REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JVC (PHILIPPINES), INC., Petitioner,	**CTA EB NO. 1027** *(CTA Case No. 7927)*
	Present:
-versus-	Del Rosario, *PJ* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 20 2013 11:a/am

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RESOLUTION

This resolves the Petition for Review filed by petitioner JVC (Philippines), Inc. on June 20, 2013 under Section 18 of Republic Act No. 9282, *sans* comment of the respondent Commissioner of Internal Revenue (CIR) despite notice as per Records Verification dated September 17, 2013.

The instant petition seeks to annul and set aside the Resolution dated March 20, 2013 of the former Third Division[1] of the Court of Tax Appeals (CTA) which granted respondent's motion to dismiss for lack of jurisdiction, and the Resolution dated May 31, 2013 of the Special Third Division[2] which denied petitioner's motion for reconsideration for lack of merit.

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[1] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred by Associate Justice Lovell R. Bautista.

[2] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred by Associate Justice Lovell R. Bautista.

The facts, as culled from the records of this case,[3] are as follows:

Petitioner received on December 8, 2008 the Formal Letter of Demand (FLD) dated December 2, 2008 for alleged deficiency taxes for the fiscal year ending March 31, 2004. On January 7, 2009, petitioner allegedly filed its administrative protest with the Bureau of Internal Revenue (BIR) Large Taxpayers District Office-Makati (BIR-LTDO). On the other hand, respondent alleges that petitioner filed the protest only on January 9, 2009.

On February 9, 2009, petitioner received the letter dated January 15, 2009 from BIR-LTDO denying petitioner's protest for having been filed beyond the 30-day reglementary period to file a protest.

On March 2, 2009, petitioner received the BIR-LTDO's Collection Letter dated February 24, 2009.

On March 5, 2009, petitioner filed its Request for Reconsideration of the BIR's denial on its protest letter with the BIR-LTDO.

On April 1, 2009, petitioner received a letter from BIR-LTDO denying its request for reconsideration. Thereafter, petitioner filed a petition for review before the CTA on April 30, 2009.

On January 18, 2013, respondent filed her motion to dismiss on the ground that the CTA has no jurisdiction over the case. Respondent alleged that petitioner failed to file its petition for review within the 30-day appeal period.

In the assailed Resolution dated March 20, 2013, the Court in Division granted respondent's motion to dismiss and consequently, the petition for review was dismissed for lack of jurisdiction.[4] The Court in Division ruled that the 30-day period to appeal to the CTA must be counted from the date of receipt of the denial of the administrative protest on February 9, 2009. Petitioner failed to avail of either of the remedies available under Revenue Regulations (RR) No. 12-99, that is, *to file an appeal with the CTA or elevate its protest to the CIR, within the allowed period*, thus, the assessment became final, executory and demandable. Since petitioner merely filed a request for reconsideration of the denial of the protest to the BIR-LTDO, the 30-day period to file an appeal to the CTA or to elevate the protest to the CIR was not tolled.

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[3] CTA EB No. 1027 Rollo, p. 24.
[4] CTA EB No. 1027 Rollo, pp. 23-26.

Petitioner filed its motion for reconsideration on April 5, 2013, but the same was denied in the assailed Resolution dated May 31, 2013.[5]

Aggrieved, petitioner filed the instant petition for review and prayed that the Court in Division's Resolutions dated March 20, 2013 and May 31, 2013 be set aside and annulled, based on the following grounds:

1. The CTA has jurisdiction to resolve the issues in this case considering that the petition for review dated April 29, 2009 was filed pursuant to Section 7(A)(1) of Republic Act No. 9282; and,

2. The Commissioner of Internal Revenue is already estopped from questioning the CTA's jurisdiction since trial has already commenced.

In the assailed Resolutions, the Court in Division noted that while the administrative protest dated January 7, 2009 and the request for reconsideration dated March 4, 2009 were addressed to the Commissioner of Internal Revenue (CIR), the same were to the "attention" of the Large Taxpayers Service and were filed with the BIR-LTDO; thus, it cannot be said that petitioner elevated its protest to the CIR pursuant to Section 3.1.5 of RR No. 12-99.

On the other hand, petitioner contends that its request for reconsideration dated March 4, 2009, particularly the upper left portion, bears the words "THE COMMISSIONER OF INTERNAL REVENUE", which clearly shows that the request was addressed to the CIR for her review and reconsideration. Petitioner claims that while the request for reconsideration was inadvertently filed with the HREA-Large Taxpayers Service, said office failed to discharge its duty to transmit the request for reconsideration to the Office of the CIR. Petitioner maintains that its statutory privilege to appeal pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997 and Section 3.1.5 of RR No. 12-99 was jeopardized by the omission of the HREA-Large Taxpayers Service to do a positive act of transmitting the inadvertently filed request for reconsideration to the Office of the CIR, especially when the same was clearly addressed to the latter.

Petitioner further argues that the CTA has the power to relax the interpretation of Section 228 of the 1997 NIRC and Section 3.1.5 of RR No.

[5] CTA EB No. 1027 Rollo, pp. 27-31.

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12-99 since the rigid application of procedural rules and the circumstances of the case will deprive petitioner of its substantive right to due process; that due process is the essence of Section 228 of the 1997 NIRC and RR No. 12-99; thus, a taxpayer should be accorded every opportunity to present his side and prove his defenses against tax assessments that would deprive him of his property.

Relying on the pronouncement of the Supreme Court in the case of *Tijam v. Sibonghanoy,*[6] petitioner insists that respondent is already *estopped* from questioning the CTA's jurisdiction considering that trial had already commenced and respondent actively participated therein. It avers that the instant case should not be dismissed outright on a mere technicality; and that a contrary ruling would deprive it of its right to fully defend itself against respondent's baseless and erroneous tax assessments.

The instant petition for review must be dismissed outright pursuant to Section 10 of Rule 43 of the 1997 Rules of Civil Procedure as it does not show *prima facie* that the Court in Division committed errors of fact or law that would warrant a reversal or modification of the assailed Resolutions.

Section 228 of the 1997 NIRC provides the rules on the issuance of an assessment, including the remedies available to taxpayers in disputing the same, *viz.*:

> "SECTION 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
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> 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; otherwise, the assessment shall become final.

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[6] L-21450, April 15, 1968.

> 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." *(Emphasis supplied)*

Pursuant to the provisions of Section 244, in relation to Section 245 of the 1997 NIRC, RR No. 12-99 was promulgated to implement Section 228 of the 1997 NIRC.[7] Section 3 of RR No. 12-99 provides:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 3.1.1 Notice for informal conference. — xxx
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> 3.1.2 Preliminary Assessment Notice (PAN). — xxx
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> 3.1.3 Exceptions to Prior Notice of the Assessment. — xxx
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> 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. xxx
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> 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
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> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. xxx
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> 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.

[7] Section 1, Revenue Regulations No. 12-99.

> 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.
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> **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 thirty (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.**
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> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable." *(Emphasis supplied)*

Section 3.1.5 of RR No. 12-99 categorically states that if the protest is denied by the CIR's duly authorized representative, the taxpayer has an option to either ***[i]* make a direct appeal to the CTA, or *[ii]* elevate his protest to the CIR herself, both of which must be made within thirty (30) days from the date of receipt of the decision of the CIR's duly authorized representative.** When a protest is elevated before respondent CIR herself, the decision of the CIR's duly authorized representative shall not become final, executory and demandable. The CIR shall decide on the protest, and her decision may be appealed by the aggrieved taxpayer to the CTA within 30 days from the date of receipt of such decision.

Applying the foregoing rules to the case at bench, from petitioner's receipt of the letter of the BIR-LTDO denying its administrative protest on February 9, 2009, petitioner may either elevate its protest directly to the CIR, or file an appeal to the CTA within the 30-day period, or until March 12, 2009, in order that the decision of the CIR's duly authorized representative will not attain finality. Instead of availing either of the foregoing remedies, **petitioner filed its letter-request for reconsideration with the BIR-LTDO on March 5, 2009**, *viz.*:

> "THE COMMISSIONER OF INTERNAL REVENUE
> Large Taxpayer District Office
> 5th Floor, East Wing, Atrium Bldg.
> Makati Avenue, Makati City

Attention: MARISSA O. CABREROS
HREA-LTS-Administration and Enforcement
xxx xxx xxx"[8]

Based on the foregoing, the Court in Division aptly ruled that petitioner cannot be said to have elevated its protest to the CIR. While petitioner's request for reconsideration was addressed to the CIR, the same was to the "attention" of the Large Taxpayers Service and filed with the BIR-LTDO Makati. Thus, it was reasonable on the part of the HREA-LTS to believe that the request for reconsideration was intended for her consideration since the same was to her attention.

Besides, a perusal of the contents of the letter-request for reconsideration belies petitioner's contention that it was inadvertently filed with the BIR-LTDO. The first paragraph of the letter-request for reconsideration is quoted hereunder:

> "*This refers to* **your** *letter dated January 15, 2009* informing us that our protest letter is no longer considered since the 30 day regulatory period has already lapsed and as per your collection letter February 24, 2009"[9] (Emphasis supplied)

From the foregoing, it is clear that the letter-request for reconsideration was actually intended for consideration and action of the HREA-LTS since she was the one who issued the January 15, 2009 letter. Had it been intended for the CIR, the same should have been addressed to the attention of the incumbent CIR, **filed directly with her Office**, and the contents of which should have categorically stated the fact that petitioner is elevating the BIR-LTDO's adverse decision on its protest for the CIR's consideration.

Based on the factual circumstances of the case, the Court *En Banc* agrees with the Court in Division that it lacks jurisdiction over the case since the 30-day appeal period must be reckoned from the date of receipt of the denial by BIR-LTDO of its administrative protest (first protest) on February 9, 2009, and not from the subsequent denial by the BIR-LTDO of its letter-request for reconsideration on April 1, 2009.

In *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue*,[10] the Supreme Court clarified that the filing of a motion for

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[8] CTA EB No. 1027 Rollo, p. 29.
[9] CTA EB No. 1027 Rollo, p. 86.
[10] G.R. No. 179343, January 21, 2010.

reconsideration of the CIR's final decision on disputed assessment does not toll the 30-day period to appeal to the CTA. It is with more reason that the filing of petitioner's letter-request for reconsideration with the HREA-LTS to assail the denial of its previous protest does not toll the running of the 30-day period to appeal under Section 228 of the 1997 NIRC, as implemented by RR No. 12-99.

Considering that petitioner failed to elevate its protest directly with the CIR within the 30-day period, and belatedly filed an appeal with the CTA on April 30, 2009, the disputed assessment had therefore become final, executory and demandable pursuant to RR No. 12-99. The 30-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction to entertain and determine the correctness of the assessments.[11]

Lastly, petitioner's allegation that respondent is estopped from questioning the CTA's jurisdiction, based on the case of ***Tijam, et al. v. Sibonghanoy, et al.***[12] is bereft of merit.

It must be emphasized that the *Sibonghanoy case* "represented an exceptional case wherein the party invoking lack of jurisdiction did so only after fifteen (15) years, and at a stage when the proceedings had already been elevated to the Court of Appeals."[13] In ***Venancio Figueroa y Cervantes v. People of the Philippines***[14] *(Figueroa case)*, the Supreme Court made the following pronouncements:

> "The Court, thus, wavered on when to apply the exceptional circumstance in Sibonghanoy and on when to apply the general rule enunciated as early as in De La Santa and expounded at length in Calimlim. **The general rule should, however, be, as it has always been, that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. Estoppel by laches, to bar a litigant from asserting the court's absence or lack of jurisdiction, only supervenes in exceptional cases similar to the factual milieu of Tijam v. Sibonghanoy**. Indeed, the fact that a person attempts to invoke unauthorized jurisdiction of a court does not estop him from thereafter challenging its jurisdiction over the subject matter, since such jurisdiction must arise by law and not by mere consent of the parties. This is especially true where the person seeking to invoke

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[11] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.
[12] No. L-21450, April 15, 1968, 23 SCRA 29.
[13] Metromedia Times Corporation and/or Robina Gokongwie-Pe vs. Johnny Pastorin, G.R. No. 154295, July 29, 2005.
[14] G.R. No. 147406, July 14, 2008.

> unauthorized jurisdiction of the court does not thereby secure any advantage or the adverse party does not suffer any harm.
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> Applying the said doctrine to the instant case, the petitioner is in no way estopped by laches in assailing the jurisdiction of the RTC, considering that he raised the lack thereof in his appeal before the appellate court. At that time, no considerable period had yet elapsed for laches to attach. True, **delay alone, though unreasonable, will not sustain the defense of "estoppel by laches" unless it further appears that the party, knowing his rights, has not sought to enforce them until the condition of the party pleading laches has in good faith become so changed that he cannot be restored to his former state, if the rights be then enforced, due to loss of evidence, change of title, intervention of equities, and other causes. In applying the principle of estoppel by laches in the exceptional case of Sibonghanoy, the Court therein considered the patent and revolting inequity and unfairness of having the judgment creditors go up their Calvary once more after more or less 15 years**. The same, however, does not obtain in the instant case." (Emphasis supplied)

Clearly, the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. Estoppel by laches, to bar a litigant from asserting the court's absence or lack of jurisdiction, only supervenes in exceptional cases similar to the factual milieu of *Tijam v. Sibonghanoy*. To sustain the defense of "estoppel by laches," it should further appear that the party, knowing his rights, has not sought to enforce them until the condition of the party pleading laches has in good faith become so changed that he cannot be restored to his former state, if the rights be then enforced, due to loss of evidence, change of title, intervention of equities, and other causes.

The Court *En Banc* agrees with the findings of the Court in Division that there is no extraordinary circumstance in this case that would warrant the application of the principle of estoppel by laches. Here, no judgment has yet been rendered by the Court in Division when respondent filed the motion to dismiss and raised the issue of jurisdiction. Moreover, the number of years involved from the time the petition for review was filed by petitioner with the CTA on April 30, 2009 until its dismissal by the Court in Division on March 21, 2013 fell short of the fifteen-year period in the *Sibonghanoy case*.

Aside from the allegation of petitioner that respondent actively participated in the trial of the case for more than 3 years, petitioner did not show that the requirements enunciated in *Figueroa* case are present in this case which would convince the Court *En Banc* to sustain petitioner's defense of "estoppel by laches".

In summary, the Court *En Banc* finds that the Court in Division did not commit any error of fact or law that would warrant a modification or reversal of the assailed Resolutions.

WHEREFORE, premises considered, the instant Petition for Review filed on June 20, 2013 is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice