REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FISHWEALTH CANNING CORPORATION,
Petitioner,

C.T.A. EB No. 223
(C.T.A. Case No. 7346)

-versus-

Members:

Acosta, ***P.J.,***
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.:*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 05 2007

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DECISION

CASTAÑEDA, JR., J.:

This Petition for Review En Banc under Section 11 of Republic Act No. 9282 impugns the Resolutions dated July 21, 2006 and October 13, 2006 dismissing the Petition for Review, and denying the Motion for Reconsideration issued by the First Division of the Court in the case entitled, "Fishwealth Canning Corporation vs. Commissioner of Internal Revenue" docketed as CTA Case No. 7346. The dismissal of the Petition effectively upholds the Final Decision on

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Disputed Assessment dated August 2, 2005 finding petitioner liable for income tax and Value Added Tax ("VAT") deficiencies in the aggregate amount of Seventy Nine Million Eighty Five Thousand Three Hundred Thirty Nine Pesos and 84/100 (P79,085,339.84) for taxable year 1999.

The factual milieu of the case is as follows:

Fishwealth Canning Corporation ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is engaged in the business of processing of imported fresh frozen sardines and mackerel.[1]

The Commissioner of Internal Revenue("respondent") is tasked to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue("BIR").

On May 16, 2000, the respondent ordered the examination of internal revenue taxes for the taxable year 1999 by virtue of Letter of Authority ("LOA") No. 00061371.[2] The investigation disclosed petitioner's liability in the amount of P2,395,826.88 representing income tax, VAT, withholding tax deficiencies and other miscellaneous which were eventually paid on August 30, 2000.[3]

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1 BIR Records, p. 409.
2 Rollo, p. 60.
3 Rollo, pp. 61-68.

On August 25, 2000, officials of the BIR conducted a re-investigation of petitioner's books of accounts and other records of internal revenue taxes covering the same period under LOA No. 00009366.[4]

In a letter dated March 5, 2001, petitioner through Vice President Lapaz Kaw Ngo requested the cancellation of subpoena duces tecum requiring the submission of records and books of account for the taxable year 1999 since the same set of documents have been previously examined by the BIR.[5]

The failure of petitioner to abide with the subpoena duces tecum and summons constrained the BIR to file a complaint against the former represented by its late President Lioni T. Ngo in violation of Sections 5© and 266 of the 1997 National Internal Revenue Code ("NIRC"), as amended. Consequently, in the Resolution dated March 7, 2002, Assistant City Prosecutor Gibson T. Araula, Jr. dismissed the complaint for insufficiency of evidence.[6]

On September 8, 2003, the petitioner received the Formal Letter of Demand with attached Final Assessment Notice Nos. TFD-99-INC-082-03 and TFD-99-VAT-083-03, all dated August 6, 2003 showing its income tax and VAT deficiencies in the aggregate amount of P67,597,336.75 for taxable year 1999 computed as follows:

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[4] Rollo, p. 69.
[5] Rollo, p. 70.
[6] Rollo, pp. 77-78.

DEFICIENCY INCOME TAX

Net Income per Return		4,148,053.81
Add: Discrepancy		
RDO's findings(see ROs Audit Report on IT)	3,253,574.51	
Undeclared Gross Profit (See Annex A)	18,177,220.14	21,430,794.65
Net Income Per Investigation		25,578,848.46
Tax Due 33%		8,441,019.99
Less: Income Tax Due per Audit		2,442,537.35
Basic Deficiency Income Tax		5,998,482.64
Add: 50% Surcharge		2,999,241.32
20% Interest 4/15/00 -8/15/03(66.68%)		3,999,788.22
Total Income Tax Due		**12,997,512.18**

DEFICIENCY VALUE- ADDED TAX

Taxable Sales per Return		300,810,743.75
Add: Discrepancy		
RDO's findings (see ROs Audit Report on VAT)	800,724.62	
Undeclared Sales (See Annex A)	227,215,251.79	228,015,976.41
Taxable Sales		528,826,720.16
Value-Added Tax Due		52,882,672.01
Less: VAT paid per audit		30,161,147.00
Basic Tax Due		22,721,525.01
Add: 50% Surcharge		11,360,762.50
20% Interest 2/10/99-8/15/03(90.30%)		20,517,537.07
Total Value-Added Tax Due		**54,599,824.57**[7]

On October 6, 2003, the petitioner contested the Final Assessment Notices ("FAN") primarily premised on the following grounds:

First, LOA No. LA-0061371 is a duplication of LOA No. LA-00009366. Both Letters of Authority pertain to the same taxes for taxable year 1999, in violation of Revenue Memorandum Order No. 31-95. Moreover, the BIR twice examined petitioner's books of account for the same taxable period.

Second, the Letter of Demand failed to state the facts and law on which the assessments are based.

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7 BIR Records, pp. 148-155.

Third, the assessments are mere conjectures. The BIR examiners have overlooked the fact that the VAT paid in advance to the Bureau of Customs on imported goods were based on landed cost. The timing in recording purchases transactions should also be taken into account, specifically in cases when the goods are in transit.

Finally, the three year period within which to assess the petitioner has prescribed under Section 203 of the 1997 NIRC, as amended.[8]

The respondent issued a Final Decision on Disputed Assessment dated August 2, 2005 which petitioner received on August 4, 2005.[9] The said Decision denied petitioner's protest and apprised petitioner of its income tax and VAT liabilities in the amounts of P15,396,905.24 and P63,688,434.60, respectively or the cumulative amount of P 79,085,339.84[10] for the taxable year 1999. Respondent's findings were anchored on the undeclared income and sales arising from undeclared importation of raw materials based on audit and third party information.

Feeling aggrieved, on September 1, 2005, the petitioner filed a Motion for Reconsideration questioning the Final Decision of the respondent on its protest.[11]

In the Preliminary Collection Letter dated September 6, 2005, the respondent demanded petitioner to settle the amounts of P12,997,512.18 and

8 BIR Records, pp. 668-670.

9 Rollo, pp. 11, 42-46.

10 There is an increment of deficiency interest counted from August 15, 2003 until the issuance of the Final Decision on the Disputed Assessment on August 2, 2005. See Formal Letter of Demand dated August 6, 2003.

11 CTA Case No. 7346, p. 5 and Rollo, pp. 79-81.

P54,599,824.58 or the aggregate amount of P67,597,336.76 representing income tax and VAT deficiencies for the year 1999.[12]

On September 19, 2005, the respondent issued a Final Notice Before Seizure reiterating the tax deficiencies of the petitioner for taxable year 1999.[13]

Unfazed, on October 20, 2005, the petitioner filed a Petition for Review docketed as CTA Case No. 7346 before the Court in Division; while in his Answer, respondent raised special and affirmative defenses such as the filing of the Petition outside the thirty day reglementary period.

Acting on respondent's Motion for Preferential Resolution of the Affirmative Defense of Prescription, per Resolution dated July 21, 2006, the First Division of the Court dismissed the Petition, for failure of the petitioner to appeal within the prescribed period, ratiocinating that:

> There is no argument that the subject Final Decision on Disputed Assessment is indeed the final decision of the Commissioner, and appealable to this Court, as contemplated by law. Aside from the words expressly indicating the finality of the decision, the remedy to elevate an appeal was likewise provided for. In the case at bar, the subject Final Decision on Disputed Assessment dated August 2, 2005 was issued by the Commissioner, and pursuant to the provisions of Revenue Regulations 12-99, implementing Section 228 of the National Internal Revenue Code of 1997, the remedy of the petitioner is to elevate its appeal to this Court within thirty (30) days from its receipt of the Final Decision. Unfortunately, petitioner failed to do so.
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> When the Final Decision on Disputed Assessment was admittedly received by petitioner on August 4, 2005, what it did was to elevate a letter of reconsideration to the Office of the Commissioner, instead of applying the remedy provided for by law. Failure on the part of the petitioner to timely file its appeal to this Court is fatal to its claim.[14]

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12 Rollo, p. 47.
13 BIR Records, p. 706.
14 Rollo, pp. 24-30.

Thereafter, petitioner filed a Motion for Reconsideration which the Court denied in a Resolution dated October 13, 2006.[15]

Hence, this appeal ascribing the following errors of the Court in Division:

A.

Whether or not the First Division of the Court of Tax Appeals seriously erred when it promulgated the Resolution on July 21, 2006, Annex "A" hereof, dismissing the instant Petition for lack of jurisdiction for having been filed out of time.

B.

Whether or not the First Division of the Court of Tax Appeals seriously erred in promulgating the Resolution on October 13, 2006, Annex "B", hereof, denying the petitioner's Motion for Reconsideration.[16]

The Petition is devoid of merit.

Appeal is an essential part of our judicial process. As such, courts should proceed with caution so as not to deprive a party of the right to appeal, particularly if the appeal is meritorious. However, the right to appeal is merely a statutory right. For this reason, it should be exercised only in the manner and in accordance with the provision of the law.

A taxpayer aggrieved by the adverse ruling or inaction of the Commissioner of Internal Revenue may file an appeal with the Division of the Court of Tax Appeals under Section 228 of the 1997 NIRC, as amended to be read in conjunction with Section 11 of Republic Act No. 1125, as amended by Section 9 of Republic Act No. 9282 which provide:

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15 Rollo, pp. 29-30.
16 Rollo, pp. 13.

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SEC. 228. *Protesting of Assessment.* –

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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.

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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.

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SEC. 9. Section 11 of the same Act is hereby amended to read as follows:

> 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 of Appeals or the Regional Trial Courts may file an appeal with the CTA within (30) thirty 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. x x x

In supplementary thereto, Section 3.1.5 of Revenue Regulation No. 12-99 further states:

3.1.5 Disputed Assessment. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, 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. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

> The taxpayer shall state the facts, 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 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 taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
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> The taxpayer shall submit the required 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, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
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> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
>
> <u>If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.</u>(Underscoring Ours for emphasis.)
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, excutory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory, demandable, in which case, the protest shall be decided by the Commissioner.
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> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.

According to petitioner, under Section 228 of the 1997 NIRC, as amended, a Motion for Reconsideration is the appropriate remedy against respondent's unfavorable Final Decision on the Disputed Assessment. Pursuant to Revenue Regulation No. 12-99, implementing Section 228 of the 1997 NIRC, as amended, there is no proscription on the filing of an appeal or a Motion for

Reconsideration, if the respondent partly or entirely denies the protest on the assessment. The law does not make any distinction between the Final Decision on Disputed Assessment issued by the Commissioner of Internal Revenue, or the Final Assessment Notice issued by his duly authorized representative such as the Regional Director. Both instances can be protested administratively by filing a letter of reconsideration.

The respondent counters that the final decision on disputed assessment rendered by the Commissioner of Internal Revenue should be appealed to the Court of Tax Appeals within thirty days, otherwise, failure to conform to this jurisdictional requirement is fatal to the case. It is only when any of the respondent's duly authorized representatives denies the administrative protest with finality, may the taxpayer be allowed to either appeal directly to the Court of Tax Appeals or seek reconsideration with the respondent for a period of thirty days from receipt of the decision of respondent's duly authorized representative.

In view of the foregoing provisions and the arguments of the parties, the nexus of the controversy is whether or not a Motion for Reconsideration of the respondent's Final Decision on the Disputed Assessment is allowed prior to the filing of an appeal with the Court of Tax Appeals.

The Court agrees with the respondent.

The final decision or inaction of the Commissioner of Internal Revenue on a disputed assessment is appealable to the Court of Tax Appeals as held by the

Supreme Court in the recent case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[17], viz:

> Also, petitioner's failure to file a petition for review with the Court of Tax Appeals within the 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.
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> The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. Section 7 of Republic Act No. 9282, amending R.A. No. 1125, otherwise known as the Law Creating the Court of Tax Appeals, provides:
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> Sec. 7. *Jurisdiction..* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (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;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> Also, Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of Court of Tax Appeals state:
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> **RULE 4**
> **Jurisdiction of the Court**
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> x x x x
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> SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:

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17 G.R. No. 168498, April 24, 2007.

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or 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;

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

x x x x

RULE 8
Procedure in Civil Cases

x x x x

SECTION 3. Who May Appeal; Period to File Petition. — (a) 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 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. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (n)

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From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals 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 the Commissioner 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 Tax Appeals 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 courts to extend the same.[18]

In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other. (Underscoring Ours for emphasis.)

In the instant case, the Commissioner failed to act on the disputed assessment within 180 days from date of submission of documents. Thus, petitioner opted to file a petition for review before the Court of Tax Appeals. Unfortunately, the petition for review was filed out of time, i.e., it was filed more than 30 days after the lapse of the 180-day period. Consequently, it was dismissed by the Court of Tax Appeals for late filing. Petitioner did not file a motion for reconsideration or make an appeal; hence, the disputed assessment became final, demandable and executory.

Based on the foregoing, petitioner can not now claim that the disputed assessment is not yet final as it remained unacted upon by the Commissioner; that it can still await the final decision of the Commissioner and thereafter appeal the same to the Court of Tax Appeals. This legal maneuver cannot be countenanced. After availing the first option, i.e., filing a petition for review which was however filed out of time, petitioner can not successfully resort to the second option, i.e., awaiting the final decision of the Commissioner and appealing the same to the Court of Tax Appeals, on the pretext that there is yet no final decision on the disputed assessment because of the Commissioner's inaction.

In the case of *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*[19], the Supreme Court espoused the same pronouncements, ruling in this wise: *gr*

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18 *Chan Kian v. Court of Tax Appeals*, 105 Phil. 904, 906 (1959).

19 G.R. No. 135210, July 11, 2001, 361 SCRA 71.

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> We agree with respondent. In the normal course, the revenue district officer sends the taxpayer a notice of delinquent taxes, indicating the period covered, the amount due including interest, and the reason for the delinquency. If the taxpayer disagrees with or wishes to protest the assessment, it sends a letter to the BIR indicating its protest, stating the reasons therefore, and submitting such proof as may be necessary. That letter is considered as the taxpayer's request for reconsideration of the delinquent assessment. After the request is filed and received by the BIR, the assessment becomes a disputed assessment on which it must render a decision. That decision is appealable to the Court of Tax Appeals for review.
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> Prior to the decision on a disputed assessment, there may still be exchanges between the commissioner of internal revenue (CIR) and the taxpayer. The former may ask clarificatory questions or require the latter to submit additional evidence. <u>However, the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review.</u> (Underscoring Ours for emphasis.)

Only orders or decisions attaining a character of finality are appealed to the Court of Tax Appeals. Thus, relevant to the issue is the text of the Decision dated August 2, 2005 on the disputed assessment, the pertinent excerpt of which reads:

> It is requested that your aforesaid deficiency income taxes and value-added taxes liabilities be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. <u>This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency income and value-added taxes assessments shall become final, executory and demandable.</u>[20] (Underscoring Ours for emphasis.)

The Decision dated August 2, 2005 reiterates the findings of the BIR on petitioner's income tax and VAT liabilities for the taxable year 1999 and the demand for immediate payment thereof. The wordings of the said Ruling signify a final determination on petitioner's tax deficiencies being ripe for judicial review. Jc

[20] Rollo, p. 46.

It bears stressing that the respondent's Final Decision on Disputed Assessment clearly instructed petitioner to file an appeal, and not a Motion for Reconsideration.

Hence, a Final Decision on Disputed Assessment issued by the Commissioner of Internal Revenue precludes the filing of a Motion for Reconsideration because the said Motion does not toll the thirty day period within which the taxpayer may appeal the case before the Court of Tax Appeals.

Notably, the Petition for Review likewise filed with the Court En Banc was undertaken beyond the prescriptive period mandated by law. The appellant is given a period of fifteen (15) days from receipt of copy of the assailed Decision or the Resolution issued by the Court in Division to file a Petition for Review before the Court En Banc pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals which states:

> **RULE 8**
> **PROCEDURE IN CIVIL CASES**
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> SEC. 3. *Who may appeal; period to file petition.* –
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> x x x
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from expiration of the original period within which to file the petition for review. (*Rules of Court, Rule 42, sec. 1a*)

In the case at bar, counting from October 31, 2006, the date when petitioner received the Court in Division's Resolution denying its Motion for

Reconsideration, the former had until November 15, 2006 to have filed the Petition for Review with the Court En Banc. However, it belatedly filed the said Petition six days later, or on November 21, 2006.[21]

The perfection of an appeal within the period and in the manner provided by law is jurisdictional and non-compliance with such legal requirements is fatal and has the effect of rendering judgment or order final and executory. The limitation on the period of appeal is not without reason. They must be strictly adhered as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice, to ensure an orderly discharge of judicial business and to put an end to controversies. Though in general, rules or procedures are liberally construed, the provisions with the respect to the rules on the manner and period for perfecting appeals are strictly applied and are only relaxed in exception circumstances on equitable considerations[22] which are wanting in the present case.

To recapitulate, the Court is divested jurisdiction to take cognizance over the case on the following grounds:

1. The petitioner failed to appeal within thirty (30) days from receipt of the respondent's issuance of the Final Decision on the Disputed Assessment; and;

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21 See CTA Case No. 7346, Notice of the Resolution dated October 13, 2006.

22 *Heirs of Teofilo Gaudiano vs. Constancio Benemerito*, G.R. No. 174247, Feb. 21, 2007.

2. The petitioner likewise did not seasonably elevate the case for review with the Court En Banc, after it received the assailed Resolution of the Court in Division.

In fine, respondent's Final Decision on the Disputed Assessment became final and executory as a result of petitioner's failure to file a timely appeal before the Court in Division and En Banc.

WHEREFORE, premises considered, the assailed Resolutions are hereby **SUSTAINED**. Accordingly, the Petition for Review is hereby **DISMISSED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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.

ERNESTO D. ACOSTA
Presiding Justice

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