REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CHERRIE MARIE T. CHAN,
Petitioner,

CTA CASE NO. 10240

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 01 2021 4:05 pm

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RESOLUTION

For the Court's resolution are:

1. Respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court", filed on 14 August 2020, with petitioner's "Comment/Opposition", filed on 05 October 2020; and,

2. Petitioner's "Motion for Reconsideration", filed on 21 December 2020, with respondent's "Comment/Opposition Re: Petitioner's Motion for Reconsideration", filed on 18 January 2021.

In his motion, respondent avers that the Court lacks jurisdiction as the assessment has become final, executory and demandable, hence no longer appealable. Petitioner's Protest with Request for Reconsideration and Reinvestigation was acted upon as evidenced by a letter dated 09 September 2019 granting the request for reinvestigation. Thereafter, a new Letter of Authority (**LOA**) was issued to petitioner. On 08 January 2020, respondent issued an Amended Preliminary Assessment Notice (**Amended PAN**). Later, on

27 January 2020, respondent issued an Amended Final Assessment Notice (**FAN**)/Formal Letter of Demand (**Amended FLD**) against petitioner. Petitioner then had thirty (30) days therefrom within which to appeal said Amended FAN/FLD before the Commissioner of Internal Revenue (**CIR**). However, petitioner failed to file an appeal within the 30-day period hence, by operation of law, the Amended FAN/FLD has become final and executory.

Alternatively, respondent posits that, if the assessment is not yet final and executory, the petition should still be dismissed for petitioner's breach of the proscription against forum shopping. According to respondent, petitioner has actively participated in the reinvestigation process. Even when she knew that the case is being reinvestigated at the Revenue District Office (**RDO**) upon her request, she still filed a Petition for Review before this Court on 07 January 2020. Worse, she did not disclose in the Certification of Non-Forum Shopping that she herself has requested the reinvestigation of her case before the BIR.

Respondent adds that petitioner has made it appear in the Petition for Review that there was an inaction on his part when, in truth, a reinvestigation is ongoing to re-evaluate her claim.

In her Comment, petitioner points out that the documents mentioned in respondent's motion were not attached, incorporated or referenced to, thus the Court should not take cognizance of documents that are not found in the case records. Moreover, to determine jurisdiction, only the facts alleged in the petition shall be considered, thus external facts or even evidence *aliunde* are to be excluded. At any rate, even if evidentiary matters may be passed upon, respondent's motion should be denied for his failure to actually attach pertinent documents to support his claims.

Petitioner asserts further that the jurisdiction of the Court has been sufficiently established by the allegations in her petition. Respondent's Answer should not be taken into consideration for to do so would already entail a full-blown trial on the merits (especially in the face of disputable facts).

As to the allegation of forum shopping, petitioner counters that what is being appealed to this Court is respondent's inaction, as the latter failed to act on petitioner's protest within 180 days from the time she filed the protest on 11 June 2019. Respondent was furnished a copy of the instant Petition for Review on 06 January 2020, or prior to the filing of the said petition.

Addtionally, the issuance of the Amended FLD dated 27 January 2020 left petitioner with no choice but to file another Protest with Request for Reconsideration and Reinvestigation dated 18 February 2020. The filing of the protest was mainly due to petitioner's apprehensions that the BIR will consider the Amended FLD final and executory if not timely disputed. Petitioner indicated in the said protest that a Petition for Review was already filed in court. The BIR cannot claim that she actively particated in the investigation before it which she did not initiate in the first place. Accoridng to her, her response and the action she took relative to the BIR's assessment could not be deemed as forum shopping.

Later during the court proceedings, petitioner was not able to file her Pre-Trial Brief and attend the scheduled Pre-Trial Conference on 26 August 2020. Her absence prompted the Court to dismiss the case in the Order issued on the same date.[1]

Petitioner filed a Motion for Reconsideration (**MR**) of the Order dated 26 August 2020 on 21 December 2020. Respondent filed his Comment thereto on 18 January 2021.

In support of her present MR, petitioner explains that the only reason why she failed to attend the Pre-Trial Conference and file the Pre-Trial Brief was that she was "unaware of the schedule" therefor. She adds that she only received the assailed Order dismissing the case on 15 December 2020, or after almost three (3) months from the Pre-trial Conference.

In the MR, petitioner pled for leniency stating that technical rules of procedure must yield to the higher interest of justice.

In his Comment, respondent noted that based on the registry return card, it appears that petitioner's counsel received the Notice of Pre-Trial Conference on 13 October 2020. Petitioner then should have immediately inquired and sought reconsideration on the dismissal without actually waiting for the hard copy of the order

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[1] Order dated 26 August 2020.

(dismissing the case). Aware of the Pre-Trial schedule and with the rules in place, petitioner should have already anticipated the dismissal of her case if she fails to attend. To actually wait for the Order dismissing the case would be costly on her part as it would prolong the case. Thus, counting from her receipt of the Notice of Pre-Trial Conference on 13 October 2020, she had until 27 October 2020 to file a motion for reconsideration.

For respondent, petitioner should not solely rely on the notices from this Court which is sent by registered mail. Petitioner can simply call the Court or regularly check the website regarding the latest status of the case.

We resolve.

The Court finds it appropriate to first discuss petitioner's MR on the Order dated 26 August 2020 which dismissed her case following her failure to attend the Pre-Trial Conference and file the required Pre-Trial Brief.

While indeed Section 5 of Rule 18[2] of the Rules of Court provides that a plaintiff's failure to attend the pre-trial and to file the pre-trial brief will cause the dismissal of the case, the dismissal of herein case may not be the proper sanction it appearing that there is a justifiable reason for the omissions.

A closer scrutiny of the records reveals that petitioner was not indeed duly notified of the schedule for the Pre-Trial Conference. The Registry Return Receipt attached to the records of this case shows that petitioner received the Notice of Pre-Trial Conference only on 13 October 2020 or more than a month after the scheduled Pre-Trial Conference.

Respondent's argument that petitioner should not have waited for the receipt of the Order dated 26 August 2020 to file the MR is specious.

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2 Section 5. *Effect of failure to appear.* – When duly notified, the failure of the plaintiff and counsel to appear without valid cause when so required, pursuant to the next preceding Section, shall cause the dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court...[2]

...

A.M. No. 19-10-20-SC or the *Amendments to the 1997 Rules of Civil Procedure.*

Section 1, Rule 15 of the Revised Rules of the CTA provides:

> ...
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> Section 1. Who may and when to file motion. – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order from the Court. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice** of the decision, resolution or **order of the Court** in question.[3]
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> ...

With the foregoing, the reckoning point of the fifteen (15) days within which to file an MR is the receipt of the notice of such order of the Court. Surely, if petitioner had filed an MR ahead of the receipt of the court order as respondent suggested, she would not have been compliant with the afore-cited rule. Besides, she could not be expected to know the outcome of the pre-trial conference that she was not aware of in the first place. Neither is she expected to know and prepare her MR that would have addressed the content of the court order she has yet to receive.

On respondent's motion for early resolution on the issue of jurisdiction, he raised two alternative grounds to support his bid to have petitioner's case dismissed. *First*, that the assessment has become final and executory for petitioner's failure to file a protest to the Amended FLD. *Second*, the petition must be dismissed for petitioner's violation on the prohibition on non-forum shopping.

Respondent's grounds for dismissal of the case for lack of jurisdiction are bereft of merit.

A perusal of the averments in the Petition for Review shows that petitioner is appealing before this Court respondent's inaction to her protest to the FLD dated 10 May 2019. In establishing jurisdiction, petitioner alleged as follows:

> ...
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> 2. RD Furia failed to act on the Protest with Request for Reconsideration and Reinvestigation dated 6 June 2019 (filed on 11 June 2019) to dispute the FLD. RD Furia was not able to resolve

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[3] Emphasis supplied.

> Petitioner's Protest and issue a Formal Demand on Disputed Assessment (FDDA) within the period of one hundred eighty (180) days from filing of the Protest as required under Section 228 of the National Internal Revenue Code (NIRC) and paragraph 8, II (Policies and Guidelines) of RMO No. 26-2016. The said inaction of RD Furia within the period of 180 days is considered by Petitioner as a denial of her Protest dated 6 June 2019 and a tacit approval of the FLD despite being factually and legally infirm as will be exhaustively discussed hereunder.
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> ...

Concomitantly, Section 3(a)(2) of Rule 4 of the RRCTA on *Jurisdiction* reads:

> ...
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> Sec. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> ...
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> (2) **Inaction** by the Commissioner of Internal Revenue in cases involving disputed assessments...where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, **that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within one hundred eighty-day period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case**[.][4]
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> ...

Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or

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[4] Emphasis supplied.

not the plaintiff is entitled to recover upon all or some of the claims asserted therein. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.[5]

It bears stressing that the Amended FLD being referred to by respondent was issued only on 27 January 2020 and after the filing of the instant Petition for Review on 07 January 2020. Even assuming *arguendo* that petitioner failed to file a protest thereto, such will not divest this Court of jurisdiction that was already acquired.

Respondent's alternative ground for dismissal of the case in view of petitioner's alleged violation of the rule prohibiting forum shopping is likewise unavailing.

As explained above, petitioner is appealing respondent's inaction on its disputed assessment. While the reinvestigation for petitioner's protest has not yet concluded as respondent claims, the period of 180 days set by law to decide has already lapsed. Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, lays down the procedure for disputing the assessment, to wit:

> . . .
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> Sec. 228. *Protesting of Assessment.* –
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> . . .
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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 the 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 the 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**

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5 *Padlan v. Elenita Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.

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> **lapse of the one hundred eighty (180)-day period**; otherwise the decision shall become final, executory and demandable.[6]
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> . . .

Verily, petitioner's filing of the instant Petition for Review is a remedy sanctioned by the NIRC, and cannot thus be considered as an act of forum shopping.

WHEREFORE, with the foregoing, petitioner's Motion for Reconsideration is **GRANTED**. The Order dated 26 August 2020 dismissing the case is hereby **RECALLED and SET ASIDE**. On the other hand, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is **DENIED** for lack of merit.

Accordingly, let the case be set for Pre-Trial Conference on **05 April 2021 at 9:00 a.m**. The parties are reminded to file their respective pre-trial briefs and the judicial affidavits of their witnesses.

SO ORDERED.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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6 Emphasis supplied.