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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THAI AIRWAYS INTERNATIONAL, LTD.,
Petitioner,

- versus -

C.T.A. CASE NO. 5014

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 27 1997

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DECISION

This is a petition for review of the decision rendered by the respondent, Commissioner of Internal Revenue, dated March 2, 1993, denying petitioner's protest on the alleged deficiency common carrier's and documentary stamp tax assessments amounting to P4,052,101.27 for the fiscal year ending September 30, 1988.

The antecedent facts of the case are as follows: On May 24, 1991, Letter of Authority No. 000332 (Exh. G) was served upon Thai Airways authorizing Revenue Officer Metsolida C. Almeida to examine the books of accounts and other accounting records of petitioner for business (VAT, percentage, documentary stamp) tax purposes for the fiscal year ending September 30, 1988.

An investigation was conducted and as a result thereof, petitioner received a conference letter, dated August 30, 1991 (Exh. H), informing them about the results of the audit based on the report submitted by Revenue Officer Almeida, that a deficiency business tax has been found due from the petitioner. The same letter invited the petitioner to a conference to discuss the aforementioned findings.

On November 26, 1991, petitioner executed a Waiver of the Statute of Limitations as provided under Section 223(b) of the National Internal Revenue Code, as amended, valid up to March 15, 1992 (p. 49, BIR rec.). This was signed and accepted by Bernardo A. Frioneza, Asst. Chief, Special Operation Service, for the respondent.

A conference was held on October 28, 1991 where the petitioner challenged the correctness and basis for the computations made by the examiner. A thorough discussion about the deficiency tax findings ensued between the petitioner and the Revenue Officer. Petitioner was offered two alternatives within which it may settle the deficiency tax findings, i.e., to either file its protest in writing, or to settle by way of compromise the assessed deficiency taxes, upon receipt of the deficiency tax assessment.

On February 17, 1992, the revenue officer who have conducted the examination prepared a Memorandum Report

(Exh. 2, pp. 58-59, BIR rec.), addressed to the respondent, recommending the issuance of a formal assessment notices amounting to ₱4,052,101.27.

On March 23, 1993, petitioner received an assessment letter (Exh. L), dated March 12, 1992, demanding payment of ₱4,052,101.27, representing alleged deficiency common carrier's tax and documentary stamp tax, computed as follows:

Deficiency Common Carrier's Tax

Deficiency tax		₱1,914,194.00
Add:	25% surcharge	478,548.50
	20% interest	1,628,261.27
	Compromise penalty	25,000.00
Total Amount Due and Collectible		₱4,046,003.77

Deficiency Documentary Stamp Tax

Deficiency tax (1,626 airway bills x P3.00)		P 4,878.00
Add:	25% Surcharge	1,219.50
Total Amount Due and Collectible		P 6,097.50

Petitioner filed its protest, dated April 22, 1992 (Exh. B), with herein respondent through Barcelona & Barcelona, Jimeno, Magdamit and Carlitos Law Offices.

On March 22, 1993, petitioner received respondent's decision denying its protest (Exh. A), pertinent portion thereof is quoted hereunder, to wit:

> "In reply thereof, please be informed that this Office hereby denies your protest for lack of legal basis. The above assessments do not fall as per your allegation under the purview

> taxation since the common carriers tax is not an income tax covered by the RP-Thailand Tax Treaty, inasmuch as the former is a tax on the privilege of operating a business of transportation and imposable even if a tax on income has already been collected. This position has consistently been maintained by this Office.
>
> Hence, Thai Airways, like any other airline operating in the Philippines, is still subject to the 3% common carriers tax pursuant to Section 115 of the Tax Code. This is the <u>final decision</u> of this Office on this assessment and the demand for payment of the assessments amounting to P4,052,101.27 is hereby reiterated to be paid within thirty (30) days from receipt thereof."

Petitioner filed a request for reconsideration (Exh. E), dated April 20, 1993, of the aforementioned decision. However, on July 29, 1993, a Warrant of Distraint and/or Levy (Exh. F) was served on the petitioner to enforce collection of the assessments issued against them. Hence, on <u>July 30, 1993,</u> Thai Airways filed the instant petition for review.

The following issues have been raised:

> 1. Whether or not the imposition of the common carrier's percentage tax on the gross revenues of Thai Airways International, Ltd. constitutes [as] a violation of the pertinent provisions of the RP-Thailand Tax Treaty;
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> 2. Assuming for the sake of argument, that the common carrier's percentage tax may correctly be imposed upon herein petitioner, whether or not the deficiency tax assessments issued by respondent against petitioner are in fact accurate and/or true and correct assessments considering:
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> 2.a. The absence of specific and appropriate guidelines and/or procedures

> to be observe and/or followed in the conduct of the examination of the records and/or books of accounts of herein petitioner; and
>
> 2.b. The basis applied by respondents in determining the total amount of gross receipts/revenues subject of the common carriers percentage tax, particularly on the definition and or interpretation of the term "continuous and uninterrupted flight", runs contrary to the pertinent provisions of Revenue Regulations No. 6-66." (p. 8, Petition for Review)

Respondent, in her answer, specifically denied the issues raised by the petitioner for being mere arguments, opinions and erroneous conclusions of law and fact. As a defense she stated that her decision denying petitioner's protest had become final, executory and demandable when petitioner failed to appeal to this Court within thirty (30) days from receipt thereof, hence, this Court has no jurisdiction to act on the petition.

After a thorough examination of the BIR records and pleadings of the parties, this Court found that a discussion of each of the arguments raised by both parties would be useless until the question on jurisdiction is first settled. Determination of the case on merits would be futile if this Court have no jurisdiction to act on the petition.

The pertinent provisions of the Tax Code relevant to the issue abovementioned is Section 229, which is quoted hereunder:

> "Sec. 229. *Protesting of assessment.* - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings, within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings."
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
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> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable". (as inserted by P.D. No. 1773, Underscoring supplied)

And implementing the last paragraph of the foregoing provisions, Revenue Regulations No. 12-85, November 27, 1985, provides:

> "Sec. 10. *Appeals of decision of Commissioner or Regional Director to the Court of Tax Appeals* - Final decision issued by the Commissioner or Regional Director may be appealed to the Court of Tax Appeals within (30) days from receipt thereof, otherwise the same shall become final and executory." (Underscoring supplied)

In the case at bar, respondent Commissioner rendered the assailed decision, dated March 2, 1993, denying the considered the final decision of respondent on the matter. The decision was admittedly received by the petitioner on March 22, 1993. Petitioner, instead of filing an appeal with this Court, filed a letter-request for reconsideration addressed to the respondent on April 21, 1993 (Exh. E). It was only on July 30, 1993, a day after petitioner received a Warrant of Distraint and/or Levy or four months from receipt of the final decision of the respondent, did Thai Airways filed a petition for review before this Court.

This Court finds for the respondent.

The law and regulations previously mentioned clearly mandate that if a protest against the assessment is denied, the decision on the protest may be appealed to the Court of Tax Appeals within thirty (30) days from receipt of the decision otherwise, the decision shall become final, executory and demandable. Nowhere in the law does it provides that a letter-request for reconsideration of the decision on the protest would suspend the running of the 30-day period to appeal to this Court as alleged by the petitioner.

In the case of **St. Anthony Academy of Iriga, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 4569**, Resolution dated August 26, 1993, this Court held that:

"With regard to the instant petition, it was filed beyond the period allowed by the Tax Code. Petitioner is mandated to appeal before this Court the respondent's final decision within 30 days from receipt of the said decision or not later than July 30, 1989; otherwise, 'the decision shall become final, executory and demandable'. (Section 229)

His failure is fatal to his case since this Court cannot now take jurisdiction of the case on grounds of prescription and lack of a cause of action. (**Commissioner of Internal Revenue vs. Western Pacific Corp., 14 SCRA 105; Republic vs. Lim Tian Teng Sons and Co. Inc., 16 SCRA 584**)

Petitioner's claim that its request for reconsideration of the final decision forestalled the running of the prescriptive period is without merit. The respondent's letter of denial clearly indicates that it constitutes the final decision of the respondent on the matter." (Underscoring supplied)

The provision of law is clear and leaves no doubt as to its interpretation. The Supreme Court, through Justice Isagani A. Cruz, held in a similar case of **Elegado vs. Court of Tax Appeals** (173 SCRA 285) that:

> "(T)he most compelling consideration in this case is the fact that the first assessment is already final and executory and can no longer be questioned at this late hour. The assessment was made on February 9, 1978. It was protested on March 7, 1978. The protest was denied on July 7, 1978. As no further action was taken thereon by the decedent's estate, there is no question that the assessment has become final and executory.
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> xxx xxx xxx.
>
> In view of the finality of the first assessment, the petitioner cannot now raise the question of its

than he could have done so before the Court of Tax Appeals."

More so, even assuming that the respondent did not categorically answered all the points raised by petitioner in his request, the latter cannot be excused from the requirements of Section 229 of the Tax Code since it is not precluded in raising the same points anew before this Court."

The foregoing ruling has been reasserted by the Court of Appeals in **Saint Anthony Academy of Iriga, Inc. vs. Court of Tax Appeals, et al., CA-G.R. Sp. No. 34310, August 18, 1994**, in this wise:

"Although it appears that petitioner has moved for a reconsideration of the respondent Commissioner's decision in its letter dated July 8, 1989, the same will not toll the running of the 30-day period within which to file a petition for review before the respondent Court of Tax Appeals, considering that the respondent Commissioner had signified in his letter-decision dated May 16, 1989, that the same constituted the final decision of his office on said matter. Clearly the period of appeal has commenced to run. It appearing that petitioner received a copy of the letter-decision on June 30, 1989, petitioner has only until July 30, 1989, within which to file a petition for review. Thus, when petitioner filed its petition on January 16, 1991, the period to appeal has already prescribed.

Given the above-stated facts, the respondent Court of Tax Appeals correctly ruled that the 30-day reglementary period for filing a petition for review before the Court of Tax Appeals is jurisdictional in nature and is determinative of the power of respondent court to proceed and hear the case on the merits.

In the case of Surigao Electric Co., Inc. vs. Court of Tax Appeals (57 SCRA 523), the Honorable Supreme Court, held:

> 'The thirty-day period prescribed by Section 11 of Republic Act 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 a taxpayer to lodge his appeal within the prescribed period bars his appeal and renders the questioned decision final and executory.'
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> 'Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero motu.' (Commissioner of Internal Revenue vs. Villa, 22 SCRA 3)

The perfection of an appeal within the statutory or reglementary period is mandatory and jurisdictional, and the failure thereof, renders final and executory the questioned decision, and deprives the appellate court of jurisdiction to entertain the appeal (Sembrano vs. Ramirez, 166 SCRA 30)." (Underscoring supplied)

The decision in this case having become final, executory and demandable due to the failure of the petitioner to appeal before this Court within the 30-day period required by law, this Court has no jurisdiction to entertain the petition for review.

WHEREFORE, in view of all the foregoing, the petition of Thai Airways International, Ltd., praying for the reversal of the decision of the Commissioner of Internal Revenue, denying its letter-protest, is hereby **DISMISSED** on the ground of lack of jurisdiction.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals