REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ONE HUNDRED SERVICES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 941
(CTA Case No. 8373)

Present:

Del Rosario, *PJ*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, *JJ.*

Promulgated:

AUG 22 2013 Apolinario 11:25 a.m.

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DECISION

DEL ROSARIO, *P.J.*:

The instant Petition for Review seeks to annul, reverse and set aside the Resolution of the CTA-Third Division in CTA Case No. 8373, entitled *One Hundred Services, Inc. versus Commissioner of Internal Revenue*, promulgated on June 7, 2012, denying petitioner's Petition for Review filed on November 10, 2011, as well as, the CTA-Third Division's Resolution promulgated on September 7, 2012 denying petitioner's Motion for Reconsideration [of the Resolution Promulgated on 7 June 2012] dated June 28, 2012.

FACTS

Petitioner One Hundred Services, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines with address at 8th Flr. Ecoplaza Building, 2305 Don Chino Roces Avenue, Makati City.[1]

On 16 December 2009, petitioner received the Preliminary Assessment Notice (PAN) dated 11 December 2009. In a letter dated 22 December 2009, petitioner protested the PAN, which letter was received by respondent on 23 December 2009. On 26 May 2010, petitioner received the Final Assessment Notice (FAN). Petitioner protested the FAN through its letter dated 1 June 2010, which was received by respondent on 23 June 2010.[2]

As found by the CTA-Third Division, petitioner received on October 10, 2011 a copy of the Final Decision on Disputed Assessment (FDDA) from the Bureau of Internal Revenue (BIR), sent through registered mail. On October 19, 2011, petitioner received another copy of the FDDA from the BIR sent through personal delivery.[3]

On November 10, 2011, petitioner filed its petition for review before the CTA,[4] docketed as CTA Case No. 8373, which was raffled to the Third Division of the Court.

On December 26, 2011, respondent filed through registered mail her Answer (with Motion to Dismiss).[5] In support of her Motion, she argued among others that the petition for review was belatedly made since thirty one (31) days has lapsed from October 10, 2011.

In the Resolution dated January 3, 2012, the CTA-Third Division ordered petitioner to comment on respondent's Answer with Motion to Dismiss.[6] Instead of filing the required comment, petitioner filed its Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition.[7] In compliance with the order of the

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[1] Admitted allegation, (respondent's Answer in relation to the allegation in the Petition for Review); CTA Case No. 8373 Docket, pp. 9 & 130.
[2] Admitted allegations (respondent's Answer in relation to the allegations in the Petition for Review); CTA Case No. 8373 Docket, pp. 11, 12, 130 & 131
[3] Rollo, p. 54
[4] CTA Case No. 8373 Docket, p. 6
[5] CTA Case No. 8373 Docket, pp. 129-142
[6] CTA Case No. 8373 Docket, p. 148
[7] CTA Case No. 8373 Docket, p. 150

CTA-Third Division in its resolution dated January 30, 2012,[8] respondent filed, through registered mail, her Comment and/or Opposition (to the Manifestation and Motion for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition on February 13, 2012, which was received by the CTA-Third Division on February 17, 2012.[9] On March 6, 2012, the CTA-Third Division received petitioner's Reply (to Respondent's Comment and/or Opposition dated February 13, 2012) posted on February 27, 2012.[10]

On April 23, 2012, the CTA-Third Division submitted for resolution respondent's Motion to Dismiss and petitioner's Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition.[11]

On June 7, 2012, the CTA-Third Division issued the assailed resolution[12] granting respondent's prayer for the dismissal of the petition on the ground of prescription, the dispositive part of which reads:

> "WHEREFORE, premises considered, the prayer of respondent for the dismissal of the instant petition, on the ground of prescription or belated filing, pleaded as a special and affirmative defense in the 'Answer (with Motion to Dismiss)', is hereby GRANTED.
>
> Accordingly, the instant Petition for Review is hereby DISMISSED, the failure of petitioner to comply with the 30-day statutory period to appeal effectively deprived this Court of its jurisdiction to entertain and determine the correctness of the subject assessments.
>
> SO ORDERED."

On June 29, 2012, petitioner filed its Motion for Reconsideration [Of The Resolution Promulgated on 7 June 2012],[13] but the same was denied in the CTA-Third Division's Resolution[14] dated September 7, 2012, the dispositive portion of which provides: om

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[8] CTA Case No. 8373 Docket, p. 194
[9] CTA Case No. 8373 Docket, p. 195-211
[10] CTA Case No. 8373 Docket, p. 213
[11] CTA Case No. 8373 Docket, pp. 231-232
[12] Rollo, pp. 35-46
[13] CTA Case No. 8373 Docket, pp. 246-262
[14] Rollo, pp. 48-61

"WHEREFORE, in light of the foregoing laws and jurisprudence, the Motion for Reconsideration filed by the petitioner is hereby DENIED for lack of merit.

SO ORDERED."

Displeased, petitioner filed on October 2, 2012 the instant Petition for Review seeking to annul, reverse and set aside the Resolution of the CTA-Third Division promulgated on June 7, 2012, which denied its petition for review dated November 10, 2011, and the Resolution as well of the same CTA Division promulgated on September 7, 2012, which denied its motion for reconsideration [of the resolution promulgated on 7 June 2012]. Petitioner presented the following grounds in support of its petition, to wit:

A. The one (1)-day delay in filing the Petition for Review dated 10 November 2011 is completely excusable, considering that great injustice and prejudice on the part of the petitioner obviously outweighs the policy on strict implementation of the statutory period to appeal.

B. Petitioner, then unassisted by counsel, honestly and sincerely believed in good faith, that the last day of filing of the petition for review dated 10 November 2011, should be reckoned from the last day of service, i.e., on 19 October 2011. Petitioner adequately exercised ordinary diligence in seasonably filing the said Petition.

C. Petitioner presents legal issues of transcendal importance, both in tax practice and in the academe, which are worthy of judicial intervention and interpretation.

This Court required respondent to file her comment, not a motion to dismiss, on the petition for review in the Resolution promulgated on October 11, 2012.[15]

Respondent filed, *via* registered mail on November 8, 2012, her Comment and Opposition (to the Petition for Review), which was received by this Court on November 15, 2012.[16]

After finding that the Comment and Opposition (to the Petition for Review) filed by respondent are insufficient in number as required under Section 4, Rule 5 of the Revised Rules of the Court of Tax Appeals, this

[15] Rollo, p. 363
[16] Rollo, p. 366

Court resolved to order respondent to submit additional copies of her Comment and Opposition (to the Petition for Review) on November 20, 2012.[17]

On its part, petitioner filed its Reply [to the Comment and/or Opposition dated 5 November 2012] on November 23, 2012.[18]

Respondent submitted, through registered mail on November 29, 2012, additional copies of her Comment and Opposition (to the Petition for Review), which was received by this Court on December 5, 2012.[19] This Court noted respondent's compliance in a minute resolution dated December 7, 2012.[20]

On January 24, 2013, this Court gave due course to the petition for review after considering the issues raised by both parties in their respective pleadings, and required the parties to submit their respective memoranda.[21]

On March 7, 2013, petitioner filed its Memorandum.[22] On the other hand, respondent filed her Manifestation[23] on March 12, 2013 via registered mail, and the same was received by this Court on March 19, 2013. Respondent manifested that she does not intend to file a Memorandum, instead, she is restating and adopting her Answer (with Motion to Dismiss) filed in the court *a quo* on 26 December 2011; Comment and/or Opposition (to Petitioner's Motion for Reconsideration dated 28 June 2012) filed on 23 July 2012; Comment and Opposition (to the Petition for Review) filed on 08 November 2012; and the ruling by the CTA-Third Division in its Resolutions dated 07 June 2012 and 07 September 2012.

With the filing of petitioner's Memorandum and respondent's Manifestation, the instant case was deemed submitted for decision on May 8, 2013.

Hence, the Court's instant decision.

[17] Rollo, p. 362
[18] Rollo, p. 363
[19] Rollo, p. 390
[20] Rollo, p. 439
[21] Rollo, p. 441
[22] Rollo, p. 444
[23] Rollo, p. 475

PARTIES' ARGUMENTS

Petitioner asserts that one day delay in filing the Petition for Review before the CTA-Third Division on November 10, 2011 is completely excusable using the principles enunciated in Gonzales v. Pennissi;[24] Government Service Insurance System v. National Labor Relations Commission;[25] Philippine National Bank v. Court of Appeals;[26] Samala v. Court of Appeals,[27] where the Supreme Court allegedly allowed the relaxation of statutory period of time to appeal guided by its duty to avoid miscarriage of justice. According to petitioner, its delay is very minimal, *i.e., one (1) day*; hence, it has no potential impact or prejudice to the proceedings.

Petitioner argues that its responsible officer, then unassisted by counsel, believed with all sincerity and honesty that the thirty (30) day period within which to file an appeal should be reckoned from the date of last service, i.e., October 19, 2011; thus, although said allegations were not included in its petition for review dated November 10, 2012, the same should not be presumed to be a mere afterthought, as similarly perceived by the CTA-Third Division. Petitioner adds that while it may have experience and knowledge in procedures in the administrative level, it cannot be deemed to have the legal knowledge of procedural matters in the courts of justice, which is not its field of expertise.

Moreover, petitioner argues that it presents to this Court an unsettled and contentious legal issue, worthy to be examined and passed upon, which would be considered as a compelling reason for the Court to entertain the petition. In support of this, petitioner submits that the three (3) waivers signed by the BIR revenue officers are void for failure to comply with the strict requirements under Revenue Memorandum Order (RMO) No. 20-90. According to the petitioner, the assessed deficiencies income tax, withholding tax and value-added tax (VAT) are void for having been issued beyond the prescriptive period. It further states that even assuming the three waivers are valid, respondent's right to assess the alleged deficiency VAT, pertaining to those covered by quarterly VAT return filed on July 21, 2006 and November 27, 2006, has already prescribed.

Lastly, petitioner asserts that respondent is just playing the games of technicality in order to avoid the resolution of the case on the merits. Allegedly, respondent interposed the procedural defense that petitioner

[24] 614 SCRA 292
[25] 635 SCRA 251
[26] G.R. No. 108870, July 14, 1995
[27] G.R. No. 128628, August 23, 2001

cannot include as prayer in the instant Petition the grant of its Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition dated January 17, 2012. Petitioner explains that while there is nothing in the CTA Rules or any Philippine procedural law that requires a petition for review to be set for hearing, its prayer for the grant of Manifestation and Motion is merely an incident of its primary prayer for the reversal of the CTA Division's resolution.

Respondent, on the other hand, argues that the CTA has no jurisdiction considering that petitioner failed to perfect its appeal in the manner and within the period mandatorily laid down by law. She likewise states that petitioner should not be allowed to raise the defense of prescription for it failed to raise such issue before the administrative level.

Respondent avers that petitioner cannot ask this Court that its Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition dated 17 January 2012, much more the reinstatement of the instant action for its failure to show merit or even compliance with the requirement of the Rules. According to respondent, since the prayer for the admission is in the form of a motion and is not coupled with a notice of hearing, then it should be treated as a mere scrap of paper.

Respondent finally states that since there is no merit to the case being presented, the same should be dismissed outright following Sec. 10, Rule 43 of the Rules of Court; that the Manifestation and Motions be denied for having no merit; and that petitioner should be ordered to pay the deficiency taxes for the same are already final, executory, and demandable.

ISSUE

Whether or not the CTA-Third Division erred in denying petitioner's Petition for Review filed on November 10, 2011, and in denying petitioner's Motion for Reconsideration [of the Resolution Promulgated on 7 June 2012] dated June 28, 2012.

The crux of the controversy hinges on the concept of appeal from the notice of a final decision on disputed assessment of the BIR. This Court needs to address the question of whether the period to appeal with the CTA from the notice of final decision on disputed assessment is jurisdictional.

RULING

The law that allows an appeal from notice of the denial of taxpayer's protest against an assessment, commonly known as the final decision on disputed assessment, is Section 228 of the National Internal Revenue Code (NIRC), which states:

> "Sec. 228. Protesting of Assessment. – xxx
>
> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."
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> *(Emphasis supplied)*

The afore-quoted portion of Section 228 is clear, plain and unequivocal in providing that the taxpayer adversely affected by the decision, relative to a protest against an assessment, may file an appeal before the CTA within 30 days from receipt of decision; otherwise, the decision shall become final, executory and demandable.

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[28] Among the matters under the exclusive appellate jurisdiction of the CTA is to review on appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments as stated in Section 7 of Republic Act (RA) No. 1125, as amended by RA 9282, which provides:

> "Sec. 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (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;" *(Emphasis supplied)*

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[28] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007 Resolution

Relatedly, Section 11 of RA 1125, as amended, 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 or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) 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." *(Emphasis supplied)*

The provisions of RA 1125, as amended, are re-echoed in Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), which read:

> "RULE 4
> JURISDICTION OF THE COURT
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> 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 revenues 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;
>
> xxx xxx xxx
>
> RULE 8
> PROCEDURE IN CIVIL CASES
>
> SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such

> decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenues taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes."

(Emphasis supplied)

In the case of ***Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue***,[29] the Supreme Court held that the decision of the Commissioner is necessary in order to vest the CTA with jurisdiction to entertain the appeal, provided it is filed within 30 days after receipt of such decision. **The 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA 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 court to extend the same.**[30]

In the present case, it is undisputed that petitioner received on October 10, 2011, a copy of the final decision on disputed assessment, which was sent by the BIR through registered mail. Under Section 228 of the NIRC and RA 1125, as amended, petitioner had only 30 days, or until November 9, 2011 to appeal such final decision of the BIR to the CTA. Petitioner filed its petition for review before the CTA Division only on November 10, 2011; hence, it was filed out of time. At the time petitioner elevated its case before the CTA Division, respondent's final decision on disputed assessment had already become final, executory and demandable pursuant to Section 228 of the NIRC.

Petitioner's contentions that the thirty (30) day period within which to file an appeal with the CTA should be reckoned from October 19, 2011, the date of last service through personal delivery of the final decision on disputed assessment; and that while it has knowledge in procedures in the administrative level, it cannot be deemed to have the legal knowledge of procedural matters in the courts of justice deserve no merit.

Section 228 of the NIRC specifies the reglementary period within which an appeal may be prosecuted. Following the well-settled *verba legis* om

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[29] Note 28, *supra*.
[30] *Id.*

doctrine[31], the provision should be applied exactly as worded since it is clear, plain and unequivocal. Inasmuch as petitioner received a copy of the final decision on disputed assessment on October 10, 2011, the period within which to elevate the case on appeal must necessarily commence therefrom. To sustain petitioner's arguments would render nugatory an otherwise clear statutory mandate.

Incidentally, the CTA-Third Division aptly observed that petitioner was able to timely file its protest to the PAN and FAN in the administrative level, thereby evincing petitioner's awareness of the procedures in protesting an assessment.

In fine, considering that the petition for review of the petitioner before the CTA-Third Division was filed beyond the 30-day period, which period is characterized by no less than the Supreme Court as mandatory and jurisdictional, and beyond the power of the court to extend,[32] this Court finds that the CTA-Third Division committed no reversible error in dismissing the petition for review. Indeed, petitioner's failure to comply with the 30-day period to appeal effectively deprived the CTA-Third Division of jurisdiction to entertain and determine the correctness of the disputed assessments.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[31] The "plain meaning rule" or *verba legis* in statutory construction is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule derived from the maxim *Index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. *Verba legis non est recedendum,* or from the words of a statute there should be no departure. *(Republic of the Philippines v. Lacap, G.R. No. 158253, March 2, 2007)*

[32] Note 28, *supra.*

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MARIA BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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