REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ICS-PHILS. FREIGHT LOGISTICS INC., Petitioner,	CTA CASE NO. 7992
- versus -	Members: ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 15 2011, 3:00 p.m.

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RESOLUTION

Fabon-Victorino, J.:

After petitioner rested its case, respondent filed the present Motion to Dismiss dated February 16, 2011 on the ground that the Court did not acquire jurisdiction over the petition. Allegedly, the Letter dated September 03, 2009[1] issued by the Bureau of Internal Revenue (BIR) subject of this appeal does not constitute respondent's final decision on petitioner's protest against the assessment on deficiency income and withholding tax issued against it.

[1] Exhibit F

First, the Letter was signed by a Revenue District Officer (RDO) in his own capacity and not in behalf of respondent. Second, the letter itself shows that petitioner was given a period within which to submit additional documents to substantiate its protest. Third, the finality of the decision cannot be implied from the contention of the issuing RDO that the matter will be referred to higher authorities for legal action to effect immediate collection of deficiency taxes. Only when of a warrant of distraint and levy or filing of a complaint for collection is ordered that the BIR letter or communication may be considered respondent's final decision.

Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals provides that only decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue can be subject of appeal before this Court. Since the Letter dated September 03, 2009, signed by the Revenue District Officer was not respondent's final decision on petitioner's protest, the 30-day period to file an appeal mandated under Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals, was yet to commence, rendering the instant Petition for Review premature.

In rejecting respondent's motion, petitioner avers that the non-finality of the decision embodied in the Letter dated September 03, 2009 has been raised in respondent's Answer as a defense. Respondent has invoked lack of cause of action on the part of petitioner rendering the petition dismissible. After petitioner rested, respondent can no longer change her stance and invoke lack of jurisdiction on the part of the Court. Additionally, in her Answer dated January 06, 2010, respondent admitted that "the assessments have become final, executory and demandable" and even argued this position at length.

It is also not necessary for the finality of respondent's decision that a warrant of distraint and levy be ordered issued or a filing of a complaint for collection be directed. In an effort to stress its point, petitioner even differentiated 'final' and not interlocutory order from a 'final and executory' decision. Allegedly, a decision is 'final' when nothing more remains to be done at the level of the court or body which promulgated a decision. On the other hand, a decision is 'final and executory' if the period to appeal has lapsed and no appeal is taken, or when all modes of appeals have been exhausted, and the case is ripe for execution. Petitioner maintains that the Letter dated September 03, 2009 is 'final,' but not 'final and executory' or ripe for execution through a warrant of distraint and levy.

Moreover, respondent can be represented by her alter egos, like the Regional directors, who can bind her in their decision as in this case where RDO Florante C. De Castro signed in her behalf.

Petitioner claims that it has complied with all the legal requirements and seasonably filed the instant Petition for Review on November 13, 2009, or within the 30-day period from receipt of the impugned Letter dated September 03, 2009 on October 19, 2009.

Finally, petitioner insists that the Letter of September 03, 2009 shows the BIR intention to deny its protest.

The record shows that respondent filed the instant Motion to Dismiss on February 21, 2011 or after she filed her Answer on January 07, 2010. However the rule[2] that a motion to dismiss shall be filed within the time for but before filing the answer to the complaint or pleading asserting a claim[3] is not absolute.

[2] Section 1, Rule 16 of the Revised Rules of Civil Procedure.
[3] Co vs. Court of Appeals, G.R. No. 147999. February 27, 2004.

Even after the answer has been filed, a defendant or respondent can still file a motion to dismiss on the following grounds: (1) lack of jurisdiction, (2) *litis pendentia* (3) lack of cause of action, and (4) discovery during trial of evidence that constitutes a ground for dismissal.[4]

To be sure, the timeliness of the filing of this petition is intricately woven with jurisdiction of the Court to hear and determine it. As a general rule, a question of jurisdiction may be raised at any time, even on appeal, provided that doing so does not result in a mockery of the tenets of fair play.[5] Time and again, the Final Arbiter has ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional.[6] Therefore, jurisdiction which respondent invokes in the Motion to Dismiss falls under the exceptions to the general rule that a motion to dismiss should be filed within the time for but before filing an answer. To stress the import of the of the principle, the Highest Court held that a decision rendered without jurisdiction is not a decision in contemplation of law and can never become executory.[7] Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before

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[4] Panganiban vs. Pilipinas Shell, G.R. No. 131471. January 22, 2003.
[5] Roxas v. CA, G.R. No. 138955, October 29, 2002.
[6] Sehwani, Incorporated vs. In-N-Out Burger, Inc., G.R. No. 171053, October 15, 2007.
[7] Heirs of Honrales v. Honrales, G.R. No. 192651, August 25, 2010.

this Court.[8] In *Tambunting, Jr. v. Sumabat,* it declared that a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bonds anyone, and under which all acts performed and all claims flowing therefrom are void.[9] Obviously, to proceed with the case given that the Court has no jurisdiction is not only a waste of time and resources of the Court but also plain ignorance of the law.

On the merits of the Motion to Dismiss, the pertinent provisions are Section 7 and 11 of Republic Act (R.A.) No. 1125 as amended by R.A. No. 9282 and R.A. No. 9503, which read as follows:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; x x x"

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[8] Bungcayao, Sr. v. Fort Ilocandia Property Holdings, G.R. No. 170483, April 19, 2010.
[9] Tanenglian v. Silvestre, et al., G.R. No. 173415, March 28, 2008.

> "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.
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> 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)

In the same vein, Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals states, thus:

> "SEC. 3. *Who may appeal; period to file petition.* - **A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court**

> **<u>by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments</u>**. x x x" (emphasis ours)

From the foregoing provisions, an aggrieved taxpayer must file a petition for review with this Court within 30 days from receipt of the adverse decision or ruling or inaction of respondent.

Necessarily, there must be a decision, ruling or inaction on the part of respondent within the allotted period before a taxpayer may seek the intervention of the Court. And the Court is competent to entertain the appeal if it is filed within 30 days after the receipt of the adverse 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. The said reglementary period of 30 days to appeal is jurisdictional and non-compliance therewith will bar the appeal and deprive the Court of jurisdiction to entertain and determine the correctness of the assailed assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[10]

[10] RCBC vs. CIR, G.R. No. 168498, April 24, 2007.

As to the question of whether the Letter dated September 03, 2009 issued by the BIR may be deemed the final decision of respondent that can be properly raised on appeal before this Court, the answer is in the negative.

Apropos is the case of *Oceanic Wireless Network v. CIR,* where the Supreme Court held that the authority to make tax assessment may be delegated by respondents to subordinate officers and the said assessment has the same force and effect as that issued by her, if not reviewed or revised by her.[11] This is obviously in accord with Section 7 of Republic Act No. 8424 which expressly empowers respondent to delegate the powers vested in her under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:

> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate under Section 204(A) and (B) of this Code, any tax deficiency: Provided, however, that assessments issued by the Regional Offices

[11] G.R. NO. 148380, December 09, 2005

involving basic deficiency taxes of five hundred thousand pesos (P500,000) or less, and minor criminal violations as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

Hence, respondent may delegate any power vested upon her by law to division chiefs or to officials of higher rank, inclusive of the power to review and decide on protest cases of deficiency tax assessments.

A scrutiny of the Letter dated September 03, 2009[12] reveals that it was issued and signed by Revenue District Officer Florante C. De Castro, who cannot be deemed as an alter-ego of respondent for purposes of issuing a final decision on petitioner's protest under a delegated authority. On this score alone, the instant Petition must fail.

[12] Exhibit F.

Further examination of the wording of the Letter dated September 03, 2009, also shows that it cannot be deemed as the final decision of respondent on petitioner's protest.

Again in *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*,[13] the parameter for any BIR correspondence to be considered as the final decision of respondent over any protest case of a deficiency tax assessment has been laid down as follows:

> 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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> x x x x x x x x x
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> In this case, the letter of demand dated January 24, 1991, unquestionably constitutes the final action taken by the Bureau of Internal Revenue on petitioner's request for reconsideration when it reiterated the tax deficiency assessments due from petitioner, and requested its payment. Failure to do so would result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice." In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.
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> The above conclusion finds support in

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[13] G.R. NO. 148380, December 09, 2005

> *Commissioner of Internal Revenue v. Ayala Securities Corporation,* where we held:
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> The letter of February 18, 1963 (Exh. G), in the view of the Court, is tantamount to a denial of the reconsideration or [respondent corporation's]...protest o[f] the assessment made by the petitioner, considering that the said letter [was] in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment of the sum of P758,687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961. This certainly is a clear indication of the firm stand of petitioner against the reconsideration of the disputed assessment...This being so, the said letter amount[ed] to a decision on a disputed or protested assessment, and, there, the court a quo did not err in taking cognizance of this case.

Similarly, in *Surigao Electric Co., Inc v. Court of Tax Appeals,* and in *CIR v. Union Shipping Corporation,* we held:

> ". . . In this letter, the commissioner not only in effect demanded that the petitioner pay the amount of P11,533.53 but also gave warning that in the event it failed to pay, the said commissioner would be constrained to enforce the collection thereof by means of the remedies provided by law. The tenor of the letter, specifically the statement regarding the resort to legal remedies, unmistakably indicate[d] the final nature of the determination made by the commissioner of the petitioner's deficiency franchise tax liability."

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 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."

In the light of the foregoing jurisprudence, the Letter dated September 03, 2009, could not be deemed as respondent's final word on petitioner's protest. The tenor of the said Letter did not in any way suggest finality of the decision. No demand to pay the subject assessment was indicated therein. It even granted petitioner an additional period to substantiate its claim in support of its protest. The pertinent portion is found in page 3 of the impugned letter which states, thus:

> "Since the required period of submission of documents/evidences under Section 228 of the Tax Code has already lapsed, you are given another chance of five (5) days upon receipt of this letter to submit the required documents, otherwise, much to our regret, we shall be constrained to forward the case to higher authorities to enforce legal actions for the immediate collection of deficiency taxes herein being assessed.
>
> Please give this matter your utmost concern."

Clear as a day that the BIR was still open to the possibility of a change in its assessment depending on the additional documents that petitioner might submit to substantiate its protest. In fine, the letter was not a final ruling of respondent. And without the said final ruling of respondent, petitioner could seek relief from this Court as the 30-day reglementary period for appeal was yet to run.

It is also worth to note at this juncture that the premature invocation of the Court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. In this petitioner failed. As a party with an administrative remedy available to it, it is not sufficient that petitioner initiated the prescribed administrative procedure to obtain relief, it must as well pursue the administrative action to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[14]

This Court in cases more than one has invariably ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so

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[14] Asia International Auctioneers vs. Parayno, G.R. No. 163445, December 18, 2007.

renders the questioned decision/final order final and executory, and deprives the appellate court of jurisdiction to alter the judgment or final order, much less to entertain the appeal.[15]

WHEREFORE, premises considered, the Motion to Dismiss dated February 16, 2011, filed by respondent is **GRANTED.** Consequently, the Petition for Review filed by ICS-Phils. Freight Logistics Inc., is hereby **DISMISSED.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

(on leave)
ERLINDA P. UY
Associate Justice

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[15] Sehwani, Incorporated vs. In-N-Out Burger, Inc., G.R. No. 171053, October 15, 2007.