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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

M.B. FINANCE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5203

Promulgated:
OCT 16 1996

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RESOLUTION

Presented before Us for resolution is respondent's Motion to Dismiss on the ground of lack of jurisdiction alleging, as a reason thereof, that no decision on petitioner's protest against the assessment has as yet been rendered. In other words, respondent's theory is that petitioner's appeal is premature since there is no decision yet on a disputed assessment within the perview of Sec. 7(1) of R.A. No. 1125.

It appears from the records of this case that on July 15, 1994, petitioner received a pre-assessment notice dated July 5, 1994 from the Bureau of Internal Revenue (Bureau, for brevity) informing the petitioner of alleged deficiency income and business taxes for the taxable years 1990 and 1991.

The petitioner alleged that it was not able to present its side and evidence within the prescribed period of fifteen (15) days from receipt of the said pre-assessment notices because it was also on the same date that the assessment notices in the amount of P7,695,657.22 and P99,689.00 as deficiency income and deficiency business taxes for the year 1990 and P6,953,858.57 and P92,592.09 as deficiency income and deficiency business taxes for the year 1991, respectively, were received.

On August 12, 1994, or within thirty (30) days from receipt of the formal assessments, petitioner protested the aforementioned assessments. However, on January 23, 1995, petitioner received a letter denying the protest and reiterating the assessment. Respondent requested the petitioner to pay the deficiency taxes on or before February 26, 1995 with a warning that "it will (the Bureau) take the necessary legal actions to protect the interest of the government." The letter was dated January 10, 1995 and signed by Mr. Sixto S. Esquivias, IV, the Revenue District Officer of Revenue District Office No. 48.

Petitioner filed on February 21, 1995 its appeal (Petition for Review) with this Court assailing the validity and legality of respondent's assessment. On July 17, 1995, respondent filed her answer.

Subsequently, Counsel for the respondent filed a Motion to Dismiss questioning the jurisdiction of this Court to take cognizance of the petition alleging that it was prematurely filed. It was argued by the respondent that the letter of the Revenue District Officer is not the final decision on the protest. To settle the issue, during the hearing on October 17, 1995, petitioner's counsel brought to the attention of the Court that although the assessment letter involving this case was signed by a Revenue District Officer, nevertheless there was a threat on the last part of the assessment that the BIR will take necessary action to protect the interest of the government, hence the case was elevated to this Court. And on November 21, 1995, the issue of jurisdiction was submitted for resolution.

Petitioner raises two arguments in its opposition to respondent's motion to dismiss, to wit:

1. That a motion to dismiss filed by the respondent after answer is improper; and

2. Even assuming that the motion to dismiss could be entertained, the decision contained in the letter dated January 10, 1995 of the Revenue District Officer, RD No. 409 West Makati, is the final decision on disputed

assessments which is appealable to the Court of Tax Appeals.

It is an elementary rule that jurisdiction of the court over the subject matter is conferred by the sovereign authority which organizes courts. (**US vs. Dela Santa, 9 Phil. 22**) and the law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of R.A. 1125, the pertinent part of which states:

> "**Sec. 7.** *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
>
> 1) Decisions of the Collector (now Commissioner) of Internal Revenue in cases involving disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue."

Jurisdiction cannot be conferred by laches or even by consent of the parties (**Peo vs. Martinez, 76 phil. 599; Salandanan vs. Tizon, 62 SCRA 388**). If under the law, the Court has no jurisdiction over the subject matter, it cannot take cognizance of the case, notwithstanding the silence or acquiescence of the accused (**US vs. Jayme, 24 Phil. 90**). It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case as *mero motu* **(Commissioner of Internal Revenue vs. Villa, 22 SCRA 3).**

The same interpretation finds support in Sec. 2 of Rule 9 of the Rules of Court, by way of an exception, to wit:

> **Sec. 2.** ***Defenses and objections not pleaded deemed waived.*** - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; Except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial at the merits; but in the last instance, the motion shall be disposed of as provided in Sec. 5 Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction even the subject matter, it shall dismiss the action.

And in a case all fours with this case, Justice Francisco, citing **Union National Bank of Clarksburg vs. McDonald, (35 F. Supp. 46** and **Render et. al vs. Conner, Com'r Motor Vehicles,** Dist. of Connecticut, Clark, C.J. **Aug.** 11, 1939) states that failure to plead lack of jurisdiction in the answer does not waive such defense. The defense of lack of jurisdiction may be raised for the first time by motion to dismiss filed after answer (Sec. 2, Rule 9, Rules of Court by V. Francisco, 1973 edition).

With respect to the arguments found in the Motion to Dismiss, respondent categorically states that the office having authority to resolve protests is the Assessment

Division and not the Revenue District Office, hence the decision of the Revenue District Officer which was interpreted by the petitioner as the one finally appealable to this Court, is not the final one contemplated by existing jurisprudence as a decision on the disputed assessment reviewable by Us.

This Court believes that the aforementioned declarations of the respondent with respect to an administrative procedure of the Bureau which she herself heads, carries great weight than an interpretation made by the petitioner as to what constitutes a decision on the disputed assessment, appealable to the Court of Tax Appeals pursuant to the provisions of Section 7(1) of Republic Act 1125. However, we cannot blame the petitioner for availing of the remedy of appeal upon receipt of the letter signed by the Revenue District Officer which on its face contains a tenor of finality prompting the taxpayer to seek redress from this Court lest the 30-day prescriptive period sets in.

If respondent says that the protest filed by petitioner has not yet been finally acted upon by her office, so be it. After all, it is the respondent who is in a better position to know and decide on the procedures followed by the Bureau of Internal Revenue. It is to be observed however that this "advent of devolution" brought in part by RMO 37-94, created and continues to create confusion as it relates to Section 7(1) of Republic Act 1125.

With respect to the provision found in RMO 37-94, the procedures laid down in dealing with protests filed by the taxpayer do not point to any person or office in particular who has the authority to decide on protests with finality. We believe that even the Revenue District Officer who signed the disputed letter in the instant case was himself under the mistaken belief that it was his office who has the final say on the protest filed by the petitioner judging by the tenor of finality by which he dismissed the said protest. The lack of a categorical provision in said RMO 37-94 to clarify whose decision is appealable to the Court of Tax Appeals leaves the taxpayers "groping in the dark" as correctly phrased by the petitioner. Again, We say that the taxpayers cannot be blamed from availing of the remedy of appeal from the receipt of the letter originating from the office of the Bureau of Internal Revenue containing a declaration rejecting their protests. This obscure situation created by the so-called "devolution", demands that respondent Commissioner of Internal Revenue and all of the officials concerned in deciding protests, should indicate to the taxpayer whenever a decision is already final and appealable to the Court of Tax Appeals, otherwise this kind of controversy will never end. In making this observation, We are guided by the wisdom enunciated by the Supreme Court in the case entitled **Surigao Electric Co., Inc. v. Court of Tax Appeals, 57 SCRA 523** when it ruled, thus:

> Prescinding from all the foregoing, we deem it appropriate to state that the Commissioner of 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 1125, as amended. On the basis of this *indicium* indubitably showing that the Commissioner's 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. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment - and, consequently, the collection of the amount demanded as taxes - by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.

WHEREFORE, in view of the foregoing this Petition for Review is hereby **DISMISSED** without prejudice to recourse to this Court by the petitioner if and when the protest filed on August 12, 1995 is finally rejected by the official of the Bureau of Internal Revenue who has the corresponding authority to render a decision appealable to this Court. If as represented by the respondent that the protest of the petitioner was referred to the Legal Division of Revenue Region No. 8 for reception of evidence, this case is remanded back to her for further proceedings. Pending final decision thereof by the respondent Commissioner or her authorized representative, there shall be no enforcement for collection of subject assessment.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

ERNESTO D. ACOSTA
Presiding Judge