REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LAND OF PROMISE PAWNSHOPS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6460

BUREAU OF INTERNAL REVENUE
Board of Assessment Appeals Division,
Davao City,
Respondent.

Promulgated:

JUL 10 2002

x - x

RESOLUTION

For resolution is a Motion to Dismiss filed by the respondent on May 15, 2002 on the ground that this court has no jurisdiction to act on the petition.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

On April 16, 2001, a Preliminary Assessment Notice was sent to petitioner for deficiency income, withholding, percentage and documentary stamp taxes for the year 1998 (*Annex G, Petition for Review*).

On May 11, 2001, petitioner filed its protest thereto and requested for a reinvestigation of its tax liabilities for the said period (*Annex H, Petition for Review*).

On March, 2002, respondent sent a Formal Letter of Demand to the petitioner for deficiency income, withholding, percentage and documentary stamp taxes for the year 1998 in the aggregate amount of P1,593,189.74 (*Annex K, Petition for Review*) and a final decision denying petitioner's request for reinvestigation as regards the income tax liability (*Annex I, Petition for Review*).

Petitioner was served a copy of the said decision on March 18, 2002 and alleges that it had until April 18, 2002 to file a judicial appeal with this court. Respondent, on the other hand, disagrees for Section 228 of the Tax Code is quite explicit, thus:

> "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 said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

It is the position of the respondent that since the appeal was filed beyond the thirty (30)-day period, the decision denying petitioner's protest had already become final, executory and demandable. Hence, this court has no jurisdiction over the same.

Petitioner filed an opposition to respondent's motion averring among others, that the services of the law firm was only engaged last April 15, 2002 thereby causing the one day delay in filing the instant petition. Petitioner likewise insists that this court should take into consideration the fact that it is based in Davao while its counsel is in Makati. Moreover, "shortcomings of petitioner and counsel as to compliance with procedural requirement in taking an appeal is not sufficient to deprive petitioner to appeal its case".

We do not agree with the petitioner.

As clearly provided for under Section 228 of the Tax Code, as amended, upon failure to appeal the final decision of the Commissioner of Internal Revenue within thirty days from receipt thereof, <u>the decision becomes final, executory and demandable</u>.

Furthermore, Section 11 of R.A. No. 1125 (An Act Creating the Court of Tax Appeals) provides that:

> "Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days from receipt of such decision or ruling." (Underscoring supplied.)

When the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application (**Republic vs. Court of Appeals**, 299 SCRA 199; **Cecilleville Realty & Service Corp. vs. Court of Appeals**, 278 SCRA 819; **Paat vs. Court of Appeals**, 266 SCRA 167; **Cebu Portland Cement Co. vs. Mun. of Naga**, 24 SCRA 708).

Petitioner is naturally aware of this thirty-day requirement. Its mistake or that of its counsel, is in assuming that from March 18, 2002 to April 18, 2002 has thirty days and not thirty-one days.

This court can not give credence to petitioner's allegation that distance caused the delay in the filing of the petitioner because of the present availability of advanced technology in our country. Besides, it is admitted that it received respondent's decision on March 18, 2002. Petitioner should have endorsed its case to its counsel sooner.

Furthermore, this court noted that counsel had been confused from the start.

In filing the instant petition, counsel used as basis Section 7(3) of R.A. No. 1125 which plainly refers to decisions of Provincial or City Boards of Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law. This case involves assessments issued by Commissioner of Internal

Revenue through his authorized representative, for deficiency internal revenue taxes not real property taxes. Therefore, the decision appealed from did not come from the City Board of Assessment Appeals. This court would like to point out that the jurisdiction of the Court of Tax Appeals over appeals from decisions or rulings of the Provincial or City Board of Assessment Appeals in cases involving real property tax assessments under Section 7(3) of R.A. No. 1125 has been transferred to the Central Board of Assessment Appeals in the light of Real Property Tax Code (P.D. No. 464). Matters pertaining to real property tax collectible by local governments are covered by the Local Government Code (R.A. No. 7160).

More importantly, counsel elevated to us for review the disallowance in audit the amount of P2,480,000.00 as unsupported accounts payable and not the assessments per se. This is another miscomprehension on the counsel's part. The findings referred to by the Regional Director are the findings resulting to the assessments themselves and not the amount of P2,480,000.00. Said amount as explained, was found to be unsupported, hence, the discrepancy. In addition, the P2,480,000.00 formed part only of the deficiency income tax assessment (*Annexes G, K and L, Petition for Review*).

In other words, petitioner, through counsel, is not questioning the deficiency assessments for withholding (P2,296.53), percentage (P65,058.69) and documentary stamp taxes (P130,606.50) covering the year 1998 but only the unsupported accounts payable in the amount of P2,480,000. To reiterate, petitioner was not being assessed for this amount. The deficiency income tax assessment was for the amount of P1,395,228.02.

IN VIEW OF ALL THE FOREGOING, respondent's Motion to Dismiss is hereby **GRANTED**. Accordingly, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

ERNESTO D. ACOSTA
Presiding Judge