REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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FISHWEALTH CANNING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7346

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
JUL 2 1 2006

x - x

RESOLUTION

For resolution are:

1. respondent's "Motion for Preferential Resolution of Respondent's Affirmative Defense of Prescription" filed on April 25, 2006;

2. petitioner's "Comment/Opposition (to the "Motion for the Preferential Resolution of Respondent's Affirmative Defense of Prescription dated April 24, 2006)" filed on May 23, 2006;

3. respondent's "Reply (to Petitioner's Comment)" filed on June 6, 2006; and

4. petitioner's "Rejoinder (to the Respondent's *"Reply"* dated June 5, 2006)" filed on June 19, 2006.

Respondent submits this instant Motion on the ground that petitioner failed to elevate its appeal to this Court within thirty (30) days from its receipt of the Final Decision on Disputed Assessment issued on January 18, 2005 on August 4, 2005. Accordingly, instead of an appeal to this Court within thirty (30) days from its receipt of the Final Decision, pursuant to the provisions of law, petitioner filed a letter of reconsideration with the Office of the respondent on September 1, 2005, which remedy is clearly not available to the petitioner. Respondent argues that pursuant to Revenue Regulations No. 12-99, implementing Section 228 of the National Internal Revenue Code of 1997, the appropriate remedy of the petitioner is to appeal the respondent's final decision with this Court; and that, the remedy of a letter of reconsideration being available only to a taxpayer if the decision being assailed is issued, not by the Commissioner himself, but by a duly authorized representative.

On the other hand, petitioner objects to respondent's motion on the ground that a Letter of Reconsideration is not a prohibited pleading under Revenue Regulations No. 12-99 implementing Section 228 of the National Internal Revenue Code of 1997. The first paragraph of Section 3.1.5 of the Revenue Regulations clearly states that if the protest is denied by the Commissioner, the "petitioner 'may' appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision". Accordingly, the taxpayer is granted the option to immediately appeal to this Court. However, there is no clear and explicit prohibition as to the filing of a Letter of Reconsideration or a Motion for Reconsideration upon receipt of the Final Decision on Disputed Assessment. Although a Letter of Reconsideration may not be clearly indicated, however, this does not mean that it is a prohibited pleading, as argued by respondent.

As a reply to petitioner's opposition, respondent argued that while Revenue Regulations No. 12-99 does not categorically prohibit the filing of a letter of reconsideration, a reading of Section 3.1.5 thereof would indicate that a letter of reconsideration is "impliedly not allowed" because the said provision contemplates only of one remedy in preventing an assessment from becoming final and executory, and that is, an appeal to the Court of Tax

Appeals within the reglementary period. Moreover, even assuming that a letter of reconsideration is allowed under the regulations, the petition should be dismissed for prematurity. Accordingly, petitioner filed its letter of reconsideration on September 1, 2005, and submitted relevant documents on September 14, 2005. From this submission, respondent still has a period of 180 days within which to act on the subject protest and in turn petitioner has a period of 30 days from the lapse of the 180 days within which to elevate this instant appeal to this Court.

Petitioner filed a Rejoinder to respondent's Reply basically contending almost the same arguments in its Opposition, except for the allegations as regards respondent's argument on the dismissal of the case based on prematurity. Accordingly, the said ground was never contained in respondent's motion, however, as an argument, petitioner submits that the issue of the 180 days applies only if the taxpayer elevates his protest to the Commissioner within thirty days from the receipt of the final decision of his duly authorized representative. In other words, the new ground alleged by respondent does not apply.

This Court is not persuaded.

First and foremost, Revenue Regulations No. 12-99 is quoted below for expediency:

> **Sec. 3.1.5**
>
> 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 <u>may appeal to the Court of Tax Appeals within thirty (30) days from date of the receipt of said decision</u>, otherwise, the assessment shall become final, executory and demandable**: Provided, however, **if the <u>taxpayer elevates his protest to the Commissioner within thirty (30) days from the date of receipt of the final decision of the Commissioner's duly authorized representative</u>, the latter's decision shall not be considered final, executory and demandable, in which case the protest shall be decided by the Commissioner.**
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable."
> (Emphasis supplied)

Based on the foregoing, the remedy of a letter of reconsideration applies only if and when the final decision subject of the appeal is issued by the duly authorized representative of the Commissioner of Internal Revenue, and not when the final decision is already issued by the Commissioner himself. Section 3.1.5 of Revenue Regulations No. 12-99 has to be read in light with Section 228 of the National Internal Revenue Code of 1997. Under Section 228, there are situations when the Commissioner either denies the administrative protest filed by the taxpayer or he does not act on the protest filed. In the first situation, the second paragraph of Section 3.1.5 of Revenue Regulations 12-99 applies. In other words, when the final decision is issued by the duly authorized representative of the Commissioner, the taxpayer may either directly elevate the appeal to this Court or seek the reconsideration of the Commissioner, pursuant to his power to review decisions resolved by his subordinates. Thus, the proviso on the second paragraph of Section 3.1.5 of Revenue Regulations No. 12-99, which specifically provides that " x x x taxpayer elevates his protest to the Commissioner within thirty (30) days from the **date of receipt of the final decision of the Commissioner's duly authorized representative**".

There is no argument that the subject Final Decision on Disputed Assessment is indeed the final decision of the Commissioner, and appealable to this Court, as contemplated by law. Aside from the words expressly indicating the finality of the decision, the remedy to elevate an appeal was likewise provided for. In the case at bar, the subject Final Decision on Disputed Assessment dated August 2, 2005 was issued by the Commissioner, and pursuant to the provisions of Revenue Regulations 12-99, implementing Section 228 of the National Internal Revenue Code of 1997, the remedy of the petitioner is to elevate its appeal to this Court within thirty (30) days from its receipt of the Final Decision. Unfortunately, petitioner failed to do so.

When the Final Decision on Disputed Assessment was admittedly received by petitioner on August 4, 2005, what it did was to elevate a letter of reconsideration to the

Office of the Commissioner, instead of applying the remedy provided for by law. Failure on the part of the petitioner to timely file its appeal to this Court is fatal to its claim.

It must be emphasized that this Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction." (*Commissioner of Internal Revenue vs Villa, 22 SCRA 3*). The final decision of the Commissioner of Internal Revenue is a jurisdictional matter and not merely a violation of the principle of exhaustion of administrative remedies, thus failure on the part of the petitioner to comply with the proper remedies of law shall result to the dismissal of its case.

WHEREFORE, respondent's motion is hereby **GRANTED**. Accordingly, this instant Petition for Review filed by petitioner on July 26, 2003 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice