REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CAMELLIA TECH CORPORATION, *Petitioner,*	**CTA CASE NO. 9463**
-versus-	Members: ***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban, JJ.***
COMMISSIONER OF INTERNAL REVENUE, REGIONAL DIRECTOR, REVENUE REGION NO. 5, AND REVENUE DISTRICT OFFICER, RDO 27, *Respondents.*	Promulgated: APR 19 2017 2:26 p.m.

x--x

RESOLUTION

For resolution is petitioner's Motion for Reconsideration filed on March 21, 2017; with respondents' Comment/Opposition (Re: Motion for Reconsideration) filed on April 6, 2017.

On March 2, 2017, the Court promulgated a Resolution citing *Section 7(c)(1) of Republic Act ("RA") No. 1125*[1] and *Section 3(c)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),* which collectively provide that the Divisions of the Court of Tax Appeals ("CTA") have exclusive original jurisdiction over tax collection cases involving final and executory assessments for taxes, fees, charges and penalties; that the said provision also requires that the principal amount of taxes and fees, exclusive of charges and penalties, claimed is at least Php1,000,000.00; and that in case the amount is lower than Php1,000,000.00, the case shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court. The Court then determined that the present Petition for Review does not relate to an assessment but to a collection case; and that based on the Preliminary Collection Letter, the basic tax or the principal amount is only Php699,556.78, hence the Court has no jurisdiction over the case. Relying on *Section 1, Rule 9 of the RROC* and the Supreme Court case of *P.L. Uy Realty Corporation v. ALS Management and Development*

[1] An Act Creating the Court of Tax Appeals, June 16, 1954.

Corporation, et. al.[2] the Court dismissed the case *motu propio*, the dispositive portion of the Resolution reads as follows:

> **ACCORDINGLY**, the present Petition for Review is hereby **DISMISSED** for lack of jurisdiction. Consequently, respondents' Motion to Defer Pre-Trial Conference and/or to Suspend Proceedings is hereby **MOOT AND ACADEMIC**.
>
> **SO ORDERED.**[3]

In its Motion for Reconsideration, petitioner avers that jurisdiction is conferred by law and is determined by the allegations in the complaint, which contains a concise statement of the ultimate facts of a plantiff's cause of action; and that a reading of the instant Petition for Review will reveal that petitioner is disputing *(1)* the legality of the inaction of respondents on its request for reconsideration against the assessment and *(2)* the act of respondents in enforcing the same through levy of petitioner's real property, both anchored on the ground that the right of the Government to enforce the assessment has already prescribed under *Section 222 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*. Hence, petitioner claims that the present case is not a tax collection case under *Section 3(c)(1), Rule 4 of the RRCTA;* and that, rather, it is an appeal from the inaction of respondents on petitioner's dispute or request for reconsideration on the assessment and a claim for erroneously or illegally collected case falling under *Section 3(a)(2), Rule 4 of the RRCTA.*

Petitioner refers to its Petition for Review, in which it avers to clearly show its material allegation that the right of the Government to collect taxes pursuant to the assessment has already prescribed pursuant to *Section 222(c) of the 1997 NIRC* since the Warrant of Distraint and Levy ("WDL") was issued more than five (5) years after the assessment was issued on September 28, 2009; and that it disputed and questioned the legality of the assessment by requesting for reconsideration. Further, petitioner claims that no response was received from respondents, who proceeded to enforce the assessment by levying the properties of herein petitioner, leading it to file the present Petition for Review.

---

[2] G.R. No. 166462, October 24, 2012, 684 SCRA 453.

[3] Emphases retained.

Petitioner went on to explain that tax collection cases pertain to actions for collection and/or enforcement of taxes, fees and other charges, and penalties commenced or filed by the Government against the taxpayer, and does not refer to actions questioning the legality of the assessment and/or the right of the Government to collect taxes; and to conclude that the instant case is not a "tax collection case" but rather an appeal from the inaction of respondents from its request for reconsideration of the assessment and involves the legality of the action of respondents in enforcing the assessment, falling under *Section 3(a)(2), Rule 4 of the RRCTA.*

It likewise submits that the Motion to Set Hearing on the Affirmative Defenses filed by respondents from which the Court issued the Resolution is not founded or sanctioned by the *RRCTA*, thus the Court erroneously applied *Rules 9 and 16 of the Revised Rules of Court ("RROC")*; that it may be true that the *RROC* may be applied suppletory to the *RRCTA*, it cannot be applied to supplant and apply procedures which the *RRCTA* does not sanction; that the *RRCTA* does not provide a specific rule on the filing of a Motion to Dismiss similar to *Rule 16 of the RROC* and nowhere under the *RRCTA* does the remedy of a Motion to Dismiss before an Answer is provided; that clearly, Motions to Dismiss are not allowed for cases covered by the *RRCTA*, making it a prohibited pleading; that accordingly, a preliminary hearing on the affirmative defenses raised in the Answer is therefore also not allowed for it is akin to the filing of a Motion to Dismiss; and that the Court is not sanctioned to *motu propio* order the dismissal of a case pending before it.

In respondents' Comment/Opposition (Re: Motion for Reconsideration), they claim that the present Petition for Review seeks to forbid the tax collection case despite the fact that the assessment has become final, executory and demandable; and that the Court did not err in dismissing the Petition for Review for lack of jurisdiction.

The Court finds no basis for petitioner's Motion for Reconsideration.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[4] In order for the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter, which is the power to hear and determine the general

---

[4] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs,* G.R. No. 209830, June 17, 2015.

class to which the proceedings in question belong, and is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[5] Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[6]

In the Supreme Court case of *Ace Publications, Inc. v. The Commissioner of Customs and The Collector of Customs*[7], the Highest Tribunal, in dealing squarely on the issue of whether the CTA erred in dismissing *motu proprio* the appellant's Petition for Review, settled the same in the following manner:

> Moreover, it is provided that <u>whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action</u> (Sec. 2, Rule 9, New Rules). <u>Courts are 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</u> staying pleadings, <u>dismissing the action</u>, or otherwise noticing the defect, at any stage of the proceedings (15 C.J. 852).[8]

Moreover, the Supreme Court, in the case of *Katon v. Palanca, Jr., et. al.*[9], has declared that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action; and that jurisdiction over the subject matter is conferred by law and is determined by the allegations in the complaint and the character of the relief sought.

Hence, the Court finds it necessary to refer to the allegations and the reliefs being sought by petitioner in its Petition for Review filed on September 5, 2016, which revolved around the following assignment of errors allegedly committed by respondents:

1. The issuance of the WDL and Notice of Levy against TCT No. C-384159 were illegal and therefore null and void because the right of the Government to collect the deficiency taxes subject of the

---

[5] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[6] *Id.*
[7] G.R. No. L-18808, May 29, 1964, 11 SCRA 147.
[8] Underscoring ours.
[9] G.R. No. 151149, September 7, 2004, 437 SCRA 565.

assessment has already prescribed pursuant to *Section 222(c) of the 1997 NIRC;*

2. The levy of the property amounts to a deprivation of property without due process of law because petitioner was never furnished a copy of the WDL; and

3. The auction sale is without legal basis, because the WDL and the Notice of Levy were issued after the right of the Government to collect the assessed internal revenue taxes has already prescribed; hence, the seizure of the property is illegal and must be restrained immediately.

As to the reliefs sought for by petitioner in its Petition for Review, it prayed that after due notice and proceedings, judgment be rendered in the following manner:

1. Finding the collection of the delinquent taxes in the amount of Php1,126,837.05, subject of Assessment Notice No. 069172 dated September 28, 2009, as prescribed pursuant to *Section 222 of the 1997 NIRC;*

2. Declaring the WDL and Notice of Levy on Real property issued by respondents against the property covered by TCT No. C-384159 of the Registry of Deeds of Caloocan City as null and void *ab initio;* and

3. Ordering the cancellation of the Notice of Tax Lien and Notice of Levy on Real Property annotated by respondents in TCT No. C-384159 of the Registry of Deeds of Caloocan City.

While petitioner mentioned that the assessment has not yet attained finality, the same was done only to provide a background to, or as part of the antecedent facts of, the collection case. Petitioner, instead, emphasized the illegality of respondent's actions in relation to collection, claiming that the action to collect has prescribed and that it was not properly notified. Should petitioner wish to question the assessment, it should have *(1)* clearly and unequivocally stated the same in its Petition for Review and not merely referred to it in passing; and *(2)* filed a Petition for Review earlier, *i.e.* thirty (30) days after it received the May 24, 2010 Transmittal Letter, as discussed hereinafter.

The pertinent provision is *Section 228 of the 1997 NIRC,* as reproduced hereunder:

> SECTION 228. *Protesting of Assessment.* — xxx
>
> xxx xxx 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.[10]

Moreover, *Section 3 of RR No. 12-99*[11] provides the following:

> 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: xxx
>
> xxx xxx 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
>
> xxx xxx xxx

---

[10] Underscoring ours.

[11] 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, September 6, 1999.

> 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.
>
> 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.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.[12]

Based on the foregoing, the taxpayer has thirty (30) days from receipt of the Final Assessment Notice ("FAN") and the Formal Letter of Demand ("FLD") within which to file its protest. If the taxpayer's protest is denied, appeal can be made to the CTA within thirty (30) days from receipt of the decision. Should the Commissioner fail to rule upon the taxpayer's protest within one hundred and eighty (180) days, the taxpayer may likewise appeal to the CTA within thirty (30) days. Should the taxpayer fail to file an appeal within the thirty (30)-day period, the assessment shall become final and executory.

---

[12] Underscoring ours.

Hence, in case the CIR failed to act on the protest within the period stated, a taxpayer can either: *(1)* file a petition for review with the CTA within thirty (30) days after the expiration of the one hundred and eighty (180)-day period; or *(2)* await the final decision of the CIR and appeal the same to the CTA within thirty (30) days after receipt of a copy of such decision.[13]

In the case at bar, respondents issued an FLD[14] and FANs[15], all dated September 28, 2009. In response, a Request for Reinvestigation[16] was filed by petitioner with the Regional Director ("RD") of BIR Revenue Region ("RR") No. 5 on November 26, 2009. Thereafter, the Final Notice Before Seizure[17] was issued by the Revenue District Officer ("RDO"), which states the following:

> <u>On December 10, 2009, this Office sent you a letter requesting the settlement of the above account. However, despite the considerable length of time given to you, we have not been favored with any reply.</u>
>
> In this connection, we would like to inform you that we are giving you the last opportunity to make the necessary settlement of the above stated tax liabilities within ten (10) days from receipt of this notice. Shall we fail to hear from you within this period, this Office, much to our regret, will be constrained to serve and execute the Warrant of Distraint and/or Levy and Warrant of Garnishment already prepared to enforce the collection of your account. Simultaneously, to protect the interest of the government, your case will be referred to the Legal Division for the filing of appropriate judicial action.
>
> Please give this matter your preferential attention.[18]

Considering that, from the tenor of the Final Notice Before Seizure, petitioner believed that the RDO did not receive its Request for Reinvestigation despite having filed one on November 26, 2009, petitioner wrote another letter[19] informing the RD that it indeed requested for a reinvestigation. Thereafter, on May 24, 2010, the RD

---

[13] *RCBC v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[14] *Records, Annexes "E," "E-1" to "E-5,"* pp. 30-35.
[15] *Id., Annexes "D," "D-1" to "D-3,"* pp. 26-29.
[16] *Id., Annex "F,"* p. 36.
[17] *Id., Annexes "G" and "G-1,"* pp. 37-38.
[18] Underscoring ours.
[19] *Records, Annex "H,"* p. 39.

issued a letter[20] ("May 24, 2010 Transmittal Letter") informing petitioner that the dockets of the case will be transmitted to the Collection Section for appropriate action. Later, petitioner was issued a Preliminary Collection Letter dated January 7, 2013.

While normally, a Final Notice Before Seizure can be considered as the CIR's final decision on the protest of a taxpayer, this only applies when said Final Notice Before Seizure disposed of the request for reinvestigation. In the case at bar, the Final Notice Before Seizure stated that the BIR sent a letter requesting the settlement of petitioner's account, to which petitioner did not respond. However, records reveal that the BIR's claim that petitioner failed to respond is false for petitioner sent a response through a Request for Reinvestigation. Therefore, the Final Notice Before Seizure cannot be considered as respondents' final decision on the Request for Reinvestigation.

However, the May 24, 2010 Transmittal Letter issued by the RD can be considered as a final decision. It must be noted that the Supreme Court held that the referral by the CIR of the request for reinvestigation to the Solicitor General for collection of the tax can also be interpreted as an indirect denial by the CIR on the protest filed by the taxpayer.[21] This can be applied to the present case wherein petitioner received the May 24, 2010 Transmittal Letter informing it that the dockets of the case will be transmitted to the Collection Section for appropriate action.

It is undisputed that petitioner received the May 24, 2010 Transmittal Letter. Instead of filing a Petition for Review thirty (30) days after receipt thereof, petitioner did nothing but wrote a request for compromise of taxes on May 25, 2016[22], all the while receiving a Preliminary Collection Letter[23] dated January 7, 2013 and a letter notice[24] of levy and schedule of public auction dated August 2, 2016. It was only upon discovery that a Notice of Tax Lien[25] and Notice of Tax Levy[26] have been annotated on TCT No. C-384159 when petitioner decided to act and file a Petition for Review with the Court on September 5, 2016, more than six (6) years from issuance of the May

---

[20] *Records, Annex "I,"* p. 40.
[21] *Republic of the Philippines v. Lim Tian Teng Sons and Co., Inc.*, G.R. No. L-21731, March 31, 1966, 16 SCRA 584,
[22] *Records, Annex "K,"* p. 42.
[23] *Id., Annex "J,"* p. 41.
[24] *Id., Annex "L,"* p. 43.
[25] *Id., Annex "M-4,"* p. 48.
[26] *Id.*

24, 2010 Transmittal Letter. Since the assessment has already attained finality for failure to appeal the same on time, petitioner cannot question the same during the collection proceedings.

Accordingly, the Court finds no basis to reverse its dismissal of the instant case on the basis that the Petition for Review relates to a collection case; and that the Court has no jurisdiction since the principal amount of tax involved is only Php699,556.78.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice