

SECOND DIVISION

[G.R. No. 211289, January 14, 2019]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. LA
FLOR DELA ISABELA, INC., RESPONDENT.**

D E C I S I O N

J. REYES, JR., J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the September 30, 2013 Decision^[1] and the February 10, 2014 Resolution^[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 951, which affirmed the August 3, 2012 Decision^[3] and the October 5, 2012 Resolution of the CTA Third Division (CTA Division).

Factual background

Respondent La Flor dela Isabel, Inc. (La Flor) is a domestic corporation duly organized and existing under Philippine Law. It filed monthly returns for the Expanded Withholding Tax (EWT) and Withholding Tax on Compensation (WTC) for calendar year 2005.^[4]

On September 3, 2008, La Flor, through its president, executed a Waiver of the Statute of Limitations (Waiver)^[5] in connection with its internal revenue liabilities for the calendar year ending December 31, 2005. On February 16, 2009, it executed another Waiver^[6] to extend the period of assessment until December 31, 2009.

On November 20, 2009, La Flor received a copy of the Preliminary Assessment Notice for deficiency taxes for the taxable year 2005. Meanwhile, on December 2, 2009, it executed another Waiver.^[7]

On January 7, 2010, La Flor received the following Formal Letter of Demand and Final Assessment Notices (FANs): (1) LTEADI-II CP-05-00007 for penalties for late filing and payment of WTC; (2) LTADI-II CP 05-00008 for penalties for late filing and payment of EWT; (3) LTADI-II WE-05-00062 for deficiency assessment for EWT; and (4) LTEADI-II WC-05-00038 for deficiency assessment for WTC. The above-mentioned assessment notices were all dated December 17, 2009 and covered the deficiency taxes for the taxable year 2005.^[8]

On January 15, 2010, La Flor filed its Letter of Protest contesting the assessment notices. On July 20, 2010, petitioner Commissioner of Internal Revenue (CIR) issued the Final Decision on Disputed Assessment (FDDA) involving the alleged deficiency withholding taxes in the aggregate amount of P6,835,994.76. Aggrieved, it filed a petition for review before the CTA Division.

CTA Division Decision

In its August 3, 2012 Decision, the CTA Division ruled in favor of La Flor and cancelled the deficiency tax assessments against it. It noted that based on the dates La Flor had filed its returns for EWT and WTC, the CIR had until February 15, 2008 to March 1, 2009 to issue an assessment pursuant to the three-year prescriptive period under Section 203 of the National Internal Revenue Code (NIRC). The CTA Division pointed out that the assessment was issued beyond the prescriptive period considering that the CIR issued the FANs only on December 17, 2009. Thus, it posited that the assessment was barred by prescription.

On the other hand, the CTA Division ruled that the Waivers entered into by the CIR and La Flor did not effectively extend the prescriptive period for the issuance of the tax assessments. It pointed out that only the February 16, 2009 Waiver was stipulated upon and the Waivers dated September 3, 2008 and December 2, 2009 were never presented or offered in evidence. In addition, the CTA Division highlighted that the Waiver dated February 16, 2009 did not comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 because it failed to state the nature and amount of the tax to be assessed.

Thus, it disposed:

WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, the Formal Letter of Demand, with Final Assessment Notices LTEADI-WC-05-00038, LTEADI-WE-05-00062, LTEADI-CP-05-00007, LTEADI-CP-05-00008, all dated December 17, 2009 are hereby CANCELLED and SET ASIDE.

SO ORDERED.^[9]

The CIR moved for reconsideration but it was denied by the CTA Division in its October 5, 2012 Resolution.^[10] Undeterred, it filed a Petition for Review^[11] before the CTA *En Banc*.

CTA En Banc Decision

In its September 30, 2013 Decision, the CTA *En Banc* affirmed the Decision of the CTA Division. The tax court agreed that the EWT and WTC assessments were barred by prescription. It explained that the Waivers dated September 3, 2008 and December 2, 2009 were inadmissible because they were never offered in evidence. The CTA *En Banc* added that these documents were neither incorporated in the records nor duly identified by testimony. It also elucidated that the Waiver dated February 16, 2009 was defective because it failed to comply with RMO No. 20-90 as it did not specify the kind and amount of tax involved. As such, the CTA *En Banc* concluded that the prescriptive period for the assessment of EWT and WTC for 2005 was not extended in view of the inadmissibility and invalidity of the Waivers between the CIR and La Flor. Thus, it disposed:

WHEREFORE, premises considered, the assailed Decision dated August 3, 2012 and the Resolution dated October 5, 2012 are AFFIRMED. The Petition for Review is hereby DISMISSED.

SO ORDERED.^[12]

The CIR moved for reconsideration, but it was denied by the CTA *En Banc* in its February 10, 2014 Resolution.

Hence, this present petition raising the following:

Issues

I

WHETHER THE PRESCRIPTIVE PERIOD UNDER SECTION 203 OF THE NIRC APPLIES TO EWT AND WTC ASSESSMENTS; and

II

WHETHER LA FLOR'S EWT AND WTC ASSESSMENTS FOR 2005 WERE BARRED BY PRESCRIPTION.

The CIR argued that the prescriptive period under Section 203 of the NIRC does not apply to withholding agents such as La Flor. It explained that the amount collected from them is not the tax itself but rather a penalty. The CIR pointed out that the provision of Section 203 of the NIRC only mentions assessment of taxes as distinguished from assessment of penalties. It highlighted that La Flor was made liable for EWT and WTC deficiencies in its capacity as a withholding agent and not in its personality as a taxpayer.

On the other hand, the CIR maintained that even applying the periods set in Section 203 of the NIRC, the EWT and WTC assessment of La Flor had not yet prescribed. It pointed out that La Flor had executed three Waivers extending the prescriptive period under the NIRC. The CIR lamented that the CTA erred in disregarding them because evidence not formally offered may be considered if they form part of the records. It noted that in the Answer it filed before the CTA Division, the subject Waivers were included as annexes. In addition, the CIR assailed that failure to comply with RMO No. 20-90 does not invalidate the Waivers.

In its Comment^[13] dated August 15, 2014, La Flor countered that the CIR's petition for review should be denied outright for procedural infirmities. It pointed out that the petition failed to comply with Bar Matter (B.M.) No. 1922 because the date of issue of the Mandatory Continuing Legal Education (MCLE) compliance of the counsels of the CIR was not indicated. In addition, La Flor noted that the petition for review did not observe Section 2, Rule 7 of the Rules of Court requiring the paragraphs to be numbered. Further, it asserted that the assessment of the EWT and WTC had prescribed because it went beyond the prescriptive period provided under Section 203 of the NIRC. La Flor also assailed that the Waivers should not be considered because they were neither offered in evidence nor complied with the requirements under RMO No. 20-90.

In its Reply^[14] dated February 18, 2015, the CIR brushed aside the allegations of procedural infirmities of its petition for review. It elucidated that failure to indicate the date of issue of the MCLE compliance is no longer a ground for dismissal and that it had stated the MCLE certificate compliance numbers of its counsels. The CIR posited that the Rules of Court does not penalize the failure to number the paragraphs in pleadings.

The Court's Ruling

Other than challenging the merits of the CIR's petition, La Flor believes that the former's petition for review on *certiorari* should be dismissed outright on procedural

grounds. It points out that failure to include the date of issue of the MCLE compliance number of a counsel in a pleading is a ground for dismissal. Further, La Flor highlights that the paragraphs in the CIR's petition for review on *certiorari* were not numbered.

In *People v. Arrojado*,^[15] the Court had already clarified that failure to indicate the number and date of issue of the counsel's MCLE compliance will no longer result in the dismissal of the case, to wit:

In any event, to avoid inordinate delays in the disposition of cases brought about by a counsel's failure to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance, this Court issued an *En Banc* Resolution, dated January 14, 2014 which amended B.M. No. 1922 by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action." Thus, under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records. Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.

On the other hand, even La Flor recognizes that Section 2, Rule 7 of the Rules of Court does not provide for any punishment for failure to number the paragraphs in a pleading. In short, the perceived procedural irregularities in the petition for review on *certiorari* do not justify its outright dismissal. Procedural rules are in place to facilitate the adjudication of cases and avoid delay in the resolution of rival claims.^[16] In addition, courts must strive to resolve cases on their merits, rather than summarily dismiss them on technicalities.^[17] This is especially true when the alleged procedural rules violated do not provide any sanction at all or when the transgression thereof does not result in a dismissal of the action.

Nevertheless, the Court finds no reason to reverse the CTA in invalidating the assessments against La Flor.

Withholding taxes are internal revenue taxes covered by Section 203 of the NIRC.

Section 203 of the NIRC provides for the ordinary prescriptive period for the assessment and collection of taxes, to wit:

SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, **internal revenue taxes** shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed

before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (Emphasis supplied)

On the other hand, Section 222(a)^[18] of the NIRC provides for instances where the ordinary prescriptive period of three years for the assessment and collection of taxes is extended to 10 years, *i.e.*, false return, fraudulent returns, or failure to file a return. In short, the relevant provisions in the NIRC concerning the prescriptive period for the assessment of internal revenue taxes provide for an ordinary and extraordinary period for assessment.

The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.

In *Chamber of Real Estate and Builders' Associations, Inc. v. Hon. Executive Secretary Romulo*,^[19] the Court had succinctly explained the withholding tax system observed in our jurisdiction, to wit:

We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws. The withholding tax system was devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns and third, to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.

Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.^[20]

As a consequence of the withholding tax system, two distinct liabilities arise — one for the income earner/payee and another for the withholding agent. In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,^[21] the Court elaborated:

It is, therefore, indisputable that the withholding agent is merely a tax collector and not a taxpayer, as elucidated by this Court in the case of *Commissioner of Internal Revenue v. Court of Appeals*, to wit:

In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer