REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION
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VY DOMINGO JEWELLERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8335

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 29 2014 ; 3:40 p.m.

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RESOLUTION

UY, *J.*:

For consideration is respondent's **"MOTION TO DISMISS"** filed on September 23, 2013, with petitioner's **"OPPOSITION (Re: Respondent's Motion to Dismiss dated 20 September 2013)"** filed on October 11, 2013.

In her Motion, respondent moves for the dismissal of the instant petition for want of jurisdiction. She argues that under Republic Act No. (RA) 1125[1], as amended RA 9282,[2] and the Revised Rules of the Court of Tax Appeals (RRCTA), it is neither the assessment nor the formal letter of demand that is appealable to this Court but the decision of the Commissioner of Internal Revenue on disputed assessment. Respondent further argues that evidently, the instant Petition for Review was anchored on petitioner's receipt of the Preliminary Collection Letter. She then concludes that there being no

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[1] AN ACT CREATING THE COURT OF TAX APPEALS.

[2] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED.

disputed assessment to speak of, this Court has no jurisdiction to entertain the instant Petition for Review.

Furthermore, respondent claims that for failure of petitioner to exhaust administrative remedies, Assessment Notices No. 32-06-IT-0242 and No. 32-06-VT-0243 had become final and executory.

In its Opposition, petitioner avers that this Court has jurisdiction over the instant case. Citing the case of *Tijam vs. Sibanghanoy*[3] (hereinafter referred to as the "*Tijam* case"), among others, petitioner argues that respondent is now estopped from questioning the jurisdiction of the court under the doctrine of laches for she actively participated in the proceedings. In addition, petitioner contends that:

a) respondent admitted that petitioner became aware of the Assessment Notices only on September 15, 2011, which is clearly beyond the three (3)-year prescriptive period. Obviously, the Assessment Notices are void;

b) the tenor of the preliminary collection letter shows that respondent has already made a final decision to collect the assessed taxes from petitioner. Petitioner has no other recourse but to question the legality of the assessment before this Court;

c) one of the principal issues raised in the petition for review is the validity of the waiver of statute of limitations signed by petitioner's president. Such issue is clearly within the jurisdiction of this Court;

d) the motion to dismiss must be denied by reason of improper service; and

e) there is violation of the three (3)-day notice rule.

THE COURT'S RULING

We find for respondent.

The question of jurisdiction may be raised at any stage of the proceedings.

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[3] G.R. No. L-21450, April 15, 1968.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by the 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*.[4] The doctrine of laches or "stale demands" under the *Tijam* case, as cited by petitioner, does not find application in the instant case.

This must be so because the ruling in the *Tijam* case on the matter of jurisdiction is the exception rather than the rule. Estoppel by laches may be invoked to bar the issue of jurisdiction only in cases in which the factual milieu is analogous to that of the *Tijam* case.[5] In the said case, the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by the Surety almost fifteen (15) years after the questioned ruling had been rendered. At several stages of the proceedings, in the lower court as well as in the Court of Appeals, the Surety invoked the jurisdiction of the said courts to obtain affirmative relief and submitted its case for final adjudication on the merits. It was only when the adverse decision was finally rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction.[6] Laches should be clearly present; that is, lack of jurisdiction must have been raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.[7]

The *Tijam* case applies only to exceptional circumstances. The general rule remains: a court's lack of jurisdiction may be raised at any stage of the proceedings even on appeal.[8]

The three-day notice rule under Section 4, Rule 15 of the Rules of Court.

Petitioner alleges that the motion to dismiss was improperly served and also violated the three (3)-day notice rule under Section 4 Rule 15 of the Rules of Court,[9] since petitioner only received a copy

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[4] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 7, 1968.
[5] *Francel Realty Corporation v. Sycip*, G.R. No. 154684, September 8, 2005.
[6] *Regalado vs. Go*, G.R. No. 167988, February 06, 2007.
[7] *Francel Realty Corporation v. Sycip*, supra.
[8] *Francel Realty Corporation v. Sycip*, supra.
[9] **SEC. 4. *Hearing of motion.***—Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) of respondent's motion on September 25 and 26, 2013 by private courier and registered mail, respectively, or only two (2) days before the next scheduled hearing on September 27, 2013.

This Court disagrees.

In the case of *Jehan Shipping Corporation vs. National Food Authority*,[10] the Supreme Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. The Court held:

> "This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the said requirement. As a rule, a motion without a notice of hearing is considered ***pro forma*** and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
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> As an integral component of the procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.
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> The **test** is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. xxx
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days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[10] G.R. No. 159750, December 14, 2005.

> A close perusal of the records reveal that the trial court gave petitioner ten days within which to comment on respondent's Motion for Reconsideration. Petitioner filed its Opposition to the Motion on November 26, 2001. In its 14-page Opposition, it not only pointed out that the Motion was defective for not containing a notice of hearing and should then be dismissed outright by the court; it also ventilated its substantial arguments against the merits of the Motion and of the Supplemental Motion for Reconsideration. Notably, its arguments were recited at length in the trial court's January 8, 2002 Joint Resolution. Nevertheless, the court proceeded to deny the Motions on the sole ground that they did not contain any notice of hearing.
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> <u>The requirement of notice of time and hearing in the pleading filed by a party is necessary only to apprise the other of the actions of the former</u>. *xxx*" (*Underscoring supplied.*)

It is noteworthy that during the September 13, 2013 hearing, both parties agreed that respondent's motion to dismiss, which is anchored on this Court's supposed lack of jurisdiction, will no longer be set for hearing.[11] In addition, this Court gave petitioner a period of ten (10) days from receipt to file a comment and/or opposition on the said motion.[12] In other words, petitioner was given ample time within which to read, prepare a defense, and file its opposition against respondent's motion to dismiss upon said ground; thereby, negating any notion of surprise that might emanate from said motion.

This Court is without jurisdiction to entertain the present appeal.

Section 228 of the National Internal Revenue Code (NIRC) of 1997 provides for the procedure on how to protest assessments, to *wit*:

> "**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*
>
> *xxx* *xxx* *xxx*

[11] Transcript of Stenographic Notes of the hearing held on September 13, 2013, at p. 7.
[12] Id. Resolution dated September 13, 2013, Docket, pp. 423 to 424.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

xxx *xxx* *xxx*

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." (*Emphases supplied.*)

Relative thereto, Section 7 of RA 1125, as amended by RA 9282,[13] 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 or other laws administered by the Bureau of Internal Revenue;

2. Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

xxx xxx xxx" (*Underscoring supplied.*)

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[13] "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED" ENACTED MARCH 30, 2004.

To implement the above-quoted Section 228, Section 3 of Revenue Regulations No. 12-99[14] provides as follows:

> "**SECTION 3. Due process requirement in the issuance of a deficiency tax assessment.—**
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> **3.1.2 Preliminary Assessment Notice (PAN).** — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in **ANNEX A** hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> xxx xxx xxx
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> **3.1.4 Formal Letter of Demand and Assessment Notice.** — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, ***otherwise, the formal letter of demand and assessment notice shall be void*** (see illustration in **ANNEX B** hereof). xxx.
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> **3.1.5. Disputed Assessment.** — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx
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[14] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty.

> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from the date of receipt thereof, the assessment shall become final, executory and demandable.
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> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
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> xxx xxx xxx
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> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.
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> **3.1.6 Administrative Decision on a Disputed Assessment.**— The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, ***otherwise, the decision shall be void*** (see illustration in **ANNEX C** hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his ***final decision***.
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> xxx xxx xxx."

Based on the foregoing, before an assessment case is brought before this Court, there are at least two (2) sets of correspondences that would come from the BIR, *i.e.*, first, the Preliminary Assessment Notice (PAN), and second, the Formal Letter of Demand (FLD) and Assessment Notice (AN); and there is at least one (1) correspondence coming from the taxpayer concerned, *i.e.*, the administrative protest against the FLD and AN.

Parenthetically, it must be stated that the Administrative Decision on a Disputed Assessment need not be issued when the taxpayer, after filing the said administrative protest, files a Petition for Review before this Court within 30 days after the lapse of the 180-day period prescribed under Section 228.

Anent the action of the taxpayer against the PAN, the taxpayer need not respond to the same, since it will only bring about the issuance of an FLD and AN. As a corollary, as between responding to the PAN within 15 days from receipt thereof, and the filing of an administrative protest against the FLD and AN within 30 days likewise from receipt thereof, both of the taxpayer, the more crucial is the latter, since the taxpayer's failure to do so would have the effect of making the FLD and AN as *"final, executory and demandable"*.

Nonetheless, where a taxpayer questions an assessment and asks the Commissioner of Internal Revenue to reconsider or cancel the same because said taxpayer believes he/it is not liable therefor, the assessment becomes a "disputed assessment" that the said Commissioner must decide.[15] Furthermore, **the rule is that for this Court 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, [16] or denied by said Commissioner through inaction, [17] from which a petition for review may be taken to this Court.

In this case, the relevant and clear antecedents leading to the filing of the instant Petition for Review are as follows:

1) *September 9, 2009* – The BIR issued the subject PAN.[18]

2) *September 24, 2009* – Petitioner filed its response to the PAN or more specifically, its request for *"a thorough re-evaluation and re-investigation to verify the accuracy of the computation as well as the accounts included in the Preliminary Assessment Notice"*.

3) *August 18, 2011* – Petitioner received the Preliminary Collection Letter, [19] informing petitioner of the existence of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010, and indicating, in part, as follows:

> "**If you want to know the details and/or settle this assessment**, may we invite you to come to this office, within ten (10) days from receipt of this notice. However, if payment had already been made, please send or

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[15] See *St. Stephen's Association, et al. vs. Collector of Internal Revenue*, G.R. No. L-11238, August 21, 1958.
[16] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005.
[17] Section 7(a)(2) of RA 1125, as amended by RA 9282, in relation to the last paragraph of Section 228 of the NIRC of 1997.
[18] BIR Records, pp. 149 to 151.
[19] Paragraph 9, Petition for Review, Docket, p. 9.

bring us copies of the receipts of payment together with this letter to be our basis for canceling/closing your liability/ies."[20] *(Emphases supplied)*

4) *September 12, 2011* – Petitioner filed a letter requesting the BIR for certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010.

5) *September 16, 2011* – Petitioner filed the instant Petition for Review, attaching therewith certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010.

Thus, it can be easily discerned that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 have **not** been disputed at the administrative level. What is clear is that petitioner only administratively contested the subject PAN, and subsequently, received the said Preliminary Collection Letter dated August 18, 2011. It was only after such receipt that petitioner had copies of the said assessments. Without disputing the latter before the BIR, petitioner appealed to this Court.

As the Court sees it then, what were appealed to this Court are the subject assessments, **not** a decision or denial of respondent to the protest thereof or a decision on any disputed assessments. Correspondingly, the said assessments attained finality, and thus, this Court is without jurisdiction to entertain the said appeal.

We cannot apply the ruling in the case of *Commissioner of Internal Revenue vs. Philippine Journalists, Inc.*,[21] since the factual milieu therein is not in all-fours with the instant case. In the *Philippine Journalists* case, the subject assessment was disputed, and the BIR has already issued a warrant of distraint and levy against the taxpayer. This is not so in the instant case. Per the BIR Records, no such warrant has been issued against petitioner.

In the same vein, neither can We apply the ruling in the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*,[22] wherein the demand letter involved therein contained the following statements, to wit:

[20] BIR Records, p. 191.
[21] G.R. No. 162852, December 16, 2004.
[22] G.R. No. 175097, February 5, 2010.

> "It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal this final decision with thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable."

The said case is inapplicable because the foregoing statements are not present in the subject assessments and formal demand letter.

Lastly, as for the other cases[23] invoked by petitioner regarding the tenor of the said Preliminary Collection Letter dated August 10, 2011 as being the final decision of the respondent, suffice it to state that the said cases are premised on the fact that the assessment has been previously disputed. As already observed, such fact is not present in the instant case, and thus, the rulings in the said cases cannot likewise be applied thereto.

WHEREFORE, premises considered, respondent's Motion to Dismiss is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[23] Namely, the cases of *Surigao Electric Co., Inc. vs. Court of Tax Appeals, et al.* (G.R. No. L-25289, June 28, 1974); *Commissioner of Internal Revenue vs. Union Shipping Corporation* (G.R. No. L-66160, May 21, 1990); *Commissioner of Internal Revenue vs. Ayala Securities Corporation* (G.R. No. L-29485, March 31, 1976); and *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 148380, December 9, 2005).