REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HIMLAYANG PILIPINO PLANS, INC.,
Petitioner,

CTA CASE NO. 8727

- versus-

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 01 2016

10:35 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

This Petition for Review filed by Himlayang Pilipino Plans, Inc. prays for the nullification and cancellation of the Formal Letter of Demand (FLD) issued by the Commissioner of Internal Revenue, assessing the former for its alleged deficiency income tax in the amount of ₱7,263,190.35, deficiency value-added tax (VAT) in the amount of ₱4,179,258.23, deficiency expanded withholding tax (EWT) in the amount of ₱231,150.35, deficiency documentary stamp tax (DST) in the amount of ₱94,974.98, and compromise penalty in the amount of ₱25,000.00 or a total of ₱11,793,573.91 for taxable year 2009.[1]

FACTS

Petitioner Himlayang Pilipino Plans, Inc. is a corporation duly organized and existing under Philippine laws, with office address at 12th Floor, Triumph Building, 1610 Quezon Avenue, Quezon City.[2] It is a wholly-owned subsidiary of

[1] Summary of the Case, Pre-Trial Order, docket, vol. I, p. 527.
[2] Par. 1.1, Admitted Facts/Documents, Joint Stipulation of Facts and Simplification of Issues (JSFSI), docket, vol. I, p. 509.

Himlayang Pilipino, Inc. (HPI),[3] which is also a corporation duly organized and existing under Philippine laws.[4] Petitioner's principal purpose is to engage in the pre-need plans business.[5] It is duly registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 39, with Taxpayer's Identification No. (TIN) 000-845-616-000.[6]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested with authority, among others, to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On September 29, 2010, respondent issued Letter of Authority LOA-039-2010-00000072[7], authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2009. It was received by petitioner on October 12, 2010.

Petitioner submitted pertinent documents relevant to the examination of its books of accounts for taxable year 2009 on July 21, 2010[8], on July 8, 2011[9], and on July 11, 2011[10]. After the examination of petitioner's accounting records, petitioner was found to have deficiency taxes for taxable year 2009.[11]

On August 28, 2012, petitioner requested an extension of time to reconcile its accounting records for taxable year 2009,[12] which respondent granted in a letter dated August 31, 2012.[13]

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[3] Exhibit "P-1", docket, vol. I, pp. 347 to 355.
[4] Par. 1.9, Admitted Facts/Documents, JSFSI, docket, vol. I, p. 511; Exhibit "P-3", docket, vol. I, pp. 373 to 386.
[5] Par. 1.8, Admitted Facts/Documents, JSFSI, docket, vol. I, p. 511; Exhibit "P-2", docket, vol. I, pp. 356 to 367.
[6] Par. 1.12, Admitted Facts/Documents, JSFSI, docket, p. 512.
[7] Exhibit "R-2", BIR records, p. 1.
[8] Exhibit "P-6", docket, vol. I, p. 400.
[9] Exhibit "P-7", docket, vol. I, p. 401.
[10] Exhibit "P-8", docket, vol. I, p. 402.
[11] Exhibits "R-5", "R-5-a", "R-5-a-1", "R-5-a-2", BIR records, pp. 361 to 364.
[12] Exhibit "P-9", docket, vol. I, p. 403.
[13] Exhibit "P-10", docket, vol. I, p. 404.

Respondent issued a Preliminary Assessment Notice[14] (PAN) with Details of Discrepancies[15] on December 14, 2012. The PAN and the attached Details of Discrepancies were received by petitioner on even date.[16]

Petitioner contested the said PAN on December 28, 2012.[17] However, on January 14, 2013, Formal Letters of Demand[18] dated January 4, 2013 with Final Assessment Notices[19] (FAN) and Details of Discrepancies[20] dated January 14, 2013 were issued against petitioner; which petitioner received on the same date.[21]

Petitioner administratively protested the FAN on February 14, 2013[22]. Petitioner likewise submitted documents in support of its administrative protest on April 12, 2013.[23] Due to the alleged inaction of respondent on its protest, petitioner filed the instant Petition for Review[24] on November 7, 2013.

Respondent filed her Answer[25] on December 16, 2013, which interposed the following arguments: the assessments were issued in accordance with the laws and regulations and contains the factual and legal bases of the assessments; the petitioner failed to submit the required documents in support of its protest within sixty (60) days from the date of filing of its protest, hence, the assessment has become final, executory, and demandable, therefore, the Court no longer has jurisdiction over the petition due to the finality of the assessment; and, that respondent's right to issue the assessment has not prescribed. Respondent further explains the bases of the assessments. Thus, income tax deficiency assessment arose from the following: that total revenues were

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[14] Exhibit "P-11", docket, vol. I, pp. 405 to 406; Exhibits "R-12" and "R-12-a", BIR records, pp. 385 to 386.
[15] Exhibit "R-13", BIR records, p. 384.
[16] Par. 1.6, Admitted Facts/Documents, JSFSI, docket, vol. I, p. 510.
[17] Exhibit "P-12", docket, vol. I, pp. 408 to 414.
[18] Exhibits "P-22" and "P-23", docket, vol. I, pp. 396 to 398; Exhibits "R-19", "R-20", and "R-20-a", BIR records, pp. 388 to 390.
[19] Exhibits "P-17", "P-18", "P-19", "P-20" and "P-21", docket, vol. I, pp. 391 to 395; Exhibits "R-14", "R-15", "R-16", "R-17", and "R-18", BIR records, pp. 391 to 395.
[20] Exhibit "P-24", docket, vol. I, p. 399; Exhibit "R-21", BIR records, p. 387.
[21] Par. 1.7, Admitted Facts/Documents, JSFSI, docket, vol. I, pp. 510 to 511.
[22] Par. 1.15, Admitted Facts/Documents, JSFSI, docket, vol. I, p. 512; Exhibit "P-13", docket, vol. I, pp. 457 to 484.
[23] Exhibit "P-14", docket, vol. I, pp. 499 to 506.
[24] Docket, vol. I, pp. 6 to 44.
[25] Docket, vol. I, pp. 202 to 210.

not fully reported; that certain income payments, salaries, and wages were not subject to withholding tax and thus disallowed as deductions; that there were unaccounted sources of cash. The VAT assessment arose from failure to subject total receipts to VAT; and the unaccounted sources of cash should be subject to VAT. Respondent also explains that the deficiency expanded withholding tax assessment arose from failure to subject income payments to withholding tax; and deficiency documentary stamp tax assessment arose from failure to impose the documentary stamp tax on premiums collected and advances made by petitioner which qualified as loan agreements. Finally, respondent argues that tax assessments by examiners are presumed correct and made in good faith.

Respondent's Pre-Trial Brief[26] was filed on January 16, 2014; while petitioner's Pre-Trial Brief[27] was filed on January 24, 2014. Thereafter, the parties submitted their Joint Stipulation of Facts and Simplification of Issues[28] on February 18, 2014.

The Court issued the Pre-Trial Order[29] on February 25, 2014, terminating the pre-trial and setting the case for petitioner's presentation of evidence.

Upon motion of petitioner, Mr. Enrico T. Pizarro was commissioned by the Court as the Independent Certified Public Accountant (CPA) for the case on April 10, 2014.[30]

During trial, petitioner presented Ms. Leah Laxamana and Mr. Enrico T. Pizarro as its witnesses. On the other hand, respondent presented as witnesses, Mr. Bernard R. Bugauisan and Mr. Bacolor D. Yambing.

Petitioner formally offered Exhibits "P-1" to "P-83-1, inclusive of submarkings, which were all admitted by the Court except for Exhibits "P-59.7954" and "P-60.84".[31] On the other hand, respondent formally offered Exhibits "R-1" to "R-

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[26] Docket, vol. I, pp. 213 to 218.
[27] Docket, vol. I, pp. 261 to 295.
[28] Docket, vol. I, pp. 509 to 522.
[29] Docket, vol. I, pp. 527 to 534.
[30] Minutes of the Hearing, docket, vol. I, p. 560.
[31] Resolution, docket, vol. II, pp. 985 to 987.

23-1", inclusive of submarkings; which the Court admitted as respondent's evidence via Resolution dated April 30, 2015.

The Court declared the case submitted for decision on July 20, 2015,[32] after the filing of respondent's Memorandum on May 22, 2015[33] and the submission of the Memorandum (For the Petitioner) on July 10, 2015[34].

ISSUES

The parties presented the following issues[35] to be resolved by the Court:

1. Whether petitioner timely and validly filed an administrative protest and the Petition for Review in accordance with Section 3.1.5 of Revenue Regulations No. 12-99, in relation to Section 228 of the Tax Code; and

2. Whether respondent's deficiency tax assessments for taxable year 2009, including imposition of twenty percent (20%) interest and compromise penalty, are void for being erroneous and contrary to the facts, applicable laws, rules and regulations, and established jurisprudence.

RULING OF THE COURT

Respondent contends that the Protest Letter filed by petitioner did not comply with the conditions set forth under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations No. 12-99.

Section 228 of the NIRC of 1997, as amended, is quoted hereunder for ready reference:

[32] Resolution, docket, vol. II, p. 1156.
[33] Docket, vol. II, p. 1084.
[34] Docket, vol. II, p. 1094.
[35] Simplification of Issues, JSFSI, docket, vol. I, p. 513.

"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:

xxx xxx xxx

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.

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." *(Emphasis supplied)*

Under Section 3.1.5 of Revenue Regulations No. 12-99, there is a disputed assessment when the Formal Letter of Demand and the assessment notice are administratively protested by the taxpayer within thirty (30) days from the date of receipt of the Formal Letter of Demand, thus:

"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." (*Emphasis supplied*)

A careful scrutiny of the records reveals that there is no disputed assessment in this case.

On January 14, 2013, petitioner received the assessment notices and Formal Letter of Demand from respondent through BIR Revenue Region No. 7, Assessment Division.[36] On February 14, 2013, petitioner filed an administrative protest with the BIR Assessment Division, requesting the reconsideration of the assessments.[37]

In accordance with the afore-quoted Tax Code provision and revenue regulation, the suitable recourse of petitioner was to dispute the assessment by filing an administrative protest within 30 days from receipt thereof, or until February 13, 2013. Petitioner's protest, however, was filed only on February 14, 2013 or one day late.

Aside from the documents showing the late filing of petitioner's administrative protest, it can also be confirmed through the Judicial Affidavit[38] of one of petitioner's witnesses, Ms. Leah M. Laxamana, to wit:

> "25. Q: When did HPPI receive the Final Assessment Notices?
>
> A: HPPI received the Final Assessment Notices on January 14, 2013.

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[36] Par. 1.7, Admitted Facts/Documents, JSFSI, docket, vol. I, p. 510; Exhibit "P-13", docket, vol. I, p. 396.

[37] Par. 1.15, Admitted Facts/Documents, JSFSI, docket, vol. I, p. 512; Exhibit "P-22", docket, vol. I, p. 457.

[38] Exhibit "P-66", docket, vol. I, pp. 306, 313 to 314.

xxx xxx xxx

54. Q: What happened after you submitted the Reply to PAN?

A: On January 14, 2013, we received the Formal Letters of Demand dated January 4, 2013, and the Final Assessment Notices dated January 14, 2013, which I mentioned earlier.

xxx xxx xxx

57. Q: What happened after you requested Quasha Law to prepare and file an Administrative Protest?

A: Quasha Law filed the Administrative Protest with Revenue Region No. 7, Assessment Division on February 14, 2013.

xxx xxx xxx

58. Q: What is your proof that Quasha Law filed an Administrative Protest on February 14, 2013?

A: Quasha Law gave me HPPI's copy of the Administrative Protest bearing a stamp 'Received' by the BIR Revenue No. 7, Assessment Division dated 'Feb. 14, 2013' with an initial of a receiving officer printed on the first page of the Administrative Protest."

For failure of petitioner to file a timely protest, the assessment in question became final, executory and demandable. The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. Therefore, this Court has no jurisdiction to entertain the present case.

The Court of Tax Appeals is a court of special or limited jurisdiction, as such, it can only take cognizance of matters that are clearly within its jurisdiction.[39] The CTA's jurisdiction is found in Republic Act (RA) No. 1125, as amended by RA No. 9282, the significant parts of which are quoted as follows:

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

[39] *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

> (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;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations 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;" *(Emphasis supplied)*

Similarly, Section 3 of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (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 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: xxx" *(Emphasis supplied)*

It is clearly and specifically stated in the afore-quoted provisions that this Court has jurisdiction over the decisions of or inaction by the Commissioner of Internal Revenue in cases involving disputed assessments. This does not cover assessment which became final, executory and demandable.

In the case of *Protector's Services, Inc. vs. Court of Appeals, et al.*[40], the Highest Tribunal declared that failure to timely protest an assessment may result in lack of jurisdiction of the CTA over the taxpayer's appeal, thus:

> "We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a reinvestigation. From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the assessments. Hence, in our view, the CTA correctly dismissed the appeal for lack of jurisdiction."

Jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[41]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(on official business)
CAESAR A. CASANOVA
Associate Justice

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[40] G.R. No. 118176, April 12, 2000.
[41] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013.

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice