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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANITA N. TY,
Petitioner,

- versus -

C.T.A. CASE NO. 4965

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 08 1996

x - x

DECISION

Petitioner herein seeks for the nullification of the assessment issued by the respondent finding the petitioner liable for the deficiency income tax amounting to P1,841,753.49, inclusive of increments thereon, for the year 1987.

Petitioner Anita N. Ty is a practicing physician with address at 1401 San Marcelino Street, Manila.

On January 13, 1988, a Letter of Authority No. 0020207, dated December 13, 1988, was served upon petitioner authorizing Revenue Officers Bayani S. Bonifacio and Jose I. Urbi, Jr. to examine the books of accounts and other accounting records of petitioner for the calendar year 1987 and prior years not covered by tax amnesty (Exhs. "2" and "2-A", Resp., BIR records, p. 67).

The investigation was limited to the years 1986 and 1987 since petitioner availed of tax amnesty for the years 1981 to 1985 under the provisions of Executive Order No. 41 (Exh. "13", Resp., BIR records, p. 154).

On February 14, 1990, petitioner received a Notice To Taxpayer, dated February 9, 1990, informing her of the resulting proposed basic income tax deficiency assessment in the amount of P574,304.00 (Exhs. "F" and "F-1", Pet., C.T.A. records, pp. 183 and 184). This amount was arrived at using the net worth method.

In reply, petitioner in a letter, dated February 28, 1991, submitted various points for consideration (BIR records, pp. 259-261). However, instead of reducing the proposed deficiency income tax of P1,457,286.35, inclusive of increments thereon (Exhs. "14" and "15", Resp., BIR records, pp. 162 and 163), per initial report, it rose to P1,841,753.49, computed as follows: (Exh. "17", Resp., BIR records, p. 179)

Net income per investigation	P1,906,330.00
Less statutory exemption	6,000.00
Taxable net income	P1,900,330.00
Income Tax Due	P 612,291.00
Less tax already assessed	4,845.00
Deficiency income tax	P 607,446.00
Add: 25% surcharge	151,861.50
50% surcharge (fraud)	303,723.00
Total	P1,063,030.50
Add interest fr. 4.16.88 to 12.15.91	778,722.99
TOTAL AMOUNT DUE AND DEMANDABLE	P1,841,753.49

On November 11, 1991, the Commissioner of Internal Revenue issued a demand letter (Exh. "23", Resp., BIR records, p. 283) which attached the assessment notice (Exh. "24", Resp., BIR records, p. 285) covering the deficiency income tax assessment of petitioner for the year 1987 amounting to P1,841,753.49.

On December 10, 1991, petitioner filed its appeal for reinvestigation on the deficiency income tax assessment, dated November 11, 1991, received by the petitioner on November 20, 1991 (Exh. "C", Pet., C.T.A. records, pp. 168-170).

The request was denied by the respondent in a letter, dated October 15, 1992, received by the respondent on January 28, 1993.

On March 1, 1993, petitioner filed the instant petition for review.

The thrust of the appeal presented before Us is the correctness of the assessment made under the net worth method.

As much as We would have wanted to tackle the issues raised by both parties on the merit of the case, We are bound by law not to do so.

Section 11, in relation to Section 7 of Republic Act No. 1125, prescribes a thirty-day period within which a person adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal with this Court. The pertinent portions of the foregoing provisions of law are quoted hereunder:

> Sec. 11. *Who may appeal; effect of appeal.* - Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city or Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. (Underlining supplied)
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> xxx xxx xxx.
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> Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided:
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> (1) Decision of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau; (Underlining supplied)
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> xxx xxx xxx.

The Court noted that the final decision of the Commissioner, dated October 15, 1992, was received by the petitioner on January 28, 1993. This was admitted by the petitioner under paragraph three of the petition for review and supported by Exh. "B" (C.T.A. records, p. 167). The judicial appeal was made only on March 1, 1993 or after the lapse of two days from the last day which is February 27, 1993.

It may be argued that February 27, 1993 falls on a Saturday. However, the same is of no consequence. It is very well known that this Court holds office on Saturdays as prescribed under Sections 2 and 3 of the Rules of the Court of Tax Appeals, to wit:

RULE 3

PLACE OF OFFICE AND BUSINESS HOURS

SEC. 1. xxx

SEC. 2. The hearings before the Court of Tax Appeals shall be on such days and at such times as it may, by order and upon notice to the parties concerned, fix. However, the first hours of the morning session of the Court every Saturday of each week shall be devoted to hearing motions, unless, for special reasons and upon motion of a party, the Court shall fix another day for the hearing of any particular motion.

SEC. 3. The office of the Clerk of Court of the Court of Tax Appeals shall be open for the purpose of receiving petitions, pleadings, motions, and the like during the hours of eight to twelve A.M. and one to four P.M. on Mondays

> to Fridays and from eight A.M. to one P.M. on Saturdays, except on such days as may be designated by law or executive proclamation as being official holidays.

Thus, when the last day to appeal falls on a Saturday, the filing must be done on that day and not on the next succeeding business day. As ruled by the Supreme Court in the case of **Bank of America, NT & SA vs. Gerochi, Jr. (230 SCRA 9):**

> Unfortunately for the petitioner, the Saturday of 28 December 1985 was a business day for the courts. The prevailing rule even then was that if the last day to appeal fell on a Saturday, the act was still due on that day and not on the succeeding business day (SM Agri and General Machineries vs. NLRC, 169 SCRA 20). Hence, when the petitioner finally filed its appeal on 02 January 1986, it was late by five (5) days. xxx. [see also **Lucero vs. NLRC (203 SCRA 218) and Olacao vs NLRC (177 SCRA 38)**].

It is therefore evident that petitioner failed to comply with the thirty-day reglementary period to file an appeal with this Court. Thus, the decision of the Commissioner regarding the assailed deficiency income tax assessment has become final and executory.

In order for the Court to act on matters brought before it, it must acquire jurisdiction. The thirty-day period prescribed by Section 11 of Republic Act 1125, as amended, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the Tax Court is a jurisdictional requirement, and the failure of a taxpayer to lodge his appeal within the prescribed period bars his appeal and renders the questioned decision final and executory (Surigao Electric Co., v. Court of Tax Appeals, 57 SCRA 523). Thus, where the petition was filed outside of the 30-day period, the Court of Tax Appeals has no jurisdiction to entertain it, much less consider the right of the Government to collect the tax from the taxpayer. (Acting CIR v. Joseph, No. L-14034, August 30, 1962).

Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action or otherwise noticing the defect, at any stage of the proceedings (Ace Publications, Inc. v. Commissioner of Customs and Collector of Customs, 11 SCRA 147).

WHEREFORE, premises considered, this Court DISMISSES the instant petition for review for lack of jurisdiction.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the member of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge