REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILIPINAS - ESLON MANUFACTURING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5663

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 17 1999

x - x

RESOLUTION

Before Us for resolution is a Motion to Dismiss filed by the herein respondent alleging that this Court cannot take cognizance of the Amended Petition for Review filed on November 11, 1998, on the ground of lack of jurisdiction. Respondent's theory is that petitioner's appeal is premature since there is no decision yet on the disputed assessment within the purview of Section 7(1) of R.A. 1125.

Records show that on April 10, 1997 respondent issued Assessment Notice No. LA#0000625-90-325 against the petitioner for deficiency income taxes for the year 1990 in the amount of ₱2,018,592.90, inclusive of interest, surcharge, and compromise penalty. Having failed to receive an affirmative response from the petitioner, the respondent subsequently issued a Preliminary Collection Letter, dated October 27, 1997, demanding the payment of the aforesaid amount, otherwise, it will be constrained to enforce collection thru administrative remedies provided for by law without further notice. Copy of the said demand was received by the petitioner on November 17, 1997.

Within thirty (30) days from receipt or on December 12, 1997, petitioner, through its counsel, filed a request for reinvestigation with the respondent, and in compliance with the requirements of Section 228 of the Tax Reform Act of 1997, it submitted on February 6, 1998 all relevant documents in support of its protest.

In the belief that the respondent will no longer act on the disputed assessment, petitioner filed on August 3, 1998 a Petition for Review with this Court praying that after due notice and hearing, judgment be rendered declaring it not liable for any deficiency income tax.

On November 26, 1998, the respondent filed a Motion to Dismiss reiterating the ground stated in its Answer that this Court has no jurisdiction to act on the Petition. Respondent submits that Section 228 of the NIRC[1] of 1997, the provision invoked by the petitioner, is not applicable in the instant case since, as alleged in the amended petition, both the assessments and the administrative protest were made before January 1, 1998, the effectivity date of the 1997 Tax Code.

---

1 National Internal Revenue Code

In support thereto, the respondent avers that even in the assumption that the 1997 Tax Code is applicable, still, the Petition for Review is premature on the ground that it was filed based on the inaction of the Commissioner, before the lapse of the 180-day period from Petitioner's submission of documents as required by Section 228 of the same Code.

On January 7, 1998, petitioner filed its Opposition to Motion to Dismiss and raises the following defenses, viz:

I

THE PETITIONER HAS SUBSTANTIALLY COMPLIED WITH THE PROVISIONS OF SECTION 228 OF R.A. 8424

II

ASSUMING THAT THE PETITION IS PREMATURE, SUCH FACT RESULTS IN THE LACK OF CAUSE OF ACTION, AND NOT NECESSARILY A LACK OF JURISDICTION

III

ASSUMING THAT THE PETITION IS PREMATURE, EQUITY WILL CURE THE DEFECT OF LACK OF CAUSE OF ACTION

Petitioner would stress in its Opposition that it has substantially complied with the provisions of Section 228 of R.A. 8424 otherwise known as the National Internal Revenue Code of 1997 which reads, thus:

"x x x x x x x x x

> 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."

It is the main theory of the petitioner that even if the original Petition for Review was filed one hundred seventy-eighty (178) days from the submission of the documents, while seemingly premature, the same can be considered already as substantial compliance with the requirements of the above-quoted provision and Section 7 of R.A. 1125. The petitioner reasoned out that the Court of Tax Appeals is created with the aim in view of speedily resolving tax controversies. Such being the case, since the revenue examiner failed to act on the protest within a period of one hundred seventy eight (178) days, the filing of the Petition for Review on August 3, 1998, even if the same was made two (2) days in advance, can be construed already as substantial compliance with the aforesaid law.

We find for the respondent.

A closer scrutiny of all the allegations in this case cannot hide the fact that the instant controversy shall be resolved in the light of the provisions of the old Tax Code instead of the NIRC of 1997. Thus, We find rather strained the petitioner's reliance on the provisions of the 1997 Tax Code since it is quite evident that a mere glance at the pleadings submitted to this Court would readily reveal that both the assessment made on April 10, 1997 and the filing of the corresponding administrative protest, occurred before the effectivity of the said Code. Accordingly, the petitioner cannot validly invoke the 180 day period referred to in Section 228 since it only covers assessments issued on or after January 1, 1998, the effectivity date of the 1997 Tax Code. **(National Steel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5574) (BIR Ruling No. 22-98, February 19, 1998)**

In the instant case, therefore, Section 229 of the old NIRC shall apply and We quote, thus:

> **"Sec. 229.** ***Protesting of assessment.*** -
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable". (Underscoring Ours)

Clearly from the above mentioned provision, cases may be elevated only to this Court via an appeal within thirty (30) days from receipt of the decision. Hence, in the absence of any adverse ruling from which an appeal may be taken, any case involving disputed assessments brought before Us shall be dismissed for being premature.

Anent the issue of jurisdiction, petitioner equated, and wrongly at that, lack of jurisdiction with failure to state cause of action.

Jurisdiction may be defined as the authority of the Courts to hear and decide a case. It is fixed by law and cannot be conferred by the parties. More importantly, in relation to the case at bar, jurisdiction of the Court is determined by the statute in force at the time of the commencement of the action. The law conferring jurisdiction to this Court is Section 7, of R.A. 1125 otherwise known as the law creating the Court of Tax Appeals. The said law provides:

> "**Section 7.** ***Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -

> 1) <u>Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments</u>, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.
>
> x x x x x x x x x

The above quoted section is the very law where this Court derives its authority to hear and decide a case. Once a decision has been rendered by the Commissioner of Internal Revenue involving a disputed assessment, this Court, in the event a Petition for Review is filed before it, does not have any option but to take cognizance thereof. This is so, because in all cases where the authority to proceed is conferred by a statute and the manner of obtaining jurisdiction is mandatory, the same must be strictly complied with, otherwise, the proceedings will be utterly void. However, pending the outcome of the protest filed by a taxpayer, this Court cannot arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with a body of special competence.

Having been mooted by the above pronouncements, this Court deems it unnecessary to dwell on other issues raised by the petitioner in its Opposition to Motion to Dismiss.

WHEREFORE, in view of the foregoing, this Petition for Review is hereby **DISMISSED** without prejudice to recourse to this Court by the Petitioner if and when the protest filed on December 12, 1997 is finally rejected by the Commissioner of Internal Revenue.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge