REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**MOOG CONTROLS CORPORATION PHILIPPINE BRANCH,**
Petitioner,

- versus -

C.T.A. CASE NO. 6700

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**Promulgated:**

MAY 27 2004

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# RESOLUTION

Before us for resolution is respondent's "Motion to Dismiss" filed on February 3, 2004 seeking for the dismissal of this Petition for Review on the ground of lack of jurisdiction pursuant to Section 7 of R.A. 1125 and Revenue Regulations No. 12-99.

Respondent averred that the filing of this Petition for Review is premature as he has not yet decided on petitioner's protest against the assessment issued to it. Accordingly, pursuant to Section 7 of R.A. 1125, An Act Creating the Court of Tax Appeals, and in relation to Revenue Regulations 12-99, when herein petitioner elevated the decision of the Regional Director of the BIR Revenue Region No. 2 of the Cordillera Administrative Region to the Commissioner of the Bureau of Internal Revenue, the said decision did not become final, in which case, the protest shall then have to be decided by the Commissioner of Internal Revenue first, otherwise, there is no decision of the Commissioner of Internal Revenue which is subject to review by this court. Section 7 of

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R.A. 1125 and Revenue Regulations No. 12-99 are quoted below for easy reference:

> **Section 7. Jurisdiction** – The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; x x x (Emphasis supplied)
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> **Revenue Regulations No. 12-99**
>
> "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 the date of receipt of 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."** (Emphasis supplied)

Petitioner filed its "Opposition (Re: Motion to Dismiss)" on February 27, 2004, arguing that the respondent Commissioner of Internal Revenue erred when he averred that the filing of the present petition is premature. According to petitioner, the alleged prematurity in the filing of the present Petition for Review was already rendered moot and academic by the inaction of the respondent Commissioner on the appeal filed by herein petitioner from the decision of the BIR Regional Director, pursuant to Section 228 of the National Internal Revenue Code of 1997 and Section 3.1.5 of Revenue Regulations No. 12-99, which states that:

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**Section 228. Protesting of Assessment. –**
xxx xxx xxx

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"

**Revenue Regulations 12-99**

**Section 3.1.5** x x x If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from the 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."

As culled from the records of the case, it is not disputed that on January 8, 2003, petitioner received the Formal Letter of Demand with the Assessment Notices, assessing it for deficiency income and final withholding taxes for the period covering October 1998 to September 1999 in the total amount of P 38,604,536.94, inclusive of surcharges and interest (Annex "E", Petition for Review, CTA Records). On February 7, 2003, a Letter of Protest addressed to the Revenue Regional Director, Jaime Q. Concepcion, of BIR Revenue Region No. 2 of the Cordillera Administrative Region was subsequently filed by herein petitioner (Annex "G", Petition for Review, CTA Records).

On April 4, 2003, petitioner submitted its supporting documents, as evidenced by a copy of the transmittal letter addressed to herein respondent (Annex "H", Petition for Review, CTA Records).

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On May 9, 2003, a letter from Regional Director Jaime Q. Concepcion, denying with finality petitioner's protest letter dated February 7, 2003, was received by petitioner (Annex "I", Petition for Review, CTA Records). The dispositive portion of the said denial letter is quoted below:

> "We regret to inform you, however, that the District Office upon assigning the case to a Revenue Officer for evaluation finally issued its position denying with finality your request for cancellation of the assessment notices for lack of legal basis as shown in the attached reference memorandum slip to the undersigned dated April 16, 2003.
>
> Such being the case, we hereby apprise you that the entire records of the case will now be forwarded to the Collection division for enforcement of collection in view of the previous denial by both the District Office and the Legal Division as reiterated now by the Office of the Revenue District Officer of Baguio City."

On June 9, 2003, herein petitioner appealed the decision of the Regional Director of Revenue Region No. 2 with the Commissioner of Internal Revenue. On the same date, petitioner filed this instant Petition for Review with this court, likewise appealing the very same decision of the Regional Director of Revenue Region No. 2.

We resolve to grant respondent's motion.

It bears to emphasize that Section 228 of the Tax Code specifically allows an aggrieved taxpayer the remedy of filing with this Court his appeal only in the instances when there is already a decision of denial or inaction by the Commissioner of Internal Revenue on his protest. To quote Section 228 of the Tax Code:

> **Section 228. Protesting of Assessment. –**
>
> xxx xxx xxx

> 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) days period**; otherwise, the decision shall become final, executory and demandable" (Emphasis ours)

Likewise, it is also worth emphasizing that Section 7 of R.A. 1125, An Act Creating the Court of Tax Appeals, specifically provides for the jurisdiction of this Court, to wit:

> **Section 7. Jurisdiction** – The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; x x x (Emphasis supplied)

The law is explicit. A decision on the protest has to be rendered by the Commissioner of Internal Revenue before this Court may acquire jurisdiction to act on the case. Also, as specifically mentioned under Section 228 of the Tax Code, when the Commissioner of Internal Revenue fails to act on the protest of the taxpayer after the lapse of one hundred eighty (180) days from the submission of its supporting documents, the taxpayer may elevate the appeal to this Court.

It is a fundamental and mandatory rule in law that an aggrieved taxpayer must

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first exhaust all available administrative remedies before he can be able to avail of the benefits of a judicial remedy. The purpose of this is to enable the administrative tribunals, especially where their sound discretion and competence are demanded, to extend the necessary knowledge and expertise to determine the matters of the case.

This rule finds application in the case at bar. The decision received on May 9, 2003, by herein petitioner was rendered by the BIR Regional Director of Revenue Region No. 2. Subsequently, petitioner seasonably filed an administrative protest with the Commissioner of Internal Revenue on June 9, 2003. However, on the very same date, and obviously without waiting for any response from the Commissioner, this instant petition for review was likewise filed by petitioner with this court. Apparently, a decision has yet to be rendered by Commissioner of Internal Revenue which is to be the subject of review by this court. In other words, there is no decision yet to speak of, which would confer jurisdiction on this Court.

It is also argued by herein petitioner that the subsequent inaction by the respondent on its protest for more than one hundred eighty (180) days already rendered the issue of prematurity moot and academic.

We cannot agree.

It seems like herein petitioner failed to cautiously appreciate the facts of the case. It is very clear from the records that petitioner filed this instant petition for review on the very same date it filed its appeal with the Commissioner of Internal Revenue. Petitioner did not wait for any response from the Commissioner; in fact, it did not give the Commissioner the opportunity to decide on its case. As such, while

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obviously there is no decision; there is no "inaction" on the part of the Commissioner to speak of either. The period provided for under Section 228 of the Tax Code refers to the period of inaction by the Commissioner of Internal Revenue on the protest of a taxpayer, which period should be counted from the time the required documents supporting the taxpayer's protest are submitted to the Commissioner. In other words, the Commissioner has a period of one hundred eighty (180) days, from the date the aggrieved taxpayer submits his supporting documents, to act on the protest filed, and consequently, his failure to seasonably act on the protest will entitle the taxpayer to elevate the appeal to this Court within thirty (30) days from the lapse of the 180 day period.

"In the case at bar, petitioner opted to seek immediate relief to the Court of Tax Appeals instead of waiting for the decision of the respondent. Hence, we opine that petitioner is bound to follow the periods provided for in Section 228 of the Tax Code, in relation to Section 11 of RA No. 1125" *(Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6475, September 10, 2003).* Petitioner should have waited for the lapse of the 180-day period of inaction by the Commissioner of Internal Revenue before filing its Petition for Review with this court within the 30-day period provided by law, instead of filing it on the same day that petitioner filed its administrative appeal with the Commissioner of Internal Revenue. In *Commissioner of Internal Revenue vs. Villa, 22 SCRA 3,* the Supreme Court said that "[T]he Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction."

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The other issue raised pertaining to want of pre-assessment conference may be raised by the petitioner as matter of defense if this court acquired jurisdiction.

**WHEREFORE**, in view of the foregoing, this court hereby **RESOLVES** to **GRANT** respondent's Motion to Dismiss. Accordingly, petitioner's instant Petition for Review is hereby **DISMISSED** without prejudice for lack of jurisdiction.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Justice

**LOVELL R. BAUTISTA**
Associate Justice

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice