Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

BRIXTON INVESTMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8379

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
AUG 12 2013
8:05 a.m.

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DECISION

CASANOVA, *J.*:

This is an appeal from the resolution of the respondent upholding Assessment Notice Nos. 34-07-IT-0964; 34-07-VT-0965; and 34-07-MC-0966 covering alleged deficiency income tax, deficiency value added tax and penalty for alleged failure to maintain books of accounts and other accounting records, respectively, for the taxable year ending 2007 on the ground that the said assessments violate Section 228 of R.A. 8424 or the Tax Reform Act of 1997, as amended, and the Due Process Clause of the Constitution.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at the 3rd Floor, Pako Building, Pedro Gil corner Gen. Luna St., Paco, Manila.[1]

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[1] Par. 1, The Parties, Petition for Review, Docket, p. 6

Respondent is the public officer who supervises and exercises control over the Bureau of Internal Revenue (BIR), an agency under the Department of Finance, tasked with the power to assess and collect all taxes, fees and charges and account for all revenues collected and to perform all other functions under Section 18 of the Administrative Code of 1987, the National Internal Revenue Code and other related laws. She holds office at the BIR National Office, Diliman, Quezon City. She exercises her duties and performs her functions through the various Regional Offices and District Offices of the BIR, one of which is Revenue Region No. 6, located at the 6th Floor, Tuazon Building, Solano Street, Intramuros, Manila.[2]

On April 14, 2008, petitioner filed its Annual Income Tax Return for the taxable year ending 2007.[3]

On August 5, 2008, Letter of Authority No. 2007 00014594 was issued by Regional Director Alfredo V. Misajon of RR No. 6 authorizing the examination of the books of accounts and other accounting records of petitioner for taxable year 2007 and the List of Audit Requirements by Revenue Officer Luz F. Porio and Group Supervisor Reynaldo M. Layug.[4]

On October 2, 2008, the Revenue District Officer Teodoro Huelva sent petitioner a Final Notice for routine verification for internal revenue tax purposes which was duly received by petitioner.[5]

On March 10, 2009, Revenue Officer Luz F. Porio served a Final Reminder (Request for Accounting Records and Books of Accounts) dated March 10, 2009 to petitioner.[6]

For failure on the part of the petitioner to submit the necessary documents, respondent, through Revenue Officer Luz F. Porio, recommended the issuance of a Subpoena Duces Tecum.[7] Subsequently, a Subpoena Duces Tecum dated May 26, 2009 was served on petitioner.[8]

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[2] Par. 2, The Parties, Petition for Review, Ibid, pp. 6-7
[3] Par. 3, Joint Stipulation of Facts (JSFI), Id., p. 79
[4] Par. 4, JSFI, Id., and Exhibits "1" and "2"
[5] Par. 5, JSFI, Id., and Exhibit "3"
[6] Par. 6, JSFI, Id., and Exhibit "4"
[7] Exhibit "5"
[8] Par. 7, JSFI, Id., p. 80 and Exhibit "6"

On August 17, 2009, a Post Reporting Notice and Informal Conference were issued by Revenue District Officer Raul Vicente L. Recto of Revenue Office No. 34 informing the petitioner to appear for an informal conference within five days from receipt of the notice.[9]

On December 15, 2010, Regional Director Alfredo V. Misajon issued to petitioner a "Preliminary Assessment Notice" for deficiency income tax, deficiency VAT and compromise penalty for failure to maintain book of accounts and other accounting records. [10]

On January 27, 2011, petitioner received the "Formal Letter of Demand"[11] covering the said deficiency taxes and penalty. The letter is accompanied by Assessment Notice Nos. 34-07-IT-0964; 34-07-VT-0965; and 34-07-MC-0966.

On February 25, 2011, petitioner filed its protest arguing in substance that the assessments have no basis in fact and in law.[12]

Through a letter dated April 12, 2011, Regional Director Alfredo V. Misajon informed petitioner that its protest has been forwarded to Revenue District Office No. 34 for appropriate action.[13]

In a letter dated September 19, 2011, the Revenue District Officer Petronilo C. Fernando informed petitioner that they are standing pat on their assessments but issued a "revised assessment".[14]

Consequently, on November 16, 2011, petitioner filed the instant Petition for Review.[15]

Respondent, in her Answer[16], alleges by way of Special and Affirmative Defenses the following:

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[9] Par. 8, JSFI, Id., Exhibit "8"
[10] Par. 9, JSFI, Id.
[11] Par. 10, JSFI, Id.
[12] Par. 11, JSFI, Id., Exhibits "B"
[13] Par. 12, JSFI, Id.
[14] Par. 13, JSFI, Id., Exhibits "H" to "H-3"; Exhibits "15" to "15-3"
[15] Docket, pp. 6-15
[16] Ibid, pp. 43-50

"LACK OF JURISDICTION

6. The Honorable Court has no jurisdiction to entertain the instant petition for review due to prematurity. A careful perusal of the 19 September 2011 letter would clearly show that the letter was signed by the Revenue District Officer Petronillo C. Fernando only and was meant to inform Petitioner of the findings of the revenue district officer conducting the reinvestigation of Petitioner's tax liabilities. Hence, the findings of the Revenue District Officer is not final;

7. The findings of the revenue district officer who conducted the reinvestigation is still subject for review by the Assessment Division, approval by the Commissioner of Internal Revenue or her duly authorized representative, the Regional Director; and, the subsequent issuance of the Preliminary Assessment Notice and the Final Assessment Notice;

8. Sec. 7 of Republic Act No. 1125 as amended by R.A. No. 3457 enumerates the jurisdiction of the Honorable Court as follows:

> 'Sec. 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
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> (2) 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 imposed in relation thereto, or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and
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> (3) Decisions of provincial or city Board of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.'

9. Parenthetically, Section 3(a) Rule 8 of the Revised Rules of Court of Tax Appeals states, thus:

> 'Sec. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.'

10. In sum, the adversely affected party may file a petition for review with the Honorable Court within the *(sic)* thirty (30) days from receipt of the adverse ruling or inaction of the Commissioner of Internal Revenue or her duly authorized representative, the Regional Director. Hence, it is primordial that the decision or ruling or inaction must be attributed to Respondent herein. However, in the case at bar, there was none because the 19 September 2011 letter would clearly show that the letter was signed by the Revenue District Officer Petronillo C. Fernando only and not by the Regional Director as authorized representative of Respondent or by the Commissioner herself. The word "decisions" in Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, has been interpreted to refer to decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments as held by the Honorable Court in the case of Mizuho Corporate Bank, Ltd. Manila Branch vs. The Commissioner of Internal Revenue, C.T.A. Case No. 7082, 8 January 2007;

11. Considering that Petitioner opted to wait for the final resolution on its Protest, it has deemed the issuance of the 19 September 2011 letter signed by the Revenue District Officer Petronillo C. Fernando as a denial of its protest and the computations attached thereto as Assessments which is not yet final. Had Petitioner exercised prudence and not haphazardly invoked the intervention of the Honorable Court, Respondent would have exhausted all administrative remedies. The failure to exhaust all administrative remedies is fatal to Petitioner's cause. The Honorable Supreme Court held in the case of Asia International Auctioneers, Incorporated vs. Commissioner of the Bureau of Internal Revenue, et. al., G.R. No. 163445, December 18, 2007, that:

> 'It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on the matter that comes within his jurisdiction, then such remedy must first be

> exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.'

12. Even the tenor of the 19 September 2011 letter by the revenue district officer would negate the contention that the letter was tantamount to a denial or signified a sense of finality, thus, the revenue district officer wrote in the last paragraph of the letter:

> 'We hope that we have answered all the questions on your mind with regards to the assessment made. Attached herewith is the revised assessment 'annex a' for your guidance.'

13. The assessment attached to the 19 September 2011 letter was a mere computation of how the revenue district officer came up with the amounts in his reinvestigation. As stated by the Honorable Court in the case of IDS Logistics (Phils.) vs. Commissioner of Internal Revenue, C.T.A. Case No. 7540, 20 May 2010, that:

> 'What the law demands is the issuance of a final assessment notice which should be formally protested to by petitioner; otherwise, the same becomes final and executory. Hence, when petitioner received the final assessment notice and duly protested the same, petitioner's right to due process was properly protected and observed.
>
> Based on the foregoing, what the law demands is the issuance of a Final Assessment Notice which should formally protested to by petitioner; otherwise, the same becomes final and executory.'

<u>VALIDITY OF THE ASSESSMENTS</u>

12. Petitioner's claim that Assessment Notices Nos. 34-07-IT-0964, 34-07-VT-0965 and 34-07-MC-0966 covering deficiency income tax, deficiency value added tax and penalty for failure to maintain books of accounts and other accounting records for the taxable year 2007 are null and void for failure of Respondent to sufficiently inform Petitioner of the legal and factual bases are false and misleading. The basis of Petitioner's claim is that Respondent allegedly failed to explain the factual and legal basis of the increase in the deficiency income taxes from PhP201,675.66 to PhP804,792.10; the decrease in the VAT payable from PhP411,319.55 to PhP185,045.95 and the imposition of penalty for non-maintenance of books of accounts and other accounting records in the amount of PhP30,000.00. These

increase and decrease in the amount due from Petitioner were contained in the 19 September 2011 letter by revenue district officer as a result of the reinvestigation of Petitioner's administrative protest;

13. Respondent has not yet issued the corresponding Assessment Notices with the Formal Letter of Demand attached based on the results of the reinvestigation because of the abrupt filing of the Petition for Review before the Honorable Court;

14. The propriety of questioning the alleged increase/decrease in the reinvestigation report of the revenue district officer as without factual and legal basis will lie only after the Assessment Notices and Formal Letter of Demand are issued by the Respondent which is not borne by the facts of this case because Respondent never had the chance to issue Assessment Notices and Formal Letter of Demand reflecting the increase in the income tax, decrease in VAT payable and imposition of penalty;

15. In sum, Petitioner is actually questioning the factual and legal basis of Petitioner's liability under the 19 September 2011 letter by the revenue district officer and mislabeled the attachments thereto as "Assessments", when in truth and in fact, the attachments are not "Assessment Notices" and are mere computations to show how the revenue district officer arrived at the amount stated thereon. This will further bolster that fact that the 19 September 2011 letter is not final and does not signify denial of Petitioner's administrative protest;

16. Contrary to Petitioner's claim, the Assessment Notices Nos. 34-07-IT-0964, 34-07-VT-0965 and 34-07-MC-0966 sufficiently informed the Petitioner of the facts and the law. The Formal Letter of Demand and the attached Details of Discrepancy as Annex 'A' would belie Petitioner's claim as it is clearly stated therein that the Deficiency Income Tax was pursuant to Sec. 34A.1.b of the National Internal Revenue Code (NIRC, for brevity) and Revenue Regulation No. 10-2002. The Deficiency Value Added Tax was pursuant to Sec. 108, 110 and 113 of the NIRC. The penalty for failure to maintain books of accounts was pursuant to sec. 250 of the NIRC. Each tax liability had itemized computations below. Add to this the details of discrepancies attached as annex 'A' to the Formal Letter of Demand. The Petitioner submitted the Formal Letter of Demand and Details of Discrepancies, Assessment Notice Nos. 34-07-IT-0964, 34-07-VT-0965 and 34-07-MC-0966 as Annexes 'A' to 'D', respectively. Clearly therefore, Petitioner was informed of the facts and the law on which the assessment was made.

17. Even the 19 September 2011 letter of the revenue district officer, the officer endeavored to explain briefly his findings together with his legal basis and even included the itemized computations in his letter to show how he arrived at such amount. This letter and the computations attached thereto is not the assessment contemplated for the purpose of applying Section 228 of the National Internal

Revenue Code of 1997 in requiring that the taxpayer be informed of the law and facts on which assessment is made but nevertheless, the revenue district officer explained the facts briefly and his legal basis. As stated by the Honorable Court in the case of IDS Logistics (Phils.) vs. Commissioner of Internal Revenue, Ibid., that:

> 'What the law demands is the issuance of a final assessment notice which should be formally protested to by petitioner; otherwise, the same becomes final and executory. Hence, when petitioner received the final assessment notice and duly protested the same, petitioner's right to due process was properly protected and observed.
>
> Based on the foregoing, what the law demands is the issuance of a Final Assessment Notice which should be formally protested to by petitioner; otherwise, the same becomes final and executory.'

18. What happened in the case at bar, Petitioner is impugning the validity of the Assessment Notice Nos. 34-07-IT-0964, 34-07-VT-0965 and 34-07-MC-0966 using the 19 September 2011 letter and the attached computations thereon by the revenue district officer when petitioner was granted during reinvestigation a sixty (60) days grace period within which to submit supporting documents to prove its claim in protesting the Assessment Notices but failed to present any until the grace period lapsed. The computations made by the revenue district officer is not a final assessment notice.

19. It is clear from all of the foregoing that Petitioner's Cause of Action was prematurely filed. Hence, must be dismissed."

During trial, both parties presented and formally offered their respective testimonial and documentary evidence. In a Resolution[17] promulgated on September 19, 2012, this Court admitted Exhibits **"A to H-3"** as part of petitioner's evidence. On the other hand, respondent filed her Formal Offer of Documentary Evidence (for the Respondent) on January 21, 2013 with petitioner's Comments/Objections to Respondent's Offer of Documentary Evidence filed on February 6, 2013. Petitioner subsequently filed its **"OFFER OF ADDITIONAL DOCUMENTARY EXHIBITS"**[18] and **"OFFER OF 2ND ADDITIONAL DOCUMENTARY EXHIBITS"**[19] on January 24 and 25, 2013, respectively. In a Resolution[20] promulgated on March 1, 2013, this Court admitted respondent's Exhibits **"1 to 33"** inclusive of their

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[17] Docket, p. 115
[18] Ibid, pp. 251-253
[19] Id., pp. 265-266
[20] Id., pp. 271-272

submarkings and petitioner's Exhibits **"I, J, J-1** and **J-2"** and, required both parties to submit their respective memorandum.

In a Resolution dated May 16, 2013, the case was submitted for decision taking into consideration the **"MEMORANDUM (For the Respondent)"**[21] filed on April 2, 2013 and **"MEMORANDUM FOR THE PETITIONER"**[22] filed on May 9, 2013.

The issues[23], as stated in the Joint Stipulation of Facts and Issues, are as follow:

a. Do the said assessment notice violate Section 228 of R.A. 8424 or the Tax Reform Act of 1997 as amended and the Due Process Clause of the Constitution as to render them a nullity?
b. If they are not, do the Assessment Notice Nos. 34-07-IT-0964; 34-07-VT-0965; and 34-07-MC-0966 have any factual and legal bases?
c. Does this Honorable Court have jurisdiction to entertain this petition?

This Court shall first address the issue on jurisdiction before proceeding to the other issues in this case.

Respondent avers that petitioner prematurely invoked the intervention of this Court in filing the instant Petition for Review. According to her, the September 19, 2011 letter was meant to inform petitioner of the findings of the Revenue District Officer Petronilo C. Fernando who conducted the reinvestigation of petitioner's tax liabilities. In addition, respondent posits that what is appealable before this Court are decisions of the Commissioner of Internal Revenue or her duly authorized representative - the Regional Director. Considering that what is appealed before this Court is a letter coming from the Regional District Officer, petitioner, therefore, failed to exhaust all administrative remedies provided by law which is fatal to its cause.

Petitioner, on the other hand, claims that respondent, in her Comment dated August 3, 2012 to petitioner's "Offer of Documentary Exhibits", failed to raise the issue with respect to the three (3)

[21] Id., pp. 277-287
[22] Id., pp. 294-307
[23] JSIF, Id., p. 81

assessment notices which cannot be considered as final assessments that can be elevated to this Court, thereby acknowledging the jurisdiction of the CTA. In addition, petitioner posits that it filed a Letter Protest with the Office of the Regional Director following the statement in the Assessment Notice. And, it is only after receiving the September 19, 2011 letter of respondent, denying its protest, that it filed the instant Petition for Review before this Court.

We find respondent's arguments tenable.

To begin with, jurisdiction of a court to take cognizance of a case should be clearly conferred by law and should not be deemed to exist on mere implication, specifically with respect to this Court,[24] being a court of limited jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction.[25]

Section 7 of Republic Act (RA) No. 1125, as amended by R.A. No. 9282 and R.A. No. 9503, 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;
>
> xxx."

The word "decisions" in the aforequoted provisions has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessment[26]. It should be recalled that the subject of appeal in the case at bench, is the letter issued by Revenue District Officer Petronilo C. Fernando which is, still, subject for review by the

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[24] Philippine Ports Authority vs. Fuentes, G.R. No. 91259, April 16, 1991
[25] Ker & Co., Ltd. vs. Court of Tax Appeals, L-12396, January 31, 1962
[26] Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097 February 5, 2010

Assessment Division of the BIR and, subject to the approval of the Commissioner of Internal Revenue. Thus, the said letter cannot be considered as a final decision of the respondent herein. Consequently, this Court acquires no jurisdiction as there is no decision or inaction to speak of.

Since this Court has no jurisdiction over the instant Petition for Review, the other issues raised by petitioner becomes inconsequential and need not be resolved by this Court.

WHEREFORE, premises considered, petitioner's Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice