Court of Tax Appeals
QUEZON CITY

Third Division

LIGHT RAIL TRANSIT AUTHORITY,
Petitioner,

- *versus* -

BUREAU OF INTERNAL REVENUE represented by the COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8891

Present:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

FEB 02 2015
cata 1:07 p.m.

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RESOLUTION

For resolution is respondent's "Motion to Dismiss," filed by registered mail on November 5, 2014; with petitioner's "Comment/Opposition (To the Motion to Dismiss dated 4 November 2014)," filed on January 14, 2015.

Respondent alleges that the Court lacks jurisdiction to entertain the Petition for Review filed on September 11, 2014 as the reckoning period to appeal to the Court of Tax Appeals was on March 17, 2012, when petitioner received the Warrant of Distraint and/or Levy from the Regional Director ("RD") and not on August 12, 2014, when petitioner received the Letter dated June 30, 2014, which denied its request for a reinvestigation.

Petitioner, on the other hand, avers that the letter dated June 9, 2014 issued by Revenue District Officer Ms. Shirley A. Calapatia does not constitute as the final decision of the Commissioner pursuant to Revenue Memorandum Circular (RMC) No. 11-2014.[1]

After a perusal of the records of the case, the Court finds merit in the "Motion to Dismiss."

Based on the records, on December 8, 2008, respondent through the Bureau of Internal Revenue Regional Director ("RD") issued a Preliminary Assessment Notice ("PAN")[2] on petitioner for the deficiency income tax, valued added tax, withholding tax on compensation, expanded withholding tax and withholding of VAT ("deficiency taxes") for the year 2003.

On December 22, 2008, petitioner filed its protest to the said PAN.[3]

On December 24, 2008[4] the RD issued a Formal Assessment Notice ("FAN") on the said deficiency taxes. On April 1, 2011, the RD issued its Final Decision on Disputed Assessment[5] ("FDDA").

On May 6, 2011, petitioner filed its appeal on the said FDDA with the Commissioner.[6]

Momentarily, a Preliminary Collection Letter was issued by the RD on September 20, 2011.

Then, through a Letter[7] petitioner informed the RD that an appeal was pending before the Commissioner.

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[1] Issued on February 19,2014 clarifies certain issues relative to due process requirement in the issuance of a deficiency tax assessment pursuant to Revenue Regulations (RR) No.12-99, as amended by RR No.18-2013.RRNo.12-99, as amended.

RR No.12-99, as amended by RR No 18-2013, provides that the Commissioner or his duly authorized representative shall issue the Preliminary Assessment Notice (PAN), Formal Letter of Demand/Final Assessment Notice (FLD/FAN) and Final Decision on Disputed Assessment (FDDA). The term "duly authorized representative" therein refers to Revenue Regional Directors, Assistant Commissioner-Large Taxpayers Service and Assistant Commissioner- Enforcement and Advocacy Service.

[2] *Records*, pp 20-21, Annex D.

[3] *Id.*, pp.25-28, Annex E.

[4] *Id.*, pp. 29-33, Annex F.

[5] *Id.*, pp. 34-35, Annex G.

[6] *Id.*, pp. 38-39, Annex H.

[7] *Id.*, p.41, Annex K.

Despite of such fact, on March 5, 2012, a Warrant of Distraint And/Or Levy was issued by the RD which was received by petitioner on May 17, 2012.[8] Thereafter, petitioner through a Letter dated May 28, 2012,[9] it requested a reconsideration of the issuance of the said warrant.

In a Letter[10] dated June 9, 2014, the RD denied petitioner's request for reinvestigation upon its alleged failure to submit the required documents within the prescribed period.

On June 17, 2014, petitioner received the Letter dated June 9, 2014.

After the dockets of the case have been moved to another regional district officer, petitioner again requested for a reinvestigation which was denied in a Letter[11] dated June 30, 2014. The Letter denying the request for reinvestigation was received by petitioner on August 12, 2014.[12]

Hence, the present "Petition for Review" filed on September 11, 2014.

From the foregoing factual circumstances, the issue presented before Us is whether the Court lacks jurisdiction to entertain the instant Petition for Review as the assessment has attained finality.

The Court, being a court of special jurisdiction, can take cognizance only on matters that are clearly within its jurisdiction. Section 7 of RA No. 9282, as amended,[13] provides:

> "Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[8] *Id.*, p. 45, Annex N.
[9] *Id.*, p.46, Annex O.
[10] *Id.*, p. 50, Annex R.
[11] *Id.*, p19, Annex C.
[12] *Id.*
[13] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes," April 23, 2004.

> (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 Code 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 relation 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;" (Emphasis supplied)

In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*,[14] the word "decisions" in the above quoted provision of RA No. 9282, as amended,[15] has been interpreted to mean the decisions of the Commissioner of Internal Revenue ("CIR") on the protest of the taxpayer against the assessments. Corollary thereto, Section 228 of NIRC, as amended provides for the procedure for protesting an assessment. It states:

> " SECTION 228. *Protesting of 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 pre-assessment notice shall not be required in the following cases:

[14] G.R. No. 175097, February 5, 2010, 611 SCRA 692.

[15] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes," April 23, 2004.

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> 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."

Clearly Section 228 of the NIRC, as amended, mandates that the <u>administrative protest</u> must be made within 30 days from the taxpayer's receipt of the tax deficiency assessment, otherwise the assessment becomes final, unappealable, and demandable. Only upon failure to protest within the given period will the finality of the assessment follows.

In the present case, after perusing the documents, the following facts are revealed: that on December 24, 2008[16] the RD issued a FAN on the said deficiency taxes; that on April 1, 2011, the RD issued its Final

[16] *Id.*, pp. 29-33, Annex F.

Decision on Disputed Assessment[17] ("FDDA"); that on May 6, 2011, petitioner filed its appeal on the said FDDA with the Commissioner.[18]

From the foregoing, it is shown that no protest letter was filed by petitioner to the FAN. Although, it made allegations[19] that it filed the said protest letter, no proof was presented. Basic is the rule that mere allegation is not evidence, and is not equivalent to proof.[20] Therefore, for having failed to file its protest to the FAN within the given period, the FAN has attained finality.

In the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, The Court of Tax Appeals, and The Court of Appeals,*[21] the Supreme Court has held that: "A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 of the NIRC, as amended, can no longer be contested."

Likewise in the same case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, The Court of Tax Appeals, and The Court of Appeals,*[22] "the Supreme Court has held that:"for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof."

In the present case, there was no protest filed by petitioner on the FAN issued against it. What it filed is an appeal[23] on the FDDA[24] to the Commissioner. This appeal on the FDDA to the commissioner would not result in a <u>decision</u> that is prescribed in Section 228 of the 1997 National Internal Revenue Code, as amended ("NIRC"). Therefore, the Court *a quo* cannot acquire jurisdiction.

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[17] *Id.*, pp. 34-35, Annex G.
[18] *Id.*, pp. 38-39, Annex H.
[19] *Records*, p. 7, Petition for Review, Antecedent Facts, paragraph 7.
[20] *Hector C. Villanueva vs. Philippine Daily Inquirer, Inc., Letty Jimenez Magsanoc, et. Al.*, G.R. No. 164437, May 15, 2009 citing *Philippine National Bank v. Court of Appeals*, G.R. No. 116181, January 6, 1997, 266 SCRA 136, 139.
[21] G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[22] *Id.*
[23] *Records*, p. 38, Annex H.
[24] *Id.*, p.34, Annex G.

The Court *a quo* can acquire jurisdiction only on what is vested in them in RA No. 9282,[25] that is, when a decision has been rendered by respondent after petitioner disputed/protested an assessment pursuant to Section 228 of the NIRC, as amended.

In sum, the Court lacks jurisdiction to entertain the instant Petition for Review as petitioner failed to protest the assessment as ascribed in Section 228 of the NIRC, as amended, making the same final and executory.

WHEREFORE, the "Motion to Dismiss," is hereby **GRANTED.** Accordingly, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[25] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes," April 23, 2004.