REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENJAMIN M. DIVINAGRACIA
Proprietor of Agencia Chona-BMD
Pawnshop & Jewelry Inc.,
Petitioner,

- versus -

C.T.A. CASE NO. 6717

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 07 2003
[signature]

x - x

RESOLUTION

For resolution is respondent's Motion to Dismiss filed on August 1, 2003 seeking dismissal of the Petition for Review on the ground of lack of jurisdiction. Respondent argued that the this court is without jurisdiction because the petition failed to show on its face compliance with the condition sine qua non enunciated in Section 228 of the 1997 NIRC that if the protest is denied in whole or in part, the taxpayer adversely affected by the decision may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, otherwise the decision shall become final, executory and demandable. The denial of the petitioner's protest was received on February 20, 2003. The petition for review was filed on June 20, 2003.

An earlier pleading entitled Notice of Appeal with Attached Memorandum Appeal was filed by the petitioner on March 21, 2003 via registered mail with an attached postal money order in the amount of Two Thousand Pesos, which was received by the court on May 29, 2003. In a letter dated June 3, 2003, the Executive Clerk of Court returned the Notice of Appeal with Memorandum on Appeal to the petitioner's counsel due to the insufficiency of the amount for the filing fees. The letter also stated that the appeal cannot be acted upon and will not be considered filed because the appeal must be in the form of direct Petition for Review and seven copies thereof must be filed with the Court of Tax Appeals with address at 4th Floor Hizon Bldg., 29 Quezon Ave., Quezon City. The letter further informed the counsel of the petitioner that the amount of assessment involved was not indicated.

In its Comment/Opposition posted on August 20, 2003, petitioner asserted that the Notice of Appeal with attached Memorandum on Appeal was considered a Petition for Review by this court taking into consideration the notification emanating from the Office of the Clerk of Court. Petitioner further postulated that since summons were issued to respondent on July 4, 2003, that would clearly prove and refute that the Notice of Appeal with Attached Memorandum Appeal which was subsequently replaced with Petition for Review was filed within the thirty-day period and was given due course, otherwise, the Office of the Clerk of Court would not have issued the corresponding summons and docketed the instant case.

We rule to grant the Motion to Dismiss.

The following are the Rules in filing cases before this court as provided under Rule 5 Sections 1-3 (Initiation of Proceedings – Petition for Review) of the Rules of Court of Tax Appeals, namely:

> Section 1. In all cases brought or submitted to this Court the taxpayer or the aggrieved party shall be called the "Petitioner" and the Collector of Internal Revenue, the Commissioner of Customs, or the proper provincial or city Board of Assessment Appeals, as the case may be shall be called the "Respondent"; the pleading shall be entitled "Petition for Review".
>
> Section 2. The Petition for Review shall contain allegations showing jurisdiction in the Court, a concise statement of the ultimate facts and a summary of the statement of the issues involved in the case, as well as the reasons relied upon for the reversal of the respondent's action. A copy of the decision appealed from shall be attached to the Petition for Review.
>
> Section 3. No Petition for Review shall be received for filing by the Clerk of this Court unless the petitioner submits proof of payment of the docketing fees. Upon receipt of the petition, the proceeding will be docketed and assigned a number, which shall be placed by the

> parties on all papers thereafter filed in the proceeding. The Clerk of the Court of Tax Appeals will then issue the necessary Summons to the Respondent.

The original pleadings filed by the counsel for petitioner which was posted on March 21, 2003, well-within the reglementary period of thirty (30) days reckoned from the receipt of February 20, 2003, was entitled Notice of Appeal and Memorandum on Appeal both dated March 18, 2003. The filing fee in the form of postal money order in the amount of Two Thousand Pesos was attached with the Notice but the same was insufficient. From such instance alone, the simple requisites of Sections 1 and 2 of the Rules of the Court of Tax Appeals were not complied with. In its subsequent filing of pleading posted on 20 June 2003, petitioner averred in its Petition for Review that its previous Notice of Appeal was not given due course per letter of the Executive Clerk of Court and likewise was not dismissed. The counsel for petitioner is contemplating that because the earlier Notice of Appeal was not dismissed by the Executive Clerk of Court, his subsequent filing of the proper petition would still be within the thirty (30)-day required under the last paragraph of Section 228. Petitioner misinterpreted the communication of the Executive Clerk of Court as an authority for extension of the thirty day period. Such interpretation is misplaced. The last paragraph of Section 228 of the NIRC states:

> 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 said decision, or form the lapse of one-hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable.

Hence, by filing the proper petition on June 20, 2003, the petitioner has already lost the period within which to file the Petition for Review.

In addition, we agree with the respondent that the mere fact that the Petition for Review filed by petitioner after being notified by Executive Clerk of Court Elvessa P. Apolinario that the Memorandum of Appeal it filed earlier cannot be acted upon and will not be considered filed for the reason that the appeal must be in the form of a direct petition for review was already docketed as CTA Case No. 6717 and summons had already been served to respondent, does not mean and is not to be construed that this Honorable Court has already acquired jurisdiction over said Petition for Review.

Petitioner further alleged that respondent's act of filing a motion for extension of time to file answer is deemed a waiver to question the jurisdiction of the court and tantamounts to an admission that the Court of Tax Appeals has jurisdiction over the instant case. The assertion is wrong because jurisdiction over the subject matter of the claim cannot be waived. A motion to dismiss filed on the ground of lack of jurisdiction can be filed at any stage of the proceedings.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights – like all rules, they are required to be followed except only when for the most persuasive of reasons they may be relaxed to relieve litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. (*Cometa vs. Court of Appeals, 351 SCRA 294*).

WHEREFORE, in view of all the foregoing, the instant Motion to Dismiss is hereby **GRANTED.**

ERNESTO D. ACOSTA
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge