REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MISNET, INC., Petitioner,	**CTA CASE NO. 8313**
	Members:
- versus -	**ACOSTA,** *Chairperson* **UY,** and **FABON-VICTORINO** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 27 2012, 3:59 p.m.

x - x

RESOLUTION

UY, *J.*:

For resolution is respondent's **"Motion to Dismiss (For Lack of Jurisdiction of this Honorable Court)"** filed on February 9, 2012, with petitioner's **"Comment"** filed on February 20, 2012.

Respondent seeks for the dismissal of the instant Petition for Review on the ground of lack of jurisdiction. According to respondent, petitioner allegedly admitted that it received the Final Decision on Disputed Assessment (FDDA) issued by the Regional Director, BIR Revenue Region 8, Makati City on March 28, 2011. Counting from said date, petitioner allegedly has thirty (30) days or until April 27, 2011 within which to file an appeal with this Court.

Respondent contends that the instant Petition for Review was filed only on July 29, 2011 or after ninety three (93) days had lapsed from April 27, 2011, in violation of the period of appeal provided in Section 228 of the 1997 Tax Code, as amended, in relation to Section 10 of Revenue Regulations (RR) No. 12-85. Thus, the assessment against petitioner had already become final, executory and demandable and this Court has no jurisdiction to act on the instant petition.

On the other hand, petitioner opposes the instant *Motion* averring that:

1. "Respondent's invocation of the ground of prescription is misplaced in this instance because the thirty (30) day period within which a taxpayer should file a protest of a final tax assessment under Section 228 of the National Internal Revenue Code (NIRC) actually refers to a reglementary period rather than a prescriptive period; and

2. Petitioner made a mistake when, without the assistance of counsel, it addressed its letter dated April 8, 2011 to Mr. Jaime B. Santiago, Regional Director, RDO 490, RR No. 8 Makati City, protesting the Amended Assessment Notice dated March 22, 2011. Thus, petitioner submits that the remedy of a Petition for Relief from Judgment is applicable, by supplemental application of Rule 38 of the Rules of Court pursuant to the analogous ruling of the Supreme Court speaking through Justice Feliciano in the case of *Gesulgon vs. NLRC*."

A close scrutiny of the foregoing arguments would show that the crux of the controversy concerns the jurisdiction of this Court over the instant Petition for Review.

Indeed, the rule is that a court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[1]

Moreover, it is provided that whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action. Courts are also

[1] Francel Realty Corporation vs. Sycip, G.R. No. 154684, September 8, 2005.

bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[2]

In view of the issue raised by respondent in the instant *Motion* and the Court's responsibility to take notice of the limits of its authority, a determination of this Court's jurisdiction over the subject matter of the case is indeed proper.

Section 7 of Republic Act (RA) No. 1125, as amended by Republic Act (RA) No. 9282 and Republic Act (RA) No. 9503, enumerates the cases over which this Court has appellate jurisdiction. The relevant portion of said provision provides that:

> "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;" (*Emphasis supplied.*)

In relation thereto, the pertinent portion of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, is quoted as follows:

> SEC. 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 xxx xxx

[2] Ace Publications, Inc. vs. The Commissioner of Customs, G.R. No. L-18808, May 29, 1964.

> **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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.** *(Emphasis supplied)*

Furthermore, Section 3.1.5 of Revenue Regulations (RR) No. 12-99[3], relevantly reads:

> "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 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 Commissioners 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."

Clearly, the decision of the Commissioner of Internal Revenue or his duly authorized representative is the decision appealable to this Court within 30 days, and failure to appeal therefrom will render the assessment final, executory and

---

[3] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

demandable. It is also provided that the decision of the authorized representative will not attain finality if the taxpayer appeals the same to the Commissioner of Internal Revenue who shall then be required to decide the protest himself.[4]

In this case, the instant Petition and its annexes reveal that respondent, through the Regional Director, already issued a Final Decision on Disputed Assessment (FDDA) which petitioner received on March 28, 2011. In the said FDDA, it was categorically stated that:

> *"This is our final decision. If you disagree, you or your authorized representative may appeal with the Commissioner of Internal Revenue or with the Court of Tax Appeals within thirty (30) days from the date of receipt hereof otherwise, the assessment shall become final, executory and demandable".*[5]

Undeniably, the tenor of the said FDDA clearly shows that the same is the final decision of respondent on petitioner's administrative protest. Also, there was nothing in the Petition for Review showing that petitioner tried to appeal the said FDDA with the Commissioner of Internal Revenue. Accordingly, the FDDA issued by the Regional Director shall be considered as the "decision" appealable with this Court.

Pursuant to Section 228 of the NIRC of 1997, as amended, petitioner has 30 days to appeal the FDDA, which in this case is until April 27, 2011. However, instead of filing an appeal before this Court, petitioner filed a Reply Letter on the FDDA with the Regional Director and filed the instant Petition for Review only on July 29, 2011.

---

[4] Moog Controls Corporation, Philippine Branch vs. Commissioner of Internal Revenue, C.T.A. EB No. 44 (C.T.A. Case No. 6700), May 10, 2005.

[5] Annex "S", Petition for Review.

Notably, a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to this Court.[6] Thus, the 30-day period to appeal continued to run despite the filing of the Reply Letter with the Regional Director. Accordingly, when petitioner filed the instant petition beyond the 30-day period, the FDDA had already become final and executory.

In fine, petitioner's failure to comply with the 30-day statutory period would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessment.[7]

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ON LEAVE
ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[6] Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, G.R. No. 148380, December 9, 2005.
[7] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006.