

THIRD DIVISION

[G.R. No. 202105, April 28, 2021]

LA FLOR DELA ISABELA, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT. D E C I S I O N

Hernando, J.:

Challenged in this Petition^[1] are the February 2, 2012 Decision^[2] and May 24, 2012 Resolution^[3] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB No. 672, which denied petitioner La Flor Dela Isabela, Inc.'s (La Flor) petition for cancellation of assessments issued by respondent Commissioner of Internal Revenue (CIR) for lack of merit.

The Antecedents:

On September 6, 2000, the CIR issued a Letter of Authority^[4] for the examination of La Flor's books of account for "all internal revenue taxes for the period January 1, 1999 to December 31, 1999."

In connection thereto, La Flor executed five waivers of the statute of limitations to extend the CIR's period to assess and collect the deficiency taxes, to wit:

- a) First Waiver^[5] dated May 28, 2002 to expire on December 1, 2002;
- b) Second Waiver^[6] dated October 2, 2002 effective until June 30, 2003. The waiver was received by the CIR on the same day but was notarized only on November 4, 2002;
- c) Third Waiver^[7] dated April 11, 2003 which was effective until December 31, 2003. The said Waiver was notarized on the same day but was submitted to the CIR's Large Taxpayers Audit and Investigation Division (LTAID) II only on April 14, 2003. It was signed by Assistant Commissioner for LTAID II Edwin R. Abella;
- d) Fourth Waiver^[8] dated January 6, 2004 effective until December 31, 2004; and
- e) Fifth and final Waiver^[9] on November 4, 2004 effective until June 30, 2005.

On April 8, 2003, the company received a Preliminary Assessment Notice dated March 19, 2003.^[10]

On March 14, 2005, La Flor received a Formal Letter of Demand (FLD)^[11] with the following attachments: (a) Assessment No. LTAID II IT-99-00077 for deficiency income tax (IT); (b) Assessment No. LTAID II VT-99-0091 for value-added tax (VAT); (c) Assessment No. LTAID II WC-99-00019 for withholding tax (WT) on

compensation; and (d) Assessment No. LTAID II CP-99-00020 for compromise penalty.

The company filed its protest^[12] on March 30, 2005 against the FLD and a Supplemental Protest Letter^[13] on April 12, 2005.

Thereafter, on July 9, 2007, it received the CIR's Final Decision on Disputed Assessments (FDDA)^[14] dated June 1, 2007, with a total assessment of deficiency taxes in the amount P10,460,217.23.

On October 8, 2007, La Flor applied for a tax amnesty under Republic Act No. (RA) 9480,^[15] as well as for a compromise on October 18, 2007 pursuant to Section 204 of the National Internal Revenue Code (NIRC).

On November 23, 2007, the company received an undated Warrant of Distrainment and/or Levy (WDL)^[16] issued by the CIR. This prompted petitioner to file a Petition for Review with the CTA on November 29, 2007, assailing the CIR's issuance of WDL.

Ruling of the Court of Tax Appeals in Division:

In its June 9, 2010 Decision,^[17] the CTA's Former Second Division dismissed La Flor's petition on the ground that it was filed out of time. It held that La Flor had thirty (30) days or until August 8, 2007 from July 9, 2007 within which to appeal the CIR's FDDA as per Section 228 of the NIRC, as amended, or to elevate its protest to the Commissioner as provided in Section 3.1.5 of Revenue Regulations No. 12-99. However, instead of appealing the said FDDA or elevating its protest to the Commissioner, La Flor availed of the tax amnesty under RA 9480 for its assessed IT and VAT deficiencies and filed an application for compromise for its assessed WT deficiencies on October 8, 2007 and October 18, 2007, respectively. Hence, its Petition for Review which was filed on November 29, 2007, or three months from July 9, 2007, with the CTA in Division was clearly beyond the 30-day reglementary period. The FDDA dated June 1, 2007, therefore, had become final, executory, and demandable.

La Flor filed a Motion for Reconsideration, which was denied by the CTA Division in its August 4, 2010 Resolution.^[18]

Hence, La Flor filed a Petition for Review with the CTA *En Banc* on September 7, 2010.

Ruling of the Court of Tax Appeals *En Banc*:

In the assailed February 2, 2012 Decision,^[19] the CTA *En Banc* denied La Flor's petition for lack of merit. It held that if a protest is not acted upon by the CIR within 180 days from submission of supporting documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period. When the CIR issued its FLD dated March 21, 2005, petitioner timely filed its protest on March 30, 2005. It subsequently filed a Supplemental Protest Letter to submit additional documents on April 12, 2005.

However, since the CIR did not act on La Flor's protest within 180 days from the submission of its Supplemental Protest Letter on April 12, 2005, petitioner had 30 days from October 9, 2005, or until November 8, 2005, within which to file a Petition for Review before the CTA. However, petitioner slept on its right and sought relief only on November 29, 2007, or more than two years beyond the reglementary period. According to the CTA *En Banc*, even granting that the 30-day period to appeal commenced to run only from July 9, 2007, when La Flor received the CIR's FDDA dated June 1, 2007, still La Flor's petition filed on November 29, 2007 was beyond the 30-day reglementary period.

Moreover, the CTA *En Banc* found all waivers executed by La Flor to be valid. The tax court noted that before the expiration of the last waiver, the CIR issued FLD dated March 14, 2005, which was received by petitioner on March 21, 2005. Hence, considering that all waivers were validly executed, the subsequent issuance by the CIR of the WDL for the purpose of collecting the assessed tax due was necessarily valid.

Petitioner filed a Motion for Reconsideration which was denied by the CTA *En Banc* in its May 24, 2012 Resolution.^[20]

Hence, this Petition.

Issues

The issues presented for Our resolution are as follows:

1. Whether the CTA erred in not ruling that the assessment and WDL are null and void;
2. Whether the CTA erred in not ruling that La Flor's obligation to pay IT and VAT deficiency has been absolved by its availment of the tax amnesty; and
3. Whether the CTA erred in ruling that petitioner is liable for compromise penalty.^[21]

Arguments of the Petitioner:

Petitioner argues that the waivers were null and void and thus did not toll the running of the prescriptive period for the CIR to make the assessment.^[22] It also claims that the CTA had jurisdiction to rule on the validity or invalidity of the assessments and the WDL.

La Flor further contends that the ruling in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue* (Philippine Journalists^[23]) that invalidated the therein assessments and warrant of distraint and levy due to the nullity of the waiver executed by the taxpayer for its failure to strictly comply with the requisites of a valid, binding, and enforceable waiver of statute of limitations should similarly apply in this case.

Petitioner insists that the first waiver was null and void as to the assessed VAT deficiency for the first quarter of 1999 and WT deficiency from January to April 1999 as it was executed only on May 28, 2002, when the said assessed VAT and WT

deficiencies had already prescribed. Similar to the first waiver, the second waiver was also null and void as it was executed on October 2, 2002 beyond the three-year prescriptive period.^[24]

As regards the third waiver, petitioner avers that no date of acceptance was provided by the CIR, hence, it was null and void for being incomplete and defective.

^[25] The fourth waiver was not accepted by the CIR or any duly authorized representative. The Chief of LTAID II, Manuel V. Mapoy, had no authority to accept and agree with the waiver for and on behalf of the CIR. Also, the fourth waiver was executed only on January 6, 2004 or six days after the expiration of the third waiver.

^[26] Lastly, the fifth waiver was necessarily null and void considering the nullity of the previous four waivers.^[27]

Moreover, La Flor opines that it has been absolved from paying its IT and VAT deficiencies by virtue of its availment of the tax amnesty under RA 9480 on October 8, 2007. Petitioner further maintains that Section 8(f)^[28] of RA 9480 does not apply to its case as there was yet no final and executory judgment by the courts on the validity and finality of the assessment. Hence, as to its IT and VAT deficiencies, petitioner is immune from paying the same.^[29]

Lastly, petitioner argues that it is not liable to pay compromise penalty considering that the CIR failed to present proof that La Flor agreed to a P25,000 compromise penalty.^[30]

Arguments of the Respondent:

On the other hand, respondent CIR insists that La Flor cannot question the validity of assessments in the guise of requesting the cancellation of an undated WDL because the latter was issued pursuant to an FDDA which had already become final, executory, and demandable.^[31] It argues that *Philippine Journalists* cannot be applied in the case at bar as there is no issue as to whether the CTA could assume jurisdiction over a cancellation of WDL since the present petition disputing the assessment made by the CIR was belatedly filed. Hence, the tax court cannot anymore assume jurisdiction over the present petition.^[32]

Further, respondent CIR contends that due to La Flor's failure to file on time its petition before the CTA, its right to question the validity of the five waivers had been waived. In addition, the CTA *En Banc* already passed upon the issue of the validity of these waivers. As a highly specialized agency, the conclusions of the CTA are not set aside as a matter of principle.^[33]

Lastly, respondent CIR maintains that the CTA did not err when it did not rule on petitioner's obligation to pay IT and VAT in lieu of its application for tax amnesty and to pay a compromise penalty. Since the petition was filed beyond the reglementary period, the tax court correctly refrained from ruling on said issues. Besides, La Flor had applied for tax amnesty on October 8, 2007. Ten days later or on October 18, 2007, it also applied for a compromise agreement. Hence, with its subsequent application for compromise agreement, petitioner abandoned its previous application for a tax amnesty.^[34]

Our Ruling

The petition is meritorious.

Jurisdiction of the Court of Tax Appeals:

Section 7 of RA 9282 provides for the exclusive appellate jurisdiction of the CTA on matters arising under the NIRC or other law administered by the Bureau of Internal Revenue (BIR), to wit:

Sec. 7. Jurisdiction. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x

2. Inaction by 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 matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis supplied.)

In *Philippine Journalists*, we ruled that the CTA's appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds. Section 7 (a)(2) of RA 9282 also covers "other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." Clearly, the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid and rule on the validity of the five waivers of the statute of limitations and La Flor's application for tax amnesty under RA 9480.

CIR's period to assess and collect internal revenue taxes:

Section 203 of the NIRC, as amended, provides for a period of three years for the BIR to assess and collect internal revenue taxes, counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later. Consequently, any assessment issued after the expiration of such period is no longer valid and effective.

On the other hand, Section 222 of the NIRC provides for the period to collect taxes by WDL, to wit:

Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

x x x x

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may