REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

CAGAYAN CORN PRODUCTS CORPORATION, Petitioner,	**CTA CASE NO. 7881** Members:
- versus -	**BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** *and* **COTANGCO-MANALASTAS,** *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 11 2011 DBFernando 10:18 a.m.

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DECISION

BAUTISTA, *J.*:

Before this Court is a Petition for Review filed by petitioner on March 12, 2009, seeking to declare as null and void the assessment for deficiency expanded withholding tax and interest in the total amount of P25,130,054.35 for taxable year 2005 for having been issued without any legal and/or factual bases.

As jointly stipulated by the parties, the facts of this case are as follows:

Cagayan Corn Products Corporation (petitioner) is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office and postal address at Unit 903, Ayala Life-FGU Center, Cebu Business Park, Cebu City, Philippines. It is engaged in the business of, among others, buying, selling or otherwise dealing in, at wholesale or retail, such goods as corn starch, corn oil, corn bran, and other related goods of similar nature.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested by law to decide on disputed assessments and to enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 18, 2008, petitioner received a Formal Letter of Demand with attached Details of Discrepancies and Assessment Notice dated November 5, 2008 issued by the Regional Director of BIR Revenue Region No. 13-Cebu City, finding petitioner liable for alleged deficiency expanded withholding tax in the total amount, including interest, of P25,130,054.35.[2]

[1] Par. 1(a), Joint Stipulations of Facts and Issues (JSFI), docket, p. 106
[2] Par. 1(c), JSFI, docket, p. 107

Thereafter, or on November 21, 2008, petitioner filed its protest against the Formal Letter of Demand issued by the Regional Director of BIR Revenue Region No. 13-Cebu City.[3]

In reply to the protest, petitioner received on December 22, 2008 a letter from the BIR Regional Director dated December 3, 2008, demanding payment of the alleged deficiency expanded withholding tax to avoid additional increments thereon.[4]

On January 14, 2009, petitioner replied to the December 3, 2008 letter of the Regional Director reiterating its position in its letter dated November 21, 2008.[5]

Respondent, through the BIR Regional Director, again replied on January 21, 2009 to petitioner's letter dated January 14, 2009.[6]

It must also be noted that on March 5, 2009, petitioner (through its counsel) again wrote to respondent, seeking a reconsideration of the Regional Director's position as contained in his letter of January 21, 2009 and requesting that the same be recalled and cancelled and that a new assessment be issued for a lesser amount of deficiency withholding

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[3] Par. 1(d), JSFI, docket, p. 107
[4] Par. 1(e), JSFI, docket, p. 107
[5] Par. 1(f), JSFI, docket, p. 107
[6] Par. 1(g), JSFI, docket, p. 107

tax.[7] The same averments were later on reiterated in petitioner's letter to respondent dated March 10, 2009.[8]

According to petitioner, it is due to respondent's letter-reply dated January 21, 2009 that it filed the instant Petition for Review on March 12, 2009.

Respondent filed his Answer[9] to the instant Petition for Review and raised the following Special and Affirmative Defenses:

> "4. The letter/decision dated December 3, 2008 (First Decision) of respondent Regional Director of Revenue Region No. 13, Cebu City (Annex 'C' of petitioner's petition for review) received by petitioner on December 22, 2008, which denied petitioner's protest dated November 21, 2005 (First Protest), is final, executory and demandable; and thus, this Honorable Court has no jurisdiction to entertain the instant case.
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> 5. Respondent submits that petitioner failed to file the instant case within the prescribed period as provided for under Revenue Regulation No. 12-99, particularly Section 3.1.5 thereof, the pertinent portion of which states as follows:
>
> > '3.1.5. Disputed Assessment. –
> > xxx xxx xxx
> >
> > If the taxpayer fails to file a valid protest against the formal letter of demand, and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

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[7] Par. 1(h), JSFI, docket, p. 107
[8] Par. 1(i), JSFI, p. 107
[9] Docket, pp. 30-38

> 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 sad decision, otherwise, the assessment shall become final, executory and demandable.
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> 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 receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from 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. (underscoring ours)

xxx xxx xxx

5. Based on the above underscored provision, the rule is: if the taxpayer's protest is denied, in whole or in part, by the Commissioner or **his duly authorized representative**, taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the decision, otherwise, the assessment shall be become final, executory and demandable. It also provided that the final decision of the Commissioner's duly authorized representative shall not be considered final, executory and demandable if taxpayer elevates his protest to the Commissioner within thirty (30) days from the receipt of the same,

and the protest shall be decided by the Commissioner.

6. In the instant case, petitioner admitted that it had made a formal letter of protest on November 21, 2008 (Annex 'B' of petitioner's petition for review) contesting respondent's authorized representative (Regional Director of Revenue Region No. 13) assessment against petitioner. Consequently, on December 22, 2009 upon receipt of respondent's authorized representative final decision dated December 3, 2008 wherein respondent reiterated the demand of payment on petitioner's deficiency creditable withholding tax contained in Formal Letter of Demand and Assessment Notice, petitioner filed a motion for reconsideration on January 14, 2009. On said motion, petitioner reiterated its same position contained in its letter of protest dated November 21, 2008.

7. Again, petitioner admitted that it has 30 days from February 10, 2009, or until March 12, 2009 within to file a Petition for Review before the Court of Tax Appeal upon receipt of respondent's authorized representative letter of January 21, 2009 (Annex 'E' of petitioner's petition for review) denying petitioner's motion for reconsideration.

8. The above foregoing actions of petitioner clearly shows that it did not comply with the period as provided for in the above stated regulation. Petitioner should elevate its appeal of the **final decision of respondent's authorized representative dated December 3, 2008 to this Honorable Court on *or before* January 22, 2009**, counting 30 days upon receipt thereof on December 22, 2008 to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Undisputedly, petitioner filed its petition for review on March 12, 2009 which is beyond the period of 30 days from December 22, 2009. Hence, respondent respectfully

submits this Honorable Court has no jurisdiction to entertain the present case.

7. Petitioner's deficiency expanded withholding taxes for taxable year 2005 arises from its liability as **one of the Top Ten Thousand Private Corporations under Section 2.57 (M) of RR No. 2-98, as amended**.

8. Being a Top Ten Thousand Private Corporation, petitioner is not among those mentioned establishments covered by the suspension of the implementation of withholding tax on income payments made to suppliers of agricultural products pursuant to Revenue Regulations (RR) No. 3-2004 and Revenue Memorandum Circular (RMC) No. 44-07.

9. Petitioner's assertion that RR-3-2004 has not made any distinction as to suppliers of agricultural products to whom the sales is made is misplaced. RR-3-2004 clearly provided that it was issued purportedly to suspend the implementation of withholding tax on income payments made to suppliers of agricultural products under **Section 2.57.2(S) of Revenue Regulations 2-98, as amended by RR 17-2003, further amended by RR 30-2003 and 1-2004**, read as:

> '**SECTION 1. SCOPE.** - Pursuant to the provisions of Section 244, in relation to Section 57(B) of the Tax Code of 1997, these regulations are hereby promulgated to suspend the implementation of Section 2.57.2 (S) of Revenue Regulations No. 2-98, as amended by Revenue Regulations Nos. 17-2003, 30-2003 and 1-2004, which provides as follow:
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> **(S) Income payments made to suppliers of agricultural products.** - Income payments made to agricultural suppliers such as those, but not limited to, payments made by hotels, restaurants,

> resorts, caterers, food processors, canneries, supermarkets, livestock, poultry, fish and marine products dealers, hardwares, factories, furniture shops and all other establishments, except for income payments to marginal income earners which, as defined in Revenue Regulations 11-2000 dated December 12, 2000, refer to individuals not otherwise deriving compensation as an employee under an employee-employer relationship, but who are self-employed and deriving gross sales/receipts not exceeding P100,000.00 during any 12-month period. One percent (1%).
>
> The term Agricultural suppliers refers to suppliers/sellers of agricultural, forest and marine food and non-food products, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefore. Livestock shall include cows, bulls and calves, pigs, sheep, goats and other animals similar thereto. Poultry shall include fowls, ducks, geese, turkey and other similar thereto. Marine products shall include fish and crustaceans, such as but not limited to, eels, trout, lobsters, shrimps, prawns, oysters, mussels and clams, shells and other aquatic products.'

10. Moreover, there was nothing mentioned in the provisions of RR NO. 3-2004 that the suspension covers the income payment made by Top Ten Thousand Private Corporation to suppliers of agricultural product, hence, respondent respectfully submits that there is legal basis to assess petitioner for its deficiency expanded withholding taxes for taxable year 2005.

11. RMC No. 44-2007 is a valid issuance. The clarification made by respondent in said issuances does not modify, amend, repeal or contradict the provision of Revenue Regulation No. 3-2004. The purpose or subject of RR No. 3-2004 was unaffected. Respondent clarified only his position of the taxability of agricultural suppliers for withholding tax purposes with respect to sales made to top 10,000 corporations and to the government in relation to RR No. 3-2004, which suspended the implementation of withholding tax on income payments made to suppliers of agricultural products under Section 2.57.2(S) of RR No. 2-98, as amended. Thus, no reason exists for the petitioner to claim that it was prejudiced by the passage of RMC No. 44-2007 since the words Revenue Regulations No. 3-2004 remained unchanged."

On August 17, 2009, a Notice of Pre-trial Conference was issued by this Court setting the case for pre-trial conference on September 24, 2009 and requiring both parties to be present at the pre-trial and to file with the Court and serve on the adverse party their pre-trial briefs.[10]

Petitioner's Pre-trial Brief was filed on September 18, 2009[11]; while respondent's Pre-trial Brief[12] was filed on September 22, 2009.

On November 9, 2009, the parties filed their Joint Stipulations of Facts and Issues[13], which was approved in a Resolution dated November 13, 2009.[14]

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[10] Docket, p. 83
[11] Docket, pp. 84-88
[12] Docket, pp. 89-97
[13] Docket, pp. 106-108
[14] Docket, p. 110

Thereafter, an Urgent Joint Manifestation and Motion was filed by the parties on November 16, 2009, expressing their willingness to submit this case for decision based on the pleadings and memorandum to be submitted by the parties. The parties further manifested that there is an on-going dialogue between them on a possible compromise settlement of the case.[15]

On March 17, 2010, this Court issued a Resolution noting the Joint Manifestation[16] filed by the parties on March 2, 2010 regarding the parties' failure to arrive at a compromise agreement, and granting the parties thirty (30) days from March 2, 2010, or until April 2, 2010, within which to file their memoranda.[17]

On May 12, 2010, the case was deemed submitted for decision considering petitioner's Memorandum filed on May 4, 2010 and respondent's manifestation adopting his Answer as his Memorandum.[18]

However, on May 17, 2010, petitioner filed its Urgent Motion to file Opposition to Respondent's Manifestation[19], which was granted in a Resolution[20] dated May 20, 2010. Consequently, petitioner filed its

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[15] Docket, pp. 111-113
[16] Docket, pp. 125-126
[17] Docket, p. 128
[18] Docket, p. 192
[19] Docket, pp. 193-194
[20] Docket, p. 196

Opposition to Respondent's Manifestation (To Adopt Relevant Facts, Among Others, in his Answer as his Memorandum)[21] on May 27, 2010.

After a close scrutiny of respondent's Manifestation dated May 4, 2010 and petitioner's Opposition to Respondent's Manifestation (To Adopt Relevant Facts, Among Others, in his Answer as his Memorandum) filed on May 27, 2010, the instant case was finally submitted for decision on June 22, 2010, considering petitioner's Manifestation filed on May 4, 2010 and respondent's manifestation.[22]

The parties submitted the following issues[23] for this Court's disposition:

> "(a) Whether the assessments were issued in accordance with law and regulations.
>
> (b) Whether or not the respondent has the right to assess the petitioner for alleged deficiency expanded withholding tax in the amount of P25,130,054.35, plus interest, for taxable year 2005.
>
> (c) Whether petitioner is liable for the deficiency expanded withholding tax assessment in the amount of P25,130,054.35 for taxable year 2005."

At the outset, it must be emphasized that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the

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[21] Docket, pp. 197-199
[22] Docket, pp. 201-202
[23] Docket, pp. 107-108

provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.[24] Bearing this in mind, this Court deems it imperative to first determine whether the instant petition, which is an appeal from the decision of the Revenue Commissioner, was filed in accordance with the periods provided by law.

Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals provides for the period within which an appeal from the ruling or inaction of the Commissioner of Internal Revenue may be filed, to wit:

> "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. xxx" *(Emphasis supplied)*

The 30-day period to appeal was not only prescribed by the Revised Rules of the Court of Tax Appeals but also by statute, particularly,

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[24] Producers Bank of the Philippines vs. The Honorable Court of Appeals, *et al.*, G.R. No. 126620, April 17, 2002

Section 228 of the National Internal Revenue Code of 1997, as amended, the pertinent portion of which reads:

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

In applying the foregoing to the instant case, it should be noted that a joint manifestation was filed by the parties submitting the case for decision based on the pleadings and memoranda. Hence, the ascertainment of whether or not petitioner complied with the required periods shall be based on the pleadings, memoranda, and joint stipulation of facts submitted by the parties.

It was admitted that on November 18, 2008, petitioner received a Formal Letter of Demand dated November 5, 2008, with attached Details of Discrepancies and Assessment Notice issued by the Regional Director of BIR Revenue Region No. 13-Cebu City, finding petitioner liable for alleged deficiency expanded withholding tax in the total amount of P25,130,054.35 inclusive of interest.[25] Thereafter, petitioner protested the Formal Letter of Demand on November 21, 2008.[26] Respondent replied to the protest by issuing a letter dated December 3, 2008 and received by petitioner on December 22, 2008 reiterating the demand for payment of the assessed deficiency expanded withholding tax.[27]

Significantly, the Supreme Court in the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*[28] considered a demand letter making reference to the protest filed by the taxpayer as the final decision which may be subject to judicial appeal. The pertinent portion of the said case reads:

> "The demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, '**while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as [his] final decision.**" *(Emphasis supplied)*

Accordingly, the letter issued by respondent on December 3, 2008 and received by petitioner on December 22, 2008, making reference to the protest filed by petitioner on November 21, 2008 and reiterating the

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[25] Par. 1(c), JSFI, docket, p. 107; Petition for Review, Annexes "A", "A-1", and "A-2"
[26] Par. 1(d), JSFI, docket, p. 107; Petition for Review, Annex "B"
[27] Par. 1(e), JSFI, docket, p. 107; Petition for Review, Annex "C"
[28] G.R. No. 148380, December 9, 2005

demand for payment of the assessed deficiency tax[29], shall be considered as the final decision on the disputed assessment.

Now, counting from December 22, 2008, petitioner had until January 21, 2009 or thirty days within which to file its judicial appeal. However, instead of filing a Petition for Review, petitioner filed on January 14, 2009 its reply to the letter issued by respondent reiterating its position in its protest.[30] Petitioner filed the instant Petition for Review on March 12, 2009 only; obviously, beyond the reglementary period provided for by law.

This Court is not impressed with petitioner's contention that the letter issued by respondent on January 21, 2009 is deemed to be the final decision on the disputed assessment considering that the said letter merely reiterated respondent's denial of the protest as stated in his letter dated December 3, 2008.

Likewise, a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.[31] Hence, respondent's denial of the protest as contained in his letter received by petitioner on December 22, 2008 has already become final and executory upon the expiration of the 30-day period to appeal,

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[29] Petition for Review, Annex "C"
[30] Par. 1(f), JSFI, docket, p. 107; Petition for Review, Annex "D"
[31] *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179343, January 21, 2010

notwithstanding petitioner's letter addressed to respondent dated January 14, 2009 requesting a reconsideration of the said denial of petitioner's protest. Consequently, petitioner has already lost its right to appeal the same before this Court.

At this juncture, it must be pointed out that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*.[32]

It further bears to stress that the Court of Tax Appeals is a court of special jurisdiction and as such it can take cognizance only of such matters as are clearly within its jurisdiction.[33] While the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional.[34]

With all the foregoing, petitioner's failure to comply with the 30-day period provided under the Revised Rules of the Court of Tax Appeals as well as the NIRC would indeed bar the appeal and thus, would effectively remove the instant case from the ambit of this Court's jurisdiction.

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[32] *Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Appeals*, G.R. No. L-23988, January 2, 1968

[33] *Commissioner of Internal Revenue vs. Villa, et al. supra*

[34] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, citing *Ker & Company, Ltd. v. Court of Tax Appeals*, G.R. No. L-12396, January 31, 1962

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for having been filed late.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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