

SECOND DIVISION

[G.R. No. 210604, June 03, 2019]

MISNET, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

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 P11,329,803.61, representing the expanded withholding tax (EWT) and final withholding VAT. Petitioner filed a letter-protest on the PAN.

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 P11,580,749.31, inclusive of P25,000.00 Compromise Penalty. Thus:

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

On February 9, 2007, petitioner paid the amount of P2,152.41 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 P11,580,749.31.^[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 P14,564,323.34, representing deficiency taxes, broken down as follows:

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

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 181 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 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)

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