[22] On August 6, 2013, petitioner filed a

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10 Id. at 8.
11 Id. at 76.
12 Id. at 77.
13 Id.
14 Id.
15 Id. at 78-82.
16 Id. at 192.
17 Id. at 11.
18 Id. at 104-122.
19 Id. at 200-205.
20 Id. at 206-211.
21 Id. at 213-217.
22 Supra note 1, at 535.

Motion for Reconsideration but the said Motion was denied in a Resolution dated December 9, 2013.[23]

Dissatisfied, petitioner filed the instant Petition with this Court raising the lone issue that—

> THE HONORABLE COURT OF TAX APPEALS [*EN BANC*] GRAVELY ERRED IN DISMISSING THE PETITION FOR REVIEW FOR LACK OF JURISDICTION, BECAUSE IT THEREBY DISREGARDED THE REMEDY OF PETITION FOR RELIEF IN TAX CASES, PURSUANT TO SECTION 3 OF RULE 1 OF THE REVISED RULES OF THE COURT OF TAX APPEALS, SECTIONS 1 TO 3 OF RULE 38 OF THE RULES OF COURT, AND THE RULING OF THE SUPREME COURT IN THE CASE OF GESULGON [*V.*] NLRC.[24]

Otherwise stated, the issue obtaining in the instant case is whether or not the CTA *En Banc* correctly dismissed petitioner's Petition for Review on the ground of lack of jurisdiction.

Section 228 of the 1997 National Internal Revenue Code of the Philippines (NIRC) which provides for the remedies of a taxpayer in case of an adverse final decision by the CIR on Disputed Assessment, thus:

> **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: x x x
>
> x x x x
>
> 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 (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. (Emphasis supplied)

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[23] Supra note 2.
[24] Id. at 13.

It bears to stress that the perfection of an appeal *within the statutory period* is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review.[25]

In the instant case, petitioner allegedly failed to observe the 30-day period within which to appeal the final decision of the CIR to the CTA. As records would show, petitioner admittedly received the FDDA on March 28, 2011. Reckoned from this date of receipt, it has until April 27, 2011, within which to appeal with the CTA. However, petitioner filed its appeal (Petition for Review) only on July 26, 2011 or after the lapse of ninety-three (93) days from its receipt of the FDDA. It appears that petitioner's filing of an appeal with the CTA was beyond the statutory period to appeal.

Nonetheless, this Court has on several occasions relaxed this strict requirement. We have on several instances allowed the filing of an appeal outside the period prescribed by law in the interest of justice, and in the exercise of its equity jurisdiction.[26] Thus:

> x x x [F]or a party to seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal, **strong compelling reasons** such as serving the ends of justice and preventing a grave miscarriage thereof must be shown, in order to warrant the Court's suspension of the rules. Indeed, the Court is confronted with the need to balance stringent application of technical rules *vis-a-vis* strong policy considerations of substantial significance to relax said rules based on equity and justice.[27] (Emphasis supplied; citation omitted)

Petitioner averred that after receiving the Amended Assessment Notice and the FDDA of the CIR on March 28, 2011, it filed, without the assistance of a counsel, a letter protesting the Amended Assessment Notice, with Regional Director Mr. Jaime B. Santiago, of RDO No. 049, Makati City. This letter of protest was filed by petitioner on April 11, 2011[28] or within the statutory period within which to appeal. Apparently, petitioner was merely relying on the statement in the said Amended Assessment Notice, which reads:

> IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING INDICATING YOUR REASONS WITH THE COMMISSIONER OF INTERNAL REVENUE, BIR DILIMAN, QUEZON CITY OR THE REGIONAL DIRECTOR WITHIN 30 DAYS FROM RECEIPT HEREOF: x x x[29]

Thus, petitioner opted to file the protest with the Regional Director. On May 12, 2011, petitioner received a letter informing it that its filing of a

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25 *Jocson v. Baguio*, 259 Phil. 153, 158 (1989).

26 *Toledo v. Intermediate Appellate Court*, 236 Phil. 619, 625 (1987), citing *Vda. De Crisologo v. Court of Appeals*, 137 SCRA 238.

27 *Trans International v. Court of Appeals*, 348 Phil. 830, 838 (1998).

28 *See* Affidavit of Merit, *rollo*, p. 89.

29 Id. at 71.

letter of protest was an improper remedy.[30] Therefore, petitioner, on May 27, 2011, filed a Petition for Relief from Judgment on the ground of mistake in good faith for relying on the statement provided in the Amended Assessment Notice. Petitioner contends that the CTA *En Banc* should have taken into consideration that the filing of the Petition for Relief from Judgment has stopped the running of the period to appeal. Petitioner insists that all of these incidents constitute excusable delay that justified its belated filing of an appeal with the CTA.

We sustain petitioner's argument.

When petitioner sent a letter-reply[31] dated April 8, 2011 to the Regional Director, it was actually protesting both the Amended Assessment Notice and the FDDA. The Amended Assessment Notice[32] reflects the amended deficiency EWT of petitioner after reinvestigation while the FDDA[33] reflects the Final Decision on: (a) petitioner's deficiency EWT; (b) Final Withholding of VAT; and (c) Compromise Penalty. Since the deficiency EWT is a mere component of the aggregate tax due as reflected in the FDDA, then the FDDA cannot be considered as the final decision of the CIR as one of its components - the amended deficiency EWT – is still under protest.

Petitioner was correct when it protested with the Regional Director the deficiency EWT as per the Amended Assessment Notice sent by the BIR. However, instead of resolving the protest, the Regional Director informed the petitioner that it was an improper remedy. A ruling totally inconsistent with the statement reflected in the Amended Assessment Notice, which states that protest must be filed with the CIR or the Regional Director within 30 days from receipt thereof.[34] Apparently, the Regional Director has hastily presumed that petitioner was already protesting the FDDA, which incidentally was received by petitioner on the same date as that of the Amended Assessment Notice.

With petitioner's pending protest with the Regional Director on the amended EWT, then technically speaking, there was yet no final decision that was issued by the CIR that is appealable to the CTA. It is still incumbent for the Regional Director to act upon the protest on the amended EWT– whether to grant or to deny it. Only when the CIR settled (deny/grant) the protest on the deficiency EWT could there be a final decision on petitioner's liabilities. And only when there is a final decision of the CIR, would the prescriptive period to appeal with the CTA begin to run.

Hence, petitioner's belated filing of an appeal with the CTA is not without strong, compelling reason. We could say that petitioner was merely exhausting all administrative remedies available before seeking recourse to

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30 Id. at 89.
31 Id. at 76.
32 Id. at 71.
33 Id. at 72.
34 Id. at 71.

the judicial courts. While the rule is that a taxpayer has 30 days to appeal to the CTA from the final decision of the CIR, the said rule could not be applied if the Assessment Notice itself clearly states that the taxpayer must file a protest with the CIR or the Regional Director within 30 days from receipt of the Assessment Notice. Under the circumstances obtaining in this case, we opted not to apply the statutory period within which to appeal with the CTA considering that no final decision yet was issued by the CIR on petitioner's protest. The subsequent appeal taken by petitioner is from the inaction of the CIR on its protest.

In this case, petitioner's appeal with the CTA was basically anchored on two points of contention, to wit: (a) the BIR's assessment of EWT which has no basis in fact and in law. Petitioner argues that it is not a top 10,000 Corporation, hence, not all its purchases are subject to the 1% and 2% EWT; and (b) the withholding of the VAT on royalty payments for the software application it purchased from a non-resident foreign corporation. Petitioner argues that it is only a reseller (engaged in the buy and sell) of Microsoft products and not a licensor. Thus, the income payments made to Microsoft do not constitute royalty income subject to withholding VAT but merely a business income. It maintained that even Revenue Memorandum Circular (RMC) No. 44-2005 issued by the Bureau of Internal Revenue (BIR) on September 7, 2005 does not consider payments for computer software as royalties but business income. And lastly, petitioner argues that RMC No. 7-2003 issued on November 18, 2003, which was relied upon by the BIR in assessing it with deficiency withholding tax on VAT on royalties, does not expressly state when it would take effect. Thus, petitioner opined that it cannot be given retroactive effect (to cover its case), otherwise, it will impose liabilities not existing at the time of its passage.

If petitioner's right to appeal would be curtailed by the mere expediency of holding that it had belatedly filed its appeal, then this Court as the final arbiter of justice would be deserting its avowed objective, that is to dispense justice based on the merits of the case and not on a mere technicality.[35]

Since the CTA First Division has the exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on disputed assessment,[36] it is just proper to remand the case to it in order to determine whether petitioner is indeed liable to pay the deficiency withholding tax on VAT on royalties. It should be noted that the CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems.[37] Thus, this Court has no jurisdiction to review tax cases at the first instance without first letting the CTA study and resolve the same.[38]

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35 *Trans International v. Court of Appeals,* supra note 27, at 838.
36 REVISED RULES OF THE COURT OF TAX APPEALS, Rule 4, Sec. 3 (a), par. 1.
37 *Gaw, Jr. v. Commissioner of Internal Revenue*, G.R. No. 222837, July 23, 2018.
38 Id.

WHEREFORE, the instant petition is **GRANTED**. The case is **REMANDED** to the Court of Tax Appeals 1st Division which is **DIRECTED** to reinstate petitioner's Petition for Review (appeal), in CTA Case No. 8313 and to resolve the same on the merits with reasonable dispatch.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

(On Wellness Leave)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LUCAS P. BERSAMIN
Chief Justice