REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI/MS INSURANCE CORPORATION (formerly FEB MITSUI MARINE INSURANCE COMPANY, INC.),
Petitioner,

- versus -

C.T.A. CASE NO. 6521

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 29 2003

x- x

RESOLUTION

For our resolution is a "Motion to Dismiss" filed by respondent on November 26, 2002 on the ground of lack of jurisdiction. Respondent claimed that the assessments subject of this petition for review have become final and unappealable due to petitioner's failure to file its protest within the reglementary period prescribed in Section 228 of the Tax Code.

Petitioner, in its manifestation filed on December 18, 2002 and its Opposition to Respondent's Formal Offer of Evidence and Memorandum (Re: Motion to Dismiss), asserted that it was granted a re-investigation and that respondent's Final Decision did not mention any allegation that petitioner allegedly failed to file a protest on time. In the same letter, respondent directed petitioner to appeal the said final decision to this court within thirty (30) days from receipt thereof or in case of disagreement with respondent's decision.

We rule to grant respondent's Motion to Dismiss.

Records show that respondent issued on December 29, 1999 several Assessment Notices, to wit:

Exhibit	Assessment Notice No.	Amount
1	ST-Income-970073-2000	P4,249,112.86
2	ST-WTComp-97-0072-2000	353,164.01
3	ST-EWT-97-0074-2000	278,924.57
4	ST-FWT-97-0075-2000	11,744.02
5	ST-VAT-97-0078-2000	3,019,335.13
6	ST-PREMIUM-97-0077-2000	278,744.50
7	ST-DST-97-0079-2000	1,491,966.96

these notices which were received by petitioner on January 25, without specifying the year.

On January 18, 2001, petitioner requested for a reconsideration of the subject assessments *(p. 607, BIR Records)*. Another request for reconsideration *(pp. 608-610, BIR Records)* was filed by petitioner on January 30, 2001, stating that it failed to receive the original copies of the assessment notices. It claimed that the contractual employee who received the assessment notices might have misplaced the same.

A cursory reading of the documents submitted disclosed that respondent supposedly allowed the conduct of a re-investigation of the questioned assessments notwithstanding petitioner's belated filing of its protest. Such fact may be inferred from respondent's letter dated October 4, 2001, where respondent directed petitioner to submit all the relevant supporting documents within five (5) days from receipt thereof to be utilized in the conduct of the re-investigation. However, no documents were submitted by petitioner after the lapse of the sixty (60)-day period requested as an extension.

In a letter described as the "Final Decision on the Disputed Assessment" dated June 10, 2002, respondent through Assistant Commissioner Edwin Abella, denied petitioner's protest on the ground of lack of factual and legal basis which was stamped "received" by petitioner on July 11, 2002 *(pp. 753-757, BIR Records).*

On July 18, 2002, petitioner elevated the Final Decision of Assistant Commissioner Edwin Abella to the Commissioner of Internal Revenue and requested for reconsideration and final review thereof *(pp. 758-759, BIR Records)*. Without awaiting the decision of respondent Commissioner of Internal Revenue, petitioner filed the instant petition for review with this court on August 8, 2002.

In its Opposition to the Motion to Dismiss, petitioner argued that "by granting a re-investigation to petitioner and then by deciding on such re-investigation (that directs the petitioner to appeal the final decision to the Court of Tax Appeals), the respondent made no allegation that petitioner allegedly failed to file a protest in time."

We cannot give credence to petitioner's contention.

The government can never be in estopped particularly in matters involving taxes – erroneous application and enforcement of the law by public officers do not preclude subsequent correct application of the statute, and the government is never estopped by mistakes or error on the part of its agents ***(PBA vs. CA, 337 SCRA 358)***.

Pursuant to Section 228 of the Tax Code, an 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.

Thus, if the taxpayer fails to file an administrative protest within the reglementary thirty-day period, the assessment becomes final and unappealable. As such, after the lapse of the said period, the assessment can no longer be disputed either administratively or judicially through an appeal to the Court of Tax Appeals. The assessed tax therefore, becomes collectible.

In the case at bar, petitioner filed its protest with the BIR on January 18, 2001, or almost a year from receipt of the subject assessments. Such being the case, the thirty-day period within which to protest the assessments had already lapsed and petitioner is precluded from disputing the subject assessments because these have become final and unappealable. This is regardless of the re-investigation supposedly allowed by the respondent to be conducted and the Final Decision on the Disputed Assessment being rendered. Because when said re-investigation was requested and granted, the assessments had already become final and unappealable.

Petitioner likewise argued that the subject assessments were not timely served to its authorized officers. Yet, petitioner never alluded when the assessments were properly received or that the request for re-investigation filed on January 18, 2001 fell within the thirty (30) day allowed by law. It kept on harping that the burden of proof is upon the respondent to prove that petitioner received the assessment notices. When respondent formally offered documentary evidence that indeed the assessment notices were personally delivered and received by the person at the receiving desk, it objected on the ground that the formal offer is premature. It must be noteworthy that the evidence so presented by the respondent is for the purpose of proving receipt of the assessment notices. Petitioner then resorted to technicalities that the requirements under Revenue Regulations No. 12-99 were not complied with.

Be that as it may, there appeared on the assessment notices, company stamp of petitioner, initials and date "1/25" without the year having been indicated. We cannot conclude that the year is 2001 because petitioner's request for reinvestigation was dated January 18, 2001. Therefore, the only logical conclusion would be is it was received in the year 2000.

Petitioner insisted though that it did not receive the same on January 25, 2000 as alleged by the respondent but it nevertheless failed to show that the protests (request for re-investigation) made on January 18, 2001 and January 30, 2001, were filed within thirty (30) days from receipt of said assessments. As adverted to earlier, petitioner denied proper receipt of the assessments, yet, it did not specify what date the assessments were received which it considered as proper service.

Petitioner further asserted that the Motion to Dismiss can no longer be filed because respondent already filed his Answer.

We do not agree.

A motion to dismiss based on the ground of lack of jurisdiction may be filed anytime. (See Section 1, Rule 9 in relation to Section 1, Rule 16 of the Revised Rules of Court.) The rule is settled that a question of jurisdiction may be raised at any time, even on appeal, provided that its application does not result in a mockery of the tenets of fair play ***(Jimenez v. Patricia, Inc., 340 SCRA 525).***

Considering that petitioner failed to file its protest within the period prescribed by law, the assessments became final and unappealable. Therefore, this court did not acquire jurisdiction over the instant Petition for Review.

WHEREFORE, respondent's "Motion to Dismiss" is hereby **GRANTED** and petitioner's "Petition for Review" is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge