REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE AMUSEMENT AND GAMING CORPORATION,
Petitioner,

- versus-

THE BUREAU OF INTERNAL REVENUE, THE HON. COMMISSIONER OF INTERNAL REVENUE AND THE REGIONAL DIRECTOR, REVENUE REGION NO. 6, in their official capacities as Officers of the Bureau of Internal Revenue,
Respondent.

CTA EB No. 844
(CTA Case No. 7880)

Present:

Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

FEB 18 2013 [illegible] 2:00 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

The instant case is a petition for review under Section 18 of R.A. 1125, as amended by Section 11 of R.A. 9282, and Sec. 4(b), Rule 8, Revised Rules of the Court of Tax Appeals, which seeks to reverse and set aside the CTA First Division's Decision and Resolution denying petitioner's claim for exemption from the payment of the fringe benefits tax (FBT) for the taxable year 2004. Petitioner further moves for the suspension of tax collection against it.

The Facts

The facts, as found by the Division, are as follows:

> "Petitioner claims that it is a duly organized government-owned and controlled corporation existing

under and by virtue of Presidential Decree No. 1869, as amended, with business address at the 6th Floor, Hyatt Hotel and Casino, Pedro Gil corner M.H. Del Pilar Streets, Malate, Manila. It was created to regulate, establish and operate clubs and casinos for amusement and recreation, including sports gaming pools, and such other forms of amusement and recreation.

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is the Head of the Bureau of Internal Revenue (BIR) with authority among others to resolve protests on assessments issued by her office or her authorized representatives. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner provides a car plan program to its qualified officers under which sixty percent (60%) of the car plan availment is shouldered by petitioner and the remaining forty (40%) for the account of the officer, payable in five (5) years.

On October 10, 2007, petitioner received a Post Reporting Notice dated September 28, 2007 from BIR Regional Director Alfredo Misajon of Revenue Region 6, Revenue District No. 33, for an informal conference to discuss the result of its investigation on petitioner's internal revenue taxes in 2004. The Post Reporting Notice shows that petitioner has deficiencies on Value Added Tax (VAT), Withholding Tax on VAT (WTV), Expanded Withholding Tax (EWT), and Fringe Benefits Tax (FBT).

Subsequently, the BIR abandoned the claim for deficiency assessments on VAT, WTV, and EWT in the Letter to petitioner dated November 23, 2007 in view of the principles laid down in *Commissioner of Internal Revenue vs. Acesite Hotel Corporation* exempting petitioner and its contractors from VAT. However, the assessment on deficiency FBT subsists and remains due to date.

On January 17, 2008, petitioner received a Final Assessment Notice (FAN) dated January 14, 2008, with demand for payment of deficiency FBT for taxable year 2004 in the amount of P48,589,507.65.

> On January 24, 2008, petitioner filed a protest to the FAN addressed to Regional Director Alfredo Misajon of Revenue Region No. 6 of the BIR.
>
> On August 14, 2008, petitioner elevated its protest to respondent CIR in a Letter dated August 13, 2008, there being no action taken thereon as of that date.
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> In a Letter dated September 23, 2008 received on September 25, 2008, petitioner was informed that the Legal Division of Revenue Region No. 6 sustained Revenue Officer Ma. Elena Llantada on the imposition of FBT against it based on the provisions of Revenue Regulations (RR) No. 3-98 and that its protest was forwarded to the Assessment Division for further action.
>
> On November 19, 2008, petitioner received a letter from the OIC-Regional Director, Revenue Region No. 6 (Manila), stating that its letter protest was referred to Revenue District Office No. 33 for appropriate action."[1] (*Citations omitted*)

Petitioner filed its petition for review with the CTA Division on March 11, 2009, which was subsequently dismissed for having been filed out of time. Petitioner's motion for reconsideration was likewise denied for lack of merit.

The assailed Decision discussed the issue on the timeliness of the filing of the petition for review, *to wit*:

> "But while the administrative protest is deemed timely lodged, the same is not true with the instant Petition for Review.
>
> Section 228 of the NIRC states that if the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction of the CIR or her duly authorized representative may appeal to the CTA within 30 days from the lapse of the 180-day period.
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> This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith bars the appeal and deprives the CTA of jurisdiction to entertain and determine the correctness of the assessments. Such

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[1] *Rollo*, C.T.A. EB Case No. 844, pp. 139-141.

> period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.
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> As earlier stated, petitioner timely filed its administrative protest on January 24, 2008. In accordance with Section 228 of the Tax Code, respondent CIR or her duly authorized representative had 180 days or until July 22, 2008 to act on the protest. After the expiration of the 180-day period without action on the protest, as in the instant case, the taxpayer, specifically petitioner, had 30 days or until August 21, 2008 to assail the non-determination of its protest.
>
> Clearly, the conclusion that the instant Petition for Review was filed way beyond the reglementary period for appeal on March 11, 2009, effectively depriving the Court of jurisdiction over the petition, is inescapable."[2] (*Citations omitted*)

Petitioner now seeks recourse from the Court *En Banc* and prays for the setting aside of the Decision and Resolution issued by the CTA Division. Petitioner further prays that the Final Assessment Notice issued against it be set aside for being baseless. Incorporated into the petition is petitioner's motion to suspend tax collection.

Issues

Petitioner raises the following issues for resolution:[3]

1. Whether or not the CTA's First Division gravely erred in dismissing the petition for review for having been filed out of time.

2. Whether or not the First Division gravely erred in dismissing the (*sic*) when it failed to consider the full import of petitioner's tax exemption under its charter which necessarily includes its exemption from the fringe benefits tax (FBT).

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[2] *Rollo*, pp. 149-151.
[3] *Rollo*, p. 15.

3. Assuming that PAGCOR is not exempt from the FBT, whether or not the car plan extended to its officers inured to its benefit and it is required or necessary in the conduct of its business.

4. Assuming that petitioner is subject to the alleged deficiency FBT, whether or not it is only liable for the basic tax, i.e., excluding surcharge and interest.

Ruling of the Court

The petition has no merit.

Petitioner argues that the reckoning of the 180-day period from the time the protest was elevated to the CIR who failed to act on it; not from the time the protest was filed with the RD Revenue Region 6. Petitioner asserts that it is the CIR's inaction on PAGCOR's protest that serves as basis for the petition for review filed with the CTA.[4] On the other hand, respondent argues that the right to appeal decisions or inactions of the Commissioner of Internal Revenue is a statutory right that can only be invoked in accordance with the requisites provided by law.[5]

This particular issue has already been extensively discussed in the CTA First Division's Decision and Resolution. We agree with the findings made therein that petitioner timely filed its administrative protest on January 24, 2008. The CTA First Division then determined the last day for filing the petition for review from the date of the protest, *to wit*:

> "In accordance with Section 228 of the Tax Code, respondent CIR or her duly authorized representative had 180 days or until July 22, 2008 to act on the protest. After the expiration of the 180-day period without action on the protest, as in the instant case, the taxpayer, specifically petitioner, had 30 days or until August 21, 2008 to assail the non-determination of its protest.

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[4] *Rollo*, p. 18.
[5] *Rollo*, p. 303.

> Clearly, the conclusion that the instant Petition for Review was filed way beyond the reglementary period for appeal on March 11, 2009, effectively depriving the Court of jurisdiction over the petition is inescapable."[6]

Petitioner would have this Court reckon the 180- and 30-day periods from the time it elevated its protest to the CIR.

We cannot agree. The protest filed before the Regional Director is a validly filed protest. Elevating the same to the CIR is not a step espoused in the procedure for protesting an assessment. It is an unnecessary and superfluous act. As explained by the CTA First Division:

> "As a general rule, respondent CIR may delegate any power vested upon her by law to Division Chiefs or to officials of higher rank. She may also delegate the authority to make tax assessments to subordinate officers which has the same force and effect as the ones she herself issued, if not reviewed or revised by her, as obtaining in this case. A request for reconsideration of the tax deficiency assessment issued in the manner described above should be filed within thirty (30) days from the taxpayer's receipt thereof, otherwise, the decision becomes final, unappealable, therefore, demandable.
>
> Since the issuance of the FAN by Regional Director Misajon is deemed a valid delegation of authority, it necessarily follows that the administrative protest was validly and seasonably filed on January 24, 2008."[7]

As such, the 180-day period within which the protest must be acted upon should be counted from the date when it was filed, which was on January 24, 2008. There is no basis to count the 180-day period from the time petitioner elevated its protest to the CIR.

As another point, petitioner argues that since a reinvestigation was opened, the assessment did not become final and executory, pursuant to Section 223 of the NIRC, which suspends the running of the three-year prescriptive period during a reinvestigation. /

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[6] *Rollo*, pp. 150-151.
[7] *Rollo*, pp. 149.

We disagree. As aptly stated by the CTA First Division, Section 223 "*applies only to cases where the issue is whether the government has timely issued an assessment within the three-year prescriptive period provided by law.*" [8] What is suspended here is the period within which the BIR can make assessments on a certain taxpayer. A request for reinvestigation may only happen upon the issuance of an assessment within the three-year prescriptive period. The reinvestigation of this *prior assessment* suspends the prescriptive period in order to pave the way for a *new* or *revised* assessment [9], or a decision sustaining the prior assessment. However, the reinvestigation does not automatically render the *prior assessment* ineffective as the petitioner seems to imply.[10] Section 223 does not operate on the periods and remedies available to the taxpayer when protesting an assessment.

Clearly, if petitioner's basis for appealing to the CTA is the inaction on its protest, the judicial appeal was filed out of time in light of the foregoing discussion.

The remaining issues shall no longer be discussed.

WHEREFORE, premises considered, the instant Petition for Review is hereby DISMISSED for lack of merit. The Decision and Resolution dated July 6, 2011 and October 18, 2011, respectively, are hereby AFFIRMED.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

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

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[8] *Rollo*, p. 192.
[9] *Continental Micronesia, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case 6191, March 22, 2006.
[10] *Rollo*, pp. 19-20, paragraph 44.

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice