REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NORTHSTAR SOLAR ENERGYMANAGEMENT PHILIPPINES, INC. represented by ARDEE SAN PEDRO, *Petitioner,*	**CTA CASE NO. 11348**
- versus -	Members:
COMMISSIONER OF INTERNAL REVENUE & EDGAR B. TOLENTINO REGIONAL DIRECTOR, WRENOLF D. PANGANIBAN, ALICIA DT. PALMARIA OF RR-8B, SOUTH NCR, *Respondents.*	**MANAHAN,** *Chairperson,* **REYES-FAJARDO, ANGELES,** *JJ.* Promulgated: JUL 23 2024 11:02 a.m.

x - x

RESOLUTION

In the *Petition for Review* filed on November 29, 2023, petitioner prays that immediately upon the filing thereof, a temporary restraining order or writ of preliminary injunction be issued to restrain respondents from proceeding with the collection of petitioner's bank deposits, subject of the Warrant of Garnishment (WOG) dated October 16, 2023.[1]

A perusal of the *Petition* shows that it is an appeal in relation to the **inaction** of respondent Commissioner of Internal Revenue (CIR) on **petitioner's Reply**[2] **to the Preliminary Assessment Notice** (PAN) dated January 24, 2023[3]. According to petitioner, such inaction is one of the cases specified in Section 7 (a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282 (CTA Law). Petitioner avers that the

---

[1] Annex "D", Petition, Docket, p. 59.
[2] Annex "C", Petition, Docket, pp. 39-43.
[3] Annex "B", Petition, Docket, pp. 31-38.

filing of the *Petition* is in accordance with Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA).

On the timeliness of filing of the *Petition*, petitioner claimed that it has thirty (30) days from November 23, 2023 or until December 23, 2023, within which to file a petition with the Court. Petitioner reckoned the thirty (30)-day period to appeal from its receipt via email on November 23, 2023 of a print out of respondent's letter dated November 21, 2023 addressed to Security Bank, requesting the latter to release petitioner's bank deposits subject of the WOG (the "**Letter-Request to Security Bank**").

In the *Answer* filed through registered mail on March 27, 2024, respondent CIR prayed that the *Petition* be dismissed for lack of jurisdiction, and argued that: *(1)* the Letter-Request to Security Bank is not a "decision" contemplated under Section 7 of RA No. 1125, as amended by RA No. 9282; *(2)* there is no disputed assessment in the present case since said letter is not a "decision" on petitioner's protest against deficiency tax assessment; *(3)* assuming that the inaction on petitioner's Reply was through the issuance of the WOG, the filing of the *Petition* is already time-barred considering that petitioner should have filed the same within thirty (30) days from receipt of the WOG on October 20, 2023 or until November 19, 2023; and *(4)* it would be extremely unfair for the government if the decision to choose which among the letters should be considered as appealable decision to the Court, is left to the whims of the taxpayer.

On April 22, 2024, a Records Verification Report was issued stating that respondent failed to certify and elevate to the Court the Bureau of Internal Revenue Records for the instant case.

On May 2, 2024, petitioner filed a *Motion for Leave of Court to File and Admit Attached Supplemental Judicial Affidavit of Atty. Marjay Zenn B. Igpuara and Reply to Affirmative Defenses.*

With respect to the attached Supplemental Judicial Affidavit, petitioner alleged in the *Motion* that the Supplemental Judicial Affidavit was executed since there were communications coming from the respondents and subsequent events that occurred after the execution of the Judicial Affidavit of Atty. Marjay Zenn B. Igpuara on November 29, 2023. As regards the Reply incorporated in the *Motion*, it was noted that the same was a reiteration of the claims contained in the *Petition*. Moreover, petitioner did not allege in the *Motion* that the Reply was being filed in relation to any actionable document attached to respondent's *Answer*, as required under Section 10, Rule 6[4] of the Revised Rules of Court (RROC).

Acting on petitioner's *Motion*, the same is **PARTIALLY GRANTED**. The Supplemental Judicial Affidavit is **ADMITTED.** However, the Court finds that petitioner's filing of the Reply is improper pursuant to Section 6, Rule 6 of the RROC, hence, **EXCLUDED.**

Nevertheless, the *Petition* should be **dismissed** for lack of jurisdiction.

Section 7(a)(2) of CTA Law provides for the exclusive appellate jurisdiction of the CTA to review by appeal, inaction of the CIR in case involving disputed assessments, among others, thus:

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

In relation thereto, Section (3)(a)(2), Rule 4 of the RRCTA likewise provides for the jurisdiction of the CTA in Division over CIR's inaction, to wit:

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

---

[4] Sec. 10. Reply. — All new matters alleged in the answer are deemed controverted. If the plaintiff wishes to interpose any claims arising out of the new matters so alleged, such claims shall be set forth in an amended or supplemental complaint. **However, the plaintiff may file a reply only if the defending party attaches an actionable document to his or her answer.**

A reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged in, or relating to, said actionable document.

In the event of an actionable document attached to the reply, the defendant may file a rejoinder if the same is based solely on an actionable document.

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

xxx

(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 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; xxx *(Emphasis supplied)*

Clearly, it is the inaction of the CIR over disputed assessments, among others, that is the subject of an appeal by petition for review before the CTA. Conversely, the CTA has no jurisdiction over cases involving assessments which remain undisputed.

An assessment becomes a "disputed assessment" after a taxpayer has filed its protest to the assessment in the administrative level.[5] Section 228 of the National Internal Revenue Code of 1997 (Tax Code) is instructive as to the remedies that a taxpayer can avail of in case of inaction on the part of the CIR, *viz*:

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

---

[5] Commissioner of Internal Revenue v. Liquigaz Philippines Corporation, G.R. Nos. 215534 & 215557, April 18, 2016.

> The taxpayer 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 one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable. *(Emphasis supplied)*

To implement the foregoing provision, Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, were issued. Section 3.1.4 of RR No. 18-13 provides:

> 3.1.4. Disputed Assessment. – The taxpayer or its authorized representative or tax agent may **protest administratively against the aforesaid FLD/FAN** within (30) days from date of receipt thereof. xxx
>
> If the protest or administrative appeal is **not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest**, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commission on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option o the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within the 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to on bars the application of the other. *(Emphasis supplied)*

From the foregoing, it is clear that for the CTA to acquire jurisdiction, an assessment must first be ***disputed*** by the taxpayer, by filing a request for reconsideration or reinvestigation with the Bureau of Internal Revenue, within thirty (30) days from receipt of the assessment. The protest must be ruled upon by the CIR to warrant a decision from which a petition for review may be taken to the CTA. If the protest is denied 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 CTA within thirty (30) days from receipt of the decision or from the ***lapse of the 180-day period.*** Failure to comply with the thirty (30)-day period would deprive the CTA of jurisdiction to hear and try the case.[6]

Verily, the inaction sought to be reviewed by the petitioner is not a case involving disputed assessment considering that the subject of the alleged inaction by the respondents is a Reply to the PAN, and ***not*** a protest against a formal demand letter or final assessment notice, as required under the law.

It is also worthy to note that the inaction contemplated under the CTA Law, as well as the RRCTA, is one where a ***specific period to act*** on the part of CIR is provided under the Tax Code. However, for a taxpayer's response to a PAN, the Tax Code did not provide a specific period of action.

Furthermore, there seems to be a disconnect with respect to the stated nature of the appeal and the timeliness of the filing of the *Petition*. While the nature of the appeal was the inaction on the Reply to PAN, petitioner reckoned the thirty (30)-day period to appeal from its receipt of the Letter-Request to Security Bank which was alleged to be a denial of petitioner's Request to Lift WOG dated October 26, 2023.

Even if petitioner claims that the filing of the appeal can be reckoned from its receipt of the Letter-Request to Security Bank, the Court cannot still exercise its jurisdiction over the case.

First, said Letter-Request is not a "decision" contemplated under the law; *Second,* the letter was addressed to Security Bank and was not issued in response to petitioner's Request to Lift WOG; *Third,* it took petitioner two (2) requests for the lifting of the WOG (Request to Lift WOG dated October 26, 2023 and a follow-up letter dated November 16, 2023) before it belatedly elevated the matter to the Court; and

---

[6] Commissioner of Internal Revenue v. South Entertainment Gallery, Inc., G.R. No. 225809, March 17, 2021; citing Commissioner of Internal Revenue v. Villa, 130 Phil. 3 (1968), St. Stephen's Association, et al. vs. The Collector of Internal Revenue, 104 Phil. 314 (1958), and Surigao Electric Co., Inc. v. Court of Tax Appeals, 156 Phil. 517 (1974).

Fourth, the Tax Code does not require the CIR to act upon any request to lift WOG within a specific period of time.

Also, while it may be argued that the Court has jurisdiction to review the validity of the issuance of the WOG under "other matters" pursuant to the CTA Law, the *Petition* was still filed out of time. Based on the *Petition*, petitioner had knowledge of the WOG when it received via email a printed copy thereof on **October 20, 2023**. However, instead of appealing the WOG to the Court within thirty (30) days from notice or until **November 19, 2023**, petitioner elevated the matter to the Assistant Regional Director of Revenue Region No. 8b, through the two (2) requests mentioned in the preceding paragraph. Clearly, when the instant *Petition* was filed on November 29, 2023, the period to question the WOG before the Court had already lapsed.

Finally, it bears to emphasize that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[7] Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[8]

In view of the foregoing, the Court is constrained to dismiss the *Petition for Review* including the application for restraining order and/or writ of preliminary injunction incorporated therein.

WHEREFORE, premises considered, the Court resolves to:

1. **NOTE** respondent's *Answer* filed through registered mail on March 27, 2024, and the Records Verification Report dated April 22, 2024;

2. **PARTIALLY GRANT** petitioner's *Motion for Leave of Court to File and Admit Attached Supplemental Judicial Affidavit of Atty. Marjay Zenn B. Igpuara and Reply to Affirmative Defenses* filed on May 2, 2024. Accordingly, the Supplemental Judicial Affidavit of Atty. Marjay Zenn B. Igpuara, is **ADMITTED**, while the Reply incorporated in the *Motion* is **EXCLUDED**.

3. **DISMISS** the instant *Petition for Review* filed on November 29, 2023, for lack of jurisdiction.

---

[7] Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc., G.R. No. 221780, March 25, 2019.
[8] Mitsubishi Motors Phils. Corp. v. Bureau of Customs, G.R. No. 209830, June 17, 2015.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice