REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LANAO DEL NORTE ELECTRIC COOPERATIVE [LANECO],
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES,
Respondent.

CTA CASE NO. 8769

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAR 31 2016 ; 9:52 a.m.

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RESOLUTION

For this Court's resolution are:

1. Petitioner's **Motion for Reconsideration [Re: Resolution Promulgated June 19, 2014]** filed through registered mail on July 10, 2014 and received by the Court on July 17, 2014;

2. Respondent's **Comment (Re: Motion for Reconsideration Dated July 10, 2014)**, filed on August 15, 2014;

3. Petitioner's **Supplemental Pleading in Support of the Motion for Reconsideration [Re: Resolution Promulgated June 19, 2014]**, filed on August 28, 2014; and

4. Respondent's **Comment (Re: Supplemental Pleadings in Support of the Motion for**

Reconsideration dated August 22, 2014) filed on September 17, 2014.

In support of its Motion for Reconsideration, petitioner presented on the witness stand Ms. Leonor Quintia, Finance Manager of the National Transmission Corporation, Ms. Lilian I. Duarte, Section Chief of the Accounting and Finance Division of the National Power Corporation, and Mr. Danilo T. Pasiliao, OIC-Division Chief of the Large Taxpayers-DPQAD of the Bureau of Internal Revenue.

On December 7, 2015, petitioner filed its formal offer of evidence. On February 4, 2016, the Court resolved to partially admit petitioner's formally offered evidence and thereafter submitted the subject motion for resolution.

Petitioner moves for the reconsideration of the Court's resolution dated June 19, 2014, dismissing the instant petition on the ground of lack of jurisdiction. The Court found that the assessment has become final and executory for failure of petitioner to protest against the Formal Letter of Demand and Final Assessment Notice on time.

In its motion, petitioner contends that the Court has jurisdiction of this case as the subject assessment is void for the following reasons:

a. The subject assessment has long been paid or remitted by petitioner to the Bureau of Internal Revenue.

b. Respondent representative violated the due process right of petitioner and as such subject assessment is void and does not attain finality.

Petitioner, likewise, alleges that the payment made by the petitioner of the subject tax liability which respondent refused to check and verify needs to be proven during trial.

In her Comment, respondent maintains that the Court lacks jurisdiction over the action. She contends that nowhere is it stated that an undisputed assessment confers jurisdiction on or to the Court of Tax Appeals. Respondent likewise contends that she observed due process in issuing the assessment.

The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act No. 1125[1], as amended by Republic Act No. 9282[2], the pertinent part of which reads:

> "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 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 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;"

In the case of *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*[3], the Supreme Court held that the following must be present for the Court of Tax Appeals to have jurisdiction over a case involving the BIR's decisions or inactions:

a) A case involving any of the following:

i. Disputed assessments;

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[1] An Act Creating the Court of Tax Appeals (1954).

[2] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes (2004).

[3] G.R. No. 175410, November 12, 2014.

ii. Refunds of internal revenue taxes, fees, or other charges, penalties in relation thereto; and

iii. Other matters arising under the National Internal Revenue Code of 1997.

b) Commissioner of Internal Revenue's decision or inaction in a case submitted to him or her

The present case involves an assessment which has become final, executory and demandable. The Court previously found that petitioner filed its Protest Letter to the Formal Letter of Demand and Final Assessment Notice beyond the prescriptive period allowed by the law.

Section 228 of the National Internal Revenue Code of 1997, as amended, and Section 3 of Revenue Regulations No. 12-99 provides that an assessment may be protested administratively within thirty (30) days from receipt, otherwise, it shall become final, 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 preassessment notice shall not be required in the following cases:
>
> 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 <u>within thirty (30) days from receipt of the assessment</u>** 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."

xxx xxx xxx

"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

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." (*Emphasis ours*)

A review of the records shows that petitioner received the Formal Letter of Demand and Final Assessment Notice on March 9, 2012. Petitioner, therefore, had until April 9, 2012 within which to file its administrative protest. However, petitioner filed its administrative protest only on September 6, 2012. Clearly, petitioner's Protest Letter was filed beyond the 30-day prescriptive period allowed by the law. Thus, the assessment has become final and executory.

In the case of *Commissioner of Internal Revenue vs. Hambretch & Quist Philippines, Inc.* [4], the Supreme Court held that "the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal."

In view of the foregoing, the dismissal of the instant Petition for Review by the Court for lack of jurisdiction was proper.

Moreover, since the Court has no jurisdiction over the instant petition, it cannot rule upon the issue that the subject assessment has long been paid or remitted by petitioner.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[5]

WHEREFORE, in view of the foregoing, petitioner's **Motion for Reconsideration [Re: Resolution Promulgated June 19, 2014]** is **DENIED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

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

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[4] G.R. No. 169225, November 17, 2010.
[5] *Nippon Express (Phils.) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.