REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

WESTLINK GLOBAL EQUITIES, INC., Petitioner,	CTA CASE NO. 9680
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 2018 3:47 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

In his Motion to Dismiss dated October 13, 2017, respondent prays for outright dismissal of the present action on the ground of lack of jurisdiction. Respondent claims that the Petition for Review was not filed within the thirty (30)-day prescriptive period reckoned from the receipt of the Final Decision on Disputed Assessment (FDDA) provided under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended.

According to respondent, the assailed FDDA dated January 24, 2013 was received by petitioner on January 30, 2013, thus, it had 30 days or until March 1, 2013, within which to elevate the matter to the Court pursuant to Section 228 of the NIRC, as amended. Clearly, the instant Petition for Review was filed out of time on September 6, 2017, hence, should be dismissed.

Respondent also states[1] that appeal is no longer available since the assailed assessment already became final and executory since petitioner failed to timely file a protest against the Formal Assessment Notice (FAN) dated May 15, 2012. The said FAN was received by petitioner on May 18, 2012 but there is nothing in the record indicating that petitioner ever protested the said FAN.

To the foregoing, petitioner counters[2] that respondent erroneously reckoned the 30-day period to appeal from receipt of the FDDA on January 30, 2013. Allegedly, respondent did not indicate that the FDDA issued by then Regional Director Nestor S. Valeroso denied its protest. Citing Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, petitioner argues that if the denial of the protest is made by an authorized representative, or any Bureau of Internal Revenue (BIR) official other than respondent Commissioner, the taxpayer may elevate his protest to the Commissioner within 30 days from receipt of the ruling or adverse decision of his authorized representative – and it is exactly what it did.

Upon receipt of the FDDA, petitioner filed an appeal to respondent, who rendered the Decision dated April 24, 2017, which petitioner received on August 7, 2017. Counting 30 days from August 7, 2017, petitioner had until September 6, 2017 to elevate it to the Court. Therefore, the instant Petition for Review was timely filed on September 6, 2017, says petitioner.

Petitioner admits that it did not file any protest against the FAN[3]. The said FAN however, could be deemed set aside when it filed a request for re-investigation which was granted in the Letter dated July 9, 2012 issued by then Regional Director Nestor S. Valeroso.

Finally, its Letter dated July 23, 2012 sent to the Regional Director after the issuance of the FAN reiterating

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[1] See TSN dated February 6, 2018.
[2] Manifestation and Comment on Motion to Dismiss Filed by respondent Commissioner of Internal Revenue dated December 6, 2017.
[3] Par. 12, Manifestation and Comment on Motion to Dismiss dated February 20, 2018.

the grounds cited in its protest against the PAN constitutes a valid protest to the FAN.

Section 228 of the NIRC of 1997 relevantly provides, thus:

> 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: x x x
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> x x x
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> 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.
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> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

The above cited provision laid down the roadmap for remedial measures to challenge an assessment issued by the taxing power against a taxpayer. It provides that a taxpayer has 30 days from receipt of a formal assessment notice to file its protest against it. Within 60 days from the filing of the said protest, all supporting documents must be filed or submitted.

Respondent, on the other hand, has 180 days from submission of complete documents to act on the protest. From the receipt of an adverse decision or upon the lapse of the 180 days for action on the protest, the taxpayer has 30 days to seek judicial intervention via a Petition for Review filed with the Court assailing the adverse decision or respondent's inaction.

There is no denying that the FAN was issued by respondent against petitioner on May 15, 2012.[4] The latter received it on May 18, 2012, as indicated in pages 3 and 12 of the Decision dated April 24, 2017[5] rendered by respondent, a finding which petitioner never impugned.

Thus, from receipt of the FAN on May 18, 2012, petitioner had 30 days or until June 17, 2012 to protest the said FAN. Since June 17, 2012 was a Sunday, petitioner had until the next working day, i.e., June 18, 2012, to file its protest. Admittedly petitioner did not file any[6].

The rule is clear - failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable.[7] A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested, x x x. In other words, for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals.[8] Any

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[4] Docket p. 57.

[5] The Decision dated April 24, 2017 was attached to respondent's Memorandum dated February 2, 2018 filed before the Court in support of the subject Motion To Dismiss.

[6] See Par. 12, Manifestation and Comment on Motion to Dismiss dated February 20, 2018 filed by petitioner.

[7] Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc., G.R. No. 227544, November 22, 2017.

[8] Oceanic Wireless Network vs. Commissioner of Internal Revenue, G. R. No. 148380, December 9, 2005.

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objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes.[9] This circumstance is obviously wanting in the present case.

The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[10]

The provision on the matter is clear and unequivocal. Settled is the rule that if the language of the law is clear, explicit and unequivocal, it admits no room for interpretation but merely application. A statute clear and unambiguous on its face need not be interpreted; stated otherwise, the rule is that only statutes with an ambiguous or doubtful meaning may be the subject of statutory construction.[11]

Applying the law as worded, for failure of petitioner to file the required protest to the FAN, the same became final and executory, hence, can no longer be assailed on appeal to this Court. Due to petitioner's non-filing of a protest against the FAN, the subject assessment became final and executory effectively depriving the Court of jurisdiction to review it.

The argument that respondent's Letter dated July 9, 2012 issued subsequent to the FAN must be deemed to have set aside the FAN is certainly unavailing.

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[9] Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, G.R. No. 177279, October 13, 2010.
[10] RCBC vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.
[11] Miramar Fish Company, Inc., vs. Commissioner of Internal Revenue, G.R. No. 185432, June 04, 2014.

In the first place, the Letter dated July 9, 2012 of Regional Director Nestor S. Valeroso of the BIR, alluded to by petitioner, was referring to the PAN and not the FAN. It clearly stated - "This has reference to your letter dated May 9, 2012 which was received by our office on May 10, 2012 x x x relative to our Preliminary Assessment Notice (PAN) dated October 7, 2011 x x x." Evidently, the said Letter granting petitioner's request for reinvestigation is likewise referring to the PAN and not the FAN.

More importantly, the said Letter was issued on July 9, 2012, or long after the 30-day period for petitioner to protest the FAN had lapsed. Since, the said FAN has been rendered final and executory, it is beyond the power of respondent to alter or modify.

As to petitioner's theory that its Letter dated July 23, 2012 sent to the Regional Director already constitutes a valid protest against the FAN, the same is unmeritorious as well. To constitute a valid protest, it is sufficient if what has been filed contains the spontaneous declaration made to acquire or keep some right or to prevent an impending damage. Accordingly, a protest is valid so long as it states the taxpayer's objection to the assessment and the reasons therefor.[12]

A revisit of the Letter dated July 23, 2012, revealed that it only contains petitioner's objection to the requirement that all necessary documents should be submitted within 60 days from the filing of the protest to the PAN. Not even a hint is found in the said Letter to justify conclusion that petitioner was objecting to the final assessment stated in the FAN. In fine, the Letter dated July 23, 2012 cannot be deemed a valid protest against the FAN.

WHEREFORE, the Motion to Dismiss dated October 13, 2017 filed by respondent is hereby **GRANTED.**

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[12] China Banking Corporation vs. City Treasurer Of Manila, G.R. No. 204117, July 1, 2015.

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Consequently, the Petition for Review dated September 6, 2017 filed by petitioner is **DISMISSED**, on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice