REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DNATA, INC., Petitioner,	CTA CASE NO. 7780
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 18 2011 ; 3:00 pm

x -x

DECISION

FABON-VICTORINO, J.:

This is a Petition for Review filed by petitioner DNATA, Inc. praying for the cancellation and withdrawal of the assessment issued against it by respondent Commissioner of Internal Revenue for alleged deficiency income tax, value-added tax (VAT), withholding tax on compensation, and expanded withholding tax in the aggregate amount of P8,336,375.13 for taxable year 2003.

Petitioner DNATA, Inc. alleges that it is a duly organized domestic corporation with principal address at the 4th Floor, International Passenger Terminal, Ninoy Aquino International Airport, Pasay City, and with Tax Identification No. 004-681-829-000.[1]

It is legally created and licensed to operate, engage, and provide ground handling services to all private, military, domestic and international airlines, including, but not limited to, aircraft and/or ground support equipment repair, catering services, cargo warehousing, and generally to do any and all types of services necessary or related to the aviation industry.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) authorized to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. She holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On September 12, 2007, respondent issued a Formal Assessment Notice (FAN) demanding that petitioner pay the

---

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket p. 147.
[2] Exhibits "D" and "D-1"; Par. 2, Admitted Facts, JSFI, docket p. 148.

assessed deficiency income tax, value-added tax, withholding tax on compensation, and expanded withholding tax for taxable year 2003 amounting to P3,744,523.50, P4,211,033.36, P6,159.33, and P344,658.94, respectively, inclusive of statutory increments, in the aggregate amount of P8,336,375.13.[3]

On October 18, 2007, petitioner filed a Letter of Protest assailing the validity of the FAN and praying for its cancellation and withdrawal.[4]

On March 18, 2008, respondent issued a Final Decision denying petitioner's protest on the ground that the latter failed to submit proof/documents necessary for the cancellation and withdrawal of the FAN within the reglementary period of sixty (60) days from the filing of the protest. The Final Decision was received by petitioner on March 27, 2008.[5]

On April 28, 2008, petitioner filed the instant Petition for Review through registered mail which the Court received on May 5, 2008.

---

[3] Exhibit "A"; Par. 5, Admitted Facts, JSFI, docket p. 148.
[4] Exhibit "B"; Par. 6, Admitted Facts, JSFI, docket p. 149.
[5] Exhibit "C"; Par. 7, Admitted Facts, JSFI, docket p. 149.

In her Answer filed on June 20, 2008 or within the period granted, respondent denies all the allegations in the Petition for Review except Paragraphs 6 and 7 pertaining to her personal circumstances. As a Special and Affirmative Defense, respondent contends that the questioned assessment has become final and executory per Section 3, 3.1.5 of Revenue Regulations No. 12-99 dated September 06, 1999, which requires a taxpayer protesting a tax assessment to submit documents in support of the protest within 60 days from filing. Respondent opines that petitioner failed to submit documents relevant to its protest, in violation of the cited Revenue Regulations, rendering the questioned assessment final and executory.

On September 1, 2008, the parties filed a Joint Stipulation of Facts and Issues raising the following issues for the resolution of the Court, to wit:

> "1. Whether or not Petitioner complied with Section 3 of Revenue Regulations No. 12-99 requiring that a tax protest should be accompanied with supporting documents within sixty (60) days from the date of filing of a protest.
>
> 2. Whether or not an alleged partial submission of supporting documents can result in the questioned assessment

becoming final and executory in the absence of any communication from the BIR to Petitioner of the need for additional supporting documents.

3. Whether or not Petitioner is liable to pay for tax deficiencies in the total amount of Php8,336,375.13 for taxable year 2003.

4. Whether or not the tax assessment or deficiency is supported by substantial evidence.

5. Whether or not the Petition for Review states a cause of action."

In a Resolution dated September 8, 2008, the pre-trial conference was deemed terminated and the presentation of evidence proceeded.

Petitioner's first witness was its General Manager **Junard J. Cruz**. He testified that petitioner was formerly known as DNATA-WINGS AVIATION SYSTEMS CORPORTION. The corporate name was changed to DNATA, Inc. via an amendment to its Articles of Incorporation on June 02, 2004.[6] Petitioner filed with the respondent its income tax returns (ITR) for 2003, 2004 and 2005.[7]

[6] Exhibit D.
[7] Exhibits F, FF and GG.

On September 18, 2007, petitioner received from respondent a Formal Assessment Notice[8] (FAN) to which it filed a formal protest on October 18, 2007.[9]

On March 27, 2008, petitioner received the Final Decision on its formal protest.[10] On April 28, 2008, petitioner sought the intervention of the Court through the instant Petition for Review.

Next on the witness stand was Court-commissioned **ICPA Oswaldo V. Umengan**. He testified that he conducted an examination in compliance with the audit and documentation requirement related to petitioner's alleged income tax deficiency of P3,774,523.50, VAT deficiency of P4,211,033.36, EWT deficiency of P344,658.94, and withholding tax on compensation deficiency of P6,159.33, or a total of P8,336,375.13, inclusive of interests and charges for the taxable year 2003 assessed by respondent. The audit was made to ascertain, among others, the correctness of the respondent's assessment which was based on the Audited Financial Statements/Income Tax Return (AFS/ITR) of petitioner.

---

[8] Exhibit A.
[9] Exhibit B.
[10] Exhibit C.

On December 8, 2008, he submitted to the Court his report denominated as Audit Report by an Independent Certified Public Accountant as Commissioned by the Court of Tax Appeals-DNATA, Inc. Tax Case No. 7780 for the Taxable Year 2003. His report contains his findings on the various documents submitted to him by petitioner, all of which he examined and verified. The manner and results of his examination were explained in detail in compliance with the Court's directive.

In particular, his examination of pertinent documents on petitioner's alleged income tax deficiency for 2003 revealed that petitioner is not liable for the same. As explained in his report, petitioner's Net Operating Loss Carry-Over (NOLCO) and the tax credits sufficiently cover the disallowances due to under-withholding of taxes. Petitioner is however liable for deficiency output VAT in the amount of P73,345.62 for 2003, exclusive of interests and charges, and not in the amount of P4,211,033.36, as claimed by respondent.

Likewise valid is respondent's assessment for deficiency payment on withholding tax on compensation. After ascertaining the correct amount of salaries and wages and the corresponding tax due therein, there is an unremitted withholding tax of

P3,524.86 due and payable. The total tax remittance for the twelve (12) months of 2003 is P1,790,888.12, while the total tax withheld and deducted on compensation is P1,794,412.98, thus an underpayment of the tax due. Petitioner is therefore liable for a basic withholding tax on compensation payment in the amount of P3,524.86.

Finally, various income payments[11] revealed that the total corresponding deficiency for Expanded Withholding Tax (EWT) on disallowed income payment is P73,921.78. This is due to petitioner's failure to deduct and remit EWT on income payment for Rental expense, Professional Fees expense and Outside Services. The remainder of the total deficiency per respondent's investigation could be due to income payments differently classified for AFS/ITR presentation and for EWT purposes and erroneous assumption on the part of respondent. In any event, it appears that petitioner is liable for basic expanded withholding tax on income payments in the amount of P73,921.78.

[11] Exhibits AAAA, EEE, and KKK.

After petitioner rested its case, respondent was declared to have waived the right to present evidence[12] for failure to appear during the presentation of her evidence-in-chief.

On July 29, 2010, the Court issued a Resolution [13] submitting the case for decision, taking into consideration petitioner's Memorandum [14] filed on July 15, 2010, without respondent's Memorandum.

DISCUSSION/RULING

After a careful scrutiny of the record of the case, it became evident that the present case calls for adjudication of whether petitioner paid the required docket fees and other lawful fees on time. The resolution of this issue is determinative of the validity of the proceedings conducted subsequent to the filing of the instant case and the competence of the Court to act on the present controversy.

It is undisputed that petitioner received respondent's Final Decision denying its protest on March 27, 2008. Under Section

---

[12] Resolution promulgated on June 15, 2010, docket, p. 935.
[13] Docket, p. 992.
[14] Docket, pp. 941-990.

228 of the NIRC, as amended, petitioner had thirty (30) days from receipt of the adverse decision, within which to appeal to this Court the denial of its protest via a petition for review under Rule 42 of the Rules of Court. Section 228 of the NIRC, as amended, is hereby reproduced in full below:

> SEC. 228. **Protesting of Assessment**. -
>
> x x x x x x x x x
>
> 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

A like provision granting an aggrieved taxpayer a period of thirty (30) days to perfect an appeal before this Court is Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, the relevant portion of which reads as follows:

> SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (underscoring ours)

In a litany of cases, the Court has consistently ruled the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith bars the appeal and deprives the Court of jurisdiction to entertain and determine the correctness of the assailed assessments, orders or decision of respondent. Such period is not merely directory but mandatory and it is beyond the power of the Court to extend the same.[15]

Counting thirty (30) days from March 27, 2008, petitioner had until April 26, 2008 to file its Petition for Review with the Court. It appears however that the last day for filing fell on a Saturday. To beat the deadline, petitioner filed its Petition for Review through registered mail on April 28, 2008 or the next working day, following the computation of time under Section 1, Rule 22 of the Rules of Court, which provides, thus:

> "Sec. 1. *How to compute time*. In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or even from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day."

The said initiatory pleading was received by the Court seven (7) days thereafter or on May 5, 2008, the same day that petitioner paid the required docket and other lawful fees. In

[15] RCBC vs. CIR, G.R. No. 168498, April 24, 2007

effect, petitioner filed its Petition for Review on April 28, 2008 without payment of the docket fees. While petitioner may be deemed to have filed its Petition for Review on time, it however failed to perfect its appeal for non-payment of the corresponding docket and other lawful fees at the same time that it filed its initiatory pleading as required in Section 1, Rule 42 of the 1997 of the Rules of Civil Procedure, under which Rule the instant case was instituted, pursuant to Section 4, Rule 8, in relation to Section 1, Rule 7 of the Revised Rules of the Court of Tax Appeals. The provision reads as follows:

> "*Sec. 1. How appeal taken; time for filing.* - A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction **may file a verified petition for review** with the Court of Appeals, **paying at the same time to the clerk of said court the corresponding docket and other lawful fees**, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most

> compelling reason and in no case to exceed fifteen (15) days.

Basic is the rule that docket and other lawful fees must be paid within the period for taking an appeal,[16] and that where the filing of the initiatory pleading is not accompanied by payment of the docket fees, the court may allow payment of the fee within a reasonable time **but in no case beyond the applicable prescriptive or reglementary period.**[17] Note that petitioner filed its Petition for Review on April 28, 2008 or the last day for filing its initiatory pleading, but for unknown reason, it waited until the pleading reached the Court on May 5, 2008, before it paid the required docket and other legal fees. In the meantime, the period to perfect the appeal had already lapsed. The payment of docket fees within the prescribed period is mandatory for the perfection of the appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.[18]

The filing of the appeal and the payment of the required docket and other lawful fees on time must concur as they are

---

[16] Iusorio vs. Ilusorio-Yap, G.R. No. 171656, March 17, 2009.
[17] Mercado vs. Court of Appeals, G.R. No. 150241, November 04, 2004.
[18] Tan vs. Link, G.R. No. 172849, December 10, 2008.

twin requirements for the Court to acquire competence to rule on the case. Strictest compliance with this mandatory requirement was intimated by the Final Arbiter in *Mactan Cebu International Airport Authority (MCIAA) v. Francisca Cuison, et al.,*[19] where it relaxed the rule and allowed late payment of docket fees by the petitioner but only because the 1997 Rules of Civil Procedure requiring payment of docket fees on time just took effect on July 1, 1997 or barely 13 days before petitioner therein filed its appeal.

Time and again the Supreme Court ruled that full payment of docket fees within the prescribed period is mandatory,[20] even jurisdictional,[21] for the perfection of the appeal. Otherwise, the appellate court will not be able to act on the subject matter of the action, and the decision or final order sought to be appealed from will become final and executory.

The same ruling is expressed in the case of *La Salette College v. Victor C. Pilotin,*[22] where the Supreme Court, through then Justice Artemio V. Panganiban, states that **payment of docket fees is not a trivial matter**. These fees are necessary

[19] G.R. No. 136121, August 16, 1999.
[20] Alfonso v. Spouses Andres, G.R. No. 139611, October 4, 2002; Manalili v. De Leon, 370 SCRA 625; Buenaflor v. Court of Appeals, 346 SCRA 563.
[21] Alfonso v. Spouses Andres, supra; Siy Chin et al. v. Court of Appeals, 345 SCRA 673; Ayala Land, Inc. v. Spouses Carpo, 345 SCRA 579.
[22] G.R. No. 149227, December 11, 2003.

to defray court expenses in the handling of cases. For this reason, and to secure a just and speedy disposition of every action and proceeding, the Rule of Civil Procedure mandates the payment of docket fees and other lawful fees within the prescribed period. Otherwise, the jurisdiction of the proper court to handle a case is adversely affected.[23]

In the case of *Villena v. Rupisan*, the Supreme Court went further to say that the appellate court acquires jurisdiction over the subject matter of the action **only upon payment of the correct amount of docket fees regardless of the actual date of filing of the case.**[24]

While it is true that petitioner subsequent to the filing of its Petition for Review paid the required docket and other lawful fees, the same did not cure the defect as the payment was effected beyond the reglementary period for perfecting an appeal.

Jurisprudence has it that an appeal is not a right but a statutory privilege; thus, appeal must be made strictly in accordance with provisions set by law. The requirement of the

[23] Sun Insurance Office, Ltd. (SIOL) v. Asuncion, 170 SCRA 274.
[24] Villena vs. Rupisan, G.R. NO. 167620, April 03, 2007.

law under Section 1 Rule 42 is clear. The payment of appellate docket fees is not a mere technicality of law or procedure but an essential requirement for the perfection of an appeal. It is jurisdictional, an issue that may be raised even for the first time on appeal. Moreover, the lack of it will render all the proceedings conducted null and void.[25]

Be that as it may, the strict application of the jurisdictional nature of the rule on payment of appellate docket fees may be mitigated under exceptional and meritorious circumstances[26] to better serve the interest of justice. [27] In the case at bar however, there is no showing of any satisfactory reason to justify relaxation of what otherwise should be a stringent application of the rule on the payment of appellate docket and other lawful fees.

The liberal application of rules of procedure for perfecting appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice.[28] Indeed, it is unfortunate that petitioner, which office is located only in Pasay City and could pay the required docket

---

[25] Tanenglian v. Silvestre, et al., G.R. No. 173415, March 28, 2008.
[26] Tan vs. Link, G.R. No. 172849, December 10, 2008.
[27] A.M. No. RTJ-04-1848, October 25, 2005.
[28] Ruiz vs. Delos Santos, G.R. No. 166386, January 27, 2009.

fees through postal money order, did not even bother to explain its delay and non-compliance with the Rules. In other words, there is no compelling reason for the Court to deviate from the strict application of the law.

Section 3, Rule 42 of the Revised Rules of Court provides that non-payment of docket and other lawful fees required under the Rules is sufficient ground for dismissal of the petition for review, thus:

> SEC. 3. Effect of failure to comply with requirements. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

For failure to pay the corresponding docket fees on time, petitioner also failed to seasonably perfect its appeal, divesting the Court of jurisdiction or authority to take cognizance of the instant Petition for Review. As provided in Section 228 of the NIRC, for failure to perfect an appeal on time, the decision rendered by respondent on petitioner's protest has become final, executory and demandable. That being the case, it is now beyond the province of the Court. Consequently, petitioner is precluded from disputing the correctness of the assessment.[29]

WHEREFORE, the instant Petition for Review filed by DNATA, Inc., is hereby DISMISSED, for lack of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

[29] RCBC vs. CIR, G.R. NO. 168498, June 16, 2006.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice