REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MISSOURI SQUARE, INC., *Petitioner,*	**CTA Case No. 8707**
	Members:
- versus-	**Castañeda, Jr.,** *Chairperson* **Casanova,** and **Cotangco-Manalastas,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 1 2 2016 10:15 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

Before this Court is a Petition for Review[1] filed by Missouri Square, Inc. on September 12, 2013, praying that judgment be rendered declaring it not liable for deficiency income tax and deficiency value-added tax (VAT) assessments, in the amount of ₱1,618,397.77 and ₱247,281.58, respectively, inclusive of interests, for taxable year ending December 31, 2009.

FACTS

Petitioner Missouri Square, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at No. 101 Connecticut St. corner Missouri St., Greenhills, San Juan.[2]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law with authority to assess national internal revenue taxes. She holds

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[1] Docket, vol. I, pp. 15-28.
[2] Exhibit "P-8", docket, vol. II, p. 738.

office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 14, 2013, petitioner received a Preliminary Assessment Notice[3] (PAN) dated January 8, 2013[4] from respondent, finding petitioner liable for deficiency income tax in the amount of ₱1,589,085.10 and VAT in the amount of ₱242,924.19, for taxable year ending December 31, 2009.

Thereafter, on January 21, 2013, petitioner received a Final Assessment Notice[5] (FAN) and Formal Letter of Demand[6] (FLD), with attached Details of Discrepancies[7] from respondent, assessing petitioner for deficiency income tax and VAT, in the amount of ₱1,618,397.77, and ₱247,281.58, respectively, inclusive of interest, for taxable year 2009.

On January 23, 2013, petitioner wrote to respondent, indicating that the letter should be considered as its protest letter regarding the result of the audit and examination of its books for the year 2009 based on the PAN.[8]

On August 15, 2013, petitioner received respondent's Preliminary Collection Letter[9], demanding for the payment of petitioner's alleged deficiency income tax and VAT for taxable year 2009 in the total amount of ₱1,865,679.35, inclusive of interests.

Then, on September 4, 2013, petitioner received the Final Notice before Issuance of Warrant of Distraint and Levy[10].

Accordingly, petitioner filed the instant Petition for Review before this Court on September 12, 2013[11].

In her Answer[12] filed on November 4, 2013, respondent interposed Special and Affirmative Defenses, alleging, among

[3] Exhibit "P-4", docket, vol. I, pp. 369-372, dated January 8, 2012.
[4] Par. b, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, vol. II, p. 595. However, the PAN was stamped with the date "JAN 08 2012".
[5] Exhibits "P-5" and "P-5-a", docket, vol. I, pp. 373-374.
[6] Exhibit "P-5-b", docket, vol. I, pp. 375-376.
[7] Exhibit "P-5-c", docket, vol. I, pp. 377-378.
[8] Exhibits "P-6" and "P-6-1", docket, vol. I, pp. 379-380.
[9] Exhibit "P-3", docket, vol. I, p. 32.
[10] Exhibit "P-7", docket, vol. I, p. 104; Petitioner's Memorandum, docket, vol. II, p. 893.
[11] Docket, vol. I, p. 15.
[12] Docket, vol. I, pp. 228-231.

others, that following the periods provided for in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, from January 23, 2013 (the date of petitioner's filing of protest), it had until March 24, 2013 to submit relevant documents and from March 24, 2013, the Commissioner had until September 20, 2013 to issue her decision. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. Therefore, it had until October 20, 2013 within which to elevate the case to this court. Moreover, petitioner filed a protest against the PAN, not the FAN, contrary to Revenue Regulations (RR) No. 12-99. As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.

The case was set for a pre-trial conference on March 13, 2014.[13] Thus, both parties filed their Pre-Trial Briefs[14] on March 7, 2014.

On July 4, 2014, the parties filed their Joint Stipulation of Facts and Issues[15]; which was adopted by the Court in the Pre-Trial Order[16] dated July 10, 2014.

During trial, petitioner presented the following witnesses: (1) Ms. Ma. Milagros F. Padernal[17] – Independent Certified Public Accountant (CPA); and (2) Ms. Myliene S. Breis[18] – petitioner's accountant.

Petitioner formally offered its documentary evidence on November 11, 2014,[19] with a Supplemental Formal Offer of Evidence filed on April 15, 2015[20], which the Court admitted in the Resolution dated December 1, 2014[21] and June 23, 2015[22]

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[13] Minutes of the Hearing dated January 30, 2013, docket, vol. I, p. 247.
[14] Pre-Trial Brief for the Petitioner, docket, vol. I, pp. 248-255; Respondent's Pre-Trial Brief, docket, vol. I, pp. 256-259.
[15] Docket, vol. II, pp. 595-601.
[16] Docket, vol. II, pp. 608-613.
[17] Exhibit "P-31", docket, vol. II, pp. 646-671; Minutes of the Hearing dated October 13, 2014, docket, vol. II, p. 680.
[18] Exhibit "P-12", docket, vol. I, pp. 327-350; Minutes of the Hearing dated October 13, 2014, docket, vol. II, p. 680.
[19] Petitioner's Formal Offer of Evidence, docket, vol. II, pp. 686-710.
[20] Petitioner's Supplemental Formal Offer of Evidence (As per Resolution dated 7 April 2015), docket, vol. II, pp. 878-881.
[21] Docket, vol. II, pp. 718-720.
[22] Docket, vol. II, pp. 888-890.

except for Exhibits "P-6-a-3", P-6-a-3-a", "P-6-h", "P-6-h-1", P-6-d-3", "P-6-g", "P-6-g-1", "P-6-g-5", "P-6-g-6" and "P-6-g-7".

On the other hand, respondent presented the following witnesses during trial: (1) Revenue Officer Maritess M. Aseo[23]; and (2) Revenue Officer Ellen T. Espiritu[24]. Moreover, she filed her Formal Offer of Evidence[25] on February 12, 2015, which the Court admitted in the Resolution[26] dated April 7, 2015 except for Exhibits "R-7" to "R-10".

As directed by the Court[27], petitioner and respondent filed their Memoranda on July 22, 2015[28] and on July 31, 2015[29], respectively.

Consequently, the case was declared submitted for decision on August 4, 2015.[30]

ISSUE

The sole issue[31] submitted by the parties for this Court's resolution is as follows:

> "Whether or not petitioner is liable for deficiency income tax and value-added tax for the taxable year ending 31 December 2009."

DISCUSSION/RULING

Petitioner insists that respondent's finding of income tax deficiency should be reversed. It maintains that the alleged unaccounted source of cash in the amount of ₱135,162.60 is without basis. Moreover, it avers that all salaries, wages, and benefits paid by petitioner were properly subjected to

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[23] Exhibit "R-11", docket, vol. I, pp. 262-270; Minutes of the Hearing dated December 1, 2014, docket, vol. II, p. 716.
[24] Exhibit "R-12", docket, vol. II, pp. 781-787; Minutes of the Hearing dated February 2, 2015, docket, vol. II, p. 798.
[25] Docket, pp. vol. II, 801-805.
[26] Docket, pp. vol. II, 873-876.
[27] Resolution dated June 23, 2015, docket, vol. II, pp. 888-890.
[28] Petitioner's Memorandum, docket, vol. II, pp. 891-916.
[29] Memorandum, docket, vol. II, pp. 918-927.
[30] Resolution dated August 4, 2015, docket, vol. II, p. 929.
[31] Joint Stipulation of Issues, Joint Stipulation of Facts and Issues, docket, vol. II, p. 596.

withholding tax, contrary to respondent's claim that there is a discrepancy between the salaries, wages and benefits reported by petitioner in its 2009 Audited Financial Statements (AFS) and in its Alphalist of employees. Also, all income payments for the year 2009 were duly subjected to withholding tax by petitioner. Petitioner adds that its creditable tax withheld in the amount of ₱419,451.22 is duly supported by appropriate documents.

Furthermore, petitioner argues that respondent's finding of VAT deficiency is without basis and should be reversed. It contends that respondent's assessment of alleged sales/revenues/receipts for the year 2009 not subjected to VAT is erroneous because based on the verification and examination by its accountant, Ms. Padernal, all sales/revenues/receipts reported by petitioner per VAT Returns, Income Tax Returns, and AFS were subjected to VAT. Petitioner also insists that it has no unaccounted sources of cash in the amount of ₱135,162.60. It further asserts that it did not claim input tax on the alleged unsupported expenses of ₱922,101.52, which warrants the reversal of alleged input tax claimed in the amount of ₱110,652.18.

Finally, petitioner posits that respondent failed to establish, by competent evidence, the factual and legal bases of the assessment issued against petitioner, as the witnesses presented by her are both incompetent to testify on such matters.

Respondent, on the other hand, maintains that the Court of Tax Appeals (CTA) has no jurisdiction over the case on the ground that the subject assessments had become final, executory and enforceable for failure of petitioner to comply with the period required by law in filing an administrative protest, pursuant to Section 3.1.5 of RR No. 12-99, implementing Section 228 of the NIRC of 1997, as amended. She posits that since petitioner received the FLD and the FAN on January 21, 2013, petitioner had only until February 20, 2013 to file its protest letter.

Moreover, respondent contends that she complied with the due process requirement under Section 228 of the NIRC of

1997, as amended, and RR No. 12-99. Therefore, petitioner is liable for deficiency income tax and VAT for taxable year 2009.

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[32] 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:
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> (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;
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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 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;" *(Emphasis supplied)*

Meanwhile, Section 228 of the NIRC of 1997, 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 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:
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> xxx xxx xxx

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

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."

It must be noted that this Court has consistently held that the required protest contemplated by the afore-quoted Section 228 of the NIRC of 1997, as amended, is the one assailing the FAN and the FLD, and not the PAN.[33] Moreover, RR No. 12-99, which implements Section 228 provides that:

"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

3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice

[33] *Allied Banking Corporation vs. The Commissioner of Internal Revenue*, CTA EB No. 157, January 2, 2007; *Allied Banking Corporation vs. The Commissioner of Internal Revenue*, CTA EB No. 167, August 23, 2006; *Cebu Rosver Pawnshop, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6425, March 17, 2003.

(PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

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** xxx.

xxx xxx xxx

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 (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." *(Emphasis supplied)*

From the foregoing, it is clear that the protest referred to in a disputed assessment that is properly appealable to the CTA is a protest on the FAN and the FLD, as opposed to a protest on the PAN.[34]

In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[35], the Supreme Court held that an assessment that was not administratively protested within 30 days from receipt shall become final and unappealable, thus, depriving the CTA of its jurisdiction to review the correctness of the assessment, to wit:

> "The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments:"

In the instant case, records show that petitioner filed a letter-protest[36] only on the PAN. The opening paragraph of the

[34] *Allied Banking Corporation vs. The Commissioner of Internal Revenue*, CTA EB No. 157, January 2, 2007.
[35] G.R. No. 134062, April 17, 2007.
[36] Exhibits "P-6" and "P-6-1", docket, vol. I, pp. 379-380.

said letter specifically stated that "[i]n response to the PRELIMINARY ASSESSMENT NOTICE that we received last January 14, 2013 xxx" while the last paragraph stated that "[p]lease consider this as our protest letter regarding the result of the audit and examination of our books for the year 2009 based on the preliminary assessment notice." Clearly, the protest filed by petitioner was against the PAN and not the FAN and FLD.

Petitioner received the FAN and FLD on January 21, 2013 and counting 30 days therefrom, petitioner had until February 20, 2013 to file its protest. Unfortunately, petitioner no longer filed a protest on the FAN and FLD. By failing to do so, the assessment became final, executory and demandable.

Consequently, there was no disputed assessment to speak of that would confer jurisdiction upon the Court in Division to try and hear the case as provided in Section 7(a)(1) of Republic Act No. 9282.[37]

Based on the foregoing discussion, the Court finds that petitioner's failure to file its administrative protest within the 30-day statutory period would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessment.[38]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.	(On Wellness Leave)
JUANITO C. CASTAÑEDA, JR.	**CAESAR A. CASANOVA**
Associate Justice	Associate Justice

[37] *Allied Banking Corporation vs. The Commissioner of Internal Revenue*, CTA EB No. 157, January 2, 2007.

[38] *Subic Bay Motors vs. Commissioner of Internal Revenue*, CTA EB No. 98, October 11, 2005, citing *Commissioner vs. Western Pacific Corp.*, L-18804, May 27, 1965.

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice