REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

BRAVO ALABANG, INC., Petitioner,	**CTA Case No. 8654**
- versus -	***Members:***
	DEL ROSARIO, *Chairperson*, **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:***
	JAN 20 2016 ; 1:27 p.m.

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DECISION

UY, *J*.:

This is a Petition for Review filed on May 17, 2013 by Bravo Alabang, Inc., petitioner, against the Commissioner of Internal Revenue, respondent, praying that judgment be rendered declaring the deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and compromise penalty assessments issued against it for the year 2008 in the amounts of ₱3,986,213.16, ₱165,859.47, ₱257,993.36, and ₱12,000.00, respectively, inclusive of interest, null and void.

THE FACTS

Petitioner Bravo Alabang, Inc. is a corporation established and existing under the laws of the Republic of the Philippines.[1] Its mailing address is at No. 156 Guava Drive, Ayala Alabang,

[1] Securities and Exchange Commission, Certificate of Registration No. A199815597, BIR Records, p. 50.

Muntinlupa City.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, authorized to perform the duties of her Office, including, *inter alia*, the power to decide on any disputed deficiency internal revenue tax assessments or other charges, or penalties imposed in relation thereto, pursuant to the provisions of the National Internal Revenue Code (NIRC), as amended.[3]

On December 5, 2011, respondent issued a Preliminary Assessment Notice (PAN) dated December 2, 2011 against petitioner[4] informing petitioner that it is liable for alleged deficiency income tax, VAT, EWT, withholding tax on compensation (WTC), and compromise penalty.

Thereafter on December 27, 2011, respondent issued Formal Assessment Notices (FAN),[5] assessing petitioner for alleged deficiency income tax, VAT, EWT, WTC, and compromise penalty in the amounts of ₱4,280,957.52, ₱142,765.11, ₱223,092.41, ₱507,578.41, and ₱14,000.00, respectively. The said FAN was received by petitioner on January 2, 2012.[6] Petitioner then filed before the Bureau of Internal Revenue (BIR) its Protest Letter dated January 31, 2012 against the FAN on February 7, 2012.[7]

Respondent issued the Final Decision on Disputed Assessment[8] (FDDA) with Details of Discrepancies on April 8, 2013[9], which petitioner received on April 18, 2013, assessing the latter for deficiency income tax, VAT, EWT, and compromise penalty in the respective amounts of ₱3,986,213.16, ₱165,859.47, ₱257,993.36, and ₱12,000.00, inclusive of interest, for taxable year 2008.[10]

Consequently, petitioner filed the instant Petition for Review[11] before this Court on May 17, 2013.

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[2] Petition for Review, p. 1, Docket, p. 6.
[3] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 107.
[4] Exhibit "R-8", BIR Records, pp. 172 to 178.
[5] Exhibit "R-9", BIR Records, pp. 188 to 199.
[6] Exhibit "R-10", BIR Records, p. 223.
[7] Exhibits "P-8" to "P-8-e", BIR Records, pp. 241 to 246.
[8] Exhibits "P-10" to "P-10-a", BIR Records, pp. 278 to 279.
[9] Exhibits "P-11" to "P-11-b", BIR Records, pp. 275 to 277.
[10] Pars. 2 and 3, Stipulation of Facts, JSFI, Docket, p. 107.
[11] Docket, pp. 6 to 15.

Upon respondent's Motion for Additional Time filed on July 15, 2013,[12] and within the extended time granted by the Court in the Resolution dated July 25, 2013,[13] respondent filed her Answer[14] through registered mail on August 13, 2013, interposing the following special and affirmative defenses:

> "7. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
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> 8. Section 228 of the 1997 Tax Code partly reads as follows:
>
> > 'Sec. 228. *Protesting Assessment*
> >
> > 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.'
>
> 8.1 Implementing the aforesaid provision, Section 3, 3.1.5 of Revenue Regulations No. 12-99 dated September 6, 1999, provides that that taxpayer shall submit the required documents in support of its protest within sixty (60) days from the date of filing of the protest, otherwise, The phrase 'submit the required documents' includes submission or presentation of pertinent

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[12] Docket, pp. 27 to 28.
[13] Docket, p. 31.
[14] Docket, pp. 32 to 36.

documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation. In the instant case, despite the length of time given to herein petitioner, it failed to submit the required documents in support of its protest against the Formal Assessment Notice. Consequently, the assessment became final, executory and demandable. As such, this Honorable Court has no jurisdiction to act on the instant petition. In fact, one of the evidences for the petitioner which was even attached as Annex 'A' in its Petition for Review categorically confirmed the non-submission of the supporting papers in this wise:

x x x

> Relative to the above-cited provisions and with reference also to the report submitted by Revenue Officer Eugene R. Garcia of Revenue District Office (RDO) No. 53B, Muntinlupa City, this Region, you failed to submit the required documents relative to your protest despite of our letters dated February 15, 2012 and July 15, 2012, except for the alphabetical list of employees subjected to withholding tax x x x

x x x

9. Further yet, Section 7 and 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282 and RA No. 9503, which enumerates the cases over which the Court of Tax Appeals has appellate jurisdiction, relevantly states:

> '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;
>
> (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 Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> 'Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

10. Indubitably, the Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction (Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150). Its jurisdiction may only invoked in the particular instances enumerated in Section 7 of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282 (Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA EB. No. 44, May 10, 2005). Verily, Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals provides that only decisions of the Commissioner of Internal Revenue (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 National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue can be subject of appeal before this Court. And considering that the petitioner failed to file the necessary documents, the assessment in the instant case already became final and executory, and demandable.

> 11. Over and above all, petitioner should be reminded that the taxes are important because it is the lifeblood of the government and should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.- **Non videtur quisquam id capere quod ei necesse est alii restitutere.**"

The pre-trial conference was initially set on October 11, 2013.[15] However, upon respondent's Motion To Reset Pre-Trial Conference filed on September 6, 2013, which was granted by the Court, the pre-trial conference was re-scheduled to November 8, 2013.[16] Petitioner filed its Pre-Trial Brief on November 4, 2013,[17] while respondent filed her Pre-Trial Brief on November 7, 2013.[18]

As directed by the Court, the parties submitted their Joint Stipulation of Facts and Issues on February 17, 2014[19] and the same was approved in the Resolution dated May 7, 2014.[20] Thereafter, the Court issued its Pre-Trial Order pursuant thereto on May 9, 2014.[21]

During trial, petitioner presented its sole witness, Rodrigo Bacon, Jr., the Accounting Manager of Merry Cooks, Inc..[22] Then on March 5, 2014, petitioner filed its Formal Offer of Evidence, offering in evidence, Exhibits "P-1" to "P-12-a", inclusive of sub-markings.[23] In the Resolution dated May 12, 2014, all of the said Exhibits were admitted by the Court.[24]

Respondent, for her part, presented also a sole witness, Aguida C. Carranza.[25] The Formal Offer of Evidence (for the respondent) was filed through registered mail on July 2, 2014, offering, as her evidence, Exhibits "R-1" to "R-11", inclusive of sub-markings.[26] The

[15] Notice of Pre-Trial Conference, Docket, p. 38.
[16] Order dated September 10, 2013.
[17] Docket, pp. 52 to 56.
[18] Docket, pp. 57 to 59.
[19] Docket, pp. 107 to 109.
[20] Docket, p. 132.
[21] Docket, pp. 134 to 142.
[22] Minutes at the hearing held on February 18, 2014, Docket, pp. 110 to 111.
[23] Docket, pp. 115 to 119.
[24] Docket, pp. 144 to 145.
[25] Minutes at the hearing held on June 17, 2014, Docket, pp. 149 to 150.
[26] Docket, pp. 157 to 161.

Court likewise admitted said Exhibits in the Resolution dated September 1, 2014.[27]

The case was submitted for decision on February 4, 2015[28] taking in consideration the filing of respondent's Memorandum through registered mail on December 10, 2014[29] and the Records Verification dated January 29, 2014[30] stating that petitioner failed to file its memorandum.

Hence, this Decision.

THE ISSUES

The issues[31] submitted by the parties for this Court's resolution are as follows:

> "1. Whether or not the alleged increase in the amount of cash of petitioner for taxable year 2008 is part of its gross income subject to tax?
>
> 2. Whether or not the Details of Discrepancies on the final deficiency value-added tax and expanded withholding tax of the Petitioner for the year ended December 31, 2008 has complied with the requirements under Section 228 of the National Internal Revenue Code, as amended?
>
> 3. Whether or not the deficiency income tax, value-added tax, and expanded withholding tax assessments were arrived at pursuant to a valid and proper audit examination of petitioner's financial accounting records of the Petitioner?
>
> 4. Whether or not the assessment and audit of petitioner corporation(s) for its 2008 taxable year has become final and executory?
>
> 5. Whether or not the instant petition for review is already barred by prescription? and

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[27] Docket, pp. 167 to 168.
[28] Resolution dated February 4, 2015, Docket, p. 185.
[29] Docket, pp. 177 to 181.
[30] Docket, p. 183.
[31] Issues, JSFI, Docket, p. 108.

6. Whether or not petitioner is liable for the deficiency taxes as embodied in the Formal Assessment Notice dated December 27, 2011?"

The above-enumerated issues may be summarized as follows:

1. Whether or not the deficiency tax assessments for taxable year 2008 issued against, and received by, petitioner, have become final, executory, and demandable; and

2. And if the answer to the first issue is in the negative, whether or not petitioner is liable to pay the amounts of ₱3,986,213.16, ₱165,859.47, ₱257,993.36, and ₱12,000.00, allegedly representing petitioner's deficiency income tax, VAT, EWT, and compromise penalty, respectively, for taxable year 2008.

Petitioner's arguments:

In its Petition for Review, petitioner argues that respondent (through her Regional Director) has confirmed that the letter dated April 8, 2013 was her final decision on the protest against the deficiency income tax, VAT, EWT and compromise penalty assessments for the year 2008 as manifested therein; and as such, petitioner has the right to appeal to this Court said final decision of the duly authorized representative of respondent, denying the protest letter of petitioner pursuant to Section 228 of the NIRC, as amended.

Moreover, anent the subject assessments, petitioner contends as follows:

1. The deficiency income tax assessment is without merit as it arose on the alleged unsupported source of cash. A mere discrepancy arrived at through the interpolation of the input tax of petitioner in a taxable year does not necessarily mean that it is an unaccounted source of input tax and considered as taxable income;

2. The deficiency VAT assessment did not provide for the details (*i.e.*, the name of the supplier, the reason for disallowance of input tax, and the amount of input tax disallowed) of the alleged unaccounted source of input tax from which the assessment arose from, in violation of Section 228 of the NIRC, as amended, requiring that the *"taxpayer shall be informed in writing of the law and the facts on which the assessment is*

made";

3. The deficiency EWT assessment did not provide the details and facts on the amount of payments which allegedly was not subjected by petitioner to withholding tax, which was likewise in violation of petitioner's right to be informed of the facts on which the assessment is made under the said Section 228; and

4. Petitioner has provided respondent of substantially, if not entirely, all of the documents the former was required to submit. There is therefore no excuse that the audit examination of the financial accounting records of petitioner for the year 2008 be undertaken through an "interpolation" process.

Respondent's counter-arguments:

Respondent avers that for failure of petitioner to file a protest within the 30-day mandatory period from receipt of the Assessment Notices dated December 27, 2011, together with the FAN (Parts 1 and 2) also dated December 27, 2011, with its corresponding Details of Discrepancies, the assessment had become final, executory and demandable.

According to respondent, this Court has no jurisdiction to entertain the instant case for petitioner's failure to comply with the period required by law in filing an administrative protest, pursuant to Section 228 of the NIRC of 1997 and Section 3.1.5 of Revenue Regulations (RR) No 12-99.

In this connection, respondent points out that petitioner failed to file an administrative protest within thirty days from January 2, 2012, the date of receipt of the FAN. As verified and confirmed by respondent's witness, petitioner purportedly received the FAN on January 2, 2012, and the latter filed its protest only on February 7, 2012. Respondent posits that the administrative protest of petitioner was filed thirty-six (36) days after the receipt of the said FAN.

Lastly, respondent stresses that petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance; and that taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.

THE COURT'S RULING

The subject deficiency tax assessments have become final, executory and demandable. Hence, the instant Petition for Review will not prosper.

Section 228 of the NIRC of 1997 provides as follows:

> "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: xxx
>
> 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.
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> 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; **<u>otherwise, the assessment shall become final</u>.**
>
> 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." *(Emphases and underscoring supplied)*

In relation thereto, Section 3.1.5 of Revenue Regulations (RR) No. 12-99[32] reads:

> "SECTION 3. *Due Process Requirement 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.** xxx.
>
> xxx xxx xxx
>
> **<u>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</u>.**
>
> xxx xxx xxx." *(Emphases and underscoring supplied)*

From the foregoing, it is clear that a taxpayer may protest the deficiency tax assessment within thirty (30) days from date of receipt of the Formal Letter of Demand (FLD) and Assessment Notice. However, if the taxpayer fails to file a valid protest against the said FLD and Assessment Notice within said period, the deficiency tax assessment shall become final, executory, and demandable.

Records reveal that petitioner received the FAN on January 2, 2012.[33] Accordingly, petitioner had thirty (30) days from January 2, 2012 or until February 1, 2012 within which to file an administrative protest.

Further scrutiny of the records show that petitioner filed its protest on February 7, 2012 as shown by the BIR stamping of said

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[32] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty.

[33] Exhibit "R-10", BIR Records, p. 223.

date of receipt on petitioner's Protest Letter dated January 31, 2012 marked as Exhibit "P-8" [34]. Clearly, the filing thereof was six (6) days after the lapse of the said 30-day period (February 1, 2012) to file an administrative protest.

In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*,[35] the Supreme Court, in no uncertain terms, stated that the failure to protest the assessment within the thirty (30) day period provided by Section 270 (now Section 228) of the Tax Code, means that the assessment becomes final and unappealable, to wit:

> "Considering that the October 28, 1988 notices were valid assessments, BPI should have protested the same within 30 days from receipt thereof. The December 10, 1988 reply it sent to the CIR did not qualify as a protest since the letter itself stated that "[a]s soon as this is explained and clarified in a proper letter of assessment, we shall inform you of the taxpayer's decision on whether to pay or protest the assessment." Hence, by its own declaration, BPI did not regard this letter as a protest against the assessments. As a matter of fact, BPI never deemed this a protest since it did not even consider the October 28, 1988 notices as valid or proper assessments.
>
> **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:
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>> Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue

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[34] Exhibits "P-8" to "P-8-e", BIR Records, pp. 241 to 246.
[35] G.R. No. 134062, April 17, 2007.

> examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments." *(Bold emphasis supplied.)*

Accordingly, the subject tax assessments have already become final, executory and demandable. Since the assessment has become final and executory, the taxpayer may not anymore raise defenses which go into the merits of the assessment.[36] Such being the case, there is no other avenue by which the said assessments may be modified, altered, or revised under the law.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice

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[36] *Republic of the Philippines vs. Ker & Company, Ltd.*, G.R. No. L-21609, September 29, 1966.