REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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WORLD GRANNARY, INC. (Formerly: "NATION GRANARY, INC."),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8616

Members:

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

Promulgated:

JUN 05 2013 3:20 pm

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RESOLUTION

Submitted for resolution are:

1. petitioner's *Motion to Suspend Collection of Tax*, incorporated in its Petition for Review filed on March 7, 2013, with respondent's *Comment (Re: Petitioner's Motion for Suspension of Collection of Tax)* filed through registered mail on April 15, 2013 and received by this Court on April 18, 2013; and
2. respondent's *Urgent Motion for Extension of Time to File Answer* filed on May 10, 2013.

In the instant *Motion to Suspend Collection of Tax*, petitioner seeks for the issuance of an order suspending the collection of the disputed tax assessment and/or enjoining respondent from enforcing a warrant of distraint and levy.

Petitioner contends that according to Section 2, Rule 10 of the Revised Rules of the Court of Tax Appeals, where the collection of the taxpayer's tax liability may jeopardize his or its interest, an interested party may file a motion for suspension of the collection of the tax liability.

Petitioner alleges that a Stay Order had been issued by the Regional Trial Court (RTC) of Lucena City suspending the enforcement of all claims against petitioner. Hence, the warrant of distraint or levy does not only jeopardize the interest of petitioner but also violates the Stay Order issued by a competent court.

On the other hand, respondent opposes petitioner's *Motion for Suspension of Collection*, alleging that this Court does not have jurisdiction over the main action considering that the instant Petition for Review was filed beyond the periods provided by law. Respondent maintains that since this Court has no jurisdiction over the main petition, it cannot grant the ancillary remedy of suspension of collection. Such being the case, respondent prays that the instant Motion should be denied.

In addition, respondent avers that even assuming this Court may acquire jurisdiction, petitioner is not entitled to the remedy of suspension of collection of taxes. Respondent states that suspension of collection of taxes has the effect of injunction and pursuant to Section 3, Rule 58 of the 1997 Rules of Civil Procedure, as amended, and applicable jurisprudence, the movant has the burden to show a "clear legal right" thereto. However, petitioner failed to do so. Petitioner merely based its claim on the Stay Order issued by the RTC of Lucena City and such will not prosper. Failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction, or of the acts or attempts to commit any act which endangers or tends to endanger the existence of said right, or of the urgent need to prevent serious damage, is a sufficient ground for denying the preliminary injunction.

This Court emphasizes at the outset that following the provision of Section 1, Rule 9 of the 1997 Rules of Civil Procedure, as amended, a court has the power to dismiss an action when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter or that the action is already barred by statute of limitations.

Relevantly, courts are also 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.[1]

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

Considering the arguments raised by respondent and the above legal principles, an initial determination of this Court's jurisdiction over the case is proper.

Section 7(a) of Republic Act (RA) No. 1125, as amended,[2] provides that this Court has appellate jurisdiction over **decisions of the Commissioner of Internal Revenue (CIR) 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.

Furthermore, Section 11 of the same law provides that **a party adversely affected by a decision, ruling or inaction of the CIR, may appeal with this Court by filing a petition for review within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure, as amended.

In relation thereto, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that a taxpayer adversely affected by the decision or inaction of the CIR may appeal to this Court 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. Pertinent portions thereof are set forth below:

> 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
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> **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

[2] Republic Act (RA) No. 9282 and Republic Act (RA) No. 9503

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)*

All told, in addressing the matter of this Court's jurisdiction, it is relevant for petitioner to show the existence of a "decision" or "inaction" of the CIR on the subject disputed assessments.

A review of the instant Petition for Review bears that a Formal Letter of Demand was issued by respondent on June 12, 2008[3] which was protested on August 8, 2008.[4] On January 19, 2009, petitioner wrote a letter to respondent stating among others that it is submitting the enclosed document to substantiate its claim.[5] On February 9, 2012, petitioner received a Preliminary Collection Letter dated February 6, 2012.[6] Also, on December 6, 2012, petitioner received a Warrant of Distraint and/or Levy No. 60-07-06-29-2012 for the sum of P72,888,316.69, representing petitioner's alleged deficiency expanded withholding tax, documentary stamp tax and compromise penalty.[7]

A further scrutiny of the Preliminary Collection Letter[8] and the Warrant of Distraint and/or Levy[9] shows that they were issued by Assistant Revenue District Officer, Rosemarie B. Luces and Revenue District Officer Yolanda B. Ferrer, respectively. However, provisions of the 1997 NIRC, as amended, failed to show that a Revenue District Officer can issue decisions that are appealable to this Court.

It is noteworthy that Section 7 of the 1997 NIRC, as amended, allows the CIR to delegate her vested powers, except those enumerated therein, to

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[3] Par. 2.9, Petition for Review, docket p. 00010; Annex "F" of the Petition for Review shows that the Formal Letter of Demand was dated June 30, 2008.
[4] Par. 2.5, Petition for Review, docket p. 00011; Annex "G".
[5] Par. 2.7, Petition for Review, docket p. 00012; Annex "I".
[6] Par. 2.14, Petition for Review, docket p. 00014; Annex "M".
[7] Par. 2.15, Petition for Review, docket p. 00014; Annex "N".
[8] Petition for Review, Annex "M".
[9] Petition for Review, Annex "N".

any subordinate official, with the rank equivalent to a division chief or higher.

Parallel to this, Sections 11 and 13 of the NIRC of 1997, as amended, provides the duties and authority of a Revenue District Officer as follows:

> "SEC. 11. **Duties of Revenue District Officers and Other Internal Revenue Officers.** - It shall be the duty of every Revenue District Officer or other internal revenue officers and employees to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with, and to aid in the prevention, detection and punishment of frauds or delinquencies in connection therewith.
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> It shall be the duty of every Revenue District Officer to examine the efficiency of all officers and employees of the Bureau of Internal Revenue under his supervision, and to report in writing to the Commissioner, through the Regional Director, any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts and any evidence sustaining each case.
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> SEC. 13. - **Authority of a Revenue Officer**. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

This Court is a court of limited jurisdiction and as such, its jurisdiction to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implication.[10]

There being no decision of the CIR in the present case that is appealable to this Court, this Court cannot acquire jurisdiction over the instant Petition for Review.

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[10] Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp., et. al., G.R. No. 158540, July 8, 2004.

Even assuming for the sake of argument that the Warrant of Distraint and/or Levy issued is considered as the appealable decision of the CIR on the disputed assessment; still, the Court has no jurisdiction to entertain the instant appeal considering that the same was filed out of time.

Petitioner states that the Warrant of Distraint and/or Levy No. 60-07-06-29-2012 was received on December 6, 2012. Counting the 30 day period from the said date, petitioner had until January 7, 2013[11] within which to file its appeal before this Court. Thus, the instant Petition for Review filed on March 7, 2013 was clearly filed beyond the 30-day period provided by law.

In *Ker & Company, Ltd. v. Court of Tax Appeals*[12], the Supreme Court held that while the right to appeal a decision of the CIR to this Court is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith *would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessment.*[13]

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of jurisdiction. Accordingly, the resolution of petitioner's *Motion for Suspension of Collection of Tax* and respondent's *Urgent Motion for Extension of Time to File Answer* is moot.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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

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[11] The 30 day period from December 6, 2012, which is January 5, 2013, fell on a Saturday. Thus, petitioner had until January 7, 2013 within which to file its appeal. See Section 1, Rule 22, The 1997 Rules of Civil Procedure, as amended.

[12] G.R. No. L-12396, January 31, 1962.

[13] Commissioner of Internal Revenue vs. Western Pacific Corporation, 121 Phil. 889, 893 (1965), as cited in RCBC vs. CIR, G.R. No. 168498, June 16, 2006.