REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CATHERINE T. LOH/ ARYSTA MARKETING, Petitioner,	**CTA CASE NO. 9934**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA,** *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 15 2019 9:10 a.m.

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RESOLUTION

For resolution is petitioner's **Motion to Suspend Collection of Taxes** incorporated in its Petition for Review, filed on September 24, 2018. In the said motion, petitioner prays for the following: (i) reversal of respondent's Final Decision dated August 14, 2018; and (ii) issuance of an Order that will suspend the collection of taxes.

On October 2, 2018, the Court issued Summons ordering the respondent and the Solicitor General to file their respective Answers to the instant Petition within fifteen (15) days after service thereof. The same were personally served to the said offices on October 5 and 9, 2018, respectively.

The hearing on petitioner's motion to suspend collection was set by the Court on October 10, 2018, as per Notice of the Hearing dated October 4, 2018.

On October 8, 2018, petitioner's counsel, Atty. Linus T. Galias, filed a Motion to Reset the aforesaid hearing, which was granted in the hearing held on October 10, 2018. In view thereof, the hearing was reset on November 21, 2018.

On October 19, 2018, respondent's counsel filed an Urgent Motion for Extension of Time to File Answer on the ground that he has yet to retrieve the BIR Records from the Collection Division of Revenue Region No. 6, Manila. Said Motion was granted by the Court in an Order dated October 25, 2018.

Within the additional period granted by the Court, respondent filed his Answer on October 31, 2018, and interposed the following special and affirmative defenses, to wit:

> "11. The Honorable Court has no jurisdiction to entertain the instant petition for review. Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals provides:
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> xxx xxx xxx
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> 12. Following the above-quoted rule, petitioner has thirty days after receipt of a copy of such decision to file a petition for review before the Court of Tax Appeals.
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> 13. In Paragraphs 3 and 11 of the Petition for Review, petitioner admitted that on August 22, 2018, she received a copy of the respondent's final decision dated August 14, 2018 denying her motion for reconsideration. Contrary to what the petitioner claims under Paragraph 4 of her petition, the last day to file a petition for review is on September 21, 2018.
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> 14. Considering that the Petition for Review was filed only on September 24, 2018, the same was filed out of time.
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> 15. Hence, the subject assessment has already attained finality.
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> xxx xxx xxx

> 18. As regards the Motion to Suspend Collection of Taxes, Section 218 of the Tax Code of 1997, as amended, provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by the Code, hence, the motion for suspension of collection of tax must be denied for lack of legal basis."

In support of its Motion to Suspend Collection of Taxes, petitioner presented its lone witness, Ms. Lorraine Bangloy, and orally offered Exhibit "P-9" (Affidavit of Ms. Bangloy) in the hearing held on November 21, 2018. There being no objection from respondent's counsel, the Court admitted said exhibit. Considering also the respondent's manifestation that he has no witness to present as regards petitioner's Motion for Suspension of Collection of Taxes, the parties were granted five (5) days or until November 26, 2018 to file their memoranda.

In compliance, petitioner filed its Memorandum (Re: Petitioner's Motion to Suspend Collection of Taxes), *via* registered mail, on November 26, 2018, which was received by the Court on December 4, 2018. Respondent, on the other hand, failed to file his Memorandum, as per Records Verification dated December 17, 2018.

Hence, this resolution.

The Court shall determine first whether it has jurisdiction to entertain the present petition since the same is a primordial issue that must be passed upon by a court before any other issue is adjudicated.[1]

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, specifies the reglementary period within which an appeal may be prosecuted. Said provision provides:

> "Sec. 228. *Protesting of Assessment.* — x x x
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> xxx xxx xxx
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from

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[1] *Bernadette S. Bilag, et.al. vs. Estel a Ay-Ay, et. al.,* G.R. No. 189950, April 24, 2017.

> 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**." *(Emphases supplied)*

It is clear from the foregoing that a taxpayer adversely affected by the decision, relative to a protest against an assessment, may file an appeal before this Court within 30 days from receipt of decision; otherwise, the decision shall become final, executory and demandable.

In relation thereto, the period for filing an appeal before this Court is provided under Section 11 of the Republic Act No. 1125, as amended, the portion of which states:

> "Section 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*)

Likewise, Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals reads:

> "SEC. 3. *Who may appeal; period to file petition.*
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> —
>
> (a) **A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the

> Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision** or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenues taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes." *(Emphasis supplied)*

In this case, petitioner's witness, Ms. Bangloy, testified, by way of Judicial Affidavit, that the Final Decision on Disputed Assessment dated June 30, 2015, denying its Motion for Reconsideration dated July 30, 2015, was received by petitioner on August 22, 2018.[2]

Applying Section 228 of the 1997 NIRC, as amended, and RA No. 1125, as amended, petitioner had only 30 days, or until September 21, 2018 to appeal such final decision of the respondent to this Court. However, petitioner filed its Petition for Review before this Court only on September 24, 2018; hence, the same was filed out of time. Consequently, the subject assessment has already attained finality at the time petitioner elevated its case before this Court.

In the light of the above facts, this Court has no recourse but to dismiss the instant Petition on the ground that the appeal was filed beyond the reglementary 30-day period provided by law. It follows that it is also devoid of authority to act on its Motion to Suspend Collection of Taxes.

WHEREFORE, premises considered, the **Petition for Review with Motion to Suspend Collection of Taxes** filed by petitioner on September 24, 2018 is hereby **DISMISSED** for lack of jurisdiction.

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[2] Answers to Questions Nos. 18-25, Judicial Affidavit (For Witness: Ms. Loreinne Bangloy), Exhibit "P-9."

SO ORDERED.

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

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