REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

TEN-FOUR READYMIX CONCRETE, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10081

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
JAN 16 2020 9:49a

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RESOLUTION

This resolves respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** filed on October 7, 2019 which prays that petitioner's Petition for Review (PFR) be dismissed for being time-barred and/or lack of jurisdiction.

Respondent avers that petitioner failed to submit its relevant supporting documents within the prescribed period after filing its protest on May 18, 2018. Thus, said failure rendered the deficiency assessment final, executory and demandable after the lapse of the 60-day period after the date of filing of said protest.

On the other hand, petitioner in its **Comment/ Opposition [To Respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court]** which was filed through registered mail on November 29, 2019 and received by this Court on December 5, 2019, citing Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) and the case of *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[1], this Court has jurisdiction on other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by

[1] G.R. No. 169225, November 17, 2010.

the Bureau of Internal Revenue (BIR) where its petition is grounded on.

A closer look at petitioner's PFR shall reveal that, among its allegations, a protest was filed on May 18, 2018 against respondent's Formal Letter of Demand (FLD) dated April 10, 2018.[2]

On June 8, 2018, petitioner received a letter dated May 29, 2018 from Officer-in-Charge (OIC) - Regional Director Clavelina S. Nacar, BIR – Revenue Region 1 (RR1), Calasiao, Pangasinan, granting its protest/request for reinvestigation.[3]

On June 19, 2018, petitioner alleged that it submitted an additional relevant document in support of its protest.[4] However, on December 21, 2018, petitioner was surprised to receive a Preliminary Collection Letter (PCL) dated November 27, 2018 and a Final Notice Before Seizure (FNBS) dated December 17, 2018 despite its non-receipt of respondent's decision on its protest.[5] Hence, on January 3, 2019, petitioner wrote a letter to the Collection Division of BIR-RR1 inquiring about the issuance of said PCL and FNBS.[6]

On January 16, 2019, petitioner alleged that it was served with a Warrant of Distraint and/or Levy (WDL) dated January 15, 2019.[7] Several communication exchanges were made by it with the Collection Division concerning valid service of the Final Decision on Disputed Assessment (FDDA).[8] Petitioner filed the instant PFR on May 20, 2019.

We find respondent's argument tenable.

Section 228 of the 1997 NIRC, as amended, provides:

> **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 pre-

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[2] Docket, CTA Case No. 10081, Petition for Review, p. 12.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*, pp. 12-13.
[7] *Id.* at p. 13.
[8] *Id.*, pp. 13-15.

assessment notice shall not be required in the following cases:

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) 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 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. (*Emphasis supplied*)

Similarly, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides for the procedure in disputing an assessment, to wit:

3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting 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. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, **the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied**.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive

> **and the resort to one bars the application of the other.** (*Emphases supplied*)

As shown in the above-cited provisions, when the protest made is in the form of a request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final. The finality of the assessment extends only as far as the barring of the taxpayer from disputing the correctness of the issued assessment by the introduction of newly discovered or additional evidence, hence, the protest on such disputed assessment must be denied.

However, in case of inaction or failure to act on said protest by the Commissioner of Internal Revenue (CIR) or his authorized representative, the taxpayer is given two options, namely: (1) to appeal such inaction directly with this Court within 30 days after the lapse of the 180-day period from submission of the relevant supporting documents, which is within 60 days from the date of filing the protest; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision. However, a choice of any of said remedies shall bar the taxpayer from resorting to the other one.

The latter procedure was emphasized by the Supreme Court in the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*,[9] where it ruled that:

> "It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate - the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other.**
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> Accordingly, considering that Lascona opted to await the final decision of the Commissioner on the protested

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[9] G.R. No. 171251, March 05, 2012.

> assessment, it then has the right to appeal such final decision to the Court by filing a petition for review within thirty days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments..."

In the instant case, petitioner filed its protest in the form of a request for reinvestigation on May 18, 2018, hence, it had 60 days from the date of filing of the protest or until July 17, 2018 to submit said supporting documents. Petitioner alleged that it submitted its relevant supporting documents on June 19, 2018, which is being disputed by the respondent based on their records.

Granting that there were indeed documents submitted by petitioner on said date, respondent now had a 180-day period, from June 19, 2018 or until December 16, 2018, to act on such protest. However, the next action of respondent's authorized representative was the issuance of the PCL and FNBS which was received by petitioner on December 21, 2018.

Now, the question is, what is the effect of the issuance of said PCL and FNBS?

Petitioner should be aware that the issuance of said PCL and FNBS is tantamount to a denial of its protest. In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue et al.*[10], the Supreme Court ruled that when taxpayers receive a notice or a letter other than the Final Decision on Disputed Assessment (FDDA) demanding payment of the alleged tax deficiency assessment after the latter filed its protest letter, the same is deemed a denial of such protest, to wit:

> A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.
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> xxx xxx xxx
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> The demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, "while the denial of the

[10] G.R. No. 148380, December 09, 2005.

> protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as [his] final decision."

The protest was deemed denied by the issuance of said PCL and FNBS. Hence, petitioner should have appealed before this Court within 30 days from December 21, 2018 or until January 20, 2019 by filing a PFR.

However, petitioner only filed its PFR on May 20, 2019. Thus, prescription on the filing of said petition PFR has already set in, thereby depriving this Court of jurisdiction in hearing the instant case.

It is true that law and jurisprudence have vested this Court with jurisdiction on other matters arising under the 1997 NIRC or other laws administered by the BIR. However, such jurisdiction is not absolute but is pre-conditioned on whether prescription has already set in.

In the instant case, it is very clear from the factual allegations of the petitioner itself that its right to file an appeal before this Court was already prescribed at the time of its filing of the PFR.

WHEREFORE, premises considered, respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* is hereby **GRANTED**. Accordingly, petitioner's *Petition for Review* is **DISMISSED** for lack of jurisdiction due to prescription.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice