REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

CATHAY PACIFIC AIRWAYS, LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7876

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

SEP 21 2010

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

What constitutes the inaction of the Commissioner of Internal Revenue that is appealable to this Court under *Section 7(a)(2) of RA 9282, as amended,* in relation to *Section 3(a)(2) of the 2005 Revised Rules of the CTA, as amended*, is the issue raised in this Petition For Review.

THE CASE

This is a Petition for Review filed by Cathay Pacific Airways, Ltd. (hereafter "petitioner") from the alleged inaction of respondent

Commissioner of Internal Revenue on petitioner's application for value-added tax (VAT) registration and change of tax type from percentage tax to VAT, under *Section 236(H) of the NIRC of 1997, as amended.*

THE PARTIES

Petitioner is a branch of Cathay Pacific Airways, Ltd., a corporation organized and existing under the laws of Hong Kong, with principal office located at 22nd Floor, LKG Tower, 6801 Ayala Avenue, Makati City, where it may be served with orders, pleadings, and other court processes. It is engaged in the business of international air carriage.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide matters arising under the Tax Code and other laws or portions thereof administered by the Bureau of Internal Revenue (BIR), as well as the power to interpret the provisions of the Tax Code and other tax laws. He may be served with summons, pleadings and other legal processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts of the case, as culled from the records, are as follows:

On January 24, 1969, petitioner was registered with the Securities and Exchange Commission.

Petitioner is registered with the BIR and was issued Tax Identification Number 000-442-856-000. Petitioner is a large taxpayer and is under the jurisdiction of the Large Taxpayers Division of the BIR, as evidenced by the Certificate of Registration issued by the Large Taxpayers Division.

On May 4, 2006, petitioner filed with the Large Taxpayers Assistance Division of the BIR an Application for Registration Information Update (BIR Form 1905), indicating as reasons for its registration update, the following:

a) Change of registration from non-VAT to VAT taxpayer;

b) Change of registered address to 22nd Floor, LKG Tower, 6801 Ayala Avenue, Makati City; and

c) Change of tax type from percentage tax to VAT.

On June 26, 2006, a letter dated May 19, 2006 from Ms. Merlinda L. Ordoyo of the Large Taxpayers Service of the BIR was received by Mr. Moises Visperas, Jr., petitioner's representative, stating that international air carriers do not have the option to register for VAT under *RA 9337*, as implemented by *RR 16-2005, as amended.*

On July 3, 2006, Mr. Visperas filed a letter requesting for reconsideration of the denial of petitioner's request for VAT registration.

On August 18, 2006, Mr. Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayer Service, wrote a letter addressed to Mr. Rolando N. Santiago, petitioner's Financial Service and Automation Manager, stating that the letter of Mr. Moises V. Visperas, Jr., dated July 3, 2006, was indorsed to the Legal Service of the BIR for appropriate action.

On May 15, 2007, petitioner wrote a letter to Atty. Eufrocina S. Casasola, Vice-Chairman of the VAT Committee of the BIR, to follow-up the resolution of petitioner's request for change of registration from non-VAT to VAT taxpayer.

Despite numerous follow-ups by petitioner, the BIR has not resolved petitioner's application for VAT registration and change of tax type from percentage tax to VAT.

On February 24, 2009, in view of respondent's inaction, petitioner filed the instant Petition For Review with this Court, docketed as C.T.A. Case No. 7876.

In his Answer, respondent alleged by way of special and affirmative defenses, among others, that petitioner cannot be granted its application for change of tax type from percentage tax to VAT for the following reasons:

1) *Section 118 of RA 8424, as amended,* was not one of those sections of the NIRC that were subjected to amendments under *RA 9337,* which took effect on July 1, 2005, and such being the case, *Section 118* is still valid and existing;
2) that the CTA is bereft of jurisdiction over the case on account of the fact that the sole issue of change of tax type from percentage tax to VAT registration is not considered as "other matters", which may be given consideration by this Court;
3) contrary to the allegation of petitioner, respondent acted on the letter request of petitioner to apply for change of tax type from percentage tax to VAT registration. As correctly pointed-out in the letter/reply of respondent dated May 19, 2006 through the Office of the Large Taxpayers Assistance Division I, addressed to petitioner's representative, Mr. Rolando N. Santiago, Financial Services and Automation Manager, denying its request to change its registration from Non-VAT to VAT taxpayer, the option to register for VAT under RA 9337 as implemented by RR 16-2005 applies only to the following:

a) Any person who is a VAT-exempt under Section 4-109-1(B)(e) not required to register for VAT may, in relation to section 4-109-2, elect to be VAT-registered by registering with the RDO that has jurisdiction over the head of that person and pay the annual registration fee of P500.00 for every separate and distinct establishment.

b) Any person who is VAT-registered but enters into transactions which are exempt from VAT (mixed transactions) may opt that the VAT apply to his transactions which would have been exempt under Section 109 (1) of the Tax Code, as amended [Section 109(2) of RA 9337].

c) Franchise grantees of radio and/or television broadcasting whose annual gross receipts of the preceding year do not exceed Ten Million Pesos (P10,000,000.00) derived from the business covered by the law granting the franchise may opt for VAT registration. This option, once exercised, shall be irrevocable. (Section 119 of the Tax Code)"

4) The sole issue being raised by petitioner does not merit a long, tedious and full blown trial considering that the only purpose of the Petition for Review filed by petitioner is to determine whether petitioner is entitled to be a VAT registered taxpayer. To reiterate, said issue has already been settled by respondent in the aforementioned letter dated May 19, 2006 on the basis of the pertinent provisions of RA 9337 and the implementing Revenue Regulations No. 16-2005.

Petitioner presented Moises M. Visperas, Jr. and Rolando N. Santiago, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"G"*, inclusive of their submarkings, which were all admitted by the Court in its Resolution dated November 23, 2009.

On the other hand, counsel for respondent did not present any evidence and manifested that she is submitting the case for decision.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich the case shall be deemed submitted for decision.

Both parties having complied thereto, the petition was deemed submitted for decision on August 10, 2010.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT CASE.

II

WHETHER OR NOT THE INSTANT PETITION FOR REVIEW INVOLVES *"OTHER MATTERS ARISING UNDER THE NATIONAL INTERNAL REVENUE CODE OR*

OTHER LAWS ADMINISTERED BY THE BUREAU OF INTERNAL REVENUE" OVER WHICH THE HONORABLE COURT HAS JURISDICTION.

III

WHETHER OR NOT RESPONDENT'S INACTION ON PETITIONER'S APPLICATION FOR OPTIONAL VAT REGISTRATION IS TANTAMOUNT TO A DENIAL THAT MAY BE APPEALED TO THE HONORABLE COURT.

IV

WHETHER OR NOT PETITIONER HAS THE OPTION TO REGISTER AS A VAT TAXPAYER UNDER SECTION 236(H) OF THE TAX CODE.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO CHANGE ITS REGISTRATION FROM A PERCENTAGE TAXPAYER TO A VAT REGISTERED PERSON PURSUANT TO THE PROVISION OF SECTION 236 OF THE TAX CODE.

THE COURT'S RULING

We dismiss the petition.

Section 7(a)(2) of RA 9282, as amended, provides:

"SEC. 7. *Jurisdiction. – The CTA shall exercise:*

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) xxx xxx;

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(2) Inaction by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial; (Emphasis Supplied)

xxx xxx."

Corollary thereto, *Section 3(a)(2) of Rule 4 of the Revised Rules of the Court of Tax Appeals* provides:

"SEC. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) xxx xxx;

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action xxx" (Emphasis supplied)

Pursuant to the above provisions, the CTA has exclusive appellate jurisdiction to review by appeal, other matters arising under the *NIRC* or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case, the inaction shall be deemed a denial.

Petitioner's application for VAT registration and change of tax type from percentage tax to VAT is anchored on *Section 236 (H) of the NIRC of 1997, as amended*, which provides for optional VAT registration of VAT-exempt persons, to wit:

> "SEC. 236. *Registration Requirements.-*
>
> xxx xxx
>
> (H) Optional Registration for Value-added Tax of Exempt Person. – (1) Any person who is not required to register for value-added tax under Subsection (G) hereof may elect to register for value-added tax by registering with the Revenue District Office that has jurisdiction over the head office of that person, and paying the annual registration fee in Subsection (B) hereof."

In this regard, both *Section 7(a)(2) of RA 9282, as amended,* and *Section (3)(a)(2) of the 2005 Revised Rules of the CTA, as amended*, expressly provide that the CTA in Division shall exercise exclusive original or appellate jurisdiction to review by appeal the "inaction by the 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 NIRC or other laws administered by the BIR, where the NIRC or other applicable law provides a specific period for action xxx."

Pursuant to these provisions, what is appealable to the CTA in Division is the inaction by the 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 NIRC or other laws administered by the BIR, where the NIRC or other applicable law provides a specific period for action. A careful perusal of *Section 236 of the NIRC of 1997, as amended*, clearly shows that there is no specific period for the BIR to act on the application for optional registration for value-added tax of exempt person.

Pursuant to the above provisions, the alleged failure of the respondent to resolve petitioner's application for VAT registration and change of tax type from percentage tax to VAT cannot be considered as inaction of the Commissioner, that is appealable to this Court under *Section 7(a)(2) of RA 9282, as amended, and Section 3(a)(2) of the 2005 Revised Rules of the CTA, as amended,* for the simple reason that *Section 236 of the NIRC of 1997, as amended,* does not provide for a specific period for the Commissioner to act and resolve the application for change of tax type.

Clearly, this Court has no jurisdiction over the subject matter of the present Petition For Review.

With the conclusion thus reached, we find no need to discuss the other issues raised in this petition, for being moot and academic.

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of jurisdiction over the subject matter.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice