REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

EURO-MED LABORATORIES PHIL., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7274

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

AUG 0 4 2006

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RESOLUTION

For resolution are:

1) Respondent's "Motion for Preferential Resolution of Respondent's Affirmative Defense of Prescription" filed on March 29, 2006; and

2) Petitioner's "Opposition (to Respondent's Affirmative Defense)" filed on May 12, 2006.

The motion is anchored on the ground that petitioner failed to elevate its appeal to this Court within thirty (30) days from its receipt of the Final Decision on Disputed Assessment issued on January 18, 2005, on February 5, 2006. Accordingly, the Final Decision was signed by Deputy Commissioner Kim Jacinto-Henares, as the authorized representative of the Commissioner of Internal Revenue, the fact of it being the "final decision" having been clearly stated therein.

On the other hand, petitioner interposes its objection on the following grounds:

a) Revenue Regulations No. 12-99 provides 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."

b) The alleged "final decision on disputed assessment" was not even signed by or for respondent Commissioner – it was signed by a Deputy Commissioner.

c) Even assuming the said Deputy Commissioner was duly authorized to issue said final decision, the petitioner was not informed of such authority.

d) To rule that the appeal prescribed would be contrary to the standards of fair play, regularity and orderliness.

After a careful examination of the records of the case, We grant respondent's Motion to Dismiss and rule for the dismissal of the case for lack of jurisdiction.

Petitioner is correct in quoting Revenue Regulations No. 12-99, which provides for the administrative remedies available to a taxpayer in cases where protests against assessments issued are filed before the Commissioner or his duly authorized representatives. For expediency, the said section is quoted below, to wit:

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"Sec. 3.1.5

xxx xxx xxx

In general, if the protest is denied in whole or in part, by the Commissioner of his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of the receipt of said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from the 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)

Pursuant to the above provision, once a taxpayer is aggrieved by the Final Decision of the Commissioner's duly authorized representative, it may elevate its request for reconsideration to the Commissioner himself, or elevate the appeal directly to this Court. In which case, the Final Decision would not become final and executory.

The subject Final Decision on Disputed Assessment issued by Deputy Commissioner Kim Jacinto-Henares on January 18, 2005 is the final decision of the Commissioner's duly authorized representative appealable to the Commissioner himself. Thus, petitioner is correct in stating that the final

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decision did not attain finality when it timely filed its request for reconsideration to the Commissioner on March 3, 2005, which is well within the thirty (30) day prescribed period.

Nevertheless, even though petitioner timely filed its request for reconsideration to the Commissioner, still, this Court has no jurisdiction to try this instant case.

It must be emphasized that when petitioner filed its request for reconsideration on the Final Decision on Disputed Assessment, a Collection Letter dated April 19, 2005 and received by petitioner on May 3, 2005, was issued for and in behalf of the Commissioner of Internal Revenue himself. The collection letter received by petitioner verily signified a character of finality, which was likewise tantamount to the denial of its request for reconsideration. In the said collection letter, the Commissioner not only demanded that the petitioner pay the amount of P1,556,623.93 as deficiency income and value-added taxes, but it likewise gave a warning that in the event of petitioner's failure to pay, the Commissioner would be constrained to enforce the collection thereof by means of the remedies provided for by law. Thus, not only was the Collection Letter signed for and in behalf of the Commissioner, but it likewise had the Commissioner's so-called "finality" which is the subject of the present appeal before this Court.

In this regard, petitioner should have elevated its appeal to this Court within thirty (30) days from receipt of the collection letter, or on June 3, 2005.

When Petitioner filed the instant Petition for Review on June 24, 2005, which is 21 days late, clearly, its right to appeal had already lapsed.

"[T]he right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin, a remedy that may be exercised only in the manner prescribed by the provisions of law authorizing such exercise. Hence, the legal requirements must be strictly complied with" *(Philippine Rabbit Bus Lines, Inc. vs. People, 427 SCRA 456 [2004]).* As in this case, appeal "must be availed of within the period and in the manner provided for by law; otherwise, upon the lapse of the period to appeal from a decision or final order and no appeal has been perfected by the aggrieved party, such final order or decision *ipso facto* becomes final and executory. The appellate court does not aquire appellate jurisdiction over a belated appeal from the said order or decision" *(Vda. de Cardona vs. Amansec, 427 SCRA 758 [2004]).*

WHEREFORE, premises considered, respondent's motion is hereby **GRANTED**. **ACCORDINGLY,** the instant Petition for Review is hereby **DISMISSED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice