REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MEDICARD PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9049

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 23 2015
11:16 a.m.

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RESOLUTION

On May 15, 2015, the Court received petitioner Medicard Philippines, Inc.'s (Medicard's) "Petition for Review" praying that judgment be rendered: 1) declaring that respondent's right to assess petitioner for any deficiency VAT for taxable year 2007 is barred by prescription; 2) declaring that petitioner is not liable for deficiency VAT for the taxable year 2007 in the aggregate amount of ₱582,823,612.22, inclusive of interest and compromise penalty; and 3) ordering the withdrawal and cancellation of the subject FAN/FLD.

However, a perusal of the Petition shows that there are certain material averments lacking that would necessarily determine the jurisdiction of this Court over the subject matter. The settled rule is that the jurisdiction of the court over the subject matter is determined by the allegations of the complaint.[1] Basic is the law on procedure is the doctrine that the jurisdiction of a court over the subject-matter of an action is conferred only by the Constitution or the law and that the Rules of Court yield to substantive law, in this case, the Judiciary Act and B.P. Blg. 129, both as amended, and of which jurisdiction is only a part. Jurisdiction cannot be fixed by the agreement of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or

[1] Regalado, Florenz D., Remedial Law Compendium, Vol. I, 6th Ed., 1997, citing *Edward J. Nell & Co. vs. Cubacub*, L-20843, June 23, 1965; *Time, Inc. vs. Reyes, et. al.*, L-28882, May 31, 1971, *Ganadin vs. Ramos, et. al.*, L-23547, September 11, 1980.

omission of the parties; neither can it be conferred by the acquiescence of the court.[2]

Republic Act (RA) No. 1125, as amended by RA No. 9282, an RA No. 9503 provides for the Court's jurisdiction in this particular matter in Section 7(a)(1) thereof, to wit:

"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 Code or other laws administered by the Bureau of Internal Revenue; x x x"

Likewise, Section 3(a)(1) of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals under "Jurisdiction of the Court" provides:

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

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

(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 Code or other laws administered by the Bureau of Internal Revenue; x x x"

On the other hand, petitioner is launching its appeal from a denial of its protest of an assessment provided for in Section 228 of the NIRC, to wit:

"SECTION 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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[2] *Ibid.* citing *De Jesus, et al. vs. Ramirez*, et. al., L-26816, February 28, 1967; *Calimlim, et al. vs. Ramirez, et al.*, L-34363, November 19, 1982.

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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."

In *Commissioner of Internal Revenue vs. Sarangani Resources Corporation*[3], promulgated on April 28, 2015, this Court had occasion to rule on the construction of the 180-day period provided by Section 228 for the CIR or her authorized representative to decide the protest, thus:

"It must be stressed that Section 228 of the NIRC of 1997, as amended, provides only for <u>one</u> 180-day period for the CIR or her authorized representative to decide the protest. Thus, RR No. 12-99, which implements Section 228, does not provide for a fresh or separate 180-day period for the CIR to decide the appealed decision of her authorized representative.

A plain reading of Section 228 of the NIRC of 1998, as amended, and Section 3.1.5 of RR No. 12-99 reveals that there is only <u>one</u> '180-day period' which shall be counted from the date of submission of the relevant supporting documents. The date of

[3] CTA EB No. 1098 (CTA Case No. 8105), April 28, 2015.

submission of the relevant supporting documents, as expressly provided in Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99, shall be within sixty (60) days from the filing of the protest. There is no mention in either Section 228 of the NIRC of 1997, as amended, nor in Section 3.1.5 of RR No. 12-99, that upon appeal to the CIR of the decision of her duly authorized representative, the taxpayer may submit additional document or that the taxpayer is given a fresh period of 60 days to submit such additional supporting documents."

The relevant dates as averred in the Petition are as follows:

DATE	INCIDENT
November 22, 2013	Petitioner received the Final Assessment Notice (FAN)/Final Letter of Demand (FLD).
December 20, 2013	Protest of FAN/FLD.
April 11, 2014	Final Decision on Disputed Assessment (FDDA) issued.
May 9, 2014	Elevated protest to the Commissioner of Internal Revenue (CIR).
April 14, 2015	CIR denied protest.
May 15, 2015	Appeal to CTA via Petition for Review.

From the foregoing, we see that the protest of the assessment issued on November 22, 2013 was done within the thirty (30)-day period upon receipt of the assessment, or on December 20, 2013, as provided for by Section 228 of the NIRC.

Within sixty (60) days after filing of the protest, or until February 18, 2014, petitioner ought to have submitted all relevant supporting documents. It is from this date that Section 228 grants the CIR 180 days to decide on the protest, or in case of her inaction, grants petitioner recourse to this Court within thirty (30) days from receipt of the decision or upon the lapse of 180 days.

While petitioner failed to aver when the relevant supporting documents were submitted, the starting point of counting 180 days therefrom, even if petitioner submitted the relevant supporting documents on the very last day allowed, February 18, 2014, the relevant dates show that this Petition was filed out of time.

Counting 180 days after February 18, 2014, the CIR had until August 17, 2014 to decide the protest. In case of the CIR's inaction, petitioner has thirty (30) days from the lapse of the 180 days or until September 16, 2014 to file its Petition for Review with this Court. Petitioner filed its Petition for Review on May 15, 2015, eight months late. This Court has no jurisdiction over the same.

WHEREFORE, premises considered, the petitioner's "Petition for Review" is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice