Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ROBERTO O. YANGCO,
Petitioner,

-versus-

THE REVENUE DISTRICT OFFICER OF REVENUE DISTRICT NO. 8 OF THE BUREAU OF INTERNAL REVENUE BAGUIO CITY, AND THE REGIONAL DIRECTOR OF REVENUE REGION NO. 2 OF THE BUREAU OF INTERNAL REVENUE, BAGUIO CITY,
Respondents.

CTA Case No. 9388

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
APR 05 2017 3:35 pm

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RESOLUTION

For this Court's resolution are the following:

1. Respondents' Motion to Dismiss, filed on February 16, 2017, sans petitioner's Comment as per Record Verification dated March 13, 2017;

2. Petitioner's Manifestation Re Unacted Upon Draft of Joint Stipulation of Facts and Issues, filed on March 16, 2017; and,

3. Parties' Joint Stipulation of Facts & Issues which was belatedly filed on March 27, 2017.

Motion to Dismiss

In the instant case, respondents move for the dismissal of above-captioned case on the following grounds:

A. The Petition for Review must be dismissed for failure to conform to rules regarding appeal to the Court of Tax Appeals (CTA); and

B. The present Petition for Review was filed out of time.

In support of the first ground, respondents claim that they were improperly impleaded since it is the Commissioner of Internal Revenue (CIR), and not the Regional Director and Revenue District Officer that must be impleaded in cases involving disputed assessments; that petitioner failed to disclose in the Verification and Certification of Non-Forum Shopping that a similar petition was filed and decided by the Regional Trial Court of Baguio City; and, that the Petition was devoid of any allegations showing the jurisdiction of the Court over the instant case, as required under Section (sic) 6 of the Revised Rules of the Court of Tax Appeals.

Anent the second ground, respondents aver that, if the protest is denied in whole or in part by the CIR's duly authorized representative, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from the date of the receipt of the said decision; or (ii) elevate his protest to the CIR through request for reconsideration within the same period pursuant to Revenue Regulations No. 12-99, in relation to Section 228 of the 1997 National Internal Revenue Code, as amended.

But in this case, respondents claim that, when petitioner received the respondents' June 26, 2013 decision denying his protest to the Formal Letter of Demand/ Final Assessment Notice on July 1, 2013, he had until July 31, 2013 to file his request for reconsideration. He filed one, however, on September 30, 2013, hence, it was filed out of time.

Respondents also submit that, even assuming that there was a valid protest filed before the CIR, the subject assessment has, again, attained finality when petitioner failed to appeal the Final Notice Before Seizure issued by respondent within the aforesaid period. Accordingly, petitioner had thirty days (30) from May 21, 2015 (date of receipt of FNBS), or until June 20, 2015 to elevate its appeal. However, it was only on July 20, 2016, that petitioner filed his Petition for Review with the Court of Tax Appeals.

Thus, based on the foregoing, respondents insist that the Court has no jurisdiction over the subject matter of the instant case.

We grant respondents' Motion to Dismiss.

It bears noting at the outset that the CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[1] The jurisdiction of the CTA is conferred by Republic Act (RA) No. 1125, as amended by RA No. 9282. The pertinent provisions are as follows:

> "SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (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 or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial;"

In relation thereto, Section 228 of the 1997 NIRC as amended, provides when and how an assessment may be protested, to wit:

> "SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds

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[1] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, Resolution dated April 24, 2007.

that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, that a pre-assessment notice shall not be required in the following cases:

xxx xxx xxx

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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.

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."

Moreover, Section 3 of Revenue Regulations (RR) No. 12-99 provides the following:

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

3.1 Mode of procedures in the issuance of a deficiency tax assessment: . . .

xxx xxx xxx

3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, 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. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> 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 date of receipt of the 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.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from 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.
>
> 3.1.6 Administrative Decision on a Disputed Assessment. — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision."

Applying the foregoing, records show that petitioner received the Formal Letter of Demand with Audit Result/Assessment (FLD) dated January 4, 2013 on January 10, 2013[2]. Pursuant to Section 228 of the 1997 NIRC, as amended, as well as Section 3.1.5 of RR No. 12-99, petitioner had thirty days, or until February 9, 2013, to file a protest. Since February 9, 2013, falls on Saturday, petitioner timely protested

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[2] As stated in the Annex E of the Petition, Docket, p. 39.

the subject assessment with the Regional Director on February 11, 2013.

However, petitioner's protest was denied by respondent RDO in a letter dated June 26, 2013 for lack of factual and legal basis. By such reason, petitioner elevated to the CIR his protest thru a letter dated September 30, 2013. [3]

Respondents are correct in pointing out that, even if we are to consider July 1, 2013 as the date of receipt of respondents' June 26, 2013 decision denying petitioner's protest to the FLD, petitioner's request for reconsideration would still be filed out of time since the last day to file the same would be on July 31, 2013. Consequently, petitioner belatedly filed his request for reconsideration on September 30, 2013.

Even assuming further that the period to appeal in the instant case was from the date of receipt of the Final Notice of Seizure dated May 19, 2015 on May 21, 2015[4], giving petitioner the last opportunity to settle his unpaid delinquent accounts on or before May 29, 2015, the judicial action taken by petitioner on July 20, 2016 was still filed beyond the 30-day period to appeal. That being the case, the assailed assessment became final and executory depriving the Court of authority to determine its validity.

All told, the CTA is bereft of jurisdiction to hear petitioner's judicial appeal considering that his Petition was filed beyond the period provided by law.

Having settled the foregoing, this Court finds it unnecessary to delve on the other issues submitted for resolution.

WHEREFORE, respondents' Motion to Dismiss is hereby **GRANTED**. Thus, petitioner's Manifestation Re Unacted Upon Draft of Joint Stipulation of Facts and Issues and belated filing of the parties' Joint Stipulation of Facts and Issues are hereby **RENDERED MOOT**.

SO ORDERED.

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[3] Par. 10 of the Petition, Id., p. 13.

[4] As stated in the last paragraph of respondents' Motion to Dismiss, Id., p. 167.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice