REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ASIA RENAL CARE PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8832

Members:

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

Promulgated:

MAY 05 2016; 10:43 am.

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RESOLUTION

UY, J.:

For this Court's resolution is respondent's **Motion to Dismiss**, filed on February 3, 2016, with petitioner's **Comment/Opposition (Re: Motion to Dismiss dated February 2, 2015)**, filed on February 26, 2016.

Respondent contends that the Court has no jurisdiction over the case since the subject assessment have already become final, executory and demandable pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations No. 12-99, as amended by Revenue Regulation No. 18-2013. She alleges that petitioner failed to timely file a valid protest to the subject assessment. Respondent avers that the protest filed by petitioner with the respondent, marked as Exhibit "P-31.1", failed to comply with the requisites of a valid administrative protest, as it failed to state the facts, applicable law, rules and regulations or jurisprudence on which it is based. Respondent, likewise, submits that petitioner's witness, Corazon R. Alcantara, the acting business director and the previous Finance Controller of petitioner, admitted in open court that its protest to the Assessment Notice did not cite the legal basis.

Petitioner, on the other hand, argues that the Motion to Dismiss should be dismissed outright for having been filed out of time. It contends that a motion to dismiss filed beyond the period provided under Section 1, Rule 16 of the Rules of Court should not be entertained by any court. Petitioner likewise contends that respondent is estopped from assailing the jurisdiction of the Court as she filed her Answer to the Petition for Review, participated in the trial, and failed to file her Motion to File Demurrer to Evidence after the Court ordered her to file the same. It stresses that respondent cannot be allowed to surreptitiously revive the remedy of Demurrer to Evidence by filing a belated Motion to Dismiss. Petitioner also argues that in denying its protest letter, respondent unequivocally recognized that petitioner has the option of lodging an appeal with the Court. Moreover, it contends that the allegations in the Petition for Review sufficiently conferred the Court with jurisdiction over the present case. Petitioner avers that the Court need not go beyond the allegations of the Petition for Review just to determine whether or not it has jurisdiction over the present case. It also argues that respondent's deficiency tax assessments against petitioner are not yet final and executory.

Section 1 of Rule 9 and Section 8 of Rule 15 of the Rules of Court provide:

Rule 9
EFFECT OF FAILURE TO PLEAD

> **SECTION 1.** *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter**, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, **the court shall dismiss the claim**.

Rule 15
MOTIONS

> **SEC. 8.** *Omnibus motion.* – Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then

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> available, and all objections not so included shall be deemed waived. (*Emphasis supplied.*)

In the case of *Boston Equity Resources, Inc. vs. Court of Appeals and Lolita G. Toledo*[1], the Supreme Court ruled that lack of jurisdiction over the subject matter can always be raised anytime, even for the first time on appeal, since jurisdictional issues cannot be waived, subject, however, to the principle of estoppel by laches, to wit:

> Based on the foregoing provisions, the "objection on jurisdictional grounds which is not waived even if not alleged in a motion to dismiss or the answer is lack of jurisdiction over the subject matter. x x x Lack of jurisdiction over the subject matter can always be raised anytime, even for the first time on appeal, since jurisdictional issues cannot be waived x x x subject, however, to the principle of estoppel by laches."

In this case, respondent interposed the ground of lack of jurisdiction over the subject matter in her motion to dismiss, arguing that the subject assessment already become final, executory and demandable. Considering that the issue on lack of jurisdiction over the subject matter can be raised at any time, the Court can resolve the said issue on jurisdiction.

Moreover, respondent is not estopped from assailing the jurisdiction of the Court. In the case of *Spouses Erorita vs. Spouses Dumlao*[2], the Supreme Court held that:

> As a general rule, lack of jurisdiction over the subject matter may be raised at any time, or even for the first time on appeal. An exception to this rule is the principle of estoppel by laches.
>
> Estoppel by laches may only be invoked to bar the defense of lack of jurisdiction if the factual milieu is analogous to *Tijam v. Sibonghanoy*. In that case, lack of jurisdiction was raised for the first time after almost fifteen (15) years after the questioned ruling had been rendered and after the movant actively

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[1] G.R. No. 173946, June 19, 2013.
[2] G.R. No. 195477, January 25, 2016.

> participated in several stages of the proceedings. It was only invoked, too, after the CA rendered a decision adverse to the movant.
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> In *Figueroa v. People*, we ruled that the failure to assail jurisdiction during trial is not sufficient for estoppel by laches to apply. When lack of jurisdiction is raised before the appellate court, no considerable length of time had elapsed for laches to apply. Laches refers to the "negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."

The circumstances in this case are not analogous to that of the *Tijam vs. Sibonghanoy*[3] case. In fact, the letter dated April 29, 2014 issued by Regional Director Jonas DP. Amora[4] , and respondent's Answer[5] to the Petition for Review both state that the assessment has already become final, executory and demandable. Hence, estoppel by laches may not be invoked by petitioner to bar the defense of lack of jurisdiction over the subject matter. The Court therefore may entertain respondent's Motion to Dismiss.

After consideration of the allegations in the parties' pleadings and of the evidence on record, the Court finds merit in respondent's Motion to Dismiss.

Section 228 of the NIRC of 1997, as amended, provides for the procedure in protesting assessment notices, thus:

> 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

[3] G.R. No. L-21450, April 15, 1968.
[4] Exhibit "P-32", docket, p. 621.
[5] Docket, pp. 110-114.

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

In connection thereto, Section 3.1.4 of Revenue Regulations No. 12-99, as amended by Revenue Regulation No. 18-2013, implementing Section 228 of the NIRC of 1997, as amended, reads:

> **3.1.4** ***Disputed Assessment.*** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> xxx xxx xxx
>
> The **taxpayer shall state in his protest** (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) **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 xxx xxx. (*Emphasis Supplied.*)

The foregoing provisions explicitly require that the protest should state the facts and law upon which it is based, otherwise, the protest shall be considered void and without force and effect.

In this case, the purported protest letter[6] filed by petitioner reads:

February 12, 2014

Mr. Jonas DP. Amora
Regional Director
6th Floor BIR Bldg.
Quezon Ave. cor Sct. Santiago
Quezon City

Dear Mr. Amor:

We received the tax assessment notice to Asia Renal Care Phils. Inc. with TIN: 200-547-897-000 dated January 15, 2014 last January 20, 2014. The 1708 with demand number 39-B150-10 amounting to Php24,593,630.95 is for taxable year 2010.

We would like to contest such assessment and would like to request to be given 60 days to prepare supporting documents.

Please find enclosed assessment notice for your reference.

Thanks you so much for your kind consideration
Respectfully yours,

Corazon R. Alcantara
Finance Manager & Controller

Perusal of the letter shows that indeed petitioner failed to state the facts, applicable law, rules and regulations or jurisprudence on

[6] Exhibit "P-31.1", docket, p. 620.

which the alleged protest is based. Thus, petitioner's protest letter is considered void and without force and effect. There being no valid protest on the assessment issued by respondent, the assessment has attained finality by mere lapse of time and is no longer open to dispute and discussion. Any objection against the assessment should have been pursued in accordance with Section 228 of the NIRC.

Furthermore, let it be stressed that the Court of Tax Appeals exercises appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, among others. In this regard, Section 7 (a) (1) Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282 provides:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (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 this case, the assessment did not become a "disputed assessment" subject to the Court's review because petitioner failed to file an administrative protest thereon.

The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[7] The Court's jurisdiction may only be invoked in the particular instances prescribed under Section 7 of R.A. No. 1125, as amended by R.A. No 9282. It is necessary for petitioner to file a valid administrative protest in order for the Court to acquire jurisdiction. Without a valid protest on the assessment in the administrative level, the assessment becomes final and the Court is deprived of any authority to rule on its validity.

[7] *Rizal Commercial Banking Corp., vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007.

WHEREFORE, in view if the foregoing, respondent's **Motion to Dismiss** is **GRANTED.** Accordingly, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR :

(On Leave)
ROMAN G. DEL ROSARIO
Presiding Justice

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