REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

RAY BURTON DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 7060

Present:

Acosta, *Chairperson*
Bautista, and
Casanova, *JJ.*

Promulgated:

JAN 26 2009 ; 1:15 pm

x---x

RESOLUTION

For resolution is respondent's "Motion for Leave to Admit Motion to Dismiss for Lack of Jurisdiction" filed by mail on November 13, 2008. Attached to the said motion is the "Motion to Dismiss for Lack of Jurisdiction". On January 14, 2009, petitioner filed by mail its "Comment (to the Motion for Leave to Admit Motion to Dismiss for Lack of Jurisdiction".

Respondent avers in his motion that Section 1, Rule 9 of the Revised Rules of Court provides that when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim. Thus, through counsel, he is filing the instant Motion to Dismiss for Lack of Jurisdiction.

The Court hereby admits the Motion to Dismiss. As correctly argued by respondent while as a general rule, defenses and objections not pleaded in a Motion to Dismiss or in the Answer are deemed waived, among the exceptions thereto is the

550

situation where it appears from the pleadings or the evidence of record that the court has no jurisdiction over the subject matter.

Respondent maintains that the case should be dismissed for lack of jurisdiction; the Petition for Review having been filed beyond the 30-day period provided under Section 228 of the National Internal Revenue Code (NIRC). Respondent avers that the computation of the 180-day period under the said provision of the NIRC commenced to run on December 30, 2003, the date of the filing of the protest since petitioner failed to allege any date as to when supporting documents relative to the protest were filed. The said 180-day period ended on June 27, 2004, and because this day was a Sunday, the next working day, or June 28, 2004 shall be deemed last day. And counting 30 days therefrom, petitioner only had until July 28, 2004, within which to file its Petition for Review. However, as the instant Petition was filed belatedly on September 29, 2004,[1] the assessments against petitioner have become final, executory and demandable.

On the other hand, in its Comment, petitioner claims that the instant Petition was filed on time. More than 180 days have passed since petitioner has filed its protest and submitted its documents. According to petitioner, the 180 day period lapsed on August 24, 2004, and counting 30 days, it had until September 23, 2004 to file a Petition for Review. Further, it argues that even assuming for the sake of argument that the petition was filed out of time, the same should not be dismissed on that ground alone. Petitioner cites jurisprudence on labor cases which states that dismissal of appeals based on technical grounds should be frowned upon.

The Court finds that the Motion to Dismiss for Lack of Jurisdiction is impressed with merit.

Case in point is **Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue**,[2] where the Supreme Court again made a pronouncement that a taxpayer's failure to file a petition for review with the Court of Tax Appeals within the statutory period renders the disputed assessment final, executory and demandable,

---

[1] Per respondent's Motion, the Petition for Review was filed on September 23, 2004
[2] G.R. No. 168498, April 24, 2007

557

thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.

> The last paragraph of Section 228 of the NIRC finds application. It reads:
>
> SEC. 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.

Here, petitioner filed a formal protest against the assessment notice on December 30, 2003. With an allegation of inaction on the part of respondent, petitioner filed the instant Petition for Review on September 29, 2004. The 180^{th} day from December 30, 2003 is June 27, 2004, a Sunday. Hence, the counting of the 30-day period within which to file the Petition for Review with this court would commence on the next working day, June 28, 2004. Clearly, petitioner only had until July 28, 2004, within which it can timely file a Petition for Review. Consequently, the instant petition was filed out of time.

The Court agrees with respondent that the 30-day period to file a Petition for Review is jurisdictional. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or **within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. Failure to comply with these periods would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such**

55

period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[3]

ACCORDINGLY, the Motion to Dismiss is hereby **GRANTED**. The assessment having attained finality, petitioner is **ORDERED TO PAY** its deficiency Expanded Withholding Tax in the amount of P405,057.90[4] plus 20% delinquency interest per annum pursuant to Section 249(C)(3) of the National Internal Revenue Code[5] from January 5, 2004, until the amount is fully paid.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

---

[3] *supra.*
[4] *See Supplemental Petition for Review, CTA docket pages 370-372.*
[5] ***SECTION 249.** Interest. –*
xxx
(C) Delinquency Interest. - In case of failure to pay:
xxx
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

553