REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRIME ASIA PAWN AND JEWELRY SHOP INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6744

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 13 2004
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RESOLUTION

Before us is respondent's Motion to Dismiss filed on September 9, 2003, which seeks the dismissal of the Petition for Review on the ground that the court has no jurisdiction to act on the petition.

According to respondent, petitioner alleged that on September 24, 2001, respondent issued an assessment for deficiency value-added tax for the year 1999; that on October 16, 2001, petitioner protested and/or sought the reconsideration of respondent's assessment; that on January 21, 2002, respondent denied petitioner's protest; that on February 28, 2002, petitioner sought a reconsideration of the denial of its protest; and that on July 18, 2003, petitioner was served with a Warrant of Distraint and Levy, without any decision on its request for reconsideration.

Based on Section 228 of the Tax Code and Revenue Regulations No. 12-99, respondent claims that petitioner's request for reconsideration on the denial of its protest by the Regional Director did not suspend the 30-day period within which to elevate the

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If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of the 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.

The records of the case reveal that petitioner filed its protest before the Regional Director. The latter issued his decision in a letter dated January 21, 2002 in which he denied the protest filed by petitioner and thereby reiterated his demand for the payment of petitioner's VAT liability. Subsequently, petitioner filed a motion for reconsideration with the Regional Director.

We rule that such motion for reconsideration is not allowed. From the above-quoted provision of the Tax Code, the proper remedy available to petitioner is to file a petition for review with the Court of Tax Appeals within thirty (30) days from receipt of the decision. Hence, petitioner's filing of the motion for reconsideration did not toll the running of the prescriptive period to appeal the case to the Court of Tax Appeals. Indeed, Section 3.1.5 of Revenue Regulations No. 12-99 provides that if a protest is filed with the Commissioner's authorized representative and the taxpayer elevates his protest to the Commissioner within thirty (30) days from receipt of the final decision of the authorized representative, the latter's decision shall not be considered final, executory and demandable. However, in the case at bar, instead of elevating its protest to the Commissioner, petitioner filed a Motion for Reconsideration with the Regional Director. There is nothing in the law nor in said regulation which allows such remedy.

Further, Section 11 of Republic Act No. 1125, states:

> **Sec. 11.** *Who may appeal; effect of appeal.-* Any person, association or corporation adversely affected by the decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city or Board of Assessment may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

In the case of *Anita N. Ty vs. Commissioner of Internal Revenue, CTA Case No. 4965, promulgated July 8, 1996,* this court made the pronouncement that the thirty-day period prescribed under Section 11 of R. A. 1125, as amended, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the Tax Court is a jurisdictional requirement and the failure of the taxpayer to lodge his appeal within the prescribed period bars his appeal and renders the questioned decision final and executory. Petitioner failed to elevate its case to the Court of Tax Appeals within thirty days from receipt of the decision denying its protest. Thus, such decision became final and executory. The court has no more jurisdiction to entertain the instant petition for review.

IN VIEW OF ALL THE FOREGOING, the instant Motion to Dismiss is hereby **GRANTED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.

LOVELL R. BAUTISTA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

18