Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

CAGAYAN CORN PRODUCTS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8491
For: Assessment

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
JUL 08 2013
3:25 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review filed on May 14, 2012 by Cagayan Corn Products Corporation as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

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1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
x x x x x x

2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Petitioner seeks cancellation of the assessment for deficiency praying that judgment be rendered declaring null and void Assessment Notice No. 81-we-13-2005-2008-11-92 for deficiency expanded withholding tax in the amount of ₱15,972,492.17 plus interest in the total amount of ₱9,157,562.18 or a total amount of ₱25,130,054.35 for petitioner's failure to withhold 1% withholding tax for its payments to agricultural suppliers for the year 2005[3], as well as Revenue Memorandum Circular No. 44-2007.

Petitioner Cagayan Corn Products Corporation is a domestic corporation organized and existing under Philippine laws. It is engaged in the business of purchase and sale of agricultural products. Petitioner has been classified by the Bureau of Internal Revenue (BIR) as among the top 10,000 corporations.[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, authorized to perform the duties of her Office, including, *inter alia*, the power to decide disputed assessments or other charges, penalties imposed in relation thereto, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended.

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x x x x x x

(1) Decisions of 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 matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Par. 7, Stipulation of Facts, JSFI, Docket, p. 182

[4] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 181

On March 1, 2004, the Secretary of Finance issued Revenue Regulations No. 3-2004, which suspended until further notice the implementation of Section 2.57.2(S) of Revenue Regulations No. 2-98, as amended by Revenue Regulations Nos. 17-2003, 30-2003, and 1-2004, requiring the withholding of one percent (1%) withholding tax on income payments to suppliers of agricultural products.[5] Thus, petitioner ceased to withhold the 1% expanded withholding tax on payments made to suppliers of agricultural products for the taxable year 2005.[6]

On July 31, 2006, petitioner was served a Letter of Authority No. 00076824 dated July 26, 2006, authorizing Revenue Officer Ruth Hilda E. Omandam of Revenue District Office (RDO) No. 81 to examine petitioner's books for the taxable year 2005.[7]

On July 6, 2007, Officer-in-charge (OIC) Commissioner Lilian Hefti issued Revenue Memorandum Circular No. 44-2007, which "clarified" that payments made by top 10,000 corporations to agricultural suppliers are not covered by the suspension order under Revenue Regulations No. 3-2004.[8]

The investigating examiner issued a finding that petitioner did not deduct 1% expanded withholding tax in the total amount of ₱15,879,420.33 from its purchases of agricultural products. Petitioner admitted the accuracy of the amount of ₱15,879,420.33 that it did not withhold.[9]

On November 5, 2008, Regional Director Jose Tan of BIR Region No. 13 issued subject Notice of Assessment No. 81-we-13-2005-2008-11-92.

[5] Par. 2, Stipulation of Facts, JSFI, Docket, p. 181
[6] Par. 4, Stipulation of Facts, JSFI, Docket, p. 182
[7] Par.5, Stipulation of Facts, JSFI, Docket, p. 182
[8]Par. 3, Stipulation of Facts, JSFI, Docket, p. 182
[9] Par. 6, Stipulation of Facts, JSFI, Docket, p. 182

Petitioner filed a protest against the Notice of Assessment.[10]

Subsequently, in a letter dated December 3, 2008, Regional Director Jose Tan reiterated his demand for the payment of the deficiency on the ground that the suspension provided by Revenue Regulations No. 3-2004 did not cover payments to agricultural suppliers by top 10,000 corporations, citing Revenue Memorandum Circular No. 44-2007.[11]

Petitioner filed another letter with Regional Director Jose Tan requesting cancellation of the assessment.[12]

In a letter dated January 21, 2009, Regional Director Jose Tan reiterated his demand and informed petitioner that the whole case docket was forwarded to the Revenue District Office No. 81-Cebu City for the enforcement of collection.[13]

Petitioner filed with the Office of the Commissioner of Internal Revenue a motion for reconsideration/appeal against Regional Director Tan's letter dated January 21, 2009.[14]

In a Decision dated February 23, 2012, BIR Commissioner Kim Jacinto Henares dismissed petitioner's appeal on the ground that it was filed out of time.[15]

Hence, petitioner filed the instant Petition for Review on May 14, 2012.

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[10] Par. 8, Stipulation of Facts, JSFI, Docket, p. 183
[11] Par. 9, Stipulation of Facts, JSFI, Docket, p. 183; Annex "E", Petition for Review, Docket, p. 40
[12] Par. 10, Stipulation of Facts, JSFI, Docket, p. 184
[13] Par. 11, Stipulation of Facts, JSFI, Docket, p. 184
[14] Par. 12, Stipulation of Facts, JSFI, Docket, p. 184
[15] Par. 13, Stipulation of Facts, JSFI, Docket, p. 184

Petitioner in its Verification/Certification of Non-Forum Shopping, among others, alleged –

> "3. That petitioner Cagayan Corn Products Corporation had earlier filed a petition for review entitled as **Cagayan Corn Products vs. Bureau of Internal Revenue docketed as CTA Case No. 7881**. This case has been dismissed jurisdictional ground with the last Order dated 21 December 2009 acknowledging the pendency of an appeal to the BIR Commissioner which rendered the petition premature. This present is filed after the BIR Commissioner final rendered a decision dismissing the appeal. Hence, the present petition."

Respondent in her Answer[16] filed on June 26, 2012, respondent interposed the following special and affirmative defenses:

> "***The Honorable Court has no jurisdiction over the instant petition for failure of petitioner to exhaust all administrative remedies.***
>
> Petitioner's allegation that Revenue Memorandum Circular No. 44-2007 ('RMC 44-2007' *for brevity*) should be nullified is bereft of merit as petitioner failed to exhaust all administrative remedies before elevating this issue to this Honorable Court. Unmistakably, Section 1 (j) of Rule 16 of the 1999 Rules of Civil Court Procedure provides that:
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> > 'MOTION TO DISMISS'
> >
> > Section 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
> >
> > xxx
> >
> > (j) That a condition precedent for filing the claim has not been complied with.'

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[16] Docket, pp. 79-92

Revenue Memorandum Circular (RMC) No. 44-2001 entitled 'Circularizing Department Order 23-01 providing for the Implementing Rules of the First Paragraph of Section 4 of the NIRC of 1997 and Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99' which was issued on October 11, 2001 provides:

> 'Section 3. Rulings Adverse to the Taxpayer. A Taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, **<u>within thirty (30) days</u>** from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath and must:
>
> xxx
>
> These are **<u>mandatory requirements and failure to comply with any of the stated substantive requirements</u>** shall be sufficient basis for the Secretary of Finance to dismiss with prejudice the request for review' *(Underscoring and emphasis supplied.)*

Feeling aggrieved by RMC 44-2007, petitioner should have moved for the reconsideration of the same with the Commissioner of Internal Revenue and should the Commissioner of Internal Revenue denied [sic, deny] its reconsideration, then, petitioner is given thirty (30) days from receipt of the same within which to file before the Secretary of Finance a request for review in writing and under oath said RMC.

Petitioner did not appeal to the Secretary of Finance the alleged RMC. Worst it did not even ask the Commissioner of Internal Revenue to reconsider said RMC prior to its questioning the legality before this Honorable Court. This is contrary to the requirements of the law that where there is a condition precedent, in this case, reconsideration before the Commissioner of Internal Revenue and subsequent appeal before the Secretary of Finance should the Commissioner of Internal Revenue ruled[sic] against petitioner, petitioner must observe the same. Petitioner, however, went straight before this Honorable Court which is a clear contravention of the law. Thus, petitioner slept on its right and allowed the period within which to present its side of the case to lapse. Petitioner should therefore, suffer the consequence of its omission to exercise its rights. Thus the Honorable Supreme Court held that:

> 'In the case at bar, **the assailed** revenue regulations and **revenue memorandum circulars are actually rulings or opinions of the CIR** on the tax treatment of motor vehicles sold at public auction within the SSEZ to implement Section 12 of R.A. No. 7227 which provides that 'exportation or removal of goods from the territory of the [SSEZ] to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines'. They were issued pursuant to the power of the CIR under Section 4 of the National Internal Revenue Code, *viz*:
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> 'x x x x x x
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> Petitioners point out that the CA based its decision on Section 7 of R.A. No. 1125 that the CTA 'shall exercise exclusive appellate jurisdiction to review *by appeal...'* decisions of the CIR. They argue that in the instant case, there is no decision of the respondent CIR on any disputed assessment to speak of as what is being questioned is purely the authority of the CIR to impose and collect value-added and excise taxes.
>
> **Petitioner's failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why the instant case should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action.** If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to

> obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.' *(Emphasis supplied)*

This Court, in a long line of cases, has consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought ***(Province of Zamboanga del Norte vs. Court of Appeals, 342 SCRA 549, 557 [2000]; Zabat vs. Court of Appeals, 338 SCRA 551, 560 [2000]; Diamonon vs. Department of Labor and Employment, 327 SCRA 283, 291 [2000]; Social Security System Employees Association vs. Bathan-Velasco, 313 SCRA 250, 252 [1999]; Paat vs. Court of Appeals, 266 SCRA 167, 175 [1997])***.

The party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court ***(Carale vs. Abarintos, 269 SCRA 132, 142 [1997])***.'

The doctrine of exhaustion of administrative remedies has practical and legal reasons. Resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Thus, for reasons of comity and convenience, courts will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly ***(Gorospe vs. Vinzons-Chato, G.R. No. 132228. January 21, 2003)***.

The doctrine of primary jurisdiction does not authorize a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence ***(Province of Zamboanga del Norte vs. Court of Appeals, 342 SCRA 549, 557 [2000])***. This doctrine squarely applies to this case considering that the reconsideration and/or review of RMC 44-2007 is within the **exclusive and original jurisdiction** of respondent Commissioner.

Based on the foregoing, it is respectfully submitted that the instant petition should not be given due course by this Honorable Court for failure of petitioner to exhaust all administrative remedies.

The right of petitioner to assail the validity of Final Assessment Notice No. 81-we-13-2005-2008-11-192 dated November 5, 2008 has already prescribed.

Petitioner is liable to pay its deficiency Expanded Withholding Tax for taxable year 2005 in the total amount of Twenty-Five Million One Hundred Thirty Thousand Fifty-Four Pesos and 35/100 (Php25,130,054.35) including penalties and interests for the following reasons:

Petitioner, in the instant petition, prayed that the Final Assessment Notice dated November 5, 2008 in the total amount of Php25,130,054.35 be declared null and void. With all due respect, petitioner's assertion that the said Assessment Notice should be declared null and void should not be given due course by this Honorable Court for lack of jurisdiction. Respondent humbly submits that petitioner cannot anymore attack the validity of the Final Assessment Notice dated November 5, 2008 issued against petitioner for the same had long became[sic] final, executory and demandable for failure of petitioner to appeal before the Honorable Court of Tax Appeals within thirty days from receipt of the Final Decision on Disputed Assessment. Section 228 of the National Internal Revenue Code of 1997, as implemented by Section 3.1.5 of Revenue Regulations No. 12-99, explicitly provides:

> SECTION 228. *Protesting of Assessment .* -
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> xxx
>
> 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 thirty (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*)

Corollary thereto, Section 3.1.5 of Revenue Regulations No. 12-99 clearly provides:

> 3.1.5 Disputed Assessment - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.
>
> xxx
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

Indubitably, the Final Decision on Disputed Assessment ('FDDA' *for brevity*) dated December 3, 2008 issued by respondent denying the protest on the disputed assessment was received by petitioner on

December 28, 2008. The pertinent portion of the FDDA is quoted hereunder, *to wit:*

> 'xxx xxx xxx
>
> In view thereof, **demand of payment is hereby reiterated from you on the deficiency expanded withholding tax assessment contained in the above-mentioned Formal Letter of Demand and Assessment Notice** to avoid additional increments thereon.' (*Emphasis supplied*)

It is clear from the above-quoted portion of the FDDA that petitioner only had until January 27, 2009 within which to file its Petition for Review to the Honorable Court of Tax Appeals. Petitioner only filed the instant petition before the Honorable Court on May 14, 2012 or after 3 years 3 months and 2 weeks from receipt of respondent's adverse decision (*i.e.* FDDA). Section 228 of the NIRC of 1997 succinctly provides that if the administrative protest is denied in whole or in part, the **taxpayer adversely affected by the decision may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**. Hence, the instant petition was filed beyond the reglementary period provided under the Tax Code.

Even assuming that petitioner's alleged administrative appeal dated March 11, 2009 from the receipt of the adverse decision to the Commissioner of Internal Revenue to be genuine, still, such allegation does not change the fact that petitioner's right to appeal to the Honorable Court of Tax Appeals had long been [sic] prescribed. It bears stressing that a **motion for reconsideration filed before the authorized representative of the Commissioner of Internal Revenue,** in this case petitioner's alleged appeal dated January 14, 2009 before the Office of the Regional Director of Revenue Region No. 13, **of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA**. Thus, the Honorable Supreme Court in the case of ***Fishwealth Canning Corporation vs. Commissioner of Internal Revenue*** had the occasion to rule that:

> 'In the case at bar, **petitioner's administrative protest was denied by Final**

> **Decision on Disputed Assessment** dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, **petitioner had 30 days to appeal respondent's denial of its protest to the CTA**.
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> Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. For a **motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA**.' (*Emphasis supplied; Underscoring in the original*)

Based on the aforementioned considerations, respondent respectfully submits that the Honorable Court has no jurisdiction over petitioner's assertion that the Final Assessment Notice dated November 5, 2008 should be nullified. While the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is **jurisdictional**. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional.

In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment."

Subsequently, on June 28, 2012, this Court issued a Notice of Pre-Trial Conference on July 19, 2012.[17]

On July 9, 2012, this Court issued a Notice of Resetting of the pre-trial conference to August 2, 2012.

Then, petitioner's Pre-Trial Brief[18] and respondent's Pre-Trial Brief[19] were filed on July 19, 2012 and July 5, 2012, respectively.

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[17] Notice of Pre-trial Conference, Docket, p. 94

On July 26, 2012, petitioner filed its Motion to Suspend Collection Disputed Tax Liability [20]; which was granted during the hearing held on September 3, 2012, subject to the posting with the Court of an acceptable surety bond.[21]

After petitioner's compliance with the requirements set forth in the Guidelines on Corporate Surety Bonds issued by the Supreme Court, denominated as A.M. No. 04-7-02-SC dated July 20, 2004, the Court issued a Resolution restraining respondent from enforcing any Warrant of Distraint and Garnishment and/or Levy against petitioner and immediately suspending the collection of the alleged deficiency expanded withholding tax until further orders from the Court.[22]

On August 2, 2012, this Court, among others, directed the parties to file their Joint Stipulation of Facts and Issues within thirty (30) days therefrom or until September 1, 2012, and that upon approval thereof, the pre-trial would be deemed terminated.

On August 31, 2012, the parties filed their Joint Stipulation of Facts and Issues[23], which was later approved during the hearing held on September 3, 2012.[24] During the same hearing, the Court, upon motion of the parties, granted the parties thirty (30) days from September 3, 2012 or until October 3, 2012 to submit their simultaneous memoranda considering the manifestations of the counsels for both parties that the factual issues were already covered by the parties' Joint Stipulation of Facts and Issues.[25]

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[18] Docket, pp. 103-109
[19] Docket, pp. 95-100
[20] Docket, pp. 110-117
[21] Docket, p. 187
[22] Docket, pp. 181-186
[23] JSFI, Docket, pp. 181-186
[24] Docket, pp. 187
[25] *Ibid*

Petitioner filed by registered mail its Memorandum on October 3, 2012 and received by this Court on October 16, 2012[26]; while respondent filed her Memorandum on October 2, 2012[27]. The case was submitted for decision on October 22, 2012.[28]

The parties submitted the following issues[29] for this Court's disposition:

> "1. Whether or not Revenue Memorandum Circular No. 44-2007 issued by the BIR OIC Commissioner Hefti is NULL AND VOID.
>
> 2. Assuming that Revenue Memorandum Circular No. 44-2007 is valid, Whether or Not it can be applied retroactively to taxable year 2005.
>
> 3. Whether or not the alleged deficiency expanded withholding taxes for taxable year 2005 are already barred by prescription.
>
> 4. Whether or not by its tenor, the letter dated 3 December 2008 constitutes a Final Decision on petitioner's protest against the Final Assessment Notice No. 81-we-13-2005-2008-11-192 dated 5 November 2008.
>
> 5. Whether the Honorable Court has jurisdiction over the instant petition.
>
> 6. Whether the instant petition was filed out of time.
>
> 7. Whether petitioner exhausted all administrative remedies before raising the issue of validity of RMC 44-2007 with the Honorable Court.

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[26] Docket, pp. 236-268
[27] Docket, pp. 213-231
[28] Docket, p. 269
[29] Docket, pp. 184-185

8. Whether petitioner is liable for the deficiency Expanded Withholding Tax for taxable year 2005 in the total amount of Twenty-Five Million One Hundred Thirty Thousand Fifty-Four Pesos and 35/100 (Php25,130,054.35) including penalties and interests."

Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[30]

Considering the issue raised by the parties as well as the Court's responsibility to take notice of the limits of its authority, a determination of this Court's jurisdiction over the case is indeed proper.

In resolving the issue at hand, the Court found instructive Section 7 of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which enumerates the cases over which this Court has appellate jurisdiction; and Section 11 of the same law which, among others, provides for the procedure on how the appeal before the Court should be filed. The relevant portions of said provisions are hereunder quoted:

> "SEC. 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) 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 in relation thereto, or other matters arising

[30] *Ace Publications, Inc. vs. The Commissioner of Customs, et. al.*, G.R. No. L-18808, May 29, 1964

under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a **decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**." *(Emphasis supplied)*

In relation thereto, Section 228 of the NIRC of 1997, as amended, is quoted as follows:

"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: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:

xxx xxx xxx

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 thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise,**

> **the decision shall become final, executory and demandable.**" *(Emphasis supplied)*

In other words, 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.

Implementing the above-mentioned provision is Section 3.1.5 of Revenue Regulations No. 12-99, the significant parts of which state:

> "3.1.5. Disputed Assessment. The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
>
> xxx xxx xxx
>
> **In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable**: Provided, however, that **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's**

> **decision shall not be considered final, executory and demandable, in which case the protest shall be decided by the Commissioner.**" *(Emphasis supplied)*

Based from all the foregoing, the decision of the Commissioner of Internal Revenue or his duly authorized representative shall be the decision appealable to this Court within 30 days from receipt thereof; otherwise, the assessment shall become final, executory and demandable. It is also provided that the decision of the authorized representative will not attain finality if the taxpayer appeals the same to the Commissioner of Internal Revenue, who shall then be required to decide the protest himself.[31] In addition, the filing of the appeal before the Commissioner should be in the manner and within the prescribed periods provided by law.

In the instant case, the parties stipulated that:

1. On November 5, 2008, BIR Regional Director Jose Tan of BIR Region 13 issued Notice of Assessment No. 81-we-13-2005-2008-11-92;[32]

2. Petitioner filed a protest against the Notice of Assessment;[33]

3. A letter dated December 3, 2008 was issued by Regional Director Jose Tan reiterating his demand for the payment of the deficiency on the ground that the suspension provided by Revenue Regulations No. 3-2004 did not cover payments to agricultural suppliers by top 10,000 corporations;[34]

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[31] *Moog Controls Corporation, Philippine Branch vs. Commissioner of Internal Revenue,* CTA EB No. 44 (CTA Case No. 6700), May 10, 2005
[32] Par. 7, Stipulation of Facts, JSFI, Docket, p. 182
[33] Par. 8, Stipulation of Facts, JSFI, Docket, p. 183
[34] Par. 9, Stipulation of Facts, JSFI, Docket, p. 183

4. Petitioner filed another letter with Regional Director Jose Tan, requesting the cancellation of the assessment;[35]

5. A letter dated January 21, 2009 was issued by Regional Director Jose Tan reiterating his demand and informing petitioner that the whole case docket was forwarded to the Revenue District Office No. 81-Cebu City for the enforcement of collection;[36]

6. Petitioner filed with the Office of the Commissioner of Internal Revenue a motion for reconsideration/appeal against Regional Director Tan's letter dated January 21, 2009;[37] and

7. A Decision dated February 23, 2012 was issued by BIR Commissioner Kim Jacinto Henares, dismissing petitioner's appeal on the ground that it was filed out of time.[38]

An examination of the foregoing stipulations, as well as the instant Petition, its annexes, and the parties' Memoranda would show that respondent, through Regional Director Jose Tan, responded to petitioner's protest against the Notice of Assessment[39] allegedly enclosed in a formal letter of demand dated November 5, 2008[40] by issuing the letter dated December 3, 2008[41]; which was allegedly received by petitioner on December 22, 2008[42], stating the following:

> **"This is to acknowledge receipt of your letter dated November 21, 2008 containing the protest against the assessment on Expanded Withholding**

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[35] Par. 10, Stipulation of Facts, JSFI, Docket, p. 184
[36] Par. 11, Stipulation of Facts, JSFI, Docket, p. 184
[37] Par. 12, Stipulation of Facts, JSFI, Docket, p. 184
[38] Par. 13, Stipulation of Facts, JSFI, Docket, p. 184
[39] Par. 8, Stipulation of Facts, JSFI, Docket, p. 183
[40] Par. 13, Petition for Review, Docket, p. 12
[41] Par. 9, Stipulation of Facts, JSFI, Docket, p. 183
[42] Annexes "E" and "F", Petition for Review, Docket, pp. 40-43; Par. 9, Statement of Facts, petitioner's Memorandum, Docket, pp. 240-241

> **Tax under Final Assessment Notice No. 81-we-13-2005-2008-11-192 dated November 5, 2008 pursuant to Letter of Authority No. 00076824 dated July 26, 2006 for the taxable year 2005.**
>
> Please be informed that Revenue Memorandum Circular No. 44-07 dated July 6, 2007 was issued clarifying that the Income Payments made by Top 10,000 corporations under Sec. 2.57-2(M) of RR 2-98 as amended are still subject to the withholding tax rate of 1%. Furthermore, pursuant to the aforementioned memorandum to wit: 'There is no ground by which agricultural suppliers can claim that they are exempt from the imposition of withholding tax on their sales to top 10,000 private corporations and/or to the government by virtue of the suspension granted by RR 3-2004. In fine, RR 3-2004 **did not** in any way **affect the taxability of agricultural suppliers for withholding tax purposes, insofar as their dealings with the top 10,000 private corporations** and/or with the government are concerned.'
>
> **In view thereof, demand of payment is hereby reiterated from you on the deficiency expanded withholding tax assessment contained in the above-mentioned Formal Letter of Demand and Assessment Notice to avoid additional increments thereon.**" (*Emphasis supplied)*

Notably, in the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*[43], the Supreme Court treated a demand letter as the Final Decision on Disputed Assessment, taking into consideration the language used or the tenor of the letter being sent to the taxpayer. The pertinent portion of the said decision reads:

> **"A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.**

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[43] G.R. No. 148380, December 9, 2005

We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment, thus:

> . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.
>
> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.

In this case, the letter of demand dated January 24, 1991, unquestionably constitutes the final action taken by the Bureau of Internal Revenue on petitioner's request for reconsideration **when it reiterated the tax deficiency assessments due from petitioner, and requested its payment**. Failure to do so would result in the 'issuance of a warrant of distraint and levy to enforce its collection without further notice.' In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.

xxx xxx xxx

The demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, '**while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as [his] final decision.**" *(Emphasis supplied)*

Furthermore, in the same case, the Supreme Court cited its ruling in *Commissioner of Internal Revenue vs. Ayala Securities Corporation, et al.*[44], wherein it was held that the content of the letter reiterating the demand for the settlement of assessment already made and for the immediate payment of the tax liability albeit with the vehement protest of the taxpayer is a clear indication of the firm stand of the Bureau of Internal Revenue against the reconsideration of the disputed assessment. In the said case, the Supreme Court considered the letter as a decision on a disputed assessment and ruled as follows:

"**The letter of February 18, 1963** (Exh. G), in the view of the Court, **is tantamount to a denial of the reconsideration or protest of the respondent corporation on the assessment made by the petitioner, considering that the said letter is in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment of the sum of P758,687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961.** This certainly is a clear indication of the firm stand of petitioner against the reconsideration of the *disputed assessment* xxx.

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[44] G.R. No. L-29485, March 31, 1976

> This being so, **the said letter amounts to a decision on a disputed or protested assessment, and, therefore, the court *a quo* did not err in taking cognizance of this case.**" *(Emphasis supplied)*

Applying the foregoing jurisprudence, it can be observed that in the letter previously stated, respondent made reference of the protest filed by petitioner and reiterated the demand for the payment of the deficiency mentioned in Final Assessment Notice No. 81-we-13-2005-2008-11-92 on the ground that the suspension provided by Revenue Regulations No. 3-2004 did not cover payments to agricultural suppliers by top 10,000 corporations, citing Revenue Memorandum Circular No. 44-2007. The tenor of the said letter clearly shows the firm stand of respondent against the reconsideration of the disputed assessment and therefore, the said letter should be considered as the final decision of respondent on petitioner's administrative protest or the Final Decision on Disputed Assessment.

Accordingly, the Court shall now ascertain whether petitioner timely filed its appeal from the Final Decision of respondent dated December 3, 2008 on the basis of Section 11 of Republic Act No. 1125, in relation to Section 228 of the NIRC of 1997, as amended, requiring the filing of an appeal before this Court within thirty (30) days from receipt of the decision on disputed assessment.

As mentioned in the instant Petition for Review and its annexes, petitioner received the Final Decision on Disputed Assessment dated December 3, 2008 issued by the Regional Director on December 22, 2008. Thus, counting from said date, petitioner had until January 21, 2009 within which to file its judicial appeal with this Court. However, instead of filing an appeal before this Court or with the Commissioner of Internal Revenue as provided under Section 3.1.5 of Revenue Regulations No. 12-99, implementing Section 228 of the NIRC of 1997, as amended, petitioner filed another letter with the Regional Director requesting the cancellation of the assessment.[45] The Regional Director again issued a

[45] Annex "F", Petition for Review, Docket, pp. 41-43

reply[46], which was thereafter appealed by petitioner before the Office of the Commissioner of Internal Revenue. Thus, in a Decision dated February 23, 2012, the Commissioner of Internal Revenue found petitioner's appeal filed out of time. The instant Petition for Review was only filed on May 14, 2012, which is way beyond the period prescribed by law for filing an appeal before this Court.

It must likewise be emphasized that a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.[47] Consequently, the 30-day period to appeal continued to run despite the filing by petitioner of its letter asking for the reconsideration of the Final Decision dated December 3, 2008 with the Regional Director and despite the subsequent exchanges of communication between petitioner and respondent. Accordingly, the disputed assessment which was reiterated and upheld in the Final Decision had already become final and executory after the lapse of the 30-day period prescribed by law to appeal.

In *Ker and Company, Ltd. vs. The Court of Tax Appeals, et al.*[48], the Supreme Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.

In view thereof, petitioner's failure to comply with the 30-day statutory period would bar the appeal and deprive

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[46] Annex "G", Petition for Review, Docket, p. 44
[47] *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179343, January 21, 2010
[48] G.R. No. L-12396, January 31, 1962

the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment.[49]

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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[49] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006, citing *Commissioner of Internal Revenue vs. Western Pacific Corporation,* 121 Phil. 889, 893 (1965)

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice