HB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THAI AIRWAYS INTERNATIONAL, LTD.,
Petitioner,

- versus -

C.T.A. CASE NO.4884

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 30 1996

x - x

DECISION

This is a petition for review of the decision of respondent, Commissioner of Internal Revenue, denying petitioner's protest with regard to the deficiency common carrier's percentage tax and documentary stamp tax assessments for the first quarter ending December 31, 1988, as well as the deficiency income tax and expanded withholding tax assessments for the fiscal year ending September 30, 1988.

The facts are as follows:

By virtue of a letter of authority, dated May 20, 1991, an examination of petitioner's books of accounts and other accounting records for business tax purposes for the fiscal year ending September 1988 was conducted.

On October 28, 1991, a conference was held between the representatives of both parties to discuss the findings of the examiners. Thereafter, on January 20, 1992, petitioner received notices of assessments pertaining to its income tax, withholding on salaries, and expanding withholding tax deficiencies, in the amounts of P3,784,305.91, P355,080.24 and P89,254.78, respectively (Exhs. N,O and P, respectively).

Subsequently, on January 23, 1992, petitioner received another notice of assessment, this time relative to its alleged common carrier's tax and documentary stamp tax deficiencies for 1988, amounting to P5,201,590.70 and P7,207.90, respectively.

Aggrieved by the aforementioned deficiency assessments, petitioner filed its protest letters, dated February 19, 1992 (Exh. C) and February 20, 1992 (Exh. D). On October 1, 1992, petitioner received a letter reply from the respondent, dated September 9, 1992, denying with finality the protest letters filed by petitioner. Petitioner moved to reconsider respondent's decision in its letter, dated October 3, 1992, sent through registered mail on November 3, 1992. Respondenton the other hand, sent a warrant of distraint and/or levy, dated November 16, 1992, which petitioner received on December 2, 1992.

Taking the issuance and service of the aforesaid warrant of distraint and/or levy as a denial of petitioner's letter request of reconsideration, petitioner filed the instant petition with this Court on December 3, 1992.

Petitioner questions the validity of the deficiency assessments issued by respondent. Respondent, on the other hand, raises the issue of jurisdiction, considering that petitioner failed to appeal respondent's decision to this Court within the thirty-day reglementary period.

Well-settled that 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 parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex meru motu* (**Commissioner of Internal Revenue vs. Villa**, 22 SCRA 3).

Section 229 of the National Internal Revenue Code which is the core of this particular controversy, provides as follows:

> "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.
>
> 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 said decision; otherwise, the decision shall become final, executory and demandable."

And in the implementation of the last paragraph of the foregoing provision, Revenue Regulations No. 12-85 provides:

> "**Sec. 10. Appeals of decisions 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 thirty (30) days from receipt thereof, otherwise the same shall become final and executory."

The aforesaid provisions reckon the counting of the thirty-day period from the receipt of the decision or ruling of the Commissioner as the span of time given to the taxpayer to file his appeal to this Court, otherwise the decision on the protest becomes final. As applied to this case, petitioner received the letter of denial, dated September 9, 1992, on October 1, 1992, stating that the same is the Commissioner's final decision on the matter. Petitioner should have appealed to this Court within 30 days from October 1, 1992. It has up to October 31, 1992 to file a petition for review with this Court. Instead, petitioner elevated this petition only on December 3, 1992, or after the lapsed of thirty-three (33) days from October 31, 1992. Therefore, beyond the thirty (30) day reglementary period to appeal.

With regard to the argument of petitioner that the thirtieth day (October 31, 1992) falls on a Saturday, and that November 2, 1992, a Monday, was declared a non-working holiday, therefore, it was not able to file its request for reconsideration on such dates but only on November 3, 1992, the Court wants to cite the following cases:

In the case of **Bank of America NT and SA vs. Gerochi, Jr., 230 SCRA 9**, the Supreme Court ruled, thus:

> "The prevailing rule even then was that if the last day to appeal fell on a Saturday, the act was still due on that day and not the next succeeding business day."

In **Lucero vs. NLRC, 203 SCRA 218**, it was similarly ruled, thus:

> "However we noted in these cases the fact that Saturday unless declared a holiday, is considered a business day and therefore, if the last day to appeal false on a Saturday, the act is due on that day and not on the next succeeding business day."

Therefore, petitioner should have filed its request for reconsideration before Saturday if it cannot be done on that date. Moreover, considering that the Commissioner's decision, dated September 9, 1992, which was received by petitioner on Octber 1, 1992, was the final decision already, we find no reason why petitioner has to file a request for reconsideration.

Hence, nothing in the records of this case, particularly the petition for review and the evidence offered by the petitioner, gives us the *raison d'etre* as to why this Court should take cognizance of this appeal, taking into consideration the allegation of respondent that this action was filed beyond the thirty-day period prescribed by law.

WHEREFORE, in view of the foregoing, this petition is hereby **DISMISSED** for lack of jurisdiction without pronouncement as to cost.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation with the member 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