REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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LANAO DEL NORTE ELECTRIC COOPERATIVE (LANECO),	**CTA CASE NO. 8769**
Petitioner,	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA** *JJ.*
COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO - HENARES, Respondent.	**Promulgated:** JUN 19 2014 ; 4:25 p.m

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RESOLUTION

For resolution are:

1. petitioner's **"Motion for the Suspension of the Collection of Tax"**, which was incorporated in its Petition for Review filed on February 20, 2014, with respondent's **"Comment on Petitioner's Motion to Suspend Collection of Taxes by the Issuance of Preliminary Injunction with Motion to Dismiss"** filed on March 11, 2014;

2. petitioner's **"Manifestation"** submitted through courier on March 14, 2014;

3. respondent's **"Second Motion for Extension of Time to File Answer"** filed on April 8, 2014; and

4. petitioner's **"Opposition to the Motion to Dismiss & Rejoinder to the Comment to the Motion to Suspend Collection of Taxes"** filed through registered mail on

March 28, 2014, which was received by the Court on April 10, 2014, with respondent's **"Reply (On Petitioner's Opposition to the Motion to Dismiss & Rejoinder to the Comment to the Motion to Suspend Collection of Taxes)"** filed on April 28, 2014.

On March 14, 2014, a hearing on the Motion for Suspension of Collection of Tax was held and both parties' counsels appeared. Petitioner's counsel reiterated its motion, while respondent's counsel manifested that all her arguments were contained in her Comment. Thus, the Motion for Suspension of Collection of Tax was submitted for resolution. Further, petitioner was granted a period of fifteen days (15) from the said date within which to submit its comment on respondent's Motion to Dismiss, furnishing a copy to respondent, who was given a period of ten (10) days from receipt thereof within which to file Reply. Thereafter, the Motion to Dismiss should be deemed submitted for resolution.

Thereafter, petitioner filed its Manifestation where she claims that respondent issued Warrant of Garnishment and/or Levy No. 101-2014-0002 and Warrant of Garnishment No. 101-2014-0001 and which were received after the Petition for Review was filed. The aforesaid warrants were attached to the said Manifestation. Consequently, petitioner prays that this Court will note its manifestation and reiterates for the suspension of the collection of tax pending the hearing on the merits.

On April 8, 2014, respondent filed the Second Motion for Extension of Time to File Answer on the ground that the same is still undergoing revision and/or finalization.

In its motion, petitioner contends that the disputed assessment for allegedly deficiency VAT is baseless, unfounded, void and nonexistent for the same was already remitted and paid to power companies, as evidenced by the certification from NAPOCOR-PSALM and receipts of TRANSCO-NGCP, showing its payment or remittance. It posits that respondent already issued a Final Notice before Seizure dated October 29, 2012 and Notice of Tax Lien dated March 4, 2013, addressed to Provincial Assessor of Lanao del Norte. It follows, respondent will issue a garnishment order against it unless it pays the assessment. Consequently, it will be greatly prejudiced and its operation, serving its member-consumers, will be severely affected. Petitioner likewise alleges that it is willing to put up a surety bond.

On the other hand, respondent counter-argues in her Comment that the aforesaid motion should be denied as this Court has no jurisdiction over the main action because petitioner belatedly filed the protest letter to the Formal Letter of Demand and Final Assessment Notice making the assessment final and executory. Thus, the Court cannot grant the ancillary remedy prayed for by petitioner and even if this Court has taken cognizance of the case, petitioner is not entitled to the suspension of collection on the ground that the latter has no clear legal right to the same. Respondent likewise prays for the dismissal of the case.

Petitioner opposes respondent's motion to dismiss on the ground that despite its belatedly filed Protest Letter against the Formal Letter of Demand and Final Assessment Notice, it is the appeal from the Decision of the respondent that confers jurisdiction over this case. It also insists that it can be inferred under Rule 10 of the Revised Rules of the Court of Tax Appeals (RRCTA) that even without the said ancillary remedies, the Court can issue an order directing the suspension of collection if warranted. It also posits that the facts are uncontroverted that it has already paid and/or remitted the subject deficiency tax.

In the Reply to petitioner's Opposition to the Motion to Dismiss, respondent reiterates that the Petition for Review was filed beyond the 30-day period from receipt of the Final Decision on Disputed Assessment and petitioner is not legally entitled to an order enjoining the collection of taxes.

The Court shall first resolve respondent's Motion to Dismiss.

The jurisdiction of this Court is defined in Section 7 of Republic Act (RA) 1125, as amended which provides that:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
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> 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 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;

xxx xxx xxx"

Pertinent thereto is Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, which states:

"SEC. 228. *Protesting 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 preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, *the taxpayer shall* be required to respond to said notice. If the taxpayer fails to respond, the *Commissioner* or his *duly authorized representative* shall issue an assessment based on his findings.

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied.)*

It is clearly and unequivocally stated in the aforesaid provisions that this Court has jurisdiction over decisions of the Commissioner of Internal Revenue on cases, among others, involving disputed assessments. This does not cover assessment which became final, executory and demandable for the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.[1]

In the present case, the assessment has admittedly become final and executory for failure of petitioner to protest against the Formal Letter of Demand and Final Assessment Notice on time. The law categorically states that assessment may be protested administratively within thirty (30) days from receipt, otherwise, it shall become final. As indicated in its Petition for Review, petitioner received the Formal Letter of Demand on March 9, 2012[2] and it protested the said assessment only on September 6, 2012[3]. Since petitioner's Protest Letter was filed beyond the prescriptive period, the assessment became final and executory.

The records likewise reveal that even in the Decisions of OIC-Regional Director Alberto S. Olasima, Revenue Region No. 16, Cagayan De Oro City and Commissioner Kim S. Jacinto-Henares[4], the subject assessment has been considered as final, executory and demandable for failure of petitioner to request for a reinvestigation or to file a protest letter within the period prescribed by law.

WHEREFORE, respondent's **"Motion to Dismiss"** is **GRANTED** for lack of jurisdiction. Accordingly, it has no reason to resolve the other pending incidents.

SO ORDERED.

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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

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[1] Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.
[2] Par. I, 5.12 of Petition for Review, docket, p. 16-17.
[3] Par. I, 5-19 of Petition for Review, docket, p. 19.
[4] Annexes "B" and "Q", docket, pp. 42 & 96, respectively.