REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TRANSFIELD PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7842

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

SEP 20 2011 3:10 pm

x - x

DECISION

Fabon-Victorino, J.:

Claiming immunity from payment of taxes by virtue of its alleged availment of tax amnesty under Republic Act (R.A.) No. 9480, petitioner Transfield Philippines, Inc. filed the instant Petition for Review, praying for (1) the nullification of Revenue Memorandum Circular (RMC) No. 19-08 or a portion thereof expanding the exceptions enumerated in R.A. No. 9480 and its Implementing Rules and Regulations (IRR), (2) the nullification of Warrant of Distraint and/or Levy No. 122-08-033 issued against it, and (3) issuance of an order directing respondent Commissioner of Internal Revenue (CIR) to desist from collecting the amount of P563,016,502.86, which allegedly represents deficiency income tax and value added tax (VAT) for the fiscal year ended June 30, 2002.

Petitioner alleges that it is a duly organized domestic corporation with principal office at Unit A-72, Zeta II Building, 191 Salcedo Street, Legaspi Village, Makati City.[1] Respondent, on the other hand, is the Commissioner of Internal Revenue with authority among others, to resolve protests on assessments, with office address at the 5/F Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City,[2]

On May 30, 2007, petitioner received from respondent a copy of Final Assessment Notices (FAN) Nos. LTDO-122-IT-2002-00014,[3] LTDO-122-WE-2002-00011,[4] LTDO-122-VT-2002-00012,[5] LTDO-122-PEN-2002-00002[6] assessing it a total amount of P563,168,996.70 as alleged deficiency income tax, expanded withholding tax, and Value Added Tax (VAT), inclusive of interest

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[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI) dated February 03, 2009.
[2] Par. 2, JSFI dated February 03, 2009.
[3] Exhibit A.
[4] Exhibit B.
[5] Exhibit C.
[6] Exhibit D.

and compromise penalties for the fiscal year covering the period from July 01, 2001 to June 30, 2002, the details of which are as follows:[7]

Kind of Tax	Basic	Interest	Compromise	Total
Income Tax	291,320,169.28	271,335,605.67	25,000.00	562,680,774.95
EWT	66,497.56	69,996.28	14,000.00	150,493.84
VAT	147,156.30	164,071.61	24,500.00	335,727.91
VAT penalty			2,000.00	2,000.00
TOTAL	**291,533,823.14**	**271,569,673.56**	**65,500.00**	**563,168,996.70**

On June 7, 2007, petitioner filed with the BIR a protest against the foregoing assessment in a Letter dated June 05, 2007.[8]

On August 28, 2007,[9] petitioner received respondent's First Collection Letter dated August 03, 2007,[10] demanding immediate payment of the assessed amount.

On January 17, 2008, a Final Notice Before Seizure dated December 20, 2007 was served upon petitioner.[11]

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[7] Par. 4, JSFI dated February 03, 2009.
[8] Exhibit F.
[9] Par. 5, JSFI dated February 03, 2009.
[10] Exhibit G.
[11] Par. 6, JSFI dated February 03, 2009.

On February 29, 2008, petitioner allegedly availed of the tax amnesty under Republic Act (R.A.) No. 9480, by submitting to the BIR its Notice of Availment of Tax Amnesty,[12] Tax Amnesty Return (BIR Form No. 2116),[13] Statement of Assets Liabilities and Networth as of December 31, 2005,[14] and Tax Amnesty Payment Form (BIR Form No. 0617)[15] together with the BIR Tax Payment Deposit Slip[16] evidencing payment of amnesty tax of P112,500.00.

On April 23, 2008, petitioner paid respondent VAT penalty of P2,000.00 as indicated in the Final Assessment Notice No. LTDO-122-PEN-2002-00002.[17]

On May 05, 2008, petitioner, through a Letter dated April 28, 2008,[18] informed the BIR Large Taxpayers District Office of Makati City that it availed of tax amnesty under R.A. No. 9480, and that it was willing to pay the compromise penalties due on the deficiency expanded withholding tax assessment and penalty of P2,000.00 for failure to file Summary of Sales & Purchases for the 1st and 2nd quarters of 2002. Moreover, it explained that no

[12] Exhibit I.
[13] Exhibit J.
[14] Exhibit K.
[15] Exhibit M.
[16] Exhibit N.
[17] Par. 7, JSFI dated February 03, 2009.
[18] Exhibit P.

VAT was collectible from it as its input tax exceeded its output tax even after deducting the disallowed input tax.

In a Letter dated July 10, 2008,[19] respondent, through its representative Marissa O. Cabreros, advised petitioner that it could not avail of the amnesty as RMC No. 19-08 which she issued states that those with delinquent accounts/accounts receivable considered as assets of the BIR/Government, including self assessed tax, are not allowed to avail of the benefits under R.A. No. 9480.[20]

On September 08, 2008, respondent issued a Warrant of Distraint and/or Levy[21] against petitioner's goods, chattels, or effects, and other personal property, and/or real property and any interest or rights thereto to the extent of P563,168,996.70.

On even date, the Bank of the Philippine Islands (BPI) formally informed petitioner that its account had been placed on hold in compliance with the Warrant of Distraint and/or Levy dated September 08, 2008, issued by the BIR. [22]

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[19] Exhibit Q.
[20] Par. 10, Petition for Review dated October 10, 2008 which was admitted by respondent in the Answer dated November 28, 2008; also par. 8, JSFI dated February 03, 2009.
[21] Exhibit R.
[22] Exhibit S.

On October 10, 2008, petitioner filed the instant Petition for Review.

Petitioner claims that it availed of tax amnesty under RA 9480 which in effect mooted the assessments issued against it rendering it immune from collection of taxes prior to 2005.

In full compliance with R.A. No. 9480 and Section 6(3), Rule III of its IRR, [23] it filed with the BIR on February 29, 2008, a notice and Tax Amnesty Return with a Statement of Assets, Liabilities, and Networth (SALN) as of December 31, 2005 in the form prescribed by the BIR, and paid the amnesty tax of P112,500.00.[24]

Consequently, petitioner is entitled to all the immunities and privileges of the law as specifically provided in Section 6 thereof which states that "the taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code (NIRC) of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years."

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[23] Exhibits I, J, K, M.
[24] Exhibit N.

Since the assailed assessments for fiscal year ending June 30, 2002 is within the period covered by the tax amnesty, the collection of the alleged tax liability has no basis rendering the Warrant of Distraint and/or Levy issued against it null and void.

Moreover, while respondent may issue administrative rulings interpreting the NIRC and other tax laws, her issuances must not contravene, override, or modify the law being interpreted which only the Congress is authorized to do. When respondent issued RMC No. 19-08, she included as additional exception taxpayers with delinquent accounts or accounts receivable which are already considered assets of the BIR/government, including self-assessed tax, among those ineligible to avail of tax amnesty. This additional exception is not found either in R.A. No. 9480 or in its IRR, hence, it is void having been issued beyond respondent's authority.

Even assuming that RMC No. 19-08 is valid, it should not cover petitioner. Under Sections 3 & 4, Chapter 2, Book IV of the Administrative Code of 1987, all administrative rules and regulations shall be filed with the University of the Philippines Law Center (UPLC) and they shall become effective 15 days from the date of filing. Per Certification issued by the UPLC, RMC No.

19-08 was submitted on March 07, 2008 or after petitioner had availed of the tax amnesty on February 29, 2008.

Finally, under Section 246 of the Tax Code, any revocation, modification or reversal of any of the rules and regulations, or any of the rulings or circulars promulgated by respondent shall not be given retroactive application if it will prejudice the taxpayer as in the case at bar.

In her Answer filed on December 02, 2008, respondent states the following Special and Affirmative Defenses, to wit:

> "10. Petitioner is liable to pay its deficiency taxes comprising (sic) of income tax, value added tax and expanded withholding tax for fiscal year ending June 30, 2002 in the total amount of Five Hundred Sixty three Million One Hundred Sixty Eight Thousand Nine Hundred Ninety Six pesos and 70/100 (P563,168,996.70) including penalties, surcharges and interest.
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> 11. The assessment for deficiency income tax in the amount of P291,320,169.28 arose from undocumented expenses which comprise deductions in the income tax return namely losses and other expenses amounting to P882,801,098.00 and P283,747.00 respectively. These were not documented in violation of Section 34(A)(b) of the National Revenue Code , as amended. x x x

The amounts of P271,335,605.67 and P25,000.00 represent interest and compromise penalty respectively.

12. The assessment for deficiency value added tax in the amount of P147,156.30 was disallowed input tax. These represent claimed input taxes for value added tax not in consonance with Section 110(A)(1) and Section 113 of the National Internal Revenue Code, as amended. Verification of the VAT returns filed for July 2001 to June 2002 revealed that only P6,126,898.56 of petitioner's sales/receipts was subjected to VAT. Pertinent vouchers and the different invoices disclosed that some input taxes were not supported by VAT invoices. As per the Integrated Tax System (ITS) of the BIR these have invalid Tax Identification Numbers (TINs), thus, not valid VAT invoices. x x x

    The amounts of P164,071.61 and P24,500.00 represent interest and compromise penalty respectively.

13. The assessment for deficiency expanded withholding tax in the amount of P66,497.56 was brought about by errors in expanded withholding tax rate for income payments to contractors and brokers. Verification of the income payments in the expanded withholding tax returns revealed that petitioner made an error in the computation of the expanded withholding tax rate for income payments in the contractor's and broker's fees, which should be 2% and 10% respectively. This is not in compliance with Section 2.57.2(E) and (G) as revised by Section 3 of Revenue Regulations 6-2001 dated July 31, 2001. The amounts of P69,996.28 and P14,000.00 represent

interest and compromise penalty respectively.

14. The penalty of P2,000.00 arose from failure of petitioner to file a summary of sales and purchases from the first to second quarters of 2002. Verification of the records in the Taxpayers Assistance Section disclosed that petitioner failed to file the Schedule of Sales and Purchases for the aforementioned period, in violation of Section 250 of the National Internal Revenue Code.

15. The assessment for the fiscal year ending June 30, 2002 in the amount of P563,168,996.70 was issued in accordance with law and regulations.

16. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of Tax Appeals, 164 SCRA 524)*. The good faith of tax assessors and validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671)*. It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality to respondent's actions and assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of

regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

17. The assessments had already become final, executory and unappealable in view of petitioner's failure to file a protest on the said assessments within thirty (30) days from receipt thereof as provided in Section 228 of the National Internal Revenue Code. x x x

18. Petitioner received the Formal Letter of Demand and Assessment Notice on May 30, 2007. No protest was filed by petitioner on the said assessment within thirty (30) days from receipt thereof, prompting respondent to send the First Collection Letter on August 28, 2007 demanding immediate payment of the assessment. More than sixty (60) days from May 30, 2007 or eighty (sic) (89) days to be exact had lapsed since petitioner received the assessment, thus, the assessments had already become final, executory and unappealable."

Trial ensued after the parties filed their Joint Stipulation of Facts and Issues on February 04, 2009.

Petitioner presented its employee Jocelyn Supetran, who testified that she is in the Utility Services since 1997. She performs general maintenance, messenger and courier services including the sending, filing and serving of the outgoing correspondences, documents, and other papers to different offices and government agencies, national or local.

On June 7, 2007, she personally delivered to the BIR petitioner's protest letter[25] signed by their Finance and Accounting Manager Ma. Gloria G. Villarama. The protest is against the Final Assessment Notice No. LDTO 122-IT-2002-00014 for the fiscal year ending June 2002 in the amount of P562,680,774.95. Due to the long queue at the BIR LTDO and per advise from the BIR Assessment Division, she proceeded to the BIR Regional Director's office which received petitioner's protest letter.

Thereafter, she gave the duplicate original of the letter, stamped received by the BIR to Ma. Gloria G. Villarama. However it could no longer be located despite diligent search. Thus, only a photocopy thereof was submitted to the Court.

For her part, Gloria Villarama testified that as petitioner's Finance and Accounting Manager, she provides financial, accounting and tax support to petitioner. She prepares financial statement, manages petitioner's cash flow, maintains its accounting records and policies, files its Annual Income Tax Returns and attends to other tax obligations with the BIR and other regulatory authorities.

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[25] Exhibit F.

She caused the preparation of the instant Petition for Review, signed the verification and certification against forum shopping and provided petitioner's lawyer with the documents attached to the Petition.

On October 16, 2003, she received from the BIR Letter of Authority No. 00061922 of even date for the audit of petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable years 2001 and 2002.

On May 30, 2007, petitioner received four undated final assessment notices in the sum of P563,168,996.70 for deficiency income tax, expanded withholding tax and VAT, inclusive of interest and compromise penalties for Fiscal year July 1, 2001 to June 30, 2002. To date, petitioner's protest letter dated June 5, 2007 remains unresolved.

On February 29, 2008, petitioner availed of the tax amnesty under R.A. No. 9480 by submitting to the Development Bank of the Philippines (DBP), the authorized agent bank of the BIR, (a) Notice of Availment of Tax Amnesty[26]; (b) Tax Amnesty Return (BIR Form No. 2116[27]; (c) Statement of Assets,

[26] Exhibit I.
[27] Exhibit J.

Liabilities, and Networth (SALN)[28] as of December 31, 2005; and (d) Tax Amnesty Payment Form (BIR Form No. 0617).[29] Subsequently, petitioner submitted copies of supporting documents[30] explaining the detail of petitioner's SALN.

The witness further testified that on January 30, 2009, petitioner, following their lawyer's advice with the information that withholding tax was not covered by the tax amnesty, paid the BIR the deficiency expanded withholding tax indicated in the undated Final Assessment Notice No. LTDO-122-WE-2002-00011, inclusive of interests and compromise penalties. Petitioner as well paid an amnesty tax of PHP112,500.00,[31] computed based on the increase in petitioner's networth determined from its SALN, Annual Income Tax Return as of fiscal year ended 2005, and its financial statements as of June 30, 2005.[32]

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[28] Exhibit K.
[29] Exhibit M.
[30] Exhibit V-6 to V-7.
[31] Exhibit N.
[32] Exhibits K and O to O-5.

In a letter dated April 28, 2008,[33] and received on May 5, 2008, petitioner informed the BIR Large Taxpayers District Office (LTDO) that it availed of the benefits under the Tax Amnesty Act.

In reply, respondent, in the letter dated July 10, 2008,[34] informed petitioner that it could not avail of tax amnesty by virtue of RMC No. 19-08 as his tax liabilities remained unpaid. Under RMC No. 19-08 delinquent account/accounts receivables considered as assets of the BIR/Government are excluded from the coverage of the amnesty law.

The witness ventured to explain that the alleged exclusion does not appear in the Guidelines and Instructions of the Tax Amnesty Return published by the BIR. Besides, petitioner was unaware of RMC No. 19-08 when it availed of the tax amnesty. More importantly, RMC No. 19-08 was not yet effective at the time petitioner availed of the tax amnesty on February 29, 2008. The BIR submitted a copy of RMC No. 19-08 on March 7, 2008 or after petitioner availed of tax amnesty, per Certification dated October 7, 2008, issued by the Office of the National

[33] Exhibit P.
[34] Exhibit Q.

Administrative Register (ONAR), University of the Philippines Law Center.[35] And only fifteen (15) days thereafter that RMC No. 19-08 became effective, thereby placing petitioner out of its coverage.

On September 8, 2008, the BIR issued a Warrant of Distraint and/or Levy[36] and served it upon petitioner on September 11, 2008. On even date, the BPI formally informed petitioner that its account Number 3765-8610-54 was put on hold by virtue of the Warrant issued by the BIR.[37] It also advised petitioner to refrain from issuing any checks against the said account which adversely affected petitioner's commercial operations.

After witness Gloria Villarama terminated her testimony, petitioner filed its Formal Offer of Evidence on June 08, 2009. In the Resolution dated July 06, 2009, all the documents offered by petitioner were admitted.

Respondent on the other hand, presented Marilu C. Zeta, Revenue Officer III of the BIR Large Taxpayers District Office

[35] Exhibit T.
[36] Exhibit R and R-1.
[37] Exhibit S.

(LTDO) in Makati City. As such, she conducts investigation and examination of internal revenue tax cases and performs such other duties and functions as may be assigned to her from time to time.

She is familiar with the case since she investigated all internal revenue tax liabilities of petitioner for the fiscal year ended June 30, 2002 by virtue of the Letter of Authority No. 61922[38] dated October 16, 2003 and Memorandum dated May 30, 2005[39] re-assigning the case to her from February Tuman, who had resigned from the service. In the course of investigation, petitioner executed three (3) waivers of the Defense of Prescription, the first on November 25, 2003,[40] extending the period to assess until December 31, 2005. The second was executed on December 5, 2005, extending the period to assess until December 31, 2006[41]. The last waiver was executed on December 6, 2006, extending the period of assessment to June 30, 2007.[42]

Her investigation shows that petitioner is liable for deficiency income tax, value added tax and expanded

[38] Exhibit 3.
[39] Exhibit 2.
[40] Exhibit 1.
[41] Exhibit 5.
[42] Exhibit 10.

withholding tax for the fiscal year ended June 30, 2002. With her findings, the BIR requested an informal conference with petitioner via a Memorandum dated November 10, 2005.[43] Upon her recommendation in an undated Memorandum[44] for Deputy Commissioner of the Large Taxpayers Service of the LTDO-Makati, a Preliminary Assessment Notice (PAN) for the cited tax deficiencies was issued. As requested in her Memorandum dated October 12, 2006,[45] the PAN was approved[46] and served on petitioner together with the Details of Discrepancies.[47]

By virtue of her a Memorandum dated May 02, 2007,[48] a Formal Letter of Demand and Assessment Notices (FANs) were issued to petitioner which was approved and served[49] as requested in her Memorandum dated May 16, 2007.[50] A Formal Letter of Demand[51] for payment of deficiency income tax, value added tax and expanded withholding tax in the total amount of P563,168,996.70 for fiscal year ending June 30, 2002 was as well served upon petitioner. These notwithstanding, petitioner failed to file any protest prompting her to prepare a

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[43] Exhibit 4.
[44] Exhibit 6.
[45] Exhibit 7.
[46] Exhibit 8.
[47] Exhibit 9.
[48] Exhibit 11.
[49] Exhibits 13, 13-a, 13-b).
[50] Exhibit 12.
[51] Exhibit 14.

Memorandum dated July 03, 2007[52] forwarding the entire docket of the case to the proper office for the enforcement of collection of the taxes due.

On cross examination, witness Marilu C. Zeta explained that upon verification with the Office of the Revenue District Officer, Taxpayer's Assistance Section, she learned that petitioner did not file a protest against the subject assessment within the prescribed thirty (30)-day period.

Respondent's witness Charlie P. Romasanta corroborated the foregoing testimony and added that he handled the instant case thus also aware of the circumstances surrounding its investigation. As a Revenue Officer II of the Collection Section, Large Taxpayers District Office (LTDO) in Makati of the BIR, he verifies tax payments of delinquent taxpayers, demands payment thereof in case of non-payment, enforces collection of tax through summary remedies, and performs such other duties and functions assigned to him from time to time.

The Memoranda dated July 09, 2007[53] and July 10, 2007,[54] show that despite issuance of a FAN, petitioner failed to file any

[52] Exhibit 15.

protest rendering the assessment issued against it final and demandable, justifying issuance of a collection letter.

The First Collection Letter dated August 03, 2007[55], granted petitioner ten (10) days to settle its outstanding account of P563,168,996.70. When no payment was made, a Final Notice Before Seizure dated December 20, 2007[56] was issued which gave petitioner the final chance to satisfy its tax liabilities. When payment appeared not forthcoming, a Report of Delinquent Account dated May 28, 2008[57] was prepared.

In the letter dated April 28, 2008, petitioner informed LTDO Makati that it had availed of the tax amnesty under R.A. No. 9480. However, respondent, in the letter dated July 10, 2008,[58] and received on August 08, 2008, informed petitioner that it was not qualified to avail of the tax amnesty under R.A. No. 9480 by virtue of RMC No. 19-2008, which outlined the exceptions to R.A. No. 9480.[59]

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[53] Exhibit 17-A.
[54] Exhibit 18.
[55] Exhibit 17.
[56] Exhibit 19.
[57] Exhibit 20.
[58] Exhibit 22.
[59] Exhibit 21.

Subsequently, Warrants of Garnishment dated September 02, 2008[60] and September 08, 2008 were issued to Banco De Oro (BDO), Mandaluyong Branch and Bank of the Philippine Islands (BPI), Intramuros Branch, respectively. Petitioner had no account with BDO, but had with BPI in the amount of P51,974.85. A Warrant of Distraint and/or Levy dated September 08, 2008[61] was constructively served on petitioner on September 11, 2008. The exercise proved futile as the BIR failed to collect the full amount of petitioner's tax liabilities.

On March 04, 2010, respondent filed her Formal Offer of Documentary Evidence. In a Resolution dated April 30, 2010, the Court admitted all the exhibits offered except Exhibits 9 and 19, both of which were neither identified nor compared with the originals.

On May 21, 2010, respondent filed a Motion to Re-open Trial for the purpose of identifying the denied Exhibits 9 and 19. However, upon the parties' stipulation on the genuineness and due execution of the two exhibits, the re-opening of trial was dispensed with resulting in the admission of the two exhibits per Resolution dated June 23, 2010.

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[60] Exhibit 23.
[61] Exhibit 25.

On August 18, 2011, petitioner filed its Memorandum. The Memorandum belatedly filed by respondent on August 24, 2011 was admitted in the Resolution dated September 28, 2010.

In their approved Joint Stipulation of Facts and Issues (JSFI), the parties submitted to the Court for resolution the following issue: Whether or not petitioner is liable and whether respondent may still collect the alleged deficiency income tax and VAT for the fiscal year ending 2002, by enforcing the Warrant of Distraint and/or Levy, after petitioner availed of the tax amnesty under R.A. No. 9480 and its IRR.[62]

Respondent strongly holds that the assailed assessment has gained finality and now beyond petitioner's realm to question on the ground that it failed to seasonably file a protest. The record however belies the contention. Evidence shows that petitioner filed its protest against the subject assessment on June 07, 2007,[63] or well within the reglementary period for filing the same as provided in Section 228 of the National Internal Revenue Code, as amended, which reads as follows:

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[62] Joint Stipulation of Facts and Issues dated February 03, 2009, p. 111 of the Record.
[63] Exhibit F.

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 case:

x x x.

The taxpayer 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 eight (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 eight (180)-day period; otherwise, the decisional shall become final, executor and demandable.

Per admission of the parties, petitioner received the copies of the undated Final Assessment Notices Nos. LTDO-122-IT-2002-00014, LTDO-122-WE-2002-00011, LTDO-122-VT-2002-00012, and LTDO-122-PEN-2002-00002 on May 30, 2007.[64] Under the foregoing provision, petitioner had 30 days or until June 29, 2007 to file a protest. From the filing of its protest letter on June 07, 2007, respondent had 180 days or until December 04, 2007 to act on the protest.

In the instant case however, respondent, before the lapse of the 180-day period, issued a First Collection Letter dated August 03, 2007[65] giving petitioner ten (10) days from receipt within which to settle its account, lest collection shall be enforced through summary remedies. By demanding immediate payment of the disputed assessments, respondent effectively denied petitioner's protest. The First Collection Letter was received by petitioner on August 28, 2007.[66]

Established is the rule that a final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a

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[64] Paragraph 4, Joint Stipulation of Facts, JSFI dated February 03, 2009.
[65] Exhibit G.
[66] Paragraph 5, Joint Stipulation of Facts, JSFI dated February 03, 2009.

denial of the taxpayer's protest or request for reconsideration. Such letter amounts to a final decision on a disputed assessment and thus may already be elevated on appeal to the Court of Tax Appeals (CTA).[67] The character of finality of a demand letter is tantamount to a rejection of the protest or request for reconsideration of an assessment.[68]

From receipt of the First Collection Letter on August 28, 2007, petitioner had 30 days or until September 27, 2007 to file an appeal with this Court. The record however shows that petitioner filed the instant Petition for Review only on October 10, 2008, or more than 1 year beyond the reglementary period for appeal, rendering the disputed assessments final and executory.

It is now an ancient rule that a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same pursuant to Section 228 can no

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[67] Commissioner of Internal Revenue vs. Isabela Cultural Corporation, G.R. No. 135210, July 11, 2001.
[68] Oceanic Wireless Network vs. Commissioner of Internal Revenue, G. R. No. 148380, December 9, 2005.

longer be contested.[69] *A fortiori*, petitioner is already precluded from disputing the correctness of respondent's assessment.[70]

It bears stressing however that the instant Petition is not a struggle to contest the denial of petitioner's protest on the subject assessments. It is a dispute questioning respondent's ruling that petitioner is excluded from the coverage of R.A. No. 9480 by virtue of RMC No. 19-2008, hence not eligible for tax amnesty.

There is no denying that respondent issued the letter dated July 10, 2008[71] informing petitioner that it was ineligible for tax amnesty. By virtue of RMC No. 19-08, which outlines the exceptions to R.A. No. 9480, petitioner's unpaid account was deemed delinquent, hence out of the coverage of R.A. 9480.

Precisely, petitioner filed the instant petition assailing respondent's ruling insisting its immunity from payment of the alleged tax liabilities having availed of tax amnesty under Republic Act (R.A.) No. 9480.

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[69] Oceanic Wireless vs. Commissioner of Internal Revenue, G.R. NO. 148380, December 09, 2005.
[70] RCBC vs. Commissioner of Internal Revenue, G.R. NO. 168498, June 16, 2006.
[71] Exhibit Q.

First that boggles the mind, is the timeliness of the filing of the instant Petition for Review. Section 11 of R.A. No. 1125, also known as an An Act Creating the Court of Tax Appeals, as amended by R.A. No. 9292 and R.A. No. 9503, relevantly states:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. x x x *(emphasis ours)*

It has been established that the assailed ruling in the letter dated July 10, 2008 was received by petitioner on August 05, 2008.[72] In accord with the foregoing provision, petitioner had 30 days or until September 04, 2008, within which to challenge respondent's ruling to this Court via a petition for review. It appears however that the instant petition was filed only on October 10, 2008, or thirty six (36) days after the lapse of the 30-day period to appeal depriving the Court of authority to entertain it.

An adverse decision, ruling or inaction of respondent is necessary to vest this with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for respondent to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the Court to extend the same.[73]

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[72] Page 7, Formal Offer of Evidence dated June 05, 2009, Document Description of Exhibit Q, docket page 200.
[73] RCBC vs. CIR, G.R. No. 168498, April 24, 2007.

While the right to appeal a decision of respondent to the Court 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 and failure to comply therewith may be raised in a motion to dismiss. In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessment,[74] or ruling of respondent.

Since this Court is of limited jurisdiction, its competence to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implication.[75]

Also deeply engrained in our jurisdiction is the rule that perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment or ruling subject of appeal, final and executory and beyond the

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[74] RCBC vs. CIR, G.R. NO. 168498, June 16, 2006.
[75] Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp., G.R. No. 158540, July 08, 2004.

power of the Court to review.[76] In other words, for petitioner's failure to seasonably appeal respondent's ruling - that it was not eligible for tax amnesty under R.A. No. 9480 by virtue of RMC No. 19-08 - has become final and executory.

A question of jurisdiction cannot be taken lightly considering that the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[77] 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, it may dismiss the same *ex mero motu* or *motu proprio.*[78]

On a final note, while the Court agrees with petitioner that RMC No. 19-08 is null and void for it expanded the coverage of the law which it seeks to implement specifically R.A. No. 9480, the Court has no option but to apply Section 11 of R.A. No. 1125, as amended.

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[76] Manaya vs. Alabang Country Club, G.R. No. 168988, June 19, 2007.
[77] Commissioner of Internal Revenue vs. Villa, L-23988, January 02, 1928.
[78] Danao, et al. vs. Tappa, et al., G.R. NO. 181303, September 17, 2009.

WHEREFORE, the instant Petition for Review dated October 10, 2008, filed by petitioner TRANSFIELD PHILIPPINES, INC., is hereby **DISMISSED,** on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice