REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MEN IN BLUE SECURITY SERVICES, INC., Petitioner,	**CTA CASE NO. 8585**
- versus -	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO, and RINGPIS-LIBAN,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 26 2014 1:52 p.m.

x--x

RESOLUTION

For resolution are:

a. Respondent's "Motion to Dismiss," filed by registered mail on May 14, 2014; and

b. Petitioner's "Comment/Opposition (to Motion to Dismiss)," filed on May 16, 2014.

Respondent avers the following: a. that on May 11, 2010, she issued a Letter of Authority No. 2009 00010606 addressed to petitioner for examination of its deficiency income tax, value-added tax ("VAT") and withholding tax;[1] b. that on January 25, 2011, she issued a Final Assessment Notice ("FAN") addressed to petitioner for deficiency income tax, and deficiency VAT for taxable year 2007 which was received by petitioner on February 2011;[2] c. that petitioner failed to formally protest the FAN making the assessment final and executory; d. that the Court lacks jurisdiction as petitioner failed to exhaust administrative remedies as prescribed in Section 228 of the National Internal Revenue Code ("NIRC"), as amended; and e. that the Court has

[1] *Records*, pp. 7-8, Paragraph 3, Petition for Review.
[2] *Records*, p. 8, Paragraph 4, Petition for Review.

no jurisdiction as there is no decision or inaction by the Commissioner for the Court to hear as ascribed in Section 7 of Republic Act No. 9282, as amended.[3]

On the other hand, petitioner avers the following: a. that the Final Decision on Disputed Assessment marked as Annex "D"[4] constitutes the final decision of the CIR on disputed assessment which is appealable before the Court; and b. that Rules should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

After a perusal of the records of the case, the Court finds the Motion to Dismiss meritorious.

Based on the records, respondent issued a Preliminary Assessment Notice ("PAN") dated October 14, 2010 addressed to petitioner by registered mail on December 22, 2010.[5]

On January 25, 2011 respondent issued a FAN to petitioner for deficiency income tax and deficiency VAT for the taxable year 2007.[6]

Admittedly, petitioner failed to formally protest said FAN (Annex "C," supra) in writing with respondent.[7]

On October 22, 2012, respondent issued a Final Decision on Disputed Assessment which was received by petitioner on November 8, 2012.[8]

Thus, on December 7, 2012, petitioner filed a Petition for Review.

From the foregoing factual circumstances, the issue presented before Us is whether the Court lacks jurisdiction to entertain the instant Petition for Review.

---

[3] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes," April 23, 2004.
[4] *Records*, p. 28.
[5]*Records*, p.151, Respondent's Pre-trial Brief, III. Proposed Facts/Documents for Stipulation, paragraph 4.
[6] *Records*, p. 8, Petition for Review, paragraph 4.
[7] *Ibid.*, Petition for Review, paragraph 5.
[8] *Records*, p. 29.

The Court, being a court of special jurisdiction, can take cognizance only on matters that are clearly within its jurisdiction. Section 7 of RA No. 9282, as amended,[9] provides:

> "Sec. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (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;
>
> (2) Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (Emphasis supplied)

In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue,*[10] the word "decisions" in the above quoted provision of RA No. 9282, as amended,[11] has been interpreted to mean the decisions of the

---

[9] *Ibid.*
[10] G.R. No. 175097, February 5, 2010, 611 SCRA 692.
[11] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes," April 23, 2004.

Commissioner of Internal Revenue ("CIR") on the protest of the taxpayer against the assessments. Corollary thereto, Section 228 of NIRC, as amended provides for the procedure for protesting an assessment. It states:

> " 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 pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> 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.
>
> 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."

Clearly Section 228 of the NIRC, as amended, mandates that the administrative protest must be made within 30 days from the taxpayer's receipt of the tax deficiency assessment, otherwise the assessment becomes final, unappealable, and demandable. Only upon failure to protest within the given period will the finality of the assessment follows.

In the instant case, petitioner alleges that on January 25, 2011, respondent issued the FAN which was received by it sometime on February 2011.[12] Assuming that petitioner received the FAN on the last day of the month of February, which was on the twenty-eight (28th), counting thirty (30) days therefrom, petitioner has until March 28, 2011, within which to file its protest. However, no protest was filed as admitted by petitioner in its Petition for Review, paragraph 5 when it stated that: "petitioner failed to formally protest said FAN (Annex "C," supra) in writing with respondent.[13]" Instead, petitioner filed its Petition for Review on December 7, 2012, counting the period to appeal from November 8, 2012,[14] when it received the Final Decision on Disputed Assessment dated October 22, 2012.

Thus, as can be gleaned from the aforesaid, the assessment was not protested making the assessment final and executory as this was held by the Supreme Court in the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, The Court of Tax Appeals, and The Court of Appeals*,[15] that: "a request for reconsideration must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise, the decision becomes final, unappealable and therefore, demandable. A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 of the NIRC, as amended, can no longer be contested."

In addition, the Supreme Court has held in the same case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, The Court of Tax Appeals, and The Court of Appeals*,[16] that: "for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference

---

[12] *Records,* p. 8, Petition for Review, paragraph 4.
[13] *Ibid.*, Petition for Review, paragraph 5.
[14] *Records*, p. 29, "Annex D."
[15] G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[16] *Ibid.*

to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof."

In the instant case, none of the types of protests were filed by petitioner on the assessment, as it admitted, that will warrant a decision from respondent pursuant to Section 228 of the NIRC, as amended.

The allegation that petitioner made a protest on the PAN is not the protest referred to in Section 228 of the NIRC, as amended, that will warrant a decision from respondent that is appealable before the Court *a quo*. The Court can acquire jurisdiction only on what is vested in them in RA No. 9282,[17] that is, when a decision has been rendered by respondent after petitioner disputed/protested an assessment pursuant to Section 228 of the NIRC, as amended.

In sum, the Court lacks jurisdiction to entertain the instant Petition for Review as petitioner failed to protest the assessment as ascribed in Section 228 of the NIRC, as amended, making the same final and executory.

WHEREFORE, the "Motion to Dismiss," is hereby **GRANTED.** Accordingly, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

(On Official Business)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[17] *Ibid.*