REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FIL-HISPANO HOLDINGS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 343
(C.T.A. Case No. 7331)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

Promulgated:
JUN 12 2008 9:05 a.m.

x---x

DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed by Fil-Hispano Holdings Corporation, praying for the reversal of (1) the Resolution of this Court's

[1] *Rollo*, pp. 7 – 230, with Annexes.

Second Division ("Court in Division") in C.T.A. Case No. 7331 dated June 25, 2007, granting the Motion to Dismiss filed by the Commissioner of Internal Revenue and (2) the Court in Division's Resolution promulgated on November 20, 2007, denying petitioner's Motion for Reconsideration.

Antecedent Facts

Based on the parties' Joint Stipulation of Facts[2] and other records of this case, the material antecedents are as follows.

Petitioner is a duly registered domestic corporation with office address at 9th Floor, Citibank Center, 8741 Paseo de Roxas, Salcedo Village, Makati City.

Respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office including among others, the power to cancel disputed assessments, with principal office located at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

On February 27, 2004, petitioner received from BIR Revenue Region No. 5, Valenzuela City ("Revenue Region No. 5"), a letter dated February 23, 2004, informing it of alleged deficiency creditable withholding and documentary stamp taxes on its sale of land and improvements to Ellimac

[2] *Rollo*, pp. 194 – 208, Annex "G" of the Petition for Review.

Prime Holdings, Inc. ("Ellimac"), covered by a Deed of Sale dated December 14, 2001.

On March 25, 2004, petitioner's counsel filed a letter-reply dated March 15, 2004, stating petitioner's disagreement to the findings made by Revenue Region No. 5 in its February 23, 2004 letter, arguing, *inter alia,* that the said land and improvements are "capital assets," hence, any gain on their sale should be subject to the capital gains tax ("CGT"), and that the same are classified as "industrial" property for purposes of determining their applicable zonal valuation.

On October 19, 2004, petitioner received from BIR Revenue District Office No. 24 ("RDO 24") which is under Revenue Region No. 5, two (2) letters dated October 18, 2004, informing it of alleged deficiency creditable withholding and documentary stamp taxes arising from its two (2) Deeds of Sale of land and improvements, both in favor of Ellimac, dated December 14, 2001 and March 4, 2003, respectively.

On October 29, 2004, petitioner's counsel filed a letter-reply dated October 28, 2004, reiterating petitioner's disagreement to the findings made by RDO 24 in its October 18, 2004 letters, maintaining the argument that the subject properties are classified as "industrial" property for purposes of determining their applicable zonal valuation; hence, the use of the selling price (which, in both sales, is higher than zonal value) by the petitioner as the basis for computation of capital gain on the sales is correct.

On December 1, 2004, petitioner received two (2) Preliminary Assessment Notices dated November 22, 2004 from Revenue Region No. 5, informing it of deficiency withholding and documentary stamp taxes arising from the two (2) Deeds of Sale of real property and improvements in favor of Ellimac.

On December 14, 2004, petitioner's counsel filed a letter-reply dated December 7, 2004, informing Revenue Region No. 5 of petitioner's previous receipt of a similar notice of findings for deficiency withholding and documentary stamp taxes from RDO 24, and reiterating its earlier request for cancellation of the said findings.

On December 28, 2004, petitioner received four (4) Formal Assessment Notices ("FAN") dated December 8, 2004 from Revenue Region No. 5 which were sent by registered mail on December 9, 2004. The first and second FAN were for alleged deficiency creditable withholding and documentary stamp taxes, respectively, arising from the sale transaction covered by the Deed of Sale dated December 14, 2001. The third and fourth FAN covered alleged deficiency creditable withholding and documentary stamp taxes, respectively, arising from the sale transaction covered by the Deed of Sale dated March 4, 2003.

On January 7, 2005, petitioner, through counsel, protested the aforementioned assessments, and requested for the cancellation of the said deficiency tax assessments.

On February 2, 2005, petitioner received a letter from Revenue Region No. 5 dated December 29, 2004, specifically replying to petitioner's letters dated October 28, 2004 and December 7, 2004, and maintaining that the subject properties had to be classified as "commercial" for purposes of zonal valuation in accordance with Department Order No. 84-96.

On March 1, 2005, uncertain whether Revenue Region No. 5's letter dated December 29, 2004 constituted the said office's final decision on its protest, petitioner filed a reply through its counsel, reiterating the arguments raised in the protest-letter dated January 6, 2005.

On March 11, 2005, petitioner received from Revenue Region No. 5, a letter dated March 4, 2005 expressly replying to petitioner's counsel's letters dated January 6, 2005 and February 28, 2005, reiterating the assessments under the protested FAN.

On March 31, 2005, petitioner acknowledged receipt of Revenue Region No. 5's letter dated March 4, 2005. In the said letter, petitioner requested Revenue Region No. 5 to reconsider its position, while expressly reserving its right to appeal under Section 228 of the National Internal Revenue Code ("NIRC") in case of a final adverse decision on its protest.

On April 4, 2005, petitioner received from Revenue Region No. 5 a letter dated April 4, 2005, the final and dispositive portion of which reads as follows:

> *"Please be informed that further review and evaluation of the record of the case in the light of the oral argument you presented on (sic) our informal conference, this Office is reconsidering our stand on the finality of our tax assessments on the condition that you will submit additional documents to substantiate your oral arguments."*

On April 6, 2005, petitioner's counsel filed with Revenue Region No. 5 a letter dated April 4, 2005, acknowledging receipt of the latter's letter of the same date, and indicating that it will be submitting a supplemental memoranda to substantiate its oral arguments.

On April 27, 2005, petitioner's counsel filed its Memorandum (Position Paper) submitting that the examiners of RDO 24 had correctly applied and relied upon the zonal valuation per square meter of ₱4,450 during their examination which led to the issuance of the tax clearances/certificates authorizing registration for the subject sales transactions, and reiterating its request for the cancellation and withdrawal of the deficiency tax assessments.

On September 30, 2005, petitioner lodged a Petition for Review with the Court in Division. On November 23, 2005, respondent filed his Answer. On December 9, 2005, petitioner filed its Reply. On January 26, 2006, respondent filed its Pre-trial Brief. On January 30, 2006, petitioner filed its Pre-trial Brief.

On December 12, 2006, the parties filed their Joint Stipulation of Facts and Issues and Admission of Documents.

On January 22, 2007, respondent filed a Motion to Dismiss the Petition for Review on the ground of lack of jurisdiction. On February 23, 2007, petitioner filed its Opposition.

The Ruling of the Court in Division

On June 25, 2007, the Court in Division issued a Resolution granting respondent's Motion to Dismiss.

According to the Court in Division, it does not have jurisdiction over the case because the Petition for Review was filed with the Court beyond the thirty (30) day statutory period. It ruled that the one hundred eighty (180) day period subject of Section 228 of the NIRC should be counted from the date of the filing of the protest on January 7, 2005. It further held that the submission of petitioner's supplemental memorandum on April 27, 2005, or 110 days from the date of the filing of the protest, did not toll the running of the 180-day period as it was submitted beyond the prescribed sixty (60) day period.

The dispositive portion of the assailed Resolution reads as follows:

> "**WHEREFORE,** in view of the foregoing, respondent's "**Motion to Dismiss**" is hereby **GRANTED**. Accordingly, this instant "**Petition for Review**" is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

On July 19, 2007, petitioner filed a Motion for Reconsideration which was denied for lack of merit by the Court in Division in its Resolution promulgated on November 20, 2007.

The Issues

Hence, petitioner filed the instant Petition for Review *En Banc*, raising the issue of whether or not the Court in Division erred in dismissing the Petition for Review on the ground of lack of jurisdiction.

Corollary to the above-mentioned issue, petitioner assigned the following errors allegedly made by the Court in Division, *viz*:

I. THE SECOND DIVISION ERRED IN RULING THAT IT DOES NOT HAVE JURISDICTION OVER THE CASE BECAUSE THE PETITION FOR REVIEW WAS FILED BEYOND THE REGLEMENTARY PERIOD; AND

II. THE SECOND DIVISION ERRED IN RULING THAT THE 180-DAY PERIOD SHOULD BE COUNTED FROM THE DATE OF FILING OF THE PROTEST.

Petitioner's Arguments

Petitioner avers that after it filed its protest on January 7, 2005, there was a series of correspondence between the BIR and the petitioner. The Court in Division failed to appreciate the fact that respondent, in a letter dated April 4, 2005, agreed to reconsider her stand on the finality of its tax assessment against the petitioner, subject to the latter's submission of additional supporting documents.

After petitioner filed its protest on January 7, 2005, Revenue Region No. 5 even sent its letter dated March 4, 2005 expressly replying to petitioner's letters dated January 6, 2005 and February 28, 2005. In the said letter, Revenue Region No. 5 reconsidered its stand on the finality of the tax assessment. It is thus clear that the controverted assessments have not yet attained finality even until April 2005 since Revenue Region No. 5 continued to review the subjected assessment.

The subsequent actions taken by the BIR, through Revenue Region No. 5, coupled with the final letter-advice dated April 4, 2005, indubitably show that the conclusion of the Court in Division was erroneous and contrary to law and evidence.

Petitioner also contends that the Court in Division erred in stating that petitioner failed to submit any relevant supporting documents within the 60-day period following the filing of the protest. The Court in Division failed to appreciate the fact that, after January 7, 2005, petitioner had been submitting to the BIR various documents consisting of its written arguments and clarificatory letters, the last of which was the letter dated February 28, 2005 and filed on March 1, 2005. Petitioner, in good faith, relied on the provision of the NIRC that it may file its Petition for Review within 30 days from the lapse of the 180-day period, the 180-day period being counted from the lapse of the 60-day period for the submission of documents after the filing of the protest.

Since the 60th day from January 7, 2005 fell on March 8, 2005, the 180-day period was until September 4, 2005. Thus, petitioner had 30 days from September 4, 2005, or until October 4, 2005 within which to file its Petition for Review.

Petitioner further stresses that the interpretation of Section 228 of the NIRC in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* ("*RCBC* case"),[3] would serve to meet the ends of substantial justice. An analysis of the facts as stipulated by the parties and as embodied in the Decision of the Court in Division would show that certain acts of respondent misled petitioner with respect to the status of its assessments and protest.

Respondent's Counter-arguments

Respondent, in her Memorandum, asserts that the decision rendered by Revenue Region No. 5 on petitioner's administrative protest on December 29, 2004 was reiterated in its letter dated March 4, 2005. This was, in fact, affirmed by petitioner, through its counsel, in its letter dated March 31, 2005 stating that *"please be advised that **we shall appeal your aforesaid decision on our protest** with the Court of Tax Appeals within the prescribed period of 30 days from receipt pursuant to Section 228 of the Tax Code."* Petitioner had 30 days from receipt of the denial of its protest on March 11, 2005 or until April 10,

[3] G.R. No. 168498, June 16, 2006, 491 SCRA 213, 221.

2005 within which to file a Petition for Review before the Court in accordance with Section 11 of Republic Act No. 1125, as amended. However, petitioner opted not to do so.

Instead, petitioner opted to file a request for reconsideration before Revenue Region No. 5 on March 31, 2005. Based on Revenue Regulations No. 12-99, which particularly outlines the procedure in filing protests and motion for reconsiderations on assessments, more specifically Section 3.1.5 thereof, a taxpayer may elevate his protest to the Commissioner of Internal Revenue within 30 days from receipt of the final decision of the Commissioner's duly authorized representative. This, petitioner also opted not to do so.

By its own admission, petitioner never submitted any additional document within the 60-day period given by law from the time of the filing of its protest on January 7, 2005 except a reply dated February 28, 2005, which only reiterated the arguments raised in its protest. Since petitioner never presented any additional documents, the assessment became final and executory in accordance with Section 228 of the NIRC.

The Ruling of the Court En Banc

The Petition for Review is devoid of merit.

Petitioner protested the subject assessments pursuant to Section 228 of the 1997 NIRC, which provides:

> "SEC. 228. **Protesting of Assessment.** – . . . .

> xxx xxx xxx
>
> 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 (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)*

Corollary thereto, Revenue Regulations No. 12-99, implementing the afore-quoted provision, reads:

> "SECTION 3. **Due Process Requirement in the Issuance of a Deficiency Tax Assessment.** —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx
>
> xxx xxx xxx

> **The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable.** The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
>
> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
>
> **If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.**
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, 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)*

In this case, respondent issued to petitioner Assessment Notices and Formal Letters of Demand, all dated December 8, 2004 for deficiency withholding taxes and documentary stamp taxes in the aggregate amount of

₱13,318,821.92, arising from two Deeds of Sale of real property and improvements both in favor of Ellimac. The said Notices and Letters were received by petitioner on December 28, 2004. It is undisputed that petitioner timely filed its protest on January 7, 2005, wherein it requested for the cancellation of the said deficiency assessments. In its protest, petitioner stated that:

> "We reserve the right to file supplemental letters, memoranda and supporting documents to bolster our herein protest, within sixty (60) days from the filing hereof, pursuant to Section 228 of the Tax Code."[4]

The primary crux of the controversy is whether petitioner filed supporting documents within the aforementioned 60-day period or from January 7, 2005 to March 8, 2005. According to the Court in Division, it did not and We agree.

A review of the records reveals that the only document filed by petitioner within the said 60-day period was its letter to Revenue Region No. 5 dated February 28, 2005, where it stated that:

> "As we have not received any reply from you in regard to our protest letter dated January 6, 2005, apart from your December 29, 2004 letter which we received only on February 2, 2005, we would have to assume that your December 29, 2004 letter is your final decision on the matter, and would be constrained to file the necessary appeal with the Court of Tax Appeals within the prescribed period under the Tax Code."[5]

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[4] *Rollo*, p. 112.
[5] *Id* p. 116.

The only other supporting document was the Memorandum (Position Paper)[6] which was filed by petitioner on April 27, 2005 which the Court in Division found to be one hundred ten days (110) days from the filing of petitioner's protest. We note that the only new document submitted together with the said Memorandum was a photocopy of the Sketch Plan showing the relative locations of the Properties. Copies of the other documents *i.e. Appraisal Report, Tax Declarations and Photographs of the various improvements/structures built on the Properties,* were already attached to the protest.

We have previously ruled[7] that when the taxpayer fails to submit relevant supporting documents within the 60-day period from filing of the protest, and in case of inaction by the respondent and the taxpayer chooses to appeal to the Court of Tax Appeals, the same must be made within 30 days from the lapse of the 180-day period. The 180-day period must be reckoned from the date the protest was filed. The 60-day period shall not be added to the computation of the 180 days because from the wordings of the law, in case the taxpayer fails to submit relevant supporting documents, the assessment becomes final. The 180-day period, therefore, commences to run from the date the protest was filed. Failure on the part of the petitioner to file a Petition for Review with the Court of Tax Appeals within 30 days from the lapse of the

[6] *Records*, pp. 336 – 342.
[7] Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, C.T.A. EB NO. 76 (C.T.A. Case No. 6111), June 22, 2006.

180-day period reckoned from the date the protest was filed, renders the assessment final, executory and demandable.

Thus, We quote with approval the ruling of the Court in Division:

> "It is very clear from Section 228 of the NIRC of 1997 **that the** petitioner is given only a period of sixty (60) days from the filing of its protest within which to submit relevant documents in support of its protest. Thus, **any document submitted beyond the sixty (60) day period can no longer toll the running of the 180-day period for respondent to act on the protest.**
>
> Applying then the provisions of Section 228 of the NIRC of 1997, **the 180-day period, which is reckoned from January 7, 2005, or the date of the filing of the protest letter, shall end on July 06, 2005.** Accordingly, petitioner had thirty (30) days from July 06, 2005, or until August 05, 2005, within which to bring this instant petition to this Court. **This Petition for Review was filed on September 30, 2005 or forty six (46) days after the lapse of the 180-day period, which is evidently beyond the period allowed by law within which to elevate the case to this Court."**[8] *(Emphasis supplied)*

Moreover, We cannot give credence to petitioner's contention that it may file its Petition for Review within 30 days from the lapse of the 180-day period, the 180-day period being counted from the lapse of the 60-day period for the submission of documents after the filing of the protest, based on the aforementioned *RCBC* case. As previously discussed, the 180-day period must be reckoned from the date the protest was filed when no relevant supporting documents are submitted within the 60-day period. The 60-day period shall not be added to the computation of the 180 days because from

[8] *Rollo,* p.41, Assailed Resolution dated June 25, 2007.

the wordings of the law, in case the taxpayer fails to submit relevant supporting documents, the assessment becomes final.[9]

As aptly pointed out by the Court in Division in its assailed Resolution, the only instance when the 180-day period can be counted from the end of the 60-day period is when relevant supporting documents are submitted on the 60th day. Thus:

> "**The ruling in Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue applies only when relevant supporting documents were submitted on the 60th day provided under** Section 228 of the Tax Code."[10] *(Emphasis supplied)*

Furthermore, assuming *arguendo* that the February 28, 2005 letter of petitioner which was received by Revenue Region No. 5 on March 1, 2005, is considered a relevant supporting document filed within the 60-day period, the Petition for Review filed with the Court in Division would still be filed beyond the period mandated by law. This was admitted by petitioner in its Motion for Reconsideration filed with the Court in Division, to wit:

> "Granting *arguendo* that the 180-day period should be reckoned from the date of the last actual submission of additional documents within the 60-day period, which petitioner contests, petitioner respectfully submits that this **petition would be in delay by a mere three days.** The 180-day period reckoned from March 1, 2005, would have ended on August 28, 2005. Petitioner would then have 30 days from August 28, 2005, or until September 27, 2005, within which to file its petition. Since this petition was filed on September 30, 2005, **it was delayed by only three days.**"[11] *(Emphasis supplied)*

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[9] *Supra*, note 7.
[10] *Rollo*, p. 44, Assailed Resolution in C.T.A. Case No. 7331.
[11] *Id.* p.160.

It bears emphasis that the Supreme Court has declared that the requirement to file a Petition for Review with Court of Tax Appeals within 30 days is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[12] The same pronouncement was made by the High Tribunal in the *RCBC* case cited by petitioner, as follows:

> "In *Ker & Company, Ltd. v. Court of Tax Appeals*, the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless **the requirement that it must be brought within 30 days is jurisdictional.** If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.
>
> In fine, **the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment.**"[13] *(Emphasis supplied) (Citations omitted)*

Lastly, We find unmeritorious petitioner's assertion that the subject assessments have not yet attained finality even until April 2005 since Revenue Region No. 5 continued to review the subject assessment.

As correctly pointed out by respondent, the decision rendered by Revenue Region No. 5 on petitioner's administrative protest on December 29,

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[12] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007, 522 SCRA 152 citing *Chan Kian v. Court of Tax Appeals, 105 Phil. 904, 906 (1959).*
[13] G.R. No. 168498, June 16, 2006, 491 SCRA 213, 221.

2004 was reiterated in its letter dated March 4, 2005.[14] This was confirmed by petitioner, through its counsel, in its letter dated March 31, 2005 stating that "*please be advised that **we shall appeal your aforesaid decision on our protest** with the Court of Tax Appeals within the prescribed period of 30 days from receipt pursuant to Section 228 of the Tax Code.*"[15] Petitioner had 30 days from receipt of the denial of its protest on March 11, 2005 or until April 10, 2005 within which to file a Petition for Review before the Court but it did so only on September 30, 2005.

We note that petitioner requested for reconsideration before Revenue Region No. 5 in its letter dated March 31, 2005 where it also stated that it would appeal the decision to the Court. However, this is not in accordance with Revenue Regulations No. 12-99, which particularly outlines the procedure in filing protests and motions for reconsideration on assessments, more specifically Section 3.1.5 thereof which provides in part:

> "In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**" *(Emphasis supplied)*

[14] *Rollo*, p.118.
[15] *Rollo*, p. 119.

Based on the foregoing provision, a taxpayer may elevate his protest to the Commissioner of Internal Revenue within 30 days from receipt of the final decision of the Commissioner's duly authorized representative. Here, petitioner failed to do so.

At any rate, even on the assumption that the decision of Revenue Region No. 5 was not yet final and the 180-day period is counted from April 27, 2005, the date petitioner filed its last supporting document which was its Memorandum (Position Paper), respondent still had until October 24, 2005 to render a final decision. However, petitioner filed its Petition for Review with the Court in Division on September 30, 2005 or only 156 days from April 27, 2005.

The law is clear. In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.[16]

[16] *Supra*, note 12.

It is well to note that a party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action.[17]

In fine, We find no cogent reason to reverse the assailed Resolutions promulgated by the Court in Division on June 25, 2007 and November 20, 2007.

WHEREFORE, the Petition for Review *En Banc* is hereby **DISMISSED** for lack of merit and the rulings in the assailed Resolutions are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[17] Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado, G.R. No. 154068, August 3, 2007, 529 SCRA 185.

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice