REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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LEASEMASTER TRANSPORT CORPORATION,
Petitioner,

C.T.A. AC No. 9

Members:

- versus -

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

MR. VICTOR ENDRIGA, CITY TREASURER, QUEZON CITY,
Respondent.

Promulgated:
AUG 0 8 2005

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RESOLUTION

This resolves the issue on whether the Court has jurisdiction over the instant case.

In the Petition for Review with Motion to Set Aside the Assessments and Collection of Taxes filed on April 8, 2005, petitioner contends that, as a transportation contractor, it is exempted from local taxation under Section 133 (j) of Republic Act (R.A.) No. 7160 (or also known as the Local Government Code of 1991), which reads:

> ***Section 133. Common Limitations on the Taxing Powers of the Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:***
>
> ***x x x***

> ***(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided by in this Code;***

Thus, respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when he assessed petitioner the aggregate amount of One Million Five Hundred Six Thousand Thirty Nine Pesos and 88/100 (₱1,506,039.88) representing unpaid local business taxes for the year 2005 despite the fact that it is tax-exempt. Respondent, therefore, must be restrained in assessing and collecting local business taxes from petitioner.

In his Comment/Opposition (To Petitioner's Petition for Review with Motion to Set Aside the Assessments and Collection Taxes), filed on July 8, 2005, respondent asserts:

> a. This Court does not have exclusive appellate jurisdiction over decisions of Local Treasurers pursuant to R.A No. 9282;
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> b. Under R.A. 7160, petitioner is not entitled to exemption from local business taxes. It is a security agency whose main business is to secure the safety of its clients' currencies while being transported by its armored vehicles. Hence, it is not entitled to the exemption under Section 133(j) of the Local Government Code of 1991; and
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> c. There is no Secretary's Certification attached to the petition showing that Jose Celso Caesar Rey B. Bataga was authorized by the petitioner to file on its behalf the present action.

After a careful deliberation on the arguments of the parties, the Court resolves to **DENY IN GIVING DUE COURSE** to the Petition and, hereby, **DISMISS** the action. Section 1 of Rule 9 of the Revised Rules of Court provides that when it appears from the pleadings of the evidence on record that the court has no jurisdiction over the subject matter, the Court shall dismiss the claim.

Section 7 of Republic Act No. 9282, which took effect on August 24, 2004, gives us the cases over which the Court has jurisdiction. Thus:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. ***Decisions of the Commissioner of the 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 or other laws administered by the Bureau of Internal Revenue;***
2. ***Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;***
3. ***Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;***
4. ***Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;***
5. ***Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;***
6. ***Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;***
7. ***Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article and the Secretary of Agriculture in the case of agricultural product, commodity, or article involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.***

b. Jurisdiction over cases involving criminal offenses as herein provided:

x x x

c. Jurisdiction over tax collection cases as herein provided:

x x x

Nowhere in the above-cited section provides that the Court has jurisdiction to review by appeal the final decision of the local treasurer on disputed assessments involving unpaid local business taxes. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. *Expressio unius est exclusion alterius.* The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[1]

Moreover, petitioner treated the Petition for Review as a certiorari case under Rule 65 of the Rules of Court by alleging that " respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it assessed petitioner despite its exemption from local business taxes". Under Section 4, Rule 65 of the Revised Rules of Court, Regional Trial Courts are clothed with authority to issue Writs of Certiorari against a lower court, corporation, board or officer who in the exercise of judicial or quasi- judicial function acted without or in excess of jurisdiction or with grave abuse of discretion.

Moreover, a Petition for Certiorari must fail when the remedy of appeal is available.[2] Section 195 of the Local Government Code provides the remedy of an appeal to the taxpayer in the event a local treasurer denies the protest. We quote:

> ***SEC. 195. Protest of Assessment. – x x x The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.***

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[1] Martin Centeno vs. Hon. Victoria Villalon-Pornillos and the People of the Philippines,236 SCRA 197. See also Lung Center of the Philippines vs. Quezon City and Constantino Rosas, in his capacity as City Assessor of Quezon City, 433 SCRA119.

[2] Section 1, Rule 65 of the Rules of Court.

In the instant case, petitioner should not have sought immediate relief before this Court after respondent denied petitioner's protest filed on February 4, 2005. It should have filed an appeal with the proper court that has jurisdiction to try and decide the case. It is only after the said court renders its decision can this Court acquire jurisdiction to entertain the appeal, provided that it is filed within the prescribed period mandated by law.[3]

Settled is the rule that absence of jurisdiction entails the dismissal of the case. Lack of jurisdiction can be interposed at any time, during appeal or even after final judgment.[4]

In view of this Court's lack of jurisdiction over the case, there is no cogent reason to resolve the other issues which have become moot and academic.

WHEREFORE, the instant Petition for Review is **DENIED DUE COURSE** and the case is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[3] Section 7(a)3 of R.A. No. 9282.
[4] Nacpil vs. Intercontinental Broadcasting Corporation, 379 SCRA 653.