REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CASTALLOY TECHNOLOGY CORP., ALLIED INDUSTRIAL CORP. AND ALINSU STEEL FOUNDRY CORP., Petitioners,	C.T.A. EB No. 1193 (C.T.A. CASE No. 8244)
- versus -	Members: DEL ROSARIO, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
ATTY. JOSE N. TAN, CESO V., as REGIONAL DIRECTOR, BIR Region No. 13, Cebu City, Acting for and in behalf of the Commissioner of Internal Revenue, Respondent.	Promulgated: DEC 02 2015 2:50pm

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DECISION

Fabon-Victorino, J.:

In this Petition for Review dated June 28, 2014, petitioners Castalloy Technology Corporation, Allied Industrial Corporation, and Alinsu Steel Foundry Corporation assail the Decision dated January 30, 2014, which dismissed their Petition for lack of jurisdiction, and the Resolution dated June 9, 2014, which denied their motion for reconsideration.

The following facts are undisputed:

Petitioners are all domestic corporations with principal office at Pagsabungan, Mandaue City.

Respondent Jose N. Tan is impleaded in his official capacity as Regional Director of Bureau of Internal Revenue (BIR) Revenue Region No. 13 - Cebu City.

On various dates in 2006, petitioner Castalloy obtained various loans from the Philippine National Bank (PNB) secured by a real estate mortgage on certain properties of petitioners Allied and Alinsu.[1]

Later, Opal Portfolio Investments, Inc. (Opal) acquired all the rights of PNB over the loan obtained by petitioner Castalloy.[2]

Subsequently petitioners entered into a *dacion en pago* wherein the properties of petitioners Allied and Alinsu were transferred to Opal in payment of the loans of petitioner Castalloy.[3]

On December 14, 2010, respondent Tan, who considered the *dacion en* pago a donation by petitioners Allied and Alinsu to petitioner Castalloy, issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies, assessing petitioners Allied and Alinsu for alleged deficiency donor's tax in the aggregate amount of P13,972,608.26 for taxable period January 21, 2009.

On January 18, 2011, petitioners Allied and Alinsu filed with respondent Tan a protest letter dated January 17, 2011 against the PAN.

On March 9, 2011, petitioners Allied and Alinsu received from respondent Tan a Letter dated February 10, 2011, denying their protest. Attached to the said Letter were a Formal Letter of Demand (FLD) and Assessment Notice both dated February 16, 2011, assessing petitioners Allied and Alinsu for deficiency donor's tax inclusive of surcharge, interest, and compromise penalty for taxable period January 21, 2009 in the aggregate amount of P14,323,423.40.

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[1] See Statement of Matters Involved in this Case, Petition For Review dated March 23, 2011, CTA Case No. 8244 docket pp. 3-4.
[2] See Statement of Matters Involved in this Case, Petition For Review dated March 23, 2011, CTA Case No. 8244 docket p. 5.
[3] See Statement of Matters Involved in this Case, Petition For Review dated March 23, 2011, CTA Case No. 8244 docket pp. 5-9.

In the letter dated February 10, 2011, respondent Tan, advised petitioners Allied and Alinsu that the BIR office "is left with no alternative but to issue Final Assessment Notice" (FAN).

On March 28, 2011, petitioners, without filing any protest, filed a Petition for Review with the Court in Division to reverse and set aside the letter dated February 10, 2011 and the FLD dated February 16, 2011, to declare the Assessment Notice attached to the FLD null and void, and finally, to declare as tax exempt the *dacion en pago* executed by petitioners Alinsu and Allied in favor of Opal Portfolio Investments, Inc.

On January 30, 2014, the Court in Division rendered the assailed Decision dismissing the Petition for Review for lack of jurisdiction.

The assailed Decision was effectively affirmed when the Court in Division denied petitioner's motion for reconsideration in the similarly assailed Resolution dated June 9, 2014.

Unconvinced, petitioners filed the instant appeal with the Court *En Banc*.

Petitioners argue that the Court in Division erred in dismissing the Petition on jurisdictional ground for failure of petitioners to protest the FLD and Assessment Notice both dated February 16, 2011 before elevating the matter to the Court of Tax Appeals (CTA). Petitioners claim that the FLD is the final decision of the Commissioner of Internal Revenue (CIR) on the matter which can already be appealed to this Court given that the FLD was accompanied by the Letter dated February 10, 2011 of respondent Tan, acting for and in behalf of the Commissioner of Internal Revenue (CIR). Petitioners deemed the Letter of February 10, 2011 the final notice since it states that "the documents attached to your letter were not sufficient to reverse the issues or to overthrow the validity of the assessment. Consequently, therefore, this office is left with no other alternative but to issue Final Assessment Notice (FAN) reiterating the demand for the payment of the deficiency donor's tax shown therein to protect the interest of the government."

In support of their position, petitioners cited the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*[4] (Allied case), in which the Supreme Court deemed the CTA to have acquired jurisdiction over an appeal by a taxpayer who did not protest an FLD to the CIR and immediately sought the Court's intervention considering the tenor of finality in said FLD.

The Court likewise erred when it did not rule that there was no donation by petitioners Allied and Alinsu in favor of petitioner Castalloy as it was a *dacion en pago.* That being the case, the imposition of donor's tax against them has no basis.

Respondent, on the other hand, espouses the opposite view. According to him, the zonal value of the properties subject of the *dacion en pago* was P65,157,070.00 while the amount of the debt paid was only P35,545,000.00. Hence, the difference of P29,612,070.00 must be deemed a donation subject to donor's tax.

Petitioners counter argue that the value of the properties transferred to Opal to settle the debt of petitioner Castalloy, based on the Certificate Authorizing Registration (CAR), was P12,593,250.00. Since, the amount of the debt paid or the *dacion* value was P35,545,000.00, the value of the properties transferred was less than the debt, there can be no donation subject to donor's tax.

Further, there can be no donation since the formalities of a valid donation as required under Article 749 of The Civil Code, such as the execution of a deed of donation, as well as a public document signifying the acceptance by the donee, are non-existent in this case.

Besides, the transaction allegedly subject to donors tax was not a gratuitous act as evidenced by the respective Board Resolutions issued by the parties therein. In the Board Resolution of petitioner Castalloy, it acknowledged its obligation to reimburse petitioners Allied and Alinsu for the value of the properties subject of the *dacion en pago*. On the other hand, petitioners Allied and Alinsu indicated in their own Board Resolutions their intention to collect the

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[4] G.R. No. 175097, February 5, 2010.

value of the properties subject of the *dacion en pago* from petitioner Castalloy. There being no gratuitous transaction between petitioners, there can be no valid donation subject to donor's tax.

Finally, the relations of petitioners Allied and Alinsu with Castalloy, being in the nature of suretyship, fall squarely within the provisions of BIR Ruling No. DA (T-006) 120-2008, which provides that the payment by a surety, in this case petitioners Allied and Alinsu, of the principal obligation through *dacion en pago*, cannot be considered a transfer of property by gift because the surety has the right to be indemnified by the principal debtor, which in this case is petitioner Castalloy. In view of the obligation to indemnify, the suretyship is not gratuitous which can be considered a donation.

Respondent Tan, in his Comment, believes that the Court in Division rightly dismissed the Petition for lack of jurisdiction citing Section 228 of the Tax Code, as implemented by Section 3 of Revenue Regulations (RR) No. 12-99, which states that an aggrieved taxpayer, such as petitioners, has 30 days from receipt of the assessment to administratively protest the same, otherwise the assessment becomes final and beyond the Court's competence.

Petitioners admit that they received the FLD together with the Letter dated February 10, 2011 denying the protest on the PAN on March 9, 2011. However, instead of filing an administrative protest on the FLD within 30 days from March 9, 2011 or until April 8, 2011, petitioners instituted a Petition for Review before the Court in Division on March 28, 2011. Thus, the failure of petitioners to file protest rendered the assailed FLD final and executory and beyond review by the Court.

Further, Sections 7(a)(2) and Section 9 of Republic Act (RA) No. 1125, as amended by RA No. 9282, the enabling law of the Court of Tax Appeals, as well as Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, all provide that the CTA has jurisdiction to review by appeal the decision or inaction of the CIR in cases involving disputed assessments if the said appeal is filed within 30 days from notice of the adverse decision or inaction. In the instant case, there was no decision or inaction on the part of the CIR because there was no protest filed to assail the FLD. In fine, there was nothing for the Court to review justifying the dismissal of the Petition by the Court in Division for lack of jurisdiction.

Under this circumstance says respondent, petitioners cannot invoke liberality as jurisdiction is conferred by law. Without jurisdiction, the petition is not within the authority of the Court. Rules of procedure exist for a purpose and may not be ignored to suit the convenience of a party. As jurisdiction was never acquired, the Court was correct in not ruling on the other issues raised as to do so is beyond its authority.

THE RULING OF THE COURT EN BANC

Section 228 of the National Internal Revenue Code (NIRC), as amended, pertinently provides, as follows:

> 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:
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> x x x x x x x x x
>
> 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.** (Emphasis ours)

Pursuant to the foregoing provision, a request for reconsideration must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise, the decision becomes final, unappealable and therefore, demandable. A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail it can no longer be contested.[5] As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is already barred from disputing the correctness of the assessment.[6]

Based on the same provision, if the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction may appeal to the CTA within 30 days from the lapse of the 180-day period.[7]

Note however that before an assessment is issued, a pre-assessment notice is sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If

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[5] Oceanic Wireless vs. Commissioner of Internal Revenue, G.R. NO. 148380, December 09, 2005.
[6] RCBC vs. Commissioner of Internal Revenue, G.R. NO. 168498, June 16, 2006.
[7] Commissioner of Internal Revenue vs. First Express Pawnshop, G.R. Nos. 172045-46, June 16, 2009.

not convinced, the CIR shall send an assessment to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her.[8]

In the present case, a PAN dated December 14, 2010 was sent to petitioners with attached Details of Discrepancies of even date. In response thereto, petitioners, together with their protest letter dated January 17, 2011, submitted position paper and documents to respondent Tan.

Thereafter, the Letter dated February 10, 2011 with Formal Letter of Demand (FLD) and Assessment Notice both dated February 16, 2011 were issued.

In the present case, petitioners failed to file protest against the Formal Letter of Demand (FLD) and Assessment Notice both dated February 16, 2011 and in haste, sprinted to the Court for intervention. In other words, there was yet no decision or inaction on the part of the CIR over which the Court could exercise its power of appeal.

It must be stressed that the denial of a protest against the PAN is not the final assessment contemplated under the law which may be appealed to this Court.

Moreover, a review of the Letter dated February 10, 2011 issued by respondent Tan with the FLD belies petitioners' contention that it was couched with finality justifying the remedy of appeal before this Court, thus:

> "x x x We hope the foregoing clarification meet its purpose. We also regret to inform you that the documents attached to your letter of protest were not sufficient to reverse the issues or to overthrow the validity of the assessment. Consequently therefore, this office is left with no alternative but to issue Final Assessment Notice (FAN) reiterating the demand for payment of the deficiency donor's tax shown therein to protect the interest of the government."

[8] Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, Rogelio A. Dio and Virginia S. Dio, G.R. No. 128315, June 29, 1999.

Consequently, the subject assessment became final and executory, hence, beyond the power of review of this Court. Precisely, the dismissal of the case, for lack of jurisdiction.

Section 7 of Republic Act (R.A.) No. 1125, as amended,[9] enumerates that instances over which Court of Tax Appeals has jurisdiction.[10] This jurisdiction is echoed in Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals.[11]

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9 Amended by R.A. No. 9282 and R.A. No. 9503.

10 SEC.7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(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 for action, in which case the inaction shall be deemed a denial;

x x x x x x x x x

(c) Jurisdiction over tax collection cases as herein provided:

(1) Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: *Provided, however*, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

11 SEC. 3. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(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

The jurisdiction of the CTA is not limited to the decisions or rulings of the CIR but the latter's inaction. The decisions, rulings or inaction of the Commissioner are necessary to vest the CTA with competence to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days 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 assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[12]

The pertinent laws have expanded the jurisdiction of the CTA. However, they did not change the jurisdiction of the CTA to entertain an appeal only from a final decision or

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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 or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

x x x x x x x x x

(c) Exclusive jurisdiction over tax collection cases, to wit:

(1) Original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; and

x x x x x x

[12] RCBC vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.

assessment of the CIR, or in cases where the CIR has not acted within the period prescribed under the NIRC.[13]

In this case, there was no final decision or inaction on the part of the CIR depriving the CTA of jurisdiction to entertain the appeal.

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.

Moreover, 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 may look into it at anytime of the proceedings, even during the appeal. 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.[14]

In view of the foregoing disquisition, a discussion on the other issues is unwarranted.

WHEREFORE, the Petition for Review dated June 28, 2014 filed by petitioners Castalloy Technology Corporation, Allied Industrial Corporation, and Alinsu Steel Foundry Corporation is hereby **DENIED**, for lack of merit.

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[13] Adamson vs. Court of Appeals, G.R. No. 120935, Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 124557, May 21, 2009

[14] AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 185969, November 19, 2014

The Decision dated January 30, 2014, and the Resolution dated June 9, 2014 rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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 Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice