REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RIZAL COMMERCIAL BANKING CORPORATION
Petitioner,

- versus -

C.T.A. CASE NO. 6475

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 10 2003

x - x

RESOLUTION

Submitted for resolution is respondent's **Motion to Resolve First the Issue of this Court's Jurisdiction** filed on July 15, 2003.

Respondent advances the argument that the assessments had become final and executory when petitioner filed the Petition for Review with this court. According to respondent, petitioner alleged in the Petition for Review that on July 20, 2001, it filed its protest/request for reconsideration/investigation and due to respondent's inaction elevated the case to this court through a Petition for Review on April 30, 2002. Respondent claims that a taxpayer is given a period of sixty (60) days from the date of protest within which to submit relevant documents. After which, the Commissioner is given one hundred eighty (180) days to act on the protest. In case of the latter's inaction, a taxpayer is given a period of thirty (30) days from the lapse of the one hundred eighty (180) days within which to file its judicial appeal before the Court of Tax Appeals.

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Considering so, from July 20, 2001, that is, the date of protest, petitioner had until September 18, 2001 to submit the relevant documents and from September 18, 2001, the Commissioner had until March 17, 2002 to issue his decision. Since the Commissioner of Internal Revenue did not act on petitioner's protest, the latter had until April 16, 2002 within which to elevate the case to this court. Thus, when petitioner filed its Petition for Review on April 30, 2002, the same was outside the thirty (30)-day period, consequently, the assessments had already become final and executory.

We find the contentions of the respondent tenable.

Jurisdiction is the power with which the courts are invested for administering justice, that is, for hearing and deciding cases *(Veluma vs. Chief of Phil. Constabulary 157 SCRA 147)*. Consequently, whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed *(La Naval Drug Corp. vs. Court of Appeals, 236 SCRA 78)*.

Relevant to the case at bar are Section 228 of the Tax Code and Section 11 of Republic Act 1125, the pertinent portions read, respectively:

> **Sec. 228**. *Protesting of Assessment*.- x x x
> x x x x x x x x x
> Such assessment may be protested administratively by filing a request for reconsideration or investigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by the 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.
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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 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.

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> **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 Appeals may file an appeal in the Court Tax Appeals within thirty days after the receipt of such decision or ruling (Emphasis supplied).

From the above provisions it is clear that petitioner has only thirty days from receipt of the decision or ruling of the Commissioner of Internal Revenue or from the lapse of the one hundred eighty days, within which to elevate its case to this court. Failure to do so results to the finality of the decision or ruling. In its Petition for Review filed on April 30, 2002, petitioner alleged, thus:

> 5. On July 20, 2001, Petitioner filed with the Respondent its protest letter/request for reconsideration/reinvestigation dated July 6, 2001 pursuant to Section 228 of the Tax Code, as amended. The aforesaid protest letter specified the factual and legal bases of the protest against the assessments, and requested that the deficiency tax assessments therein shall be cancelled and the case against the Petitioner be considered closed and terminated.
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> 6. As of this date, Respondent has not yet issued a decision on the protest filed by Petitioner against the alleged deficiency tax assessments. While Petitioner has the option to wait until Respondents decides on Petitioner's protest before elevating its case, Petitioner would like to seek immediate relief of cancellation of the assessment rather than wait for an indefinite period of time for the Respondent to decide.

Following the periods provided for in the aforementioned laws, from July 20, 2001, that is, the date of petitioner's filing of protest, it had until September 18, 2001 to submit the relevant documents and from September 18, 2001, the Commissioner had until March 17, 2002 to issue his decision. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. Therefore, it had until April 16, 2002 within which to elevate the case to this court. Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) period.

We agree with petitioner's proposition that it has the option to wait until the Commissioner decides on its protest. In the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue and Norberto R. Odulio, Regional Director, Revenue Region No. 8, Makati City, Bureau of Internal Revenue, CTA Case No. 5777, promulgated January 4, 2000,* we interpreted Section 228 of the Tax Code in this wise, thus:.

> Verily, in cases of inaction, Section 228 of the Tax Code merely gave the taxpayer an option: first, he may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180)-day period provided for under the said section, or second, he may wait until the Commissioner decides on his protest before he elevates his case. This Court believes that the taxpayer was given this option so that in case his protest is not acted upon within the 180-day period, he may be able to seek immediate relief and need not wait for an indefinite period of time for the Commissioner to decide. But if he chooses to wait for a positive action on the part of the Commissioner, then the same could not result in the assessment becoming final, executory and demandable.

In the case at bar, petitioner opted to seek immediate relief to the Court of Tax Appeals instead of waiting for the decision of the respondent. Hence, we opine that petitioner is bound to follow the periods provided for in Section 228 of the Tax Code in relation to Section 11 of RA No. 1125.

We would also like to emphasize our pronouncement in the case of *Anita N. Ty vs. Commissioner of Internal Revenue CTA Case No. 4965, promulgated July 8, 1996,* that the thirty-day period prescribed by Section 11 of RA 1125, as amended, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue

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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.

WHEREFORE, the court hereby **RESOLVES** to **GRANT** the instant Motion. Accordingly, the Petition for Review is **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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

LOVELL A. BAUTISTA
Associate Judge

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