**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**FMF DEVELOPMENT CORPORATION,**
Petitioner,

- versus -

C.T.A. CASE NO. 6403

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated
JUN 20 2002

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# RESOLUTION

Submitted for Our Resolution is a "Motion to Dismiss" filed by the respondent on April 18, 2002, on the ground of lack of jurisdiction.

In moving for the dismissal of the instant Petition for Review, respondent asserted that the subject assessment has long become final, executory and unappealable for failure on the part of petitioner to protest the income tax assessment within thirty (30) days from its receipt of the assessment notice on July 27, 2000. According to respondent, since the assessment was not disputed, there was no decision of the respondent Commissioner of Internal Revenue which was appealable to this Court.

On April 29, 2002, petitioner filed its "Reply" to respondent's "Motion to Dismiss". Contrary to respondent's assertions, petitioner argued that the Court's jurisdiction is not limited to decisions of respondent in cases involving disputed assessments but likewise to "other matters arising under the NIRC".

Assessment Notice No. 25-1-000184-91, with attached Demand Letter both dated July 19, 2000, for deficiency income tax covering the period 1991 in the amount of

P5,901,507.90 was allegedly issued beyond the three (3)-year prescriptive period. Thus, petitioner contended that the assessment was null and void, without any legal and binding effect. It further advanced the view that Section 228 of the NIRC presupposes that an assessment is issued within the three-year prescriptive period. In the instant case, however, the assessment took place beyond the three-year prescriptive period. It follows that petitioner was not obliged to observe the procedure for protesting an assessment under Section 228 of the National Internal Revenue Code (NIRC). This, notwithstanding, petitioner still contested the subject assessment when it filed its protest on December 11, 2001, thereby making it a disputed assessment which is cognizable by this Court.

We find respondent's contentions meritorious. Therefore, We resolve to grant the motion.

Records of this case disclose that petitioner received on July 10, 2000, a Pre-Assessment Notice dated June 26, 2000 for deficiency income tax amounting to P2,295,859.91 covering the fiscal year ending June 30, 1992. It does not appear from the records that petitioner filed a written protest or memorandum specifying its objections to the said pre-assessment notice.

On July 27, 2000, petitioner received Assessment Notice No. 25-1-000184-91 with attached Demand Letter, both dated July 19, 2000, assessing and demanding payment from petitioner the amount pre-assessed of P2,295,859.91 plus interest of P3,605,647.00 or the total amount of P5,901,507.90. This purportedly covered the period 1991 although the assessment notice bears the annotation "FY-6-30-92."

Petitioner received the Final Notice Before Seizure dated October 10, 2001 on November 14, 2001 requesting it to pay the amount of P5,926,507.90 inclusive of the P25,000.00 compromise penalty. The final Notice Before Seizure also reflects the period covered as 1991. Be as it may, there is no controversy regarding the period involved in this case inasmuch as the petitioner is well aware that the subject assessment was for the fiscal year ended June 30, 1992 evinced by its protest letter and petition for review.

On December 11, 2001, petitioner filed its letter protest assailing the Final Notice Before Seizure on the following grounds:

1. The right of respondent to assess petitioner for alleged deficiency income tax for the fiscal year ended June 30, 1992 has prescribed; and
2. The alleged deficiency tax assessment has no factual or legal basis.

A Warrant of Distraint and/or Levy (WDL) was thereafter issued by respondent against petitioner on January 31, 2002.

The WDL was considered by petitioner as a denial of its protest. Consequently, on March 4, 2002, petitioner filed the instant petition for review with this Court.

Pursuant to Section 228 of the 1997 NIRC, a taxpayer has thirty (30) days from receipt of an assessment to a file a protest, and another sixty (60) days from such filing to submit all the documents pertinent to the investigation being conducted. Thereafter, the Commissioner of Internal Revenue has one-hundred eighty (180) days from submission of said documents within which to rule on the protest. The taxpayer has thirty (30) days to appeal to this Court which is reckoned from the taxpayer's 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.

The thirty-day period granted to the taxpayer within which to contest the assessment made by the Collector of Internal Revenue is jurisdictional and non-extendible. **(Pangasinan Transportation Co., Inc. vs. Silverio Blasquera, G.R. No. L-13101, April 29, 1960)** Failure on the part of the taxpayer to file its protest within the thirty-day period renders the assessment final and unappealable to this Court.

In the instant case, while the assessment notice was received by petitioner on July 27, 2000, it only filed its protest letter on December 11, 2001, or after the lapse of more than one and a half years. Besides, the protest letter referred to the Final Notice Before Seizure which was not the Assessment Notice adverted to in Section 228 of the 1997 NIRC. What was referred to in the Code which must have been protested administratively by petitioner was the assessment notice issued on July 19, 2000 or BIR Form 1708.

Consequently, petitioner can no longer contest the subject assessment beyond the thirty-day prescriptive period, because it had already become final, executory and unappealable. Article 1106 of the New Civil Code of the Philippines, provides that "By prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law. In the same way, <u>rights and actions are lost by prescription</u>." (Underscoring ours)

Petitioner claimed that the thirty-day period prescribed under Section 228 of the NIRC presupposes that an assessment was issued within the three-year prescriptive period. Accordingly, Section 228 of the NIRC cannot be made applicable to the present case because the assessment in question was made beyond the three-year period for making an assessment, rendering it null and void without any legal and binding effect.

We do not agree.

Section 228 of the NIRC does not distinguish between an assessment made within the prescriptive period and an assessment made beyond the prescriptive period. *Ubi lex non distinguit nec nos distinguere debemos*, where the law does not distinguish, we should not distinguish.

Petitioner also alleged that, among others, this Court has jurisdiction over decisions of the Commissioner of Internal Revenue in cases involving disputed assessment xxx or other matters arising under the National Internal Revenue Code xxx. (Underscoring ours)

We are not convinced by petitioner's asseverations.

The causal factor of petitioner's action is the assessment issued by the respondent. So, it cannot be categorized as "other matters" covered by Section 7 of R.A. No. 1125. However, under Section 7, the assessment must be disputed before this Court can acquire jurisdiction over the subject matter. In other words, petitioner could have easily raised the issue of prescription, among others, on its administrative protest required to be filed within thirty-days from receipt of the assessment notice on July 27, 2000. The issue on prescription was belatedly raised by petitioner in its letter dated December 10, 2001. Petitioner's right to protest was, therefore, waived by its failure to contest the assessment within thirty days from receipt thereof. Hence, the assessment became final and executory.

**WHEREFORE**, in view of all the foregoing, respondent's "Motion to Dismiss" is hereby **GRANTED**.

**SO ORDERED.**

**JUANITO C. CASTAÑEDA, JR.**
Associate Judge

**ERNESTO D. ACOSTA**
Presiding Judge