REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

DAVAO CONTRACTORS DEVELOPMENT COOPERATIVE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8144

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

DEC 9 2010

ABFernandez 4:12p.m.

x -- x

RESOLUTION

PALANCA-ENRIQUEZ, J.:

This resolves:

1) petitioner's prayer for the issuance of a Writ of Preliminary Injunction, incorporated in its petition, filed on August 2, 2010;

2) respondent's "Answer" praying that the petition be dismissed for lack of jurisdiction filed on September 6, 2010;

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3) respondent's "Comment (Re: Petitioner's Application for the Issuance of a Writ of Preliminary Injunction)" filed on September 17, 2010; and

4) petitioner's "Reply" filed on October 26, 2010.

In its Petition for Review, petitioner assails the revocation of its tax exempt status by respondent, per *BIR Ruling No. ECCP-063-2008* issued on June 1, 2009. Petitioner claims that it came to know of the revocation, thru *Revenue Memorandum Circular ("RMC") No. 64-2009* dated November 25, 2009.

Petitioner also prays for the issuance of a writ of preliminary injunction to enjoin the enforcement of the tax assessment and levy against it, as said assessment and levy will work injustice to petitioner and is violative of its right as a tax exempt entity.

In her answer, by way of special and affirmative defenses, respondent averred that the request for nullification of the BIR Ruling is not within the jurisdiction of this Court to rule upon; and assuming this Court has jurisdiction over the case; still, petitioner failed to exhaust administrative remedies.

Respondent also opposed petitioner's prayer for the issuance of a writ of preliminary injunction on the ground that this Court has no jurisdiction over the main case; and petitioner failed to prove the existence of its clear right and the averment of "irreparable injury" is premature.

In its "Reply", petitioner counters that BIR Ruling No. ECCP-063-2008 was issued by respondent in the performance of her quasi-judicial function; thus, the Court has jurisdiction over the case; and that the instant case falls under the category of "other matters", as provided in *Section 7 of RA 1125, as amended by RA 9282.*

Before we resolve the merits of petitioner's prayer for the issuance of a writ of preliminary injunction, an initial determination of whether this Court has jurisdiction over the present case is imperative.

Section 7(a) of RA 9282, as amended, provides:

> "SEC. 7. Jurisdiction. – the CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (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;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties in

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> relation, 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;
>
> xxx xxx."

Corollary thereto, *Section 3(a)(2) of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals* provides:

> "SEC. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, 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;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees 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: xxx"

Pursuant to the above provisions, the CTA has exclusive appellate jurisdiction to review by appeal other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action; in which case, the inaction shall be deemed a denial.

In the present petition, petitioner prays for the nullification of BIR Ruling No. ECCP-063-2008, dated June 1, 2009, issued by respondent, revoking petitioner's tax exempt status. Said revocation of petitioner's tax exempt status was re-published in Revenue Memorandum Circular No. 64-2009, dated November 25, 2009.

In the case of *Philippine National Oil Company vs. Court of Appeals, 457 SCRA 76-77*, the Supreme Court ruled that an appeal before this Court to review the decision of then BIR Commissioner Tan to enter into a compromise agreement with the PNOC and to reject the claim for additional informer's reward are matters arising from the NIRC and other laws being administered by the BIR, thus appealable to the CTA under *Section 7(a)(1) of RA 9282, as amended.* Also, in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, 447 SCRA 224*, the Supreme Court ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.

Since the granting of tax exempt status to petitioner and the subsequent revocation thereof basically deals with the tax liability of petitioner, which are covered by the NIRC and other laws administered by the BIR; then, the revocation of petitioner's tax exempt status constitutes "other matters" arising under the NIRC and other laws administered by the BIR.

However, petitioner assails the revocation of its exempt status before this Court via the present petition for review on account of respondent CIR's inaction on petitioner's "Motion for Reconsideration" filed on January 4, 2010. Both *Section 7(a)(2) of RA 9282, as amended*, and *Section (3)(a)(2) of the 2005 Revised Rules of the CTA, as amended*, expressly provide that the CTA in Division shall exercise exclusive original or appellate jurisdiction to review by appeal the "inaction by the CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC or other applicable law provides a specific period for action xxx".

Hence, when the law does not provide for a specific period for the CIR to act, then there can be no inaction on the part of the CIR to speak of.

In the instant case, the alleged failure of the CIR to resolve petitioner's "Motion for Reconsideration" on the revocation of its exempt status can not be considered as inaction of the CIR that is appealable to this Court under *Section 7(a)(2) of RA 9282, as amended*, in relation to *Section 3(a)(2) of Rule 4 of the 2005 Revised Rules of the CTA, as amended*, for the simple reason that the *NIRC of 1997, as amended*, and the *Cooperative Code of the Philippines, as amended*, do not provide a specific period for the CIR to act and resolve the "Motion for Reconsideration" of a taxpayer on the revocation of its exempt status.

From the foregoing, it is clear that this Court has no jurisdiction over the subject matter of the present Petition for Review.

Moreover, *Revenue Memorandum Circular No. 44-01,* entitled, *"Circularizing Department Order No. 23-01 Providing for the Implementing Rules of the First Paragraph of Section 4 of the National Internal Revenue Code of 1997 and Repealing for this Purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99"* provides that a taxpayer who receives an adverse ruling from the CIR may within thirty days from the date of receipt of such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. Petitioner, however, failed to appeal the adverse ruling of the CIR to the Secretary of Finance, but went directly to this Court via the present petition for review.

In the case of *Montanez vs. Provincial Agrarian Reform Adjudicator (PARAD), 600 SCRA 230*, the Supreme Court ruled that in a long line of cases it has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action.

With the conclusion thus reached, we find no need to resolve petitioner's prayer for the issuance of a writ of preliminary injunction, for being moot and academic.

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WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of jurisdiction over the subject matter.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

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

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