REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

FIRST ASIA REALTY DEVELOPMENT CORPORATION, Petitioner,	**C.T.A. CASE NO. 7356**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 07 2007

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DECISION

UY, J.:

This petition for review seeks a reversal of the Final Decision on Disputed Assessment rendered on September 8, 2005 by the respondent, Commissioner of Internal Revenue, through Deputy Commissioner for Special Concerns, Kim S. Jacinto-Henares, OIC Large Taxpayers Service, assessing petitioner, First Asia Realty Development Corporation, for deficiency Value-Added Tax (VAT) for the year 2001 on theatre receipts in the total amount THIRTY SEVEN MILLION SIXTEEN THOUSAND FOUR HUNDRED SIXTEEN PESOS & 52/100 CENTAVOS (P 37,016,416.52) inclusive of 20% interest penalty per annum reckoned from February 26, 2001 until May 31, 2005.

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THE FACTS

The facts as culled from the records are as follows:

Petitioner, First Asia Realty Development Corporation, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at SM Megamall Bldg. A, EDSA corner J. Vargas Avenue, Mandaluyong City. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On June 3, 2005 and June 8, 2005, respondent issued his Formal Letter of Demand and Assessment Notice No. VT-01-0-00166,[1] respectively, against petitioner's deficiency value-added taxes on its theater (cinema ticket) sales for the taxable year 2001 in the amount of P37,016,416.52. This was protested by petitioner through its Protest Letter dated June 29, 2005 addressed to Deputy Commissioner for Special Concerns, OIC Large Taxpayers Service, Kim S. Jacinto - Henares.[2]

In the Final Decision on Disputed Assessment dated September 8, 2005,[3] respondent denied with finality petitioner's protest, thereby affirming the deficiency value-added tax liability of petitioner for the taxable year 2001 in the amount of P37,016,416.52, inclusive of interest penalty counted from February 26, 2001 to May 31, 2005. Not satisfied with the decision of respondent, petitioner filed the instant Petition for Review on October 28, 2005.

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[1] Annexes "B", "B-1" & "B-2", Petition for Review, Records, pp. 45 – 47.
[2] Annex "C", Petition for Review, Records, pp. 48 – 54.
[3] Exhibit "A", Records, p. 44.

On January 13, 2006, respondent filed his Answer alleging the following Special and Affirmative Defenses, to wit:

> "Respondent repleads the foregoing allegations, and as special and affirmative defenses, states the following:
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> 7. The decision of respondent had already become final, executory and unappealable due to the failure of the petitioner to appeal the same to this Honorable Court within thirty days from receipt thereof. Petitioner received the decision on September 27, 2005, it filed the above-captioned Petition for Review only on October 28, 2005.
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> 8. The Petition for Review does not merit to be given due course. Petitioner clearly failed to exhaust all administrative remedies before elevating this case to this Honorable Court.
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> 8.1 Petitioner did not appeal to the Secretary of Finance VAT Ruling Review Committee dated September 8, 2000 before Petitioner questioned its legality before this Honorable Court pursuant to the provisions of Section 4 of the National Internal Revenue Code of 1997 which provides as follows:
>
> 'SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner; subject to review by the Secretary of Finance.
>
> xxx xxx xxx'
>
> 8.2 Petitioner's precipitated act violates Section 1(j) of Rule 16 of the 1997 Rules of Civil Procedure which provides as follows:
>
> 'MOTION TO DISMISS'
>
> SECTION 1. *Grounds.* – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> xxx xxx xxx
>
> (j) That a condition precedent for filing the claim has not been complied with."[4]

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[4] Answer, Records, pp. 72-79.

During the pre-trial held on May 11, 2006, the parties agreed to submit their Joint Stipulation of Facts and Issues together with petitioner's Motion for Partial Resolution of the Issue of Jurisdiction within fifteen (15) days from said date. On May 26, 2006, petitioner filed a "Motion for Partial Resolution (On the issues of (1) timeliness of the filing of the Petition, and (2) exhaustion of administrative remedies)".[5] Subsequently, a Joint Stipulation of Facts and Issues was filed by the parties on May 29, 2006.[6]

During the hearing held on July 26, 2006, this Court granted petitioner's motion for partial resolution of the timeliness of the petition and petitioner's counsel proceeded to present evidence in support thereof. On the other hand, respondent's counsel manifested that he will not present evidence thereon. Thereafter, petitioner's formal offer of evidence was resolved in the Resolution dated September 18, 2006[7] and the parties were directed to submit their respective memorandum relative to the issues of timeliness and non-exhaustion of administrative remedies. Only petitioner filed its Memorandum on November 6, 2006[8] and the pending incident was considered submitted for decision in the Resolution dated December 18, 2006[9]. Hence, this Decision.

THE ISSUES

The issues for resolution are as follows:

1. Whether respondent's Final Decision on Disputed Assessment dated September 8, 2005 has become final and executory; and

[5] Records, pp. 103-107
[6] Records, pp. 109-111
[7] Records, pp. 139-140.
[8] Records, pp. 156-163.
[9] Records, p. 176.

2. Whether petitioner should have appealed to the Secretary of Finance VAT Review Committee Ruling dated September 8, 2000 before it filed this Petition.

As regards the first issue, petitioner submits that it received a copy of the Final Decision on Disputed Assessment dated September 8, 2005 on September 28, 2005. In support thereof, petitioner presented a copy of the Final Decision On Disputed Assessment[10] which contains a rubber stamp of the word "RECEIVED" on the upper right portion thereof with the rubber stamping of the date "SEP 28, 2005" in the middle portion of the word received. Petitioner's witness, Cecilia R. Patricio, Vice-President of the Corporate Tax Division of the SM Group of Companies, testified that her office received the Decision on September 28, 2005 based on the date stamped on the upper right portion of petitioner's copy of the Decision. Allegedly, being the authorized representative of petitioner in dealing with tax matters before respondent, her receipt of the Decision on September 28, 2005 is necessarily the date of receipt by petitioner. Thus, the filing of the instant Petition on October 28, 2005 is allegedly within the prescriptive period of thirty (30) days.

On the other hand, although no testimonial evidence was presented by respondent, it was pointed out in respondent's Answer that the Decision had already become final, executory and unappealable due to the failure of petitioner to appeal the same to this Court within thirty (30) days from its receipt thereof. Petitioner allegedly received the subject Decision on September 27, 2005, while this Petition was filed only on October 28, 2005, or a period of thirty-one (31) days, which is beyond the reglementary thirty (30)–day period. Furthermore, respondent submits that petitioner failed to exhaust

[10] Annex "A", Records, p. 44.

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all administrative remedies before elevating this case to this Court.

We rule in favor of the respondent.

In resolving the issue of timeliness, it is important that We determine with certainty the **exact date** when the subject Final Decision dated September 8, 2005 was actually received by petitioner as this will be the reckoning date in computing the thirty day period within which petitioner should file the instant petition for review.

As earlier mentioned, petitioner maintains that the subject Final Decision was received only on September 28, 2005 by the Vice-President of the Corporate Tax Division of the SM Group of Companies, Cecilia Patricio, to which petitioner belongs, as evidenced by the stamped date of receipt on the upper right portion of the copy of the Final Decision. [11] Unfortunately, however, the documentary evidence found in the BIR Records[12] of this case submitted by respondent show that the Final Decision was received by the petitioner on September 27, 2005.

In arriving at this conclusion, We carefully examined the evidence found in the records of this case: the documents formally offered by the petitioner as well as the annexes to the petition, and the BIR records of this case. We noted that the original copy of the assailed Final Decision in the hands of the petitioner marked as Exhibit "A", reveals two varieties of "receipt signatures", to wit :

(a) on the lower middle left portion thereof, a signature with the date

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[11] Exhibit "A", Records, p. 44.

[12] Pursuant to Sec. 5 (b) of Rule 6 of the Revised Rules of the Court of Tax Appeals , the respondent Commissioner of Internal Revenue, within ten days after his answer, is mandated to certify and forward to the Court all the records of the case in their possession, with the pages duly numbered and commonly referred to as BIR records. It appears that respondent Commissioner of Internal Revenue transmitted the BIR records on January 18, 2006.

"9/27", both in handwritten form, signifying it was received on September 27; and

(b) on the upper right portion thereof, in rubber stamp form showing the word "RECEIVED" with the date "SEP 28, 2005" enclosed in a rectangle located at the middle portion of the word received, with a small signature right on top of the number "28" signifying it was received on September 28, 2005.

On the other hand, the copy of the Final Decision on Disputed Assessment found on page 00076 of the BIR records shows only one receipt signature in handwritten form similar in appearance as that appearing on petitioner's copy and also situated at the lower left portion thereof with the same receipt date of September 27 but no year is stated. Compared to petitioner's copy of the Final Decision, the rubber stamped date of receipt is remarkably absent in respondent's copy (submitted to this Court as part of the BIR records on January 18, 2006). Notably, this same handwritten receipt signature also appears on the Collection Letter dated November 16, 2005 issued by Deputy Commissioner for Special Concerns, Kim S. Jacinto-Henares, found on page 00085 of the BIR records.

Furthermore, a careful consideration of the testimony of petitioner's witness shows that she merely said that her department received petitioner's copy of the Final Decision on September 28, 2005 but she did not explain or mention the handwritten signature on the lower left portion thereof with the date 9/27 written below; thus, failing to overturn what is patently expressed on the face of the subject document, that petitioner indeed received its copy of the Final Decision on September 27, 2005.

The rule is basic that a taxpayer has thirty (30) days only from the date of receipt of the Decision of the Commissioner of Internal Revenue, denying its claim or protest, to appeal to the Court of Tax Appeals. Section 228 of the National Internal Revenue Code of 1997 provides that:

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

When petitioner therefore filed this instant Petition on October 28, 2005, it was filed beyond the thirty (30)-day prescribed period within which to appeal. The thirty (30)-day period started to run from the receipt of the Decision of the Commissioner of Internal Revenue denying petitioner's protest on the assessments issued against it, which was on September 27, 2005. Clearly, the present petition was filed one (1) day late.

As such, the Bureau of Internal Revenue's Decision had become final, conclusive and unappealable, and therefore beyond Our power to alter or amend. Hence, this Court is divested of all authority and jurisdiction to take cognizance of the case or to act on the appeal.

Appeal is a statutory privilege and must be exercised in the manner provided by law. Therefore, perfection of an appeal in the manner and within the period prescribed by law is not only mandatory, but jurisdictional, and non-compliance is fatal having the effect of rendering the judgment final and executory.[13]

[13] Cabellan vs. Court of Appeals, 304 SCRA 119

The Court, therefore, is left with no recourse, but to dismiss the present petition. With the conclusion thus reached, this Court deems it unnecessary to discuss the other issues raised, for being moot and academic.

WHEREFORE, premises considered, the subject Petition for Review is hereby **DISMISSED** for having been filed out of time.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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.

ERNESTO D. ACOSTA
Presiding Justice