REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ARDCI NGO GROUP, INC.,
Petitioner,

CTA Case No. 9056

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 12 2018 11:35 AM

x---x

RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of this Court is petitioner ARDCI NGO Group, Inc.'s *Motion for Reconsideration* dated February 19, 2018 with respondent Commissioner of Internal Revenue's (CIR) *Comment/Opposition Re: Petitioner's Motion for Reconsideration* dated March 16, 2018.

Petitioner assails the Decision dated February 5, 2018,[1] (the "Assailed Decision") of this Court dismissing petitioner's Petition for Review for lack of jurisdiction.

[1] Division Docket, Vol. II, pp. 740-754.

Petitioner moves for reconsideration of the Assailed Decision based on the sole ground that this Court erred in ruling that it has no jurisdiction over the case.[2] To wriggle out of its predicament, petitioner now posits that its Petition for Review was filed by reason of the inaction on the part of the Bureau of Internal Revenue (BIR) on its protest against the Final Assessment Notice (FAN) issued against petitioner.[3] Petitioner also argues that the Formal Letter of Demand dated September 17, 2014 with attached Details of Discrepancies (FLD) can be construed as a final decision of the CIR appealable to this Court.[4] Petitioner likewise asserts that the Supreme Court rulings cited by this Court were not fully elucidated.[5] Petitioner also contends that the issue of jurisdiction was never put into issue.[6] On the theory that it properly filed the present Petition for Review, petitioner claims that this Court should have ruled on the validity of the assessment.[7] Finally, petitioner contends that substantial justice must prevail over technicalities.[8]

In its *Comment/Opposition,* respondent prays of this Court to deny petitioner's *Motion* on the ground that the same lacks factual and legal bases.[9] Respondent maintains that petitioner failed to timely file a protest against the FLD and FAN.[10] According to respondent, whether there is a decision or inaction, the fact still remains that the protest was filed out of time, therefore, the assessment as contained in the FAN and FLD had become final, executory, and demandable by operation of law.[11] Respondent also asserts that the issue as regards the belated filing of protest has been raised as early as the filing of his Answer.[12] Thus, it is misleading for petitioner to state that the issue of jurisdiction was never put into issue.[13] Respondent likewise maintains that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[14]

---

[2] *Id.*, p. 755.
[3] *Id.*, p. 756.
[4] *Id.*
[5] *Id.*, p. 761.
[6] *Id.*, p. 763.
[7] *Id.*, p. 764.
[8] *Id.*, p. 768.
[9] *Id.*, p. 777.
[10] *Id.*, p. 780.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*, p. 781.

After judicious review of the arguments and counter-arguments raised by the parties as well as the relevant rules and jurisprudence on the matter, this Court finds no substantial matter much less any compelling reason that would warrant the modification let alone the reversal of the Assailed Decision. This Court stands by its ruling that petitioner's protest to the FLD/FAN was filed out of time. Consequently, the FLD/FAN already became final, executory and demandable. As a matter of law, the said assessment did not become a "disputed assessment" subject to this Court's appellate jurisdiction. Petitioner's *Motion* is utterly devoid of any merit and thus, should be denied.

As stated earlier, petitioner posits that its Petition for Review was filed, not under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, but by reason of the inaction on the part of the Bureau of Internal Revenue (BIR) within a period of 180 days from the filing of its protest against the FLD/FAN, pursuant to Section 7(a)(2) of the said law. According to petitioner:

> "6. It is precisely by reason of the inaction on the part of the BIR/CIR (herein RESPONDENT) within a period of 180 days from the filing of the protest against the FLD/FAN which prompted the Petitioner to elevate the assessment made by the Respondent and thresh out the issues as provided under the Joint Stipulation of Facts and Issues submitted by the parties."[15]

Petitioner's argument is specious.

Section 7 (a)(1) and (a)(2) of RA No. 1125, as amended, provides:

> "Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: *[illegible]*

[15] *Id.*, p. 757.

(1) **<u>Decisions</u> of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, 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;

(2) **<u>Inaction</u> by the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis and underscoring supplied)*

A plain reading of the above provisions shows that, in both cases, the law mandates that there must be a "disputed assessment" that is seasonably elevated to this Court for review. An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level.[16] It goes without saying that the taxpayer's protest for the purpose of disputing the findings in the assessment must be validly filed, *i.e.*, compliant with the requirements of the law and regulations which include, among others, that the protest must be filed within thirty (30) days from receipt of the assessment. Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC) is explicit on the requirement of filing an administrative protest within thirty (30) days from receipt of the assessment. On the other hand, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended, further provides that if the taxpayer fails to file a valid protest against the FLD/FAN within 30 days from date of receipt thereof, the assessment shall become final, executory and demandable.

Logically speaking, there cannot be a disputed assessment without a valid protest being filed by the taxpayer to dispute the findings in the assessment. Without a disputed assessment, there can be no decision or inaction of the part of the CIR that would trigger the

---

[16] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. Nos. 215534 & 215557, April 18, 2016, 790 SCRA 79, 96.

application of either Section 7 (a)(1) or Section 7 (a)(2) of RA No. 1125, as amended.

As stated above, petitioner also argues that the FLD can be construed as a final decision of the CIR appealable to this Court, citing as basis therefor the decision of the Supreme Court in the case of *Allied Banking Corporation v. Commissioner of Internal Revenue.*[17]

Petitioner's argument is untenable.

To put things into proper perspective, a brief discussion of *Allied Banking*[18] is in order.

In *Allied Banking*, the taxpayer-petitioner filed a protest after receiving the Preliminary Assessment Notice (PAN). Subsequently, the BIR issued a Formal Letter of Demand with Assessment Notices. The taxpayer-petitioner did not protest the Formal Letter of Demand and Assessment Notices. Instead, it filed a Petition for Review before this Court. The Supreme Court acknowledged that if the rules were to be strictly applied, the dismissal of the Petition for Review was proper. However, the Supreme Court ruled in favor of the taxpayer-petitioner. Due to the language used and the tenor of the demand letter that indicate that it is the final decision of the CIR, the Supreme Court held that respondent CIR is estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision.

To shed more light on the true and accurate import of the Supreme Court's ruling in *Allied Banking*, the relevant portions thereof are quoted below:

> "The Formal Letter of Demand with Assessment Notices reads:
>
> Based on your letter-protest dated May 26, 2004, you alleged the following: *jr*

[17] Division Docket, Vol. II, pp. 758-761.
[18] G.R. No. 175097, February 5, 2010, 611 SCRA 692 ("*Allied Banking*").

1. That the said assessment has already prescribed in accordance with the provisions of Section 203 of the Tax Code.

2. That since the exemption of FCDUs from all taxes found in the Old Tax Code has been deleted, the wording of Section 28(A)(7)(b) discloses that there are no other taxes imposable upon FCDUs aside from the 10% Final Income Tax.

Contrary to your allegation, the assessments covering GRT and DST for taxable year 2001 has not prescribed for [sic] simply because no returns were filed, thus, the three year prescriptive period has not lapsed.

With the implementation of the CTRP, the phrase 'exempt from all taxes' was deleted. Please refer to Section 27(D)(3) and 28(A)(7) of the new Tax Code. Accordingly, you were assessed for deficiency gross receipts tax on onshore income from foreign currency transactions in accordance with the rates provided under Section 121 of the said Tax Code. Likewise, deficiency documentary stamp taxes was [sic] also assessed on Loan Agreements, Bills Purchased, Certificate of Deposits and related transactions pursuant to Sections 180 and 181 of NIRC, as amended.

The 25% surcharge and 20% interest have been imposed pursuant to the provision of Section 248(A) and 249(b), respectively, of the National Internal Revenue Code, as amended.

It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. **This is our final decision based on investigation. If you disagree, you may appeal this final decision within thirty (30) days from receipt hereof,**

> **otherwise said deficiency tax assessment shall become final, executory and demandable.** (Emphasis supplied)

It appears from the foregoing demand letter that the CIR has already made a final decision on the matter and that the remedy of petitioner is to appeal the final decision within 30 days.

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, we considered the language used and the tenor of the letter sent to the taxpayer as the final decision of the CIR.

In this case, records show that petitioner disputed the PAN but not the Formal Letter of Demand with Assessment Notices. Nevertheless, <u>we cannot blame petitioner for not filing a protest against the Formal Letter of Demand with Assessment Notices since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter</u>. We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Viewed in the light of the foregoing, <u>respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision.</u>

<u>Moreover, we cannot ignore the fact that in the Formal Letter of Demand with Assessment Notices, respondent used the word 'appeal' instead of 'protest', 'reinvestigation', or 'reconsideration'. Although there was no direct reference for petitioner to bring the matter directly to the CTA, it cannot be denied that the word 'appeal' under prevailing tax laws refers to the filing of a Petition for Review with the CTA. As aptly pointed out by petitioner, under Section 228 of the NIRC, the terms 'protest', 'reinvestigation' and 'reconsideration' refer to the administrative remedies a taxpayer may take before the</u>

CIR, while the term 'appeal' refers to the remedy available to the taxpayer before the CTA. Section 9 of RA 9282, amending Section 11 of RA 1125, likewise uses the term 'appeal' when referring to the action a taxpayer must take when adversely affected by a decision, ruling, or inaction of the CIR. As we see it then, petitioner in appealing the Formal Letter of Demand with Assessment Notices to the CTA merely took the cue from respondent. Besides, any doubt in the interpretation or use of the word 'appeal' in the Formal Letter of Demand with Assessment Notices should be resolved in favor of petitioner, and not the respondent who caused the confusion.

To be clear, we are not disregarding the rules of procedure under Section 228 of the NIRC, as implemented by Section 3 of BIR Revenue Regulations No. 12-99. It is the Formal Letter of Demand and Assessment Notice that must be administratively protested or disputed within 30 days, and not the PAN. Neither are we deviating from our pronouncement in *St. Stephens Chinese Girls School v. Collector of Internal Revenue*, that the counting of the 30 days within which to institute an appeal in the CTA commences from the date of receipt of the decision of the CIR on the disputed assessment, not from the date the assessment was issued.

What we are saying in this particular case is that, the Formal Letter of Demand with Assessment Notices which was not administratively protested by the petitioner can be considered a final decision of the CIR appealable to the CTA because the words used, specifically the words "final decision" and 'appeal', taken together led petitioner to believe that the Formal Letter of Demand with Assessment Notices was in fact the final decision of the CIR on the letter-protest it filed and that the available remedy was to appeal the same to the CTA."[19] *(Underscoring supplied and citations omitted)*

As can be gleaned from the aforequoted portions of *Allied Banking*, the Supreme Court had ruled in favor of the taxpayer solely

[19] *Supra*, Note 18, pp. 700-705.

on the basis of estoppel on the part of the CIR by reason of the peculiar tenor and language used in the FLD/FAN, more particularly because of the use of the term "appeal" which technically pertains to judicial remedy before this Court. Nevertheless, the Supreme Court was quick to point out that the rule remains to be the same, *i.e.*, the FLD/FAN must be administratively protested within 30 days and the filing of an appeal before this Court shall be within 30 days counted from the date of receipt of the CIR's decision on the disputed assessment.

That being said, this Court holds that the ruling in *Allied Banking* is not applicable to the present case due to substantial difference in the essential facts.

For proper frame of reference, below is a comparison of the key statements found in the FLD/FAN involved in *Allied Banking* and that found in the FLD/FAN issued in the present case:

Allied Banking	**Present case**
"**This is our final decision based on investigation. If you disagree, you may appeal this final decision within thirty (30) days from receipt hereof**, otherwise said deficiency tax assessment shall become final, executory and demandable."[20]	"Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Revenue Regulations, **you are hereby given the opportunity to present in writing your side of the case within thirty (30) days from receipt hereof** otherwise our said deficiency tax assessment shall become final, executory and demandable."[21]

The above comparison unmistakably reveals that estoppel does not lie in the present case. Notably, the crucial terms "final decision" and "appeal", which led the Supreme Court to rule in *Allied Banking* that the FLD/FAN can be construed as the CIR's final decision

[20] *Supra*, Note 18 at p. 701.
[21] Exhibit "R-9", BIR Records, p. 302 (Emphasis supplied).

appealable to this Court, were not used in the FLD/FAN issued in the present case. Quite the contrary, the highlighted clause in the right column merely suggests that petitioner was being given the chance to dispute the findings indicated in the said FLD/FAN by filing a written protest therefor within the prescribed period, conformably with Section 228 of the 1997 NIRC and its implementing regulations. Indeed, there is nothing in the said FLD/FAN whatsoever that might lead petitioner to believe that the same was the respondent's final decision appealable to this Court.

At any rate, the fact that petitioner actually filed a protest, albeit belatedly, to the FLD/FAN certainly negates any pretense that petitioner was led to believe or had construed such FLD/FAN to be the respondent's final decision appealable to this Court.

Petitioner likewise asserts that the Supreme Court rulings cited by this Court in the Assailed Decision were not fully elucidated. It particularly alleges that this Court "may have failed to completely capture the full import of what the Supreme Court has to say as regards the filing of pleadings through private courier in the case of *Bautista v. Bautista*".[22] Petitioner faulted this Court for not citing certain portion of *Bautista* which tend to support the liberal construction of the Rules of Court as regards the manner [of filing] and service of pleadings.[23]

Petitioner is grasping at straws.

In *Bautista v. Bautista,*[24] the Supreme Court held as follows:

> "The Rules provide that pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt. In the second case, the date of mailing is the date of receipt. **Though filing of pleadings thru a private courier is not prohibited by the Rules, it is established in jurisprudence that the date of actual receipt of pleadings by the court is deemed the date of filing of such pleadings, and not the date of delivery** ✓

[22] Division Docket, Vol. II, p. 761.
[23] *Id.*, pp. 762-763.
[24] G.R. No. 202088, March 8, 2017 ("*Bautista*").

thereof to a private letter-forwarding agency." (Emphasis supplied)

The Supreme Court, in *Bautista*, merely reiterated such a doctrine that was previously established in a catena of cases.[25] The foregoing jurisprudential rule, as formulated by the Supreme Court, is already a liberal construction and application of the procedural rules regarding the filing of pleadings, motions, and other papers in courts. Because even though filing of pleadings, motions and other papers through private courier service is not expressly provided under the Rules of Court, the same is allowed and is considered as akin to personal filing. As such, the date of actual receipt of the pleadings, motions, and other papers by the court is deemed the date of their filing. Clearly, petitioner's argument is downright unmeritorious.

Another contention that petitioner has raised in its *Motion* is that jurisdiction was never raised as an issue to be resolved by this Court.[26] It claims that "the parties have subjected to the exclusive appellate jurisdiction of this Court as the proper forum to ventilate their issues over the disputed assessment".[27]

The flaw in petitioner's contention is immediately apparent.

As correctly pointed out by respondent, the issue of jurisdiction was opportunely raised as early as respondent's filing of his Answer.[28] In any case, as the question of jurisdiction is not a mere technicality which can simply be brushed aside but is fundamental for a court to act on a given controversy,[29] this Court is not precluded from taking cognizance of such issue even if the parties failed to raise the same.

---

[25] *Uy v. Judge Flores*, A.M. No. RTJ-12-2332 (Formerly OCA IPI No. 10-33-RTJ), June 25, 2014, 727 SCRA 182; *Heirs of Numeriano Miranda, Sr. v. Miranda*, G.R. No. 179638, July 8, 2013, 700 SCRA 755; *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011, 662 SCRA 433; *Charter Chemical and Coating Corporation v. Tan and Sonsing*, G.R. No. 163891, May 21, 2009, 588 SCRA 97; *Philippine National Bank v. Deang Marketing Corporation*, G.R. No. 177931, December 8, 2008, 573 SCRA 97; *Industrial Timber Corp. v. National Labor Relations Commission*, G.R. No. 111985, June 30, 1994, 233 SCRA 597; *Benguet Electric Cooperative v. National Labor Relations Commission*, G.R. No. 89070, May 18, 1992, 209 SCRA 55.

[26] Division Docket, Vol. II, p. 763.

[27] *Id.*

[28] *Id.*, p. 780.

[29] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.

In this regard, the ruling of the Supreme Court in *Andaya v. Abadia,*[30] is highly instructive:

> "Jurisdiction over subject matter is essential in the sense that erroneous assumption thereof may put at naught whatever proceedings the court might have had. **Hence, even on appeal, and even if the parties do not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. It is elementary that jurisdiction is vested by law and cannot be conferred or waived by the parties or even by the judge. It is also irrefutable that a court may at any stage of the proceedings dismiss the case for want of jurisdiction. For this matter, the ground of lack of jurisdiction in dismissing a case is not waivable.** Hence, the last sentence of Sec. 2, Rule 9, Rules of Court,[31] expressly states: 'Whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action.'
>
> We note that Sec. 2, Rule 9 uses the word 'shall,' leaving the court no choice under the given situation but to dismiss the case. The same Rule also uses the phrase 'whenever it appears,' which means at anytime after the complaint or amended complaint is filed, because the lack of jurisdiction may be apparent from the allegations therein. **Hence, from the foregoing, even if no answer or motion to dismiss is filed the court may dismiss the case for want of jurisdiction. In this sense, dismissal for lack jurisdiction may be ordered by the court *motu proprio*.**" *(Emphasis supplied)*

Given that this Court has no jurisdiction over the present case, it has no choice but to dismiss the same.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

---

[30] G.R. No. L-104033, December 27, 1993, 228 SCRA 705, 717.
[31] Now Section 1, Rule 9 of the Rules of Court.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Leave)
CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice