Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION
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WHITE ROSE MERCHANDISING, INC.,
Petitioner,

CTA CASE No. 8401

Members:

-versus-

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, JJ.

ALERT B. ALOCILJA AS REGIONAL DIRECTOR OF REVENUE REGION NO. 14 IN 2010, AND REVENUE DISTRICT OFFICER CESAR R. BALANGATAN, REVENUE DISTRICT NO. 088 OF REVENUE REGION NO. 14,
Respondents.

Promulgated:
MAY 0 2 2014
4:29 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before this Court is a Petition for Review filed on December 26, 2011 by White Rose Merchandising, Inc. to seek the cancellation of the 2007 tax deficiency assessment in the total amount of Eight Million Eighty-Nine Thousand Four Hundred Forty-Two and 50/100 Pesos (P8,089,442.50) issued on December 9, 2010 by Alert B. Alocilja, as then Regional Director of Revenue Region No. 14, and Cesar R. Balangatan, as the Revenue District Officer of Revenue District Office (RDO) No. 088.

THE FACTS

Petitioner White Rose Merchandising, Inc. has its business and office address at Abad St., Naval, Biliran, where it may be served notices, orders, and other court processes.[1]

Respondent Alert B. Alocilja was the Regional Director of Revenue Region No. 14 on December 9, 2010, but who is now the Regional Director of the Bureau of Internal Revenue (BIR) Revenue Region of Zamboanga, whose present office

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[1] Par. 1, Petition for Review, docket, p. 6.

address is at the BIR Regional Office at Zamboanga City, where he may be served notices, orders, and other court processes. Respondent Cesar R. Balangatan is the Revenue District Officer of RDO No. 088, who holds office at the Government Center Palo, Leyte, where he may be served with notices, orders and other court processes.[2]

On October 21, 2008, a Letter of Authority[3] was issued by the Office of the Revenue Regional Director of Revenue Region No. 14, authorizing Revenue Officer Gerardo Pabello, Jr. to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2007.

Thereafter, a Preliminary Assessment Notice (PAN)[4] was issued on September 29, 2010, finding petitioner liable for deficiency income tax, value-added tax and expanded withholding tax in the total amount of P8,045,769.77, inclusive of interest and penalties. Likewise, petitioner was given fifteen (15) days from receipt thereof to present its position in writing, otherwise, it shall be considered in default.

Petitioner failed to comply with the said directive and was eventually declared in default by respondent Regional Director Alocilja. Petitioner then received a formal letter of demand dated December 9, 2010[5] with Assessment Notices[6] from BIR Revenue Region No. 14 on or about December 23, 2010.[7]

Notices of Tax Lien[8] were issued on September 12, 2011 and Warrants of Distraint and/or Levy[9] were served on October 19, 2011 against petitioner.

Petitioner filed a "petition" with the Commissioner of Internal Revenue (CIR) on October 25, 2011.[10] On December 26, 2011, the instant Petition for Review was filed due to the alleged inaction of the CIR on the aforesaid "petition" and was deemed by petitioner as the CIR's denial thereof.

In their Answer[11] filed on February 2, 2012, respondents raised the following Special and Affirmative Defenses:

> "5. The Formal Assessment Notice issued by the Revenue Regional Office already attained finality since no protest was filed by the petitioner within the reglementary period.

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[2] Pars. 1 and 2, Joint Stipulation of Facts and Issues (JSFI), docket, p. 97.
[3] Exhibit "B"; Exhibit "1".
[4] Exhibit "C"; Exhibit "6".
[5] Exhibit "E"; Exhibit "7".
[6] Exhibits "E-1" to "E-4"; Exhibits "7-a" to "7-d".
[7] Par. 6, JSFI, docket, p. 98.
[8] Exhibits "H" to "H-4"; Exhibits "15" to "18-A".
[9] Exhibits "I" to "J-1"; Exhibits "11" to "14-d".
[10] Par. 7, JSFI, docket, p. 98.
[11] Docket, pp. 62-69.

6. The Formal Assessment Notice issued by the Revenue Regional Office is dated **December 09, 2010** and admittedly received by the petitioner on **December 23, 2010**, while the petition with the Commissioner of Internal Revenue is belatedly filed on **October 25, 2011, more or less 300 days** from the time said notice was issued. The aforesaid petition with the Commissioner of Internal Revenue was only filed when a **Warrant of Garnishment dated October 19, 2011** was already issued and received by petitioner.

7. The failure to file an administrative protest within the period prescribed ipso jure makes the assessment final, unappealable and therefore demandable. **(Protector's Services Inc. vs. CIR, G.R. No. 118176)**

8. Assuming that petitioner filed a timely protest on the assessment, no appellate jurisdiction can be acquired by the Court because the Petition for Review filed by petitioner is premature. The 180 day period had not yet lapsed when the instant petition was filed;

9. The 'petition' to the Commissioner of Internal Revenue was filed on **October 25, 2011** while the Petition for Review to the Honourable Court of Tax Appeals was filed on **December 26, 2011**. The instant petition is filed barely 60 days from the time the petitioner filed its petition with the Commissioner. The petitioner misconstrued the prescribed 180 day period mandated under Revenue Regulation 12-99 for a thirty (30) day period in cases of inaction by the Commissioner;

10. For ease of reference, the admission by the petitioner in its Petition for Review, page 2 allegation no. 4 is quoted as follows:

> **'This is filed within thirty (30) days from November 25, 2011, the expiration of the period fixed by law as a case of inaction (deemed a denial) of the petition filed by herein appellant with the Commissioner of Internal Revenue on October 25, 2011, against the appellees, 'to cancel' the 2007 appellant's tax deficiency liabilities....'**

11. Revenue Regulation 12-99 is clear, it is stated that if the Commissioner fails to act on the protest within 180 days, the taxpayer can appeal to the Court of Tax Appeal within 30 days from the lapse of the 180 day period."

On February 3, 2012, a Notice of Pre-Trial Conference was issued by this Court setting the case for pre-trial conference on March 1, 2012 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.[12]

Accordingly, respondents and petitioner filed their pre-trial briefs on February 21, 2012[13] and February 28, 2012[14], respectively.

On March 16, 2012, the parties filed their Joint Stipulation of Facts and Issues[15], which the Court approved in a Resolution[16] dated March 19, 2012. In the same Resolution, the pre-trial was considered terminated.

During trial, petitioner presented and formally offered its documentary and testimonial evidence, specifically, Exhibits "A" to "J-1". The said exhibits, except Exhibits "D", "F-1" to "F-4", "F-5" to "F-9", "G", "G-1", "G-2", and "G-3" were admitted in a Resolution[17] dated July 27, 2012. Petitioner moved for the reconsideration of the denied exhibits on August 15, 2012.[18] The Court partially granted petitioner's motion and admitted Exhibit "D" only.[19]

On the other hand, respondents offered Exhibits "1" to "25-a", but only Exhibits "1", "2", "3", "3-b", "4", "5" to "7-d", "8" to "10-a", "11" to "18", "20" to "23-a", "24" and "25" were admitted.[20]

After the filing of the parties' memoranda on January 28, 2014[21], the case was considered submitted for decision on February 10, 2014.[22]

THE ISSUES

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

"1. Whether or not the assessments are valid. gc

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[12] Docket, p. 71.
[13] Docket, pp. 72-78.
[14] Docket, pp. 80-85.
[15] Docket, pp. 97-101.
[16] Docket, p. 103.
[17] Docket, pp. 252-253.
[18] Docket, pp. 262-265.
[19] Resolution dated September 24, 2012.
[20] Resolutions dated May 16, 2013 and November 26, 2013.
[21] Docket, pp. 437-452 and pp. 456-465.
[22] Resolution dated February 10, 2014, docket, p. 467.
[23] Docket, pp. 99-100.

2. Whether petitioner is liable for tax deficiency liabilities in the total amount of P8,089,442.50, inclusive of interest and penalty for the calendar year 2007.

3. Whether the Formal Assessment Notice dated December 09, 2010 already attained finality for failure of petitioner to file a timely protest.

4. Whether the Petition for Review filed with Court of Tax Appeal is premature.

5. Whether the petitioner misconstrued the prescribed one hundred eighty day period mandated under Revenue Regulation 12-99 for a thirty day period in cases of inaction by the Commissioner."

<u>THE COURT'S RULING</u>

Before addressing the other stipulated issues, it is apposite to resolve first the procedural objections raised by respondent.

Respondent contends that the subject tax assessment is already final and executory for failure of petitioner to file its administrative protest. Consequently, this Court lacks jurisdiction to entertain the instant Petition for Review.

On the other hand, petitioner justifies the filing of the instant Petition for Review on the ground that it is an appeal from the "inaction" of the Commissioner of Internal Revenue on its administrative petition filed before the latter.

The petition is bereft of merit.

The jurisdiction of this Court is defined in Section 7 of Republic Act (RA) No. 1125, as amended, the pertinent portions of which provide that:

> "SEC. 7. *Jurisdiction*. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (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;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 for action, in which case the inaction shall be deemed a denial;
>
> xxx xxx xxx"

The word "decisions" or "inaction" in the above-quoted Section 7 of RA No. 1125 had been settled to refer to the *decisions or inaction* of the Commissioner of Internal Revenue on the *protest* of the taxpayer against the assessment.[24] Otherwise stated, jurisdiction is conferred upon decision or inaction of the CIR on **disputed assessments**. Where a taxpayer questions an assessment and asks the CIR to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the CIR must decide.[25]

In relation to the foregoing, Section 228 of the National Internal Revenue Code (NIRC) of 1997 clearly sets down the procedure for protesting an assessment, to wit:

> "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:
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> 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**

[24] *Commissioner of Internal Revenue v. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[25] *St. Stephen's Association and St. Stephen's Chinese Girl's School v. The Collector of Internal Revenue*, G.R. No. L-11238, August 21, 1958.

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**." *(Emphases supplied)*

The foregoing provision is detailed in Revenue Regulations (RR) No. 12-99, to wit:

"REVENUE REGULATIONS NO. 12-99

SUBJECT: *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*

TO: *All Internal Revenue Officers and Others Concerned*

SECTION 1. *Scope*. - Pursuant to the provisions of Section 244, in relation to Section 245 of the National Internal Revenue Code of 1997, these Regulations are hereby promulgated to implement the provisions of Sections 6, 7, 204, 228, 247, 248 and 249 on assessment of national internal revenue taxes, fees and charges and to provide the rules governing the extra-judicial settlement of a taxpayer's criminal violation of the said Code or any of its implementing Regulations through payment of a suggested compromise penalty.

xxx xxx xxx

SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* -

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference.* - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer xxx, shall endorse the case xxx to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN).* - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.4 *Formal Letter of Demand and Assessment Notice.* - The formal letter of demand and assessment notice shall be issued by the

Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. xxx

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**. xxx

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. xxx

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**. 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.

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 said decision, otherwise, the assessment shall become final, executory and demandable." *(Emphases supplied)*

Clearly, a taxpayer is initially notified of the assessment and is given the chance to present its side through the issuance of a notice of informal conference. A Preliminary Assessment Notice and a Formal Assessment Notice will be issued one after the other if issues on the assessment remain unsettled. For its part, the taxpayer is given the recourse of filing a protest to the said notices. However, in case he fails to file his protest, the assessment becomes final and executory.

A review of the pieces of evidence presented by both parties shows that petitioner failed to file a protest after receiving the PAN. Consequently, it was declared in default and respondents issued a Formal Letter of Demand with Assessment Notices, which were received by petitioner on December 23, 2010. In accordance with the foregoing provision and regulation, the suitable recourse of petitioner was to dispute the assessment by filing an administrative protest within 30 days from receipt thereof or until January 23, 2011. Petitioner, however, did not protest the final assessment notice. Instead, it filed a petition before the Commissioner of Internal Revenue on October 25, 2011. Even if the said petition is to be considered as a protest, the procedural defect still cannot be cured for it was filed way beyond the reglementary period of 30 days.

For failure of petitioner to file a timely protest, the assessment in question became final, executory and demandable. The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.[26]

Moreover, since petitioner appealed the assessment of respondent without protesting the same, the instant petition is premature and this Court has no jurisdiction to entertain the same. As stated, the jurisdiction of this Court is to review by appeal decisions or inactions of the Commissioner of Internal Revenue on disputed assessment.[27] In the present case, there is no disputed assessment to speak of.

It is a well settled rule that a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.[28] If a litigant goes to court without first pursuing his administrative remedies, his action is premature as he has no cause of action to ventilate in Court. His case is not ripe for judicial determination.[29]

With the above declaration on the lack of jurisdiction of this Court, resolution of the other issues raised becomes unnecessary.

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

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[26] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[27] *Commissioner of Internal Revenue v. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[28] *Carale, et al. v. Abarintos, et al.*, 269 SCRA 132, G.R. No. 120704, March 3, 1997.
[29] *Aboitiz, et al. v. Collector of Customs, et al.*, 83 SCRA 265, G.R. No. L-29466, May 18, 1978.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice