REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

FIL-HISPANO HOLDINGS CORPORATION, Petitioner,	**C.T.A. CASE NO. 7331**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 2 5 2007

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RESOLUTION

For resolution are:

a) Respondent's **"Motion to Dismiss"** filed on January 22, 2007 seeking the dismissal of the instant Petition for Review; and

b) Petitioner's **"Opposition (To Respondent's Motion to Dismiss dated January 23, 2007)"** filed on February 23, 2007.

The facts, as stipulated by the parties, are as follows:

"3. On February 27, 2004, petitioner received from the BIR Revenue Region No. 5, Valenzuela City (the "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 Prime Holdings, Inc. ("Ellimac") covered by a Deed of Sale dated December 14, 2001.

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

5. On October 19, 2004, petitioner received from BIR Revenue District Office No. 24 (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. (The land covered by the two [2] Deeds of Sale are hereinafter referred to as the "Properties.")

6. On October 29, 2004, petitioner's counsel filed a reply-letter dated October 28, 2004, on behalf of petitioner, again stating petitioner's disagreement to the findings made by the Revenue District Office in its October 18, 2004 letters, maintaining the argument that the 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.

7. On December 1, 2004, petitioner received two (2) Preliminary Assessment Notices dated November 22, 2004, this time from the Revenue Region No. 5 informing it of deficiency withholding and documentary stamp taxes ("DST") arising from the two (2) Deeds of Sale of real property and improvements in favor of Ellimac dated December 14, 2001 and March 4, 2003, respectively.

8. On December 14, 2004, undersigned counsel filed a reply-letter dated December 7, 2004, on behalf of petitioner, informing the Revenue Region No. 5 of petitioner's previous receipt of a similar notice of findings for deficiency withholding and documentary stamp taxes from the Revenue District Office No. 24, and reiterating its earlier request for cancellation of the said findings as stated in petitioner's counsel's letter dated October 28, 2004.

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

xxx xxx xxx

12. On January 7, 2005, petitioner protested the above assessments, through its counsel's letter dated January 6, 2005, where it requested for the cancellation of the foregoing deficiency tax assessments on the basis of the following arguments, in sum, to wit:

xxx xxx xxx

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

14. On March 1, 2005, uncertain whether the 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 undersigned counsel's letter dated February 28, 2005, reiterating the arguments raised in the protest-letter dated January 6, 2005.

15. On March 11, 2005, petitioner received from Revenue Region No. 5, a letter dated March 4, 2004 expressly replying to undersigned counsel's letters of January 6, 2005 and February 28, 2005, reiterating the assessments under the protested Formal Assessment Notices and restating the Revenue Region No. 5's position as explained in its letter dated December 29, 2004.

16. On March 31, 2005, petitioner acknowledged receipt of the Revenue Region No. 5's letter dated March 4, 2005,

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

17. On April 4, 2005, petitioner received from Revenue Region No. 5, a letter dated April 4, 2005, the final and dispostive 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."*

18. On April 6, 2005, petitioner, through undersigned counsel, filed with the 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.

19. On April 27, 2005, petitioner filed, through undersigned counsel's letter dated April 27, 2005, its Memorandum (Position Paper) submitting that the examiners of Revenue District Office No. 24-Valenzuela City had correctly applied and relied upon the zonal valuation per square meter of P4,450.00 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."

Hence, this instant petition.

Respondent argues that, in view of the foregoing stipulations, the disputed assessments have become final and executory. However, granting that the decision did not become final and executory, respondent avers that

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this instant petition was prematurely filed because the last day of the 180-day period, as provided for under Section 228 of the National Internal Revenue Code (NIRC) of 1997, falls on October 24, 2005, which was to be reckoned from April 27, 2005, that is, the date when petitioner filed its supplemental memorandum, thus, petitioner's filing of this petition on September 30, 2005 is untimely.

On the other hand, petitioner opposes and in arguing its stand, incorporates paragraphs 10 to 19 of its Reply, to quote:

> 10. In paragraphs 21 through 27, respondent would assail the present Petition as being barred by prescription under Section 228 of the Tax Code, citing petitioner's alleged failure to file a Petition for Review with the Honorable Court within 30 days from its receipt of the BIR Revenue Region No. 5's (hereafter, RR 5's) March 4, 2005 letter.
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> 11. In reply, it is petitioner's position that no final decision on its protest has been rendered by RR 5. On April 4, 2005, an informal conference was held between representatives of petitioner and of RR 5 to follow up on the status of petitioner's protest and to clarify the March 4, 2005 letter which did not comply with the requisites of a final decision on disputed assessment under Section 3.1.6 of Revenue Regulations No. 12-99 for failing to state the facts and the law on which it was based and not being couched in the form of Annex C to the said regulations. During the conference, petitioner was able to elucidate on the arguments raised in its protest. In a letter dated April 4, 2005 addressed to petitioner's counsel, RR 5 clarified that its decision on petitioner's protest is not final and, hence, required petitioner to further substantiate the oral arguments raised during the informal conference. On April 27, 2005, petitioner complied with RR 5's requirement by submitting a position paper elucidating on its arguments to support the protest and annexing therewith a lot survey plan indicating the relative locations of the lots covered by the 2001 and 2003 sales. Thereafter, on numerous visits made to RR 5's offices between May and early September of this year, petitioner's representative followed up the decision of RR 5 on the protest. However, no decision was rendered, nor did RR 5

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indicate to petitioner's representative that a decision would be rendered at any time.

12. RR 5 had 180 days, or up to September 4, 2005, to issue its final decision on the protest. However, RR 5 did not do so. In light of RR 5's continuing inaction, petitioner within 30 days from the lapse of the 180 day period on September 4, 2005, or on September 30, 2005 to be exact, filed its appeal before this Honorable Court.

13. In paragraphs 28 to 32 of the Answer, respondent would alternatively argue that, assuming RR 5 had not issued a final decision, the instant Petition must nonetheless be dismissed for being filed prematurely. Respondent suggests that the 180 day period for RR 5 to decide on the protest should now be counted from April 27, 2005, and, hence, should have lapsed on October 24, 2005.

14. If this argument were to be given credence, it would only work to perpetuate an injustice upon petitioner and other taxpayers who may be similarly situated.

15. When it became apparent that RR 5 could not be expected to finally act upon its protest, petitioner, as early as August, had wanted to file an appeal with the Honorable Court. However, advised of the mandatory period under Section 228 of the Tax Code, petitioner patiently waited for the lapse of the 180 days before filing the present petition.

16. If RR 5 all this time intended to render an unfavorable decision on petitioner's protest, why did it not do so during the 180 days and despite petitioner's several follow ups? Why should petitioner be made to suffer a dismissal of its appeal on the ground that it is premature when RR had not given any indication that a decision would be rendered on the protest at any time?

17. Quite a contrast to petitioner's respect of the 180 day period is RR 5's disregard of the same. The period was granted to allow the Bureau of Internal Revenue sufficient time to evaluate the arguments raised and documents submitted in the protest and render a decision thereon. But, in this case, RR did not use the period as it should have.

18. Instead, respondent would seemingly use the period as a convenient artifice to repel an otherwise timely appeal made before this Honorable Court. It is submitted that,

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with this alternative argument, respondent would in effect impose upon petitioner an indefinite period of time for RR 5 to decide on the protest. The Honorable Court, in the case of Lascona Land Co., Inc. vs. Commissioner of Internal Revenue, et.al., CTA Case No. 5777, January 4, 2000, gave the following observations regarding the options of the taxpayer in cases of the Bureau's inaction in protest cases:

> *"Verily, in cases of inaction, Section 228 of the Tax Code merely gave the taxpayer an option: first, he may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180) day period provided for under the said section, or second, he may wait until the Commissioner decides on his protest before he elevates his case. This Court believes that the taxpayer was given this option so that in case his protest is not acted upon within the 180 day period, he may be able to seek immediate relief and need not wait for an indefinite period of time for the Commissioner to decide. But if he chooses to wait for a positive action on the part of the Commissioner, then the same could not result in the assessment becoming final, executory, and demandable.*
>
> *We agree with Petitioner that to adopt the interpretation of Respondent will not only sanction inefficiency, but will likewise condone the Bureau's inaction. This is especially true in the instant case when despite the fact that Respondent found Petitioner's arguments to be in order, the assessment will become final, executory and demandable for Petitioner's failure to appeal before Us within the thirty (30) day period."*

19. Petitioner submits that RR 5 had no intention of issuing a decision on its protest. Thus, it had no recourse other than to file this appeal before the Honorable Court. The dismissal of this appeal on the ground that it is premature would not only be unrealistic and impractical but also plainly unjust.

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After evaluating the parties' arguments and the records of the case, the Court finds the instant motion meritorious.

Section 228 of the NIRC provides:

> "**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:
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> xxx xxx xxx
>
> 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."
> (Emphasis supplied.)

Based on the foregoing provision, upon receipt of the final assessment notice, petitioner had a period of thirty (30) days within which to file its protest-letter. The law likewise provides that petitioner has a period of sixty (60) days from the filing of the protest within which to submit its relevant documents in support of its protest. Thereafter, the respondent is given a period of one hundred eighty (180) days from receipt of the documents to decide on the protest filed.

In the case at bar, petitioner filed its letter-protest on January 7, 2005, after it received the Formal Letters of Demand issued against it for deficiency

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taxes dated December 8, 2004. Per its protest-letter, it attached documents to prove its arguments, likewise, reserving its right to present additional documents within sixty (60) days from the date thereof, in pursuance to Section 228 of the NIRC of 1997. It must be emphasized at this point, though, that the Memorandum[1] (Position Paper) filed on April 27, 2007, or one hundred ten (110) days from the filing of the protest letter, supposedly in support of the same, could no longer be considered. 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 the 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.

In this regard, this Court lacks the jurisdiction to take cognizance of the case filed. It is stressed that this Court is a court of special jurisdiction and as such, can take cognizance only of matters and issues as are within its

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[1] Annex T-1, Petition for Review

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jurisdiction. In the absence of jurisdiction, therefore, this Court is left with no recourse, but to dismiss the petition.

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.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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