REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PGA CARS, INC.,
Petitioner,

C.T.A. CASE NO. 7319

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 2 0 2007

x- x

RESOLUTION

CASTAÑEDA, JR., J.:

For resolution is respondent's **"Motion to Dismiss"** filed on December 8, 2006 praying for the dismissal of the instant case on the ground of lack of jurisdiction, without any comment/opposition filed by petitioner despite notice and extension of time granted.

Respondent argues that pursuant to Section 3.1.5 of Revenue Regulations No. 12-99 (RR 12-99), when a taxpayer elevates the Final Decision on Disputed Assessment issued by the respondent's authorized representative to the Commissioner himself within thirty (30) days from his receipt thereof, the said decision shall not be considered as final, executory and demandable, in which case, the protest shall be decided by the

Commissioner. Thus, respondent submits that when petitioner filed a Request for Reconsideration of the Final Decision on Disputed Assessment of Deputy Commissioner for Special Concerns and OIC of the Large Taxpayer's Service, Atty. Kim S. Jacinto-Henares, before respondent's Office on August 31, 2005, and without waiting for a decision or the expiration of the one hundred eighty (180) day period afforded by law, filed this instant Petition for Review on September 9, 2005, or a period of only nine (9) days, the same appeal was prematurely filed.

This Court agrees.

As correctly pointed out by respondent, Revenue Regulations No. 12-99, which implements Section 228 of the National Internal Revenue Code of 1997, provide for the administrative remedies available to a taxpayer in cases where protests against assessments issued are filed before the Commissioner of his duly authorized representatives. For expediency, the pertinent section of RR No. 12-99 is quoted below, to wit:

> **Sec. 3.1.5** ***DISPUTED ASSESSMENT.-***
>
> Xxx xxx xxx
>
> In general, if the protest is denied in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of the receipt of said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from the date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case the protest shall be decided by the Commissioner.**
>
> 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." (Emphasis supplied)

Verily, considering that petitioner elevated its protest to respondent for reconsideration, it should have waited for the decision of respondent on its request for reconsideration or the lapse of the one hundred eighty (180) day period allowed by law before elevating its appeal to this Court. Based on the joint stipulations of the parties, petitioner received[1] a copy of the Final Assessment Notice on January 29, 2005, which notice was seasonably protested[2] to on February 16, 2005. On August 10, 2005[3], a Final Decision on Disputed Assessment was issued by the Deputy Commissioner for Special Concerns and OIC of the Large Taxpayer's Service, Atty. Kim S. Jacinto-Henares. On August 31, 2005[4], or well within the thirty (30) day period allowed by law, petitioner filed its Request for Reconsideration with the respondent's office. On September 9, 2005, or only within a period of nine (9) days, petitioner filed this instant Petition for Review. Indeed, this petition is prematurely filed.

Petitioner failed to wait for the resolution of its Request for Reconsideration by respondent so as to give the latter an opportunity to decide on the case. Moreover, there can be no "inaction" on the part of the respondent considering that the 180-day period allowed by law has not been fully exhausted.

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[1] Par. 4, Joint Stipulation of Facts and Issues
[2] Par. 5, supra
[3] Par. 6, supra
[4] Par. 7, supra

It is noteworthy to point out that under the doctrine of exhaustion of administrative remedies, any recourse through the courts shall not be allowed unless and until all such administrative remedies would have been exhausted. This is for the purpose of allowing the administrative tribunals, especially where their sound discretion and competence are demanded, to extend the necessary knowledge and expertise to determine the matters of the case.

As there is no decision or inaction to speak of on the part of respondent after the lapse of the 180-day period pursuant to Section 228 of the National Internal Revenue Code of 1997, this Court cannot take cognizance of this instant appeal. It is emphasized that this Court is a court of special jurisdiction and as such, it can only take cognizance of matters as are clearly within its jurisdiction.[5]

WHEREFORE, in view of the foregoing, respondent's "Motion to Dismiss" is hereby **GRANTED.** Accordingly, this instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

On leave
OLGA PALANCA-ENRIQUEZ
Associate Justice

[5] Commissioner of Internal Revenue vs. Villa, 22 SCRA 3.