REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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GLOBAL METAL TECH CORPORATION, Petitioner,	**CTA CASE NO. 8329**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 30 2015 ; 3:10 p.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

This resolves petitioner's "Motion for Reconsideration (Re: Decision dated 23 September 2014)" filed on October 16, 2014, with respondent's "Comment (To Petitioner's Motion for Reconsideration)" filed on November 26, 2014. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of jurisdiction.
>
> **SO ORDERED**."

Petitioner contends that the Court erred in ruling that it has no jurisdiction over the instant case since the subject matter of the Petition for Review falls under Section 11 of Republic Act No. 1125. Petitioner likewise posits that the issuance of the Formal Assessment

Notice (FAN) before the lapse of the fifteen (15)-day period for petitioner to reply to the Preliminary Assessment Notice (PAN) violates its right to due process; thus, rendering the FAN null and void. It insists that procedural requirements as provided under Section 228 of the National Internal Revenue Code (NIRC) of 1997 and under Revenue Regulations (RR) No. 12-99 should be strictly followed. It also cites several cases to support its arguments. As such, the assessment cannot be considered as final, executory and demandable since the FAN is void for violation of due process.

Respondent counter-argues that this Court has no jurisdiction since the assessment became final, executory and demandable for failure of petitioner to file a protest to the FAN within the period prescribed by law. Respondent maintains that the issuance of the FAN prior to the lapse of 15 days granted by law within which to reply to the PAN does not render the assessment void. A taxpayer may opt not to protest the PAN, and non-protest shall not in any way make the PAN final and unappealable. According to respondent, the essence of due process is simply an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling being complained. An assessment is a written notice and demand issued by the Bureau of Internal Revenue against the taxpayer for the settlement of a due tax liability that is definitely set and fixed, and the purpose of it is to inform the taxpayer of its deficiency tax liability and to give opportunity to refute the same.

After a careful perusal of the arguments raised by petitioner, the Court finds that the same are mere rehash of the allegations and contention which has been passed upon extensively in the assailed Decision.

Here, the PAN was received by petitioner on February 5, 2009, and after twelve (12) days from receipt of the same, the FAN was issued on February 17, 2009, which petitioner received on February 25, 2009. The PAN and FAN were properly addressed to petitioner and they were actually received by petitioner.

At this juncture, the Court reiterates its Decision, to wit: c "xxx In the case of *Commissioner of Internal Revenue vs. Steelasia Manufacturing Corporation*[1], the CTA *En Banc* held:

> 'xxx suffice it to say that due process in our jurisdiction refers to the right of the taxpayer to be informed of the legal and factual findings of the BIR as regards its deficiency taxes, and the opportunity to be heard through protest.
>
> Note that a preliminary assessment notice preparatory to the issuance of a formal or final assessment notice is not, legally speaking, an assessment even if it contains a computation of the tax liabilities of a taxpayer and a demand for payment of the computed tax liabilities was made in such preliminary assessment notice. Section 228 of the NIRC of 1997 clearly refers to the Final Assessment Notice that should be formally protested to by SAMC; else, the same becomes final and executory.'

The CTA *En Banc* likewise explained that a protest against the PAN, unlike the protest against the FAN, is not indispensable. A PAN may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the PAN final and unappealable. Therefore, the issuance of the FAN before the lapse of the 15-day period for the taxpayer to file its protest to the PAN, inflicts no prejudice on the taxpayer for as long as the latter is properly served a FAN and that it was able to intelligently contest the FAN by filing a protest letter within the period provided by law. Moreover, this Court observed that petitioner was afforded the procedural due process required by law when it was fully apprised of the legal and factual bases of the assessment issued against it and that petitioner

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[1] CTA EB Nos. 631 and 632, December 22, 2011.

was given the opportunity to substantially protest or dispute the assailed assessments via its protest letter.[2]"

Further, in the case of *Keppel Fels Energy, Inc. vs. Commissioner of Internal Revenue*[3], the Court of Tax Appeals held, viz:

> "Pursuant to Section 228 of the 1997 NIRC and RR 12-85, a protest against the PAN, unlike the protest against the FAN, is not indispensable. 'In fact, a preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the preliminary assessment notice final and unappealable. What is clear from Section 319-A of the Tax Code of 1977, as amended, is the failure on the part of the taxpayer to protest or reply to a preliminary assessment notice paves the way for the issuance of a final assessment notice.'
>
> It is clear from the foregoing that what the law requires is the filing of the protest against the FAN, failure to do so will cause the same to become final and executory.
>
> In the instant Petition, it is undeniable that the essential elements of due process which are notice and opportunity to be heard, were aptly accorded to petitioner. Although only a few days apart, both PAN and FAN were served upon it. That petitioner was not able to take advantage of the full fifteen (15) days given for it to file its Comment on the FAN cannot override the fact that petitioner was still given enough opportunity to defend itself against the assesments. To further bolster the fact that it has been given adequate opportunity to refute the charges against it, petitioner was able to timely file its administrative protest before the respondent. It was able to extensively discuss its position on the deficiencies being assessed against it.

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[2] *Oakwood Management Services (Philippines), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7989, August 8, 2013.

[3] CTA Case No. 6826, July 21, 2011.

In sum, it is evident that petitioner's right to a hearing was sufficiently observed and protected."

It is important to note that petitioner was able to file its protest letter against the PAN and FAN on February 20, 2009 and May 15, 2009, respectively. Petitioner is asserting that the assessment is not valid on the ground that the FAN was issued within the period to protest the PAN to deviate from the fact that its protest letter against the FAN was filed beyond the reglementary period of thirty (30) days from receipt of the same.

Considering the foregoing, there is no violation of due process as petitioner was informed of the legal and factual bases of the assessment, and petitioner was given the opportunity to explain its side.

As such, the assessment is valid, and being so, there is no disputed assessment to speak of as the same became final and executory for failure of petitioner to timely protest the Formal Letter of Demand with attached Final Assessment Notices. Thus, the Court has no jurisdiction. Accordingly, the Court find that there is no overwhelming justification to disturb the assailed Decision.

WHEREFORE, premises considered, the instant "Motion for Reconsideration (Re: Decision dated 23 September 2014)" is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

GLOBAL METAL TECH CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8329

Members:

DEL ROSARIO, *Chairperson,*
UY,
MINDARO-GRULLA, *JJ.*

Promulgated:
JAN 30 2015 ; 3 : 10 p.m.

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I agree in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, in denying petitioner's Motion for Reconsideration (Re: Decision dated 23 September 2014) solely on the ground that the Court lacks jurisdiction over the case.

Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis supplied)*

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Plainly, the Court in Division has jurisdiction to review on appeal decision of the Commissioner of Internal Revenue involving disputed assessments. The Court's jurisdiction does not cover cases involving assessments which remain undisputed and have long become final, executory and demandable.

An assessment becomes *"disputed assessment"* when a taxpayer questions the same and asks for its reconsideration or cancellation as he believes he is not liable therefor.[1] Section 228 of the National Internal Revenue Code (NIRC) of 1997 provides the manner of disputing/protesting an assessment and the consequence if not duly protested on time, *viz.*:

> "SECTION 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases: xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **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.**" (Emphasis supplied)

Implementing the foregoing provisions of the NIRC of 1997 is Revenue Regulations (RR) No. 12-99. Section 3 subparagraph 3.1.5 thereof provides:

> "3.1.5 **Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof**. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax,

[1] Commissioner of Internal Revenue vs. Villa, G.R. No. L-23988, January 2, 1968.

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> inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
>
> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
>
> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
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> **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.**" (Emphasis supplied)

Clearly, once an assessment is validly protested within 30 days from the date of its receipt, the same becomes a disputed assessment. Otherwise, if there is no protest filed within the reglementary period, the assessment becomes final, executory and demandable.

Records disclose that petitioner received the Formal Letter of Demand with attached Audit Results/Assessment Notices all dated February 17, 2009 on February 25, 2009. Counting from February 25, 2009, the date of receipt of the assessment, petitioner has 30 days or until March 27, 2009 within which to file a valid protest. Considering that petitioner filed its letter protest only on May 15, 2009, which is clearly beyond the prescriptive period, the assessment becomes final, executory and demandable by operation of law. The Court therefore has no jurisdiction to make a determination as to whether or not the assessment is void for respondent's alleged failure to observe due process in issuing the same.

Moreover, petitioner's claim anent the alleged invalidity of the assessment, *i.e., issuance of the Final Assessment Notice before the lapse of the 15-day period for petitioner to reply to the Preliminary Assessment*

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Notice, is a matter which should be the proper subject of a timely filed protest, which unfortunately petitioner failed to do. Petitioner could not simply disregard the procedure outlined in Section 228 of the NIRC of 1997, as implemented by RR 12-99 as regards the manner of disputing an assessment.

As the assessment involved in the present case already becomes final, executory and demandable for petitioner's failure to file a protest within the time allowed, the validity and correctness of such assessment may no longer be questioned on appeal.[2]

In view of the foregoing, I vote to **DENY** petitioner's Motion for Reconsideration (Re: Decision dated 23 September 2014) filed on October 16, 2014 for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.