REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FESTO HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8226

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 0 2 2011

3:05 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is respondent's **"Motion to Dismiss"** filed on May 25, 2011, without petitioner's comment/opposition, despite notice, praying for the dismissal of the instant *Petition for Review* on the ground of lack of jurisdiction, considering that said judicial appeal was premature as there was no final decision yet of the Commissioner of Internal Revenue on its protest against the subject assessment.

Respondent argues that pursuant to Sections 7 and 11 of Republic Act (R.A.) No. 1125, as amended, and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, an aggrieved taxpayer must file a petition for review with this Court within 30 days from receipt of the adverse decision or ruling or inaction of the Commissioner of Internal Revenue (CIR). Respondent contends that there must be a decision, ruling or inaction on the part of the CIR within the allotted period before a taxpayer may seek the intervention of this Court

Finally, respondent cites the ruling of the Supreme Court in the case of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*[1], where the High Tribunal ruled that the authority to make a tax assessment may be delegated by the CIR to her subordinate officers and the said assessment has the same force and effect as that issued by her, if not reviewed or revised by her.

However, respondent claims that Revenue District Officer Wilfredo Z. Narnola[2], who signed the letter dated December 17, 2010 and which became the basis of the instant petition, cannot be deemed an alter ego of the CIR for purposes of issuing a final decision on petitioner's protest under a delegated authority. As such, respondent continues that the subject letter dated December 17, 2010 is not the CIR's final decision on petitioner's protest; thus, the 30 day period to file an appeal was yet to commence, rendering the instant petition premature.

This Court agrees with respondent.

This brings to fore the legal precept that the jurisdiction of a court to take cognizance of a case should be clearly conferred and should not be

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[1] G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[2] Annex "H" of the Petition for Review, docket, pp. 36-40.

deemed to exist on mere implication, specifically with respect to this Court[3], being a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction.[4]

Section 7 of Republic Act (R.A.) No. 1125, as amended by Republic Act (R.A.) No. 9282 and Republic Act (R.A.) No. 9503, pertinently provides that:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (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;
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> "(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial;
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> "(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;
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> "(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation

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[3] *Philippine Ports Authority vs. Fuentes*, GR No. 91259, April 16, 1991, 195 SCRA 790.
[4] *Ker & Co., Ltd. v. Court of Tax Appeals*, L-12396, Jan. 31, 1962, 4 SCRA 160.

thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

"(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

"(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

"(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties. xxx"

Section 7 of R.A. No. 1125, as amended by R.A. No. 9282 and R.A. No. 9503, should be read in conjunction with Section 228 of the 1997 NIRC, as amended, and Section 3.1.5 of Revenue Regulations 12-99[5] governing the procedure in protesting internal revenue tax assessments covered by the NIRC, stating:

"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

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[5] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

preassessment notice shall not be required in the following: x x x x

"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.x x x x"

x x x x x x x x x

3.1.5 Disputed Assessment. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered ***void and without force and effect.*** If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, excutory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner. ℊℓ

> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. (Emphasis supplied.)

Clearly, in the event that a taxpayer's protest against the final assessment notice is denied by the CIR's duly authorized representative, the aggrieved party has the option whether to directly file an appeal with the Court of Tax Appeals within the thirty (30) day period, or move for a reconsideration with the CIR also within the same period.

In this case, although petitioner appealed the case before this Court within the reglementary period, it must also be ascertained if the Revenue District Officer who issued the Final Decision on Disputed Assessment dated December 17, 2010 is the CIR's duly authorized representative.

Section 7 of the National Internal Revenue Code (NIRC), as amended, allows the CIR to delegate her vested powers, except those enumerated therein, to any subordinate official, with the rank equivalent to a division chief or higher.

Be that as it may, the decision of the Revenue District Officer cannot be considered as the CIR's decision appealable to this Court, in the absence of any proof that the former was authorized to decide and act in behalf of the latter on the protest of a taxpayer.

Further, Sections 11 and 13 of the NIRC, as amended, provide the duties and authority of a Revenue District Officer as follows:

> "**SEC. 11.** ***Duties of Revenue District Officers and Other Internal Revenue Officers***. - **It shall be the duty of every Revenue District Officer or other internal revenue officers and employees to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with, and to aid in the prevention, detection and punishment of frauds or delinquencies in connection therewith**.
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> **It shall be the duty of every Revenue District Officer to examine the efficiency of all officers and employees of the Bureau of Internal Revenue under his supervision, and to report in writing to the Commissioner, through the Regional Director, any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge**, with a statement of all the facts and any evidence sustaining each case.
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> **SEC. 13. -** ***Authority of a Revenue Officer***. - subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, **examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself**."

Nowhere is it provided in the aforequoted provisions that a Revenue District Officer can issue decisions that are appealable to this Court. Therefore, there being no decision of the CIR in the present case, this Court cannot take cognizance of the present case. gr

WHEREFORE, premises considered, respondent's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the instant *Petition for Review* is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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