REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ROYAL BANK OF SCOTLAND (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 446
(C.T.A. CASE NO. 7089)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

OCT 2 3 2009
3:30 p/m.

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DECISION

PALANCA-ENRIQUEZ, J.:

The right to appeal a decision of the Commissioner of Internal Revenue to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional. In fine, the failure to comply with the

30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment *(Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 213)*.

THE CASE

This is a "Petition for Review" filed by Royal Bank of Scotland (Philippines), Inc. (hereafter "petitioner", formerly ABN-AMRO Bank, Inc.), under *Section 2, Rule 4 of the Revised Rules of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, praying for the reversal and setting aside of the Decision dated September 10, 2008, and Resolution dated November 27, 2008, rendered by the First Division of this Court, in C.T.A. Case No. 7089 entitled "ABN-AMRO Savings Bank Corporation (now ABN-AMRO Bank, Inc.) vs. Commissioner of Internal Revenue", the respective dispositive portions of which read, as follows:

> "WHEREFORE, the instant Petition for Review for the cancellation of the deficiency documentary stamp tax assessment for taxable year 1999 is hereby DISMISSED for lack of jurisdiction.
>
> SO ORDERED."

> "WHEREFORE, petitioner's Motion for Reconsideration is hereby DENIED for lack of merit. The Decision promulgated on September 10, 2008 is hereby AFFIRMED.
>
> SO ORDERED."

THE PARTIES

Petitioner Royal Bank of Scotland (Philippines), Inc. is a domestic corporation duly registered with the Securities and Exchange Commission, and duly authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in commercial banking, with principal business address at 18/F LKG Tower, 6801 Ayala Avenue, Makati City

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested by law to decide disputed assessments, and to enforce the provisions of the NIRC, and other tax laws. He may be served with papers, orders and other processes, through counsel, Atty. Wilmer B. Dekit, at the Legal Division, Bureau of Internal Revenue ("BIR"), No. 8 5/F Atrium Building, Makati Avenue, Makati City.

THE FACTS

The facts, as culled from the records, are as follows:

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On December 30, 2003, petitioner received a Formal Assessment Notice (FAN) for alleged deficiency documentary stamp tax (DST) for taxable year 1999 in the amount of P167,886,906.79, inclusive of penalties, computed as follows:

Loans entered during the year	P3,721,715,430.83
Reverse Repurchase Agreements with BSP	55,716,000,000.00
Taxable base subject to DST	P59,437,715,430.83
Documentary Stamp Tax due P0.30xP200.00	
including fractional thereof	89,156,573.40
Less: Tax payments	(7,391,652.30)
Basic deficiency documentary stamp tax	P81,764,921.10
Add: Surcharge	20,441,230.28
Interest 01-26-00 to 02-02-04	65,680,755.41
TOTAL AMOUNT DUE	167,886,906.79

In the said FAN, respondent CIR claimed that the reverse repurchase agreements with the BSP are considered as "deposit substitutes", under *Section 22 (Y) of the National Internal Revenue code (NIRC) of 1997, as amended,* and are subject to DST under *Section 180* of the same Code.

On January 28, 2004, petitioner filed its protest letter, pursuant to *Section 228 of the NIRC of 1997, as amended.*

As the protest was not acted upon by the respondent, on October 25, 2004, petitioner filed a Petition for Review with this Court, docketed as C.T.A. Case No. 7089.

On September 10, 2008, the First Division rendered the assailed Decision dismissing the petition for lack of jurisdiction.

On September 30, 2008, petitioner field a "Motion for Reconsideration" of said decision, which was denied for lack of merit by the First Division in a Resolution dated November 27, 2008.

Hence, the instant Petition for Review raising the following:

ISSUES

I

WHETHER THE HONORABLE COURT OF TAX APPEALS HAS JURISDICTION TO HEAR AND ADJUDICATE THE PETITIONER'S PETITION FOR REVIEW.

II

WHETHER PETITIONER'S TRANSACTIONS AMOUNT P55,716,000,000.00 AND WHETHER SUCH TRANSACTIONS CONSTITUTE DEPOSIT SUBSTITUTES UNDER SECTION 22(Y) OF THE NIRC MAKING IT SUBJECT TO DST UNDER SECTION 180 OF THE NIRC.

III

WHETHER PETITIONER, A REGISTERED SAVINGS BANK IN 1999, IS LIABLE FOR THE PAYMENT OF ANY DST UNDER THE THRIFT BANKS ACT.

Without necessarily giving due course to the Petition for Review, We ordered respondent to file a comment, not a motion to dismiss, within ten (10) days from notice.

On January 23, 2009, respondent CIR filed a Motion for Extension of Time to file his comment, which the Court *En Banc* granted.

On February 12, 2009, respondent CIR filed an "Ex Parte Motion to Withdraw Temporarily the BIR Records", which was granted by the Court in a Resolution dated February 16, 2009.

On February 23, 2009, respondent CIR filed his Comment to the Petition for Review.

On March 11, 2009, the Court *En Banc* issued a Resolution ordering both parties to submit their simultaneous memoranda, within a non-extendible period of thirty (30) days from notice; afterwhich the petition shall be submitted for decision.

On April 15, 2009, petitioner filed its memorandum.

On May 25, 2009, respondent CIR filed a "Motion to Admit (Respondent's Memorandum)", which was granted and respondent's memorandum was admitted by the court. Thus, the instant petition is now deemed submitted for decision.

THE COURT *EN BANC'S RULING*

The petition is without merit.

First Issue:

Whether the Court in Division
Has Jurisdiction to take Cognizance
Of the Petition For Review filed in
C.T.A. Case No. 7089

Petitioner argues that it is not time-barred in filing the Petition for Review; that under *Section 228 of the NIRC of 1997, as amended*, the law gives the BIR 180 days to resolve the taxpayer's protest; in addition, said provision also grants the taxpayer 60 days within which to submit its supporting documents; that the sixty-day period granted to petitioner to submit the relevant supporting documents is mandatory; as such, petitioner should be accorded the full sixty (60) days to file such documents; the period should not be discounted or shortened to effectively move up the reckoning date for the Commissioner's 180 days to decide the protest.

Petitioner's argument lacks merit.

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

> "SEC. 228. Protesting of Assessment. –
>
> xxx xxx
>
> Within a period 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 (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."

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Pursuant to the above provision, the assessment may be protested administratively by filing a request for reconsideration or reinvestigation, within 30 days from receipt of the assessment. Petitioner has sixty (60) days therefrom to submit relevant documents. Thereafter, respondent is given a period of 180 days within which to decide the protest. Upon denial of the protest or the lapse of the 180-day period, the petitioner may appeal the decision or inaction to the Court of Tax Appeals, within 30 days from receipt of the said decision or from the lapse of the 180-day period.

Corollary thereto, *Section 6 of Revenue Regulations No. 12-85*, which classifies protest into two kinds, namely: (1) request for reconsideration, and (2) request for reinvestigation, provides:

> "SEC. 6. Protest.— The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:
>
> xxx xxx
>
> (a) Request for Reconsideration — refers to a plea of re-evaluation of the assessment on the basis of existing records without need of additional evidence. It may involve both question of fact or of law or both.

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(b) 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 law or both."

The main difference between these two types of protest lies in the records or evidence to be examined by internal revenue officers, whether there are existing records or newly discovered or additional evidence *(CIR vs. Philippine Global Communication, Inc. 506 SCRA 427)*. Thus, applying both *Section 228 of the NIRC of 1997, as amended, and Revenue Regulations No. 12-85*, if the protest is a request for reconsideration, the submission of additional or supporting documentary evidence is not required. Thus, in case of inaction of the CIR, the 180-day period for the BIR to resolve the protest shall be counted from the filing of the protest.

On the other hand, if the protest is a request for reinvestigation, the taxpayer is required to submit additional or supporting documents. Thus, in case of inaction of the CIR, the 180-day period shall be counted from the date of the submission of the supporting documents. In case the taxpayer fails to submit said documents, within sixty (60) days from the filing of the protest, the assessment shall become final, executory and

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demandable, pursuant to *Section 3.1.5 of Revenue Regulations No. 12-99.*

A perusal of petitioner's protest filed on January 28, 2004 reveals that petitioner sought to reconsider the Final Assessment Notice issued by the BIR, finding petitioner liable for DST on its reverse repurchase agreement with the BSP contending that its "reverse repurchase agreement" cannot be considered as "deposit substitutes" under *Section 22 (Y) of the NIRC of 1997, as amended,* hence, not subject to DST under *Section 180* of the same Code.

It is clear from petitioner's protest that petitioner requested for a reconsideration of the assailed assessment, which under the law does not require the reception and evaluation of additional evidence. The issue raised by petitioner in its protest, to wit, whether or not its "reverse repurchase agreement" constitutes "deposit substitutes", as defined in *Section 22 (Y) of the NIRC of 1997, as amended,* can be resolved on the basis of the existing records, without need of additional evidence.

Considering that petitioner's protest is a request for reconsideration, the submission of additional documentary evidence is not required. Hence, the sixty (60) day period provided for in *Section 228 of the NIRC of 1997, as amended,* does not apply in this case.

Accordingly, the 180-day period, as prescribed in the said provision, should be reckoned from the filing of petitioner's protest on January 28, 2004, which lapsed on July 26, 2004. From July 26, 2004, petitioner had thirty (30) days or until August 25, 2004 to appeal the decision or inaction of the CIR to this Court. However, record shows that petitioner filed its Petition for Review with this Court on October 25, 2004 only, sixty (60) days way beyond the thirty (30) day reglementary period prescribed under *Section 228 of the NIRC of 1997, as amended.* Thus, for petitioner's failure to appeal the CIR's inaction within the reglementary period, the assessment had become final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.

As held by the Supreme Court in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 213, citing the case of Ker & Company, Ltd. vs. Court of Tax Appeals, 4 SCRA 160, 163*, the right to appeal a decision of the Commissioner to the

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Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional.

Accordingly, petitioner's failure to file a petition for review with this Court within the 30-day statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess (*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, supra*).

As aptly ruled by the First Division in its Resolution dated November 27, 2008 denying petitioner's "Motion For Reconsideration":

> "Worth reiterating that the Petition For Review on October 25, 2004 was belatedly filed because petitioner has only 30 days from the lapse of the 180-day period which starts on July 27, 2004 up to August 25, 2004 within which to appeal before this Court. Petitioner's failure to appeal to this Court in due time made the assessment in question final, executory and demandable. Thus, the petitioner is already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of its tax liability."

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In view of the foregoing discussion, the Court *En Banc* finds it no longer necessary to discuss the other issues raised by petitioner.

Finding no reversible error, We affirm the assailed Decision dated September 10, 2008, and Resolution dated November 27, 2008 of the First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice