REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB No. 1183 (C.T.A. CASE Nos. 7823 & 7832)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
ST. LUKES MEDICAL CENTER, INC.,[1] Respondent.	
	Promulgated: AUG 26 2015 3:30pm

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DECISION

***Fabon-Victorino, J.*:**

This appeal taken by petitioner Commissioner of Internal Revenue (CIR) via her Petition for Review dated June 27, 2014 assails the Decision dated February 18, 2014, which partially cancelled the assessment she issued against respondent, and the Resolution dated May 29, 2014, which denied her motion for reconsideration.

The following facts are undisputed:

Petitioner is vested with authority to abate or cancel a tax liability when the same or any portion thereof is unjustly or excessively assessed.

[1] Should be spelled as St. Luke's Medical Center, Inc.

On the other hand, respondent is a non-stock, non-profit domestic corporation and registered as a value-added taxpayer with TIN/VAT No. 000-684-591.

In Audit Results/Assessment Notice No. QA-07-000094 and Audit Results/Assessment Notice No. QA-07-000095, both dated November 22, 2007 issued by the BIR Large Taxpayers Service-Document Processing and Quality Assurance Division, respondent was assessed deficiency Income Taxes (ITs) of P97,700,084.50 for taxable year 2003, and P134,841,854.84 for taxable year 2004, or a total deficiency ITs of P232,541,939.34.

On January 14, 2008, respondent filed its protest against such assessments.

Respondent also received from the BIR an undated Formal Letter of Demand (FLD) and Details of Discrepancies, with attached Assessment Notices, assessing it deficiency taxes of P287,222,259.61 for the year 2004, detailed as follows:

1. Audit Result/Assessment Notice No. INC-04-000205 for deficiency income tax of P237,079,523.66;
2. Audit Result/Assessment Notice No. VT-04-000246 for deficiency VAT of P1,116,454.50;
3. Audit Result/Assessment Notice No. WC-04-000105 for deficiency withholding tax on compensation (WTC) of P31,546,272.95;
4. Audit Result/Assessment Notice No. EWT-04-000195 for deficiency expanded withholding tax (EWT) of P17,141,312.72; and
5. Audit Result/Assessment Notice No.DST-04-000162 for deficiency documentary stamp tax (DST) of P338,695.76.

On February 20, 2008, respondent filed with the BIR its protest against the assessments indicated in the FLD and Assessment Notices.

Petitioner failed to act on the protest within the 180-day period prescribed under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, prompting respondent to file two (2) separate Petitions for

Review with the Court in Division. The first Petition filed on August 12, 2008 was docketed as CTA Case No. 7823 while the second filed on September 18, 2008 was docketed as CTA Case No. 7832. The two Petitions were eventually consolidated on December 11, 2008.

On February 18, 2012, the Court in Division promulgated the assailed Decision, the dispositive portion of which reads, as follows:

> "WHEREFORE, premises considered, the instant consolidated Petitions for Review are hereby PARTIALLY GRANTED.
>
> The assessment issued by (petitioner) against (respondent) for the taxable year 2003 covering alleged deficiency income tax for the taxable year 2003 is hereby CANCELLED due to prescription.
>
> However, the assessments issued by (petitioner) against (respondent) for the taxable year 2004 covering deficiency income tax, deficiency value-added tax, deficiency withholding tax on compensation, deficiency expanded withholding tax and deficiency documentary stamp tax are UPHELD but with some modifications.
>
> Accordingly, (respondent) is hereby ORDERED TO PAY the amount of P151,850,822.97 for the following deficiency taxes, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

Type of Tax	**Basic Tax**	**25% Surcharge**	**Total**
Income Tax	P 132,011,615.87		P 132,011,615.87
Value-added Tax	193,921.57	P 48,480.39	242,401.96
Withholding Tax on Compensation	2,317,996.65	579,499.16	2,897,495.81
Expanded Withholding Tax	13,357,824.46	3,339,456.12	16,697,280.58
Documentary Stamp Tax	1,623.00	405.75	2,028.75
	P147,882,981.55	**P3,967,841.42**	**P151,850,822.97**

> In addition, (respondent) is hereby ORDERED TO PAY 20% deficiency interest per annum on the following basic deficiency taxes computed from the dates indicated herein after full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	Basic Deficiency Tax	Computed from:
Value-added Tax	P 193,921.57	January 25, 2005
Withholding Tax on Compensation	2,317,996.65	January 15, 2005
Expanded Withholding Tax	13,357,824.46	January 15, 2005
Documentary Stamp Tax	1,623.00	January 10, 2005
	P 15,871,365.68	

Further, (respondent) is hereby ORDERED TO PAY 20% delinquency interest per annum on the deficiency taxes of P15,871,365.68, on the 25% surcharge of P3,967,841.42 and on the 20% deficiency interest which have accrued as stated above from December 31, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

In the Resolution dated May 29, 2014, the Court in Division denied petitioner's Motion for Reconsideration for lack of merit.

Hence, this appeal before the Court *En Banc*.

Petitioner posits that cancellation of her assessment against respondent for deficiency income tax for the year 2003 on ground of prescription is flawed since there are exceptions to the 3-year prescriptive period under Section 203 of the NIRC for issuance of an assessment. In case of false or fraudulent return with intent to evade tax or if there is failure to file a return, the period to assess is 10 years after the discovery of the falsity, fraud or omission pursuant to Section 222 of the NIRC.

While respondent e-filed its Annual Income Tax Return (ITR) for the year 2003 on April 13, 2004, the said ITR was false as it did not indicate the proper income tax due. That being the case, her right to assess is anytime within 10 years from the discovery of such falsity as allowed under Section 222 of the NIRC. Therefore, she timely issued the assessment against respondent for deficiency IT for the year 2003 within ten (10) years from discovery of the deficient ITR filed by respondent.

Petitioner insists that respondent is liable to pay deficiency VAT, EWT, WT, DST and deficiency interest.

Allegedly, respondent should be charged the corresponding VAT on the medicine and pharmaceutical items it sold to out-patients, rental income earned, write-off of long overdue payable to suppliers and proceeds from the sale of property and equipment as mandated under Section 106(A) and (B) of the NIRC of 1997.

Based on the audit/investigation conducted, respondent is also liable to pay EWT relative to the variances in income payments made to local suppliers, for contractors and sub-contractors as well as Professional Fees and Honorarium for violation of Section 3 of Revenue Regulations (RR) No. 30-2003 and Section 2.57.2 of RR No. 2-98 in relation to Section 57(B) [Withholding Tax at Source] of the NIRC of 1997.

Respondent as well failed to subject to proper WT the Performance, Christmas Bonus and salaries of residents and interns as required under Section 79 (Income Tax Collected At Source) in relation to Section 24 (Income Tax Rates) of the NIRC of 1997.

Respondent must also pay the DST on the Contracts executed with Saints Inc. Coffee Shop and Fort Bonifactio Inc. pursuant to Section 194 of the NIRC of 1997. Per petitioner, the same has not yet prescribed since no return was filed nor payment made for these Contracts executed in 2011.

On top of the foregoing, deficiency interest from the 2004 deficiency Income Tax assessment, must as well be collected being mandatory in case of delinquency.

Oddly enough, despite the alleged various tax liabilities of respondent, petitioner merely pleads to order respondent to pay deficiency IT for the year 2003 plus 25% surcharge and 20% deficiency and delinquency interest for late payment citing Sections 248 and 249 of the NIRC, as amended, as basis.

By way of comment, respondent points out that all the arguments of petitioner are not new as they are mere reiteration of her arguments in her previous pleadings which have already been amply addressed in the assailed Decision.

On the assessment for deficiency income tax for year 2003, respondent, invoking Section 203 of the NIRC, states that the period to assess the alleged deficiency income tax for taxable year 2003 had expired. It explains that it was assessed deficiency income tax for taxable year 2003 on December 14, 2007, or 8 months after the 3-year prescriptive period had lapsed, reckoned from April 13, 2004 when it filed its Annual ITR.

The cited exception under Section 222 of the NIRC occurs when the taxpayer agrees in writing to extend the 3-year prescriptive period, or where the taxpayer intentionally filed a false or fraudulent return, in which case, the 10-year prescriptive period applies. In this case, there is no such agreement. More importantly, no evidence exists that respondent filed a false or fraudulent return with intention to evade tax as to warrant the application of the 10-year period under Section 222 of the NIRC. In fact, petitioner did not present any evidence before the Court in Division to support the imposition of the alleged deficiency taxes for the year 2003.

Further, the ITR filed by respondent for the year 2003 was based on its honest belief that as a non-stock, non-profit institution established for charitable purposes, it is exempt from income tax imposed on ordinary non-profit hospitals. The BIR even issued a letter declaring it exempt from income tax for which reason the Supreme Court in a decision stated that respondent was in good faith in relying on said exemption letter issued by the BIR.

Thus, there is no reason to conclude that respondent intentionally filed a false or fraudulent return meriting the application of the 10-year prescriptive period under Section 222 of the NIRC. There being no valid reason to apply the 10-year period, respondent's assessment for the year 2003 was clearly issued beyond the reglementary 3-year period and has prescribed.

On the alleged deficiency income tax, the same is incorrect as it was based on an erroneous figure representing the income of respondent. Petitioner arrived at the figure of respondent's income by simply referring to its total gross income appearing in its Annual ITR. Then petitioner subtracted therefrom the allowed deductions without considering that the total gross income reported in said ITR is the sum of gross revenues from its hospital operations and other unrelated income which have already been subjected to corresponding final withholding taxes or are exempt from tax, being still unrealized income.

Worst, petitioner also failed to consider certain deductions, specifically bad debts, expenses for professional fees, honorariums to doctors, performance bonus to doctors deemed as professional fees, performance bonus to employees, Christmas bonus, and resident and intern accounts deemed as minimal stipends for doctors undergoing training in its hospital.

The same is true with regard the assessment for EWT. Petitioner simply took the respondent's income payments in the ITR and applied the corresponding EWT rate which was erroneous since not all the income payments in the ITR were subject to EWT. Among them were the passed on VAT from purchases from regular suppliers, payments made to government agencies under 'Miscellaneous' such as payments for DST & local government tax, donations to the Episcopal Church, purchases of imported equipment including VAT and customs duties, and casual purchases below P10,000.00.

On WT on compensation, certain items, like Performance Bonuses and Christmas Bonuses were subjected to WT twice. Respondent also believes that the professional fees or stipends of interns and resident doctors are not subject to WT on compensation since their relationship with respondent is that of trainor-trainee. Assuming that they are subject to WT on compensation, the correct rate is 10% or 15% and not automatically 32% as incorrectly imposed by petitioner in the subject assessment.

On the VAT assessment, respondent avers that only its pharmacy sales to out-patients are subject to VAT and not its medical and hospital services.

Also, respondent is a VAT-registered entity engaged in transactions not subject to VAT. However, since VAT is passed on to it by suppliers for purchases of supplies for its medical services, then the VAT passed on were added as part of the cost of such supplies. Thus, in writing off overdue accounts, respondent merely reversed previously recorded transactions, which included VAT as part of the expenses for supplies. Subjecting respondent again to VAT for writing off overdue accounts from suppliers was tantamount to double taxation. The same with the purchases of equipment wherein VAT were recorded as component of the cost of the equipment.

Lastly, respondent complains about the DST assessment on a Contract of Lease executed on August 3, 2001 with Fort Bonifacio Development Corporation. The assessment therein should have been included in the assessment for the year 2001 and not in the subject assessment for the year 2004. And since it was executed in 2001, the assessment for DST for the said Contract of Lease issued in 2007 was invalid as it was issued beyond the 3-year prescriptive period.

The Ruling of the Court

Section 228 of the National Internal Revenue Code (NIRC), as amended, provides that an aggrieved taxpayer can administratively protest an assessment issued against him within thirty (30) days from receipt thereof. On the other hand, the CIR has 180 days from the filing of the protest and the submission of documents to act thereon. If the CIR failed to act on the protest within the 180-day period from submission of documents, the taxpayer adversely affected by such inaction may appeal to the CTA within 30 days from the lapse of the said 180-day period.[2]

The present Petition involves two (2) disputed assessments. The was first docketed as C.T.A. Case No. 7823, for deficiency income tax for the years 2003 and 2004 in the amounts of P97,700,084.50 and P134,841,854.84, respectively, or a total of P232,541,939.34.

The second assessment docketed as in C.T.A. Case No. 7832 is for deficiency IT, VAT, WT on compensation, EWT, and DST for the year 2004 in the amount of P287,222,259.61.

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[2] Commissioner of Internal Revenue vs. First Express Pawnshop, G.R. Nos. 172045-46, June 16, 2009

The first assessment was received by respondent on December 14, 2007 giving it 30 days or until January 13, 2008 to file administrative protest. However, since January 13, 2008 was a Sunday, the filing by respondent of its protest on January 14, 2008, the next working day, was timely.

Since no further documents were submitted in support of the said protest, it is assumed that complete documents were filed together with the said protest. From the filing of the protest on January 14, 2008, petitioner had 180 days, or until July 12, 2008 to act on the claim. With petitioner's inaction on the matter, respondent had 30 days or until August 11, 2008 to seek judicial intervention. However, record shows that respondent filed its Petition for Review for the first assessment only on August 12, 2008, or one (1) day beyond the 30-day reglementary period depriving the Court of jurisdiction over the Petition.

As to the second assessment under C.T.A. Case No. 7832, respondent received the FLD and Details of Discrepancies with attached Audit Result/Assessment Notices all dated January 9, 2008 on January 21, 2008. Thus, respondent had 30 days, or until February 20, 2008 to protest the same. Clearly, respondent's protest was seasonably filed on February 20, 2008.

The same is not true with regard respondent's appeal to the Court in Division. From the filing of the protest on February 20, 2008, petitioner had 180 days or until August 18, 2008 to act on the protest on her level. With her inaction, respondent had 30 days from the lapse of the 180-day period or until September 17, 2008 to appeal to the Court. Respondent however filed its Petition For Review in C.T.A. Case No. 7832 only on September 18, 2008, which was one (1) day after the period of appeal expired, again divesting the Court of competence to entertain the same.

The decisions, rulings or inaction of the CIR are necessary to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, after the expiration of the 180-day period fixed by law for the CIR to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the impugned assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[3]

In fine, the failure to comply with the 30-day statutory period bars the appeal and deprives the Court of Tax Appeals of jurisdiction to entertain and determine the correctness of the assessment.[4]

On the ground that the two Petitions for Review were filed by respondent one (1) day late, they should be dismissed for lack of jurisdiction. A decision rendered without jurisdiction is not a decision in contemplation of law and can never become executory.[5] It is a total nullity and may be struck down anytime. x x x a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bonds anyone, and under which all acts performed and all claims flowing therefrom are void.[6]

At this juncture, it bears emphasis that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits. Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties. As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings. Therefore, even if there was no jurisdictional issue raised by any party, the Court

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[3] RCBC vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007
[4] RCBC vs. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006
[5] Heirs of Honrales vs. Honrales, G.R. No. 182651, August 25, 2010
[6] Tanenglian, vs. Silvestre, et al., G.R. No. 173415, March 28, 2008

may look into it at anytime of the proceedings, even during this appeal. It has long been established that the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. Hence, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[7]

It also worth to note that the right to appeal is a statutory right, not a natural nor a constitutional right. The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered. x x x . "The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but jurisdictional, and the failure to perfect that appeal renders the judgment of the court final and executory.[8]"

WHEREFORE, the Petition for Review dated June 27, 2014 filed by the Commissioner of Internal Revenue is hereby **GRANTED**.

The Decision dated February 18, 2014 and the Resolution dated May 29, 2014 rendered by the Court in Division are **REVERSED and SET ASIDE**. The Petitions for Review in C.T.A. Case Nos. 7823 & 7832 are hereby DISMISSED, on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[7] AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 185969, November 19, 2014
[8] Wilson T. Go vs. BPI Finance Corporation, G.R. No. 199354, June 26, 2013

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice