

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

DELBROS, INC.,

Petitioner,

C.T.A. CASE NO. 7283

- versus -

Members:

CASTAÑEDA, JR., *Chairman*
BAUTISTA, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 04 2006

X -----X

RESOLUTION

This resolves:

- 1.) respondent's "Motion to Dismiss" filed on October 11, 2005 anchored on the ground that this Court has no jurisdiction over the subject matter of the petition for failure of the petitioner to appeal the adverse Resolution dated February 21, 2005 of the respondent, within thirty (30) days from receipt thereof, in violation of Section 228 of the National Internal Revenue Code (NIRC) of 1997, and Section 9 of R.A. No. 9282; and
- 2.) petitioner's "Comment/Opposition (To Respondent's Motion to Dismiss)" filed on November 23, 2005.

According to respondent, petitioner received respondent's Resolution dated February 21, 2005 on March 11, 2005. However, petitioner filed the instant Petition only on July 4, 2005 or 115 days from receipt of the said Resolution. Respondent argues that the failure of

a taxpayer, as in the instant case, to file its appeal within the thirty (30) day reglementary period bars its appeal and renders the questioned Resolution final and executory.

On the other hand, petitioner opposed the motion on the ground that the motion is a mere scrap of paper, since the motion does not contain a notice of hearing. Furthermore, petitioner maintains that this Court has acquired jurisdiction over the present case when respondent filed its answer and the filing of the answer has the effect of joining the issues in this case.

As regards the ground that the motion does not contain a notice of hearing, it is settled that procedural rules may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed (*Galang v. Court of Appeals*, 199 SCRA 683). Furthermore, a liberal construction of the rules is allowed where the interest of substantial justice will be served and where the resolution of the motion is addressed solely to the sound discretion of the court (*Tan v. Court of Appeals*, 295 SCRA 755). In the instant case, petitioner's interest was not adversely affected, as the Court in its Resolution dated October 28, 2005 ordered petitioner to file its Comment and/or Opposition to the "Motion to Dismiss". And, in fact, petitioner filed its Comment on November 23, 2005.

As regards the issue of lack of jurisdiction, Section 7 of R.A. No. 9282 provides that the Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal:

"SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(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 x x x x x x ."

On the other hand, Section 3. Rule 8 of the Revised Rules of the Court of Tax

Appeals provides:

"SEC. 3. Who may appeal; period to file petition – (a) A party adversely affected by a decision, ruling or 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 by petition for review filed within thirty (30) 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. x x x"

Corollary thereto, Section 228 of the NIRC 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 preassessment notice shall not be required in the following cases:

- (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
- (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
- (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year, or
- (d) When the excise tax due on excisable articles has not been paid; or
- (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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. (italics supplied)

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.”

In the present case, petitioner received copy of the Resolution dated February 21, 2005 of respondent Commissioner of Internal Revenue on March 11, 2005. Under the afore-quoted provisions, petitioner has thirty (30) days from March 11, 2005, or until April 10, 2005 within which to appeal to this Court. However, petitioner filed the instant Petition For Review only on July 4, 2005, way beyond the (30) day reglementary period. For failure of petitioner to file its appeal within the (30) day reglementary period, the Resolution dated February 21, 2005 had already become final, executory and demandable.

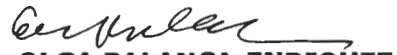
Appeal is a statutory privilege and must be exercised in the manner provided by law. Therefore, perfection of an appeal in the manner and within the period prescribed by law is not only mandatory, but jurisdictional, and non-compliance is fatal having the effect of rendering the judgment final and executory (Cabellan vs. Court of Appeals, 304 SCRA 119). Not only that, late appeals deprive the appellate court of jurisdiction to alter the final judgment, much less entertain the appeal (Pedrosa vs. Hill, 257 SCRA 373).

WHEREFORE, premises considered, the “Motion to Dismiss” is hereby **GRANTED** and the case in caption is hereby **DISMISSED**.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice