THIRD DIVISION

[G.R. No. 225809, March 17, 2021]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. SOUTH ENTERTAINMENT GALLERY, INC., RESPONDENT.

DECISION

LEONEN, J.:

The warrant of distraint or levy issued by the Commissioner of Internal Revenue constitutes constructive and final denial of respondent's belated protest, from which the 30-day period to appeal to the Court of Tax Appeals should be reckoned. Respondent's petition for review filed after 282 days is time-barred, and should have been dismissed by the Court of Tax Appeals for lack of jurisdiction.

This is a Petition for Review on Certiorari[1] seeking to reverse and set aside the Decision[2] and Resolution[3] of the Court of Tax Appeals En Banc, which affirmed the Second Division's Decision.[4] The Court of Tax Appeals cancelled the assessment for deficiency income tax and value-added tax issued against South Entertainment Gallery, Inc. for taxable year 2005, and ordered the Commissioner of Internal Revenue (Commissioner) to withdraw its warrant of distraint and levy.[5]

South Entertainment Gallery, Inc. (South Entertainment) is a corporation engaged in operating and conducting bingo games and other games of chance, pursuant to a Grant of Authority issued by the Philippine Amusement and Gaming Corporation (PAGCOR).[6]

On February 21, 2008, South Entertainment received a Preliminary Assessment Notice[7] dated February 4, 2008, informing it of its tax deficiencies.[8] On April 10, 2008, the Commissioner sent by registered mail a Formal Letter of Demand and Assessment Notice No. 021-R-0604112007 dated April 2, 2008 to respondent.[9] South Entertainment, however, denies receiving the mail.[10] Subsequently, South Entertainment received a Preliminary Collection Letter[11] dated June 10, 2008, demanding payment of its internal revenue tax liabilities of P4,067,264.18, with the following details:[12]

Kind of Tax	Tax Due	Surcharge	Interest	Compromise	Total Amount Due
Income Tax	247,216.00		79,521.15	4,000.00	330,737.15
VAT	2,046,399.96	511,735.00	1,119,521.40	20,000.00	3,697,656.36
Withholding	25,077.32		13,793.35		38,870.67
Total	**P2,318,693.28**	**P511,735.00**	**P112,835.90**	**P24,000.00**	**P4,067,264.18**[13]

South Entertainment replied[14] to the Preliminary Collection Letter informing the Commissioner that it already paid the withholding tax deficiency.[15] With regard to the income tax and value-added tax liabilities, South Entertainment claimed exemption from any kind and form of taxes invoking PAGCOR's exemption under Presidential Decree No. 1869.[16]

Nonetheless, on June 22, 2010, the Commissioner issued a Warrant of Distraint and/or Levy[17] through the OIC-Revenue District Officer of South Pampanga.[18]

South Entertainment requested the cancellation and withdrawal of the Warrant through a letter[19] dated September 24, 2010.[20] It averred that it did not receive any Final Assessment Notice and it is exempt from income tax and value-added tax liabilities.[21]

On March 25, 2011, South Entertainment received a letter[22] from OIC-Revenue District Officer Amador P. Ducut, reiterating the collection of the deficiency income and value added taxes for 2005.[23]

On March 31, 2011, South Entertainment filed a Petition for Review (With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)[24] with the Court of Tax Appeals.[25] It claimed that the Warrant of Distraint and Levy was premature and invalid because it had not received a Formal Assessment Notice from the Commissioner.[26]

After hearing and South Entertainment's submission of documentary requirements, the Court of Tax Appeals granted the application for a Temporary Restraining Order.[27]

During trial, both parties presented their testimonial and documentary evidence.[28] Upon the filing of the parties' respective memorandum,[29] the Second Division of the Court of Tax Appeals rendered a Decision on July 9, 2014, ruling in favor of South Entertainment.[30] It held that the Commissioner failed to prove that the Final Assessment Notice was indeed received by South Entertainment.[31] The dispositive portion of its Decision reads:

> **WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for deficiency Income Tax and VAT for taxable year 2005 is **CANCELLED and SET ASIDE** and respondent is ordered to withdraw the Warrant of Distraint and Levy dated June 22, 2010.
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> **SO ORDERED.**[32] (Emphasis in the original)

The Commissioner filed a Motion for Reconsideration, but it was denied by the Court of Tax Appeals Second Division in a Resolution[33] dated October 22, 2014.

The Commissioner then filed an appeal, which was likewise denied by the Court of Tax Appeals En Banc in its January 4, 2016 Decision.[34] The En Banc sustained the Division's ruling that the Commissioner failed to prove service of the Final Assessment Notice to South Entertainment.[35] On the issue of jurisdiction raised, the En Banc held that South Entertainment's petition for review was not filed out of time. According to the En Banc, the 30-day reglementary period should be reckoned from March 25, 2011, the date South Entertainment received a Letter from OIC-RDO Amador P. Ducut reiterating the collection of the deficiency taxes;[36] and not from June 22, 2010, the date South Entertainment received the Warrant of Distraint and Levy.[37]

Presiding Justice Roman G. Del Rosario disagreed with the majority. In his Dissenting Opinion, he opined that the 30-day period should be reckoned from respondent's receipt of the Warrant of Distraint and Levy on June 22, 2010, or until July 22, 2010. He explained that the warrant constitutes an act of the Commissioner on "other matters" arising under the National Internal Revenue Code which, pursuant to *Philippine Journalist, Inc. v. CIR*,[38] may be the subject of an appropriate appeal with the Court of Tax Appeals.[39]

Presiding Justice Del Rosario pointed out that it took respondent a period of 99 days to question the issuance of the Warrant before the Bureau of Internal Revenue and 282 days before it appealed to the Court of Tax Appeals.[40] Hence, by operation of law, the Warrant of

Distraint and Levy has attained finality and the Court of Tax Appeals had no more jurisdiction to act upon the petition for review filed beyond the reglementary period.[41]

Presiding Justice Del Rosario stressed that to uphold the majority view "would result in the mischievous consequence of a revenue official's responsibility to reply to a taxpayer's communication as constitutive of an extension of the reglementary period of appeal. The right to appeal is not a constitutional right but merely a statutory right, which may not be casually ignored by a revenue official[.]"[42]

The Commissioner filed a motion for reconsideration, which the Court of Tax Appeals En Banc denied in its July 22, 2016 Resolution.[43] The En Banc ruled that the Warrant of Distraint and Levy cannot be considered the final act of the Commissioner from which the counting of the statutory period to appeal must be reckoned because: (1) it was not the last response received by South Entertainment from the Commissioner;[44] and (2) there was no final, executory, and demandable assessment, which the taxpayer could protest, since the subject Final Assessment Notice was not duly served upon South Entertainment[45]

Maintaining his dissent,[46] Presiding Justice Del Rosario reiterated his position that the South Entertainment's petition for review was filed out of time, and consequently, the Warrant of Distraint and Levy has attained finality.[47] He further stated that the Commissioner proved that the Final Assessment Notice was duly served upon South Entertainment in the regular course of the mail[48] Presiding Justice Del Rosario observed:

> Truth to tell, other than its self-serving and blanket denial of receipt of the FAN, there is nothing on record which will show that SEGI presented rebutting evidence to prove that it did not actually receive the FAN. In fact, what is telling here is despite SEGFs insistence that it did not receive the FAN, and consequently, it could not have become valid, final, executory and demandable, SEGI actually paid the deficiency withholding tax assessment after receiving the Preliminary Collection Letter from the CIR in 2008[.][49]

Hence, the Commissioner filed this Petition. In compliance with this Court's Resolution,[50] respondent filed its Comment,[51] and the petitioner her Reply.[52]

Petitioner contends that the reckoning of the 30-day period to appeal under Republic Act No. 1125, as amended by Republic Act No. 9282 should be from June 22, 2010 when respondent received the Warrant of Distraint and Levy.[53] Hence, respondent's petition for review filed on March 31, 2011, or 282 days after it received the warrant, was clearly filed out of time, and the Court of Tax Appeals had no jurisdiction to act on the appeal.[54]

Petitioner further assails the Court of Tax Appeals En Banc's finding that the Warrant of Distraint and Levy was void because the Final Assessment Notice was not properly served upon respondent. She contends that enough testimonial[55] and documentary[56] evidence were presented to prove that the Formal Letter of Demand and Assessment Notice No. 021-R-0604112007 dated April 2, 2008 was indeed served and received by the addressee.[57] She adds that the records of the Bureau of Posts that she presented in evidence are *prima facie* proof that the Final Assessment Notice had been delivered to and received by respondent.[58] Official duty is presumed to have been regularly performed unless rebutted by competent proof.[59]

Respondent counters that the deficiency tax assessments were not valid and are deemed non-existent since no Formal Letter of Demand and Assessment Notice was received by it. Consequently, there is no legal basis for the collection of any deficiency tax.[60]

Arguing for the timeliness of its petition for review, respondent asserts that the "decision" appealable to the Court of Tax Appeals is the Memorandum dated February 3, 2011, which it received on March 3, 2011 or the Letter dated March 25, 2011 with attached Memorandum dated February 3, 2011, which it received on even date. Thus, reckoning the 30-day period from these dates, its petition for review was timely filed.[61]

Finally, respondent contends that "[t]he law, regulation and jurisprudence require the service of the [Final Assessment Notice] upon the taxpayer or at least, upon its agent, and not upon any other person."[62] As found by the Court of Tax Appeals, petitioner "failed to establish by competent evidence" that the Final Assessment Notice was actually received by respondent.[63] Respondent adds that the testimonial and documentary evidence of petitioner reveals that the mail matter under Registry Receipt No. 853 was received by a certain Brian David at the warehouse in the ground floor of SM City Pampanga, not by respondent in its registered address at the 3rd floor of the same mall.[64] Petitioner has never established that Brian David was authorized to receive the Final Assessment Notice or any mail matter addressed to respondent.[65]

In her Reply, petitioner argues that the subject of respondent's appeal is the validity of the Warrant of Distraint and Levy, which is subsumed under "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]"[66] Hence, the period to appeal the Warrant ended as early as July 22, 2010, 30 days after respondent received the Warrant on June 22, 2010, pursuant to Section 11 of Republic Act No. 1125, as amended.[67] She adds that the cases[68] cited by respondent were inapplicable because those cases pertained to a decision on a disputed assessment.[69]

Petitioner maintains that everything reasonable was done to trace the whereabouts of the mail sent to respondent and presented enough evidence to discharge its burden of proving that respondent received the Final Assessment Notice in the due course of the mail.[70] Even assuming that respondent's self-serving denial of its receipt is true, the assessment for deficiency taxes is not voided on this account per se since respondent was adequately informed of the basis of the assessment.[71] Respondent received a Preliminary Assessment Notice dated February 4, 2008, which stated the facts and the law, rules and regulations on which the assessment is based;[72] and after receiving petitioner's preliminary collection letter dated June 10, 2008, which referred to the Final Assessment Notice issued on April 2, 2008, respondent paid the deficiency withholding taxes.[73]

The issues for this Court's resolution are (1) whether or not the Court of Tax Appeals committed a reversible error when it ruled that it had jurisdiction over respondent's petition for review; and (2) whether it erred in affirming the Second Division's ruling that petitioner failed to prove the sendee of the Final Assessment Notice to respondent.

The Petition has merit.

I

The jurisdiction of the Court of Tax Appeals is governed by Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, the pertinent portion of which, provides:

> SECTION 7. *Jurisdiction*. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

1. *Decisions* of the Commissioner of Internal Revenue *in cases involving disputed assessments*, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, *or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue*[.] (Emphasis supplied)

The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be *disputed* by the taxpayer.[74] This is made by filing a request for reconsideration or reinvestigation with the Bureau of Internal Revenue, within 30 days from receipt of the assessment, stating the reasons therefor and submitting such proof as may be necessary. The protest must be ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court, of Tax Appeals.[75] If the protest is denied or is not acted upon within 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 decision or from the lapse of the 180-day period. Failure to comply with the 30-day period would deprive the Court of Tax Appeals of jurisdiction to hear and try the case.[76]

On the other hand, if the taxpayer fails to file a valid protest against the assessment within 30 days from date of receipt thereof, the assessment becomes final, executory, and demandable. [77]

In this case, the Formal Letter of Demand and Final Assessment Notice dated April 2, 2008 was sent by registered mail to the respondent on April 10, 2008. Petitioner did not receive any response from respondent. Thus, petitioner sent a Preliminary Collection Letter dated June 10, 2008.[78]

The Preliminary Collection Letter had a tenor of finality. It made reference to the Formal Letter of Demand and Final Assessment Notice dated April 2, 2008 issued and sent to respondent for the collection of its internal revenue tax liabilities. Respondent was directed to pay the tax liabilities within 10 days from receipt, with a warning that should it fail to do so, petitioner will initiate collection through administrative summary remedies without further notice.[79]

In its June 19, 2008 letter–reply to the Preliminary Collection Letter, respondent stated that it had already paid the withholding tax deficiency and raised its exemption from income tax and VAT deficiencies as PAGCOR licensees. While it essentially assailed the correctness of the deficiency assessments, it *did not raise its non-receipt of the Formal Letter of Demand and Final Assessment Notice*.[80]

In the absence of a timely protest from respondent, it was then reasonable for petitioner to presume that the Formal Letter of Demand and Final Assessment Notice had become final, executory, and demandable, Respondent's protest in its June 19, 2008 letter was belatedly raised. On June 22, 2010, a Warrant of Distraint and. Levy was issued and served against respondent.[81]

The Warrant of Distraint and Levy on June 22, 2010 constitutes a constructive denial or rejection of respondent's claim in its June 19, 2008 letter. It is petitioner's final decision on respondent's belated protest that is appealable to the Court of Tax Appeals. Respondent should have filed its appeal to the Court of Tax Appeals within 30 days from June 22, 2010, or on July 22, 2010, but it failed to do so. Instead, respondent filed a request[82] for withdrawal and cancellation of the Warrant of Distraint and Levy **on September 29,2010**, or **99 days** from receipt of the Warrant.

If the Commissioner will deny the protest, Revenue Regulations No. 12-99 expressly provides