REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DENNIS M. YAP, Petitioner,	CTA CASE NO. 10020
	Members:
-versus-	DEL ROSARIO, *P.J., Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 14 2019 ; 2:14 pm

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RESOLUTION

Incorporated in the *Petition for Review* filed by petitioner Dennis M. Yap on February 1, 2019, is his prayer for an Order to suspend the collection of taxes.

Petitioner avers that he is a Filipino citizen, of legal age, and with postal address at National Highway, Sillawit, Cauayan City, Isabela. He is the proprietor of JAPI Travellers' Hotel (*JAPI Hotel*) located at National Highway, Sillawit, Cauayan City, Isabela.

Respondent, on the other hand, is the head of the Bureau of Internal Revenue (BIR) with postal address at 7th Floor, BIR Building, BIR Road, Diliman, Quezon City.

On June 13, 2014, petitioner allegedly received three (3) Letters of Authority (LOAs),[1] authorizing the examination of its books of accounts and other accounting records for taxable years (TY) 2011, 2012, and 2013, respectively.

[1] Attached as Annexes "C", "D", and "E", respectively, in the instant Petition for Review.

On February 13, 2015, petitioner received a Preliminary Assessment Notice[2] (PAN) assessing him for deficiency income tax (IT) and value-added tax (VAT) in the aggregate amount of Php414,778.83, inclusive of penalties for TY 2011.

On April 14, 2015, petitioner received two (2) PANs[3] assessing him for deficiency IT and VAT in the respective amounts of Php1,537,600.23 for TY 2012 and Php2,998,493.30 for TY 2013.

On June 25, 2015, petitioner received three (3) Formal Letters of Demand[4] (FLDs), all dated June 22, 2015, finding him liable for deficiency IT and VAT for TYs 2011, 2012 and 2013 in the amount of Php430,127.17, Php1,571,746.21, and Php,042,204.06, respectively.

On July 24, 2015, petitioner filed three (3) Legal Petition Notices,[5] all dated June 27, 2015, requesting reinvestigation in relation to the FLDs he received on June 25, 2015.

On September 22, 2015, and allegedly within the 60-day period to submit supporting documents, petitioner filed three (3) Legal Petition Notices,[6] all dated September 16, 2016, supplementing his previous request for reinvestigation and transmitting relevant documents in support thereof.

On July 10, 2018, petitioner received a Preliminary Collection Notice[7] (PCL) dated July 9, 2018. Surprised with the said development, petitioner filed a Legal Petition Notice[8] on July 13, 2018, informing respondent about his pending motion for reinvestigation with supporting documents.

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[2] Annex "F".
[3] Annexes "G" and "H".
[4] Annexes "I", "J", and "K", respectively.
[5] Annexes "L", "M", and "N", respectively.
[6] Annexes "O", "P", and "Q", respectively.
[7] Annex "R".
[8] Annex "S".

On January 31, 2019, petitioner received a copy of respondent's Warrant of Distraint and/or Levy[9] (WDL) No. 2019-00006 dated January 30, 2019.

Hence the present *petition* with motion to suspend collection of taxes.

In support of his motion to suspend collection of taxes, petitioner claims that he is entitled to the relief prayed for since the assessments are premature and have no factual and legal bases. Since respondent failed to act on the incident by way of a Final Decision on Disputed Assessment (FDDA), his right to due process was violated.

Petitioner further argues that without the restraining order, the collection of the alleged deficiency taxes by respondent would severely jeopardize his interests.

On the other hand, in objecting the motion to suspend collection of taxes, respondent argues that the Court has no jurisdiction over the instant Petition for Review. He points out that while it is usual to send an FDDA to the taxpayer, jurisprudence has it that the letters expressing his intent to enforce collection despite the filing of protest by the taxpayer could also be considered his final decision from which the period to appeal via a Petition for Review should be reckoned with.

Admittedly, petitioner received the PCL on July 10, 2018. The PCL served as the FDDA informing petitioner that the protest filed was found without merit. He added that the PCL clearly stated that the tax deficiency was due and payable, and if left unpaid, the BIR would be constrained to enforce collection through administrative summary proceedings as provided by law.

The 30-day period within which to file a Petition for Review with the Court in Division should be counted from July 10, 2018, the date of petitioner's receipt of the PCL. Considering that more than 30 days had lapsed before petitioner filed the instant Petition for Review, the

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[9] Annex "B".

assessments became final, executory and demandable divesting the Court of jurisdiction to review the same.

Assuming that the Court has jurisdiction, respondent submits that petitioner's motion to suspend collection should still be denied. To justify the injunctive relief prayed for, petitioner must be able to establish that: (1) he has a clear and unmistakable right to be protected; (2) the invasion of the right sought to be protected is material and substantial; and (3) there is an urgent and paramount necessity to the writ to prevent serious damage. Here, petitioner has not presented any sufficient and convincing evidence to support its entitlement to the relief sought.

The Court's Ruling

Under Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, the Court may authorize the suspension of the collection of taxes when in its opinion, such collection may jeopardize the interest of the government or the taxpayer, it reads as follows:

> "xxx No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, **That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.** (*Emphasis ours*)

However, before the Court determines whether petitioner is entitled to the relief prayed for, the Court shall first determine if it has jurisdiction to take cognizance of the present Petition for without it any judgment it may issue is void.

According to respondent, the 30-day period within which to file the instant Petition for Review should be counted from July 10, 2018, the date petitioner received the PCL, and not the date of his receipt of the WDL. He contends that when the PCL reiterated the deficiency tax assessments as contained in the FLDs and requested the payment thereof, the said PCL was considered the final action/decision of respondent on petitioner's protest letters. Since petitioner filed the instant Petition for Review on February 1, 2019 or way beyond the 30-day period from receipt of the PCL, the action/decision of respondent has long become final, executory and demandable depriving the Court of jurisdiction to review the same.

There is merit in respondent's contentions.

For the Court to acquire jurisdiction, an assessment must first be challenged by the taxpayer and ruled upon by respondent which could be elevated to this Court via a Petition for Review. Where an adverse ruling has been rendered by respondent, the taxpayer may appeal the same within thirty (30) days thereof to the CTA pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 11 of Republic Act No. (RA) 1125, as amended by RA No. 9282. It reads as follows:

> SEC. 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:
>
> xxx xxx xxx

> 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.
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> **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 <u>within thirty (30) days from receipt of the said decision</u>, or from the lapse of the one hundred eighty (180)-day period; <u>otherwise, the decision shall become final, executory and demandable</u>.** (*Emphases supplied*)

Further, Section 11 of RA No. 1125, as amended by RA No. 9282 provides:

> SEC. 11. *Who may appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs,

> the Secretary of Finance, the Secretary of Trade and Industry of the Secretary of Agriculture or the Central Board of Assessment of Appeals or the Regional Trial Courts may file an appeal with the CTA **within (30) thirty days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action** as referred to in Section 7(a) (2) herein. xxx (*Boldfacing supplied*)

Based on the foregoing provisions, petitioner has thirty (30) days from receipt of respondent's decision within which to appeal the same to this Court.

At this juncture, the Court shall determine whether the PCL is a final decision as contemplated in the foregoing provisions.

In the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*,[10] the Supreme Court held that the decision of the CIR is deemed final when the language clearly and unequivocally indicated that it is such:

> A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. **The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer**.
>
> We laid down the rule that **the Commissioner of Internal Revenue should always indicate to the taxpayer in <u>clear and unequivocal language what constitutes his final determination of the disputed assessment</u>**, thus:
>
> > . . . we deem it appropriate to state that the Commissioner of

[10] G.R. No. 148380, December 9, 2005.

> Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioners communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues. xxx (*Emphases supplied*)

After a careful evaluation of the PCL, attached as Annex "R" in the instant *Petition for Review*, the Court finds that the same is a final decision which could be a subject of an appeal. The aforesaid notice has reiterated the petitioner's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges. It is also indicated in the notice that if petitioner failed to pay the same, respondent would be constrained to serve and execute the Administrative Summary Remedies to enforce the collection of petitioner's tax liabilities, *viz.*:

> **To avoid the accumulation of delinquency interest, it is requested that you pay the aforesaid tax liabilities within five (5) days from receipt hereof at any accredited agent bank/collection agent assigned under the jurisdiction of RDO No. 015**. However, if payment has already been made, please provide us a clear photocopy of receipt/s as proof of payment together with this letter to be the basis for cancelling/closing your tax liability/ies. **Otherwise, we shall be constrained to**

> **enforce the collection thereof thru the Administrative Summary Remedies provided for by law, without further notice**. Xxx (*Boldfacing supplied*)

A final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is thus appealable to this Court.[11]

Considering the foregoing, the Court finds the PCL as respondent's final decision on petitioner's protest against the three (3) FLDs with attached Assessment Notices.

Admittedly, petitioner received the PCL on July 10, 2018. Thus, petitioner had 30 days therefrom or until August 9, 2018 within which to appeal respondent's final decision before this Court. Evidently, the instant Petition for Review filed on February 1, 2019 was beyond the 30-day period to appeal. Thus, as respondent correctly pointed out, the Court has no jurisdiction to take cognizance of the present petition as the assessment had already become final, executory and demandable.

WHEREFORE, the instant *Petition for Review* filed by petitioner Dennis M. Yap is hereby **DISMISSED**, on jurisdictional ground.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[11] *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001.