REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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QATAR AIRWAYS COMPANY WITH LIMITED LIABILITY, Petitioner,	**CTA CASE NO. 8816**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
HON. KIM S. JACINTO-HENARES, COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 25 2016 9:45 a.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's **Motion for Reconsideration (Of the Decision dated 22 January 2016)**, filed on February 2, 2016, with respondent's **Comment Re: Petitioner's Motion for Reconsideration**, filed on March 7, 2016.

In the assailed Decision, the Court denied the Petition for Review seeking the reversal of respondent's denial of petitioner's application for abatement of surcharge in the amount of Seven Million Three Hundred Eighty-Five Thousand Two Hundred Nine Pesos (₱7,385,209.00), for failure to file the petition within the thirty (30)-day period to file an appeal. The Court held that when petitioner filed the Petition for Review on May 8, 2014, this Court had no jurisdiction over the case. The dispositive portion of the assailed Decision reads: *jc*

"**WHEREFORE**, premises considered, the Petition for Review filed by Qatar Airways Company with Limited Liability is hereby **DENIED** for lack of jurisdiction.

SO ORDERED."

In its motion, petitioner seeks reconsideration of the assailed Decision and prays that another one be rendered granting petitioner's application for abatement of surcharge in the amount of ₱7,385,209.00. Petitioner argues that the thirty (30)-day period to file a Petition for Review should be counted from petitioner's receipt of respondent's letter dated April 3, 2014, because the letter dated February 10, 2014 is a denial of the request for reconsideration by the Assistant Commissioner of Internal Revenue (CIR) and not by respondent herself. Petitioner contends that it is only the respondent CIR who has the exclusive power to abate or cancel a tax liability, hence, it is correct to reckon the thirty (30)-day period from the date of receipt of the letter dated April 3, 2014.

Petitioner further insists that it was only in respondent's letter dated April 3, 2014, that she stated that the denial is final and that no further request or motion or pleading will be entertained with respect to the same request for abatement.

Meanwhile, respondent avers that there is no law, rules, or regulations, which allow the filing of several motions for reconsideration of the decision denying the application for abatement. She contends that the Memorandum dated June 28, 2013, in which the LTS Sub-Technical Working Committee disapproved petitioner's application for abatement of surcharges, was affirmed by respondent herself.

The Motion for Reconsideration is bereft of merit.

The records of the case show that on January 14, 2013, the Large Taxpayers Service (LTS) Sub-Technical Working Committee of the Bureau of Internal Revenue (BIR) issued a Memorandum[1], recommending the denial of the petitioner's request for abatement of penalties. Thereafter, on March 7, 2013, petitioner wrote to Officer-

[1] BIR Records, p. 45.

in-Charge Assistant CIR (OIC-ACIR) Alfredo Misajon to reiterate its request[2], stating that since it learned from the Large Taxpayers Regular Audit Division (LTRAD) that said office had initially resolved to deny petitioner's request and that said recommendation had been approved by the LTRAD and the Technical Working Committee of the LTS, it seeks reconsideration of the recommendation of LTS.[3]

Meanwhile, on June 28, 2013, the LTS Sub-Technical Working Committee issued a Memorandum[4] recommending the disapproval of the taxpayer's request for abatement and/or the non-imposition of 25% surcharge in the amount of ₱7,385,209.00 pursuant to Section 204 of the National Internal Revenue Code, as amended. Such disapproval was clearly affirmed by respondent CIR herself.

On September 4, 2013, petitioner again wrote to respondent, requesting for a reconsideration of the BIR's position and argued that the one-day late filing of its Income Tax Return was due to circumstances beyond its control.[5]

On October 3, 2013, petitioner was informed that its application for abatement of surcharge was denied for lack of legal basis. In the said letter, respondent requested that the amount of ₱7,385,209.00 be paid within ten days upon receipt of such notice, otherwise, respondent shall be constrained to enforce the collection thru the administrative summary remedies provided for by law, without further notice.[6]

In a letter dated November 4, 2013, petitioner again sought reconsideration of the denial of its application for abatement of surcharge.[7]

The LTS Sub-Technical Working Committee of the BIR issued a Memorandum to respondent on December 12, 2013, wherein respondent categorically stated her denial of the application for abatement.[8]

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[2] Par. 6, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 254.
[3] BIR Records, pp. 48-52.
[4] BIR Records, pp. 65-66.
[5] Par. 7, Stipulation of Facts, JSFI, docket, p. 254, 140.
[6] Par. 8, Stipulation of Facts, JSFI, docket, p. 254; BIR Records, p. 80.
[7] Par. 9, Stipulation of Facts, JSFI, docket, p. 254; BIR Records, pp 82-84.
[8] BIR Records, pp. 92-96.

On February 10, 2014, respondent sent petitioner a letter reiterating the denial of the requests for reconsideration dated September 4, 2013 and November 4, 2013.[9] On February 19, 2014, petitioner again wrote to the BIR, seeking reconsideration of the denial of its application for abatement.[10]

On April 3, 2014, respondent once again denied petitioner's application for abatement.[11]

It must be noted that in petitioner's letter dated September 4, 2013, petitioner already asked for the reconsideration of the BIR's position denying petitioner's application for abatement of surcharge, which had been affirmed by respondent CIR herself. Hence, petitioner was aware that its application had already been denied, and yet it proceeded with the filing of several motions for reconsideration of respondent's denial.

Moreover, as early as October 3, 2013[12], and February 10, 2014[13], petitioner was informed of the respondent's final determination on the matter indicated in a clear and unequivocal language. The pertinent portion of the letter dated February 10, 2014 is hereunder reproduced, to wit:

> "In view thereof, it is requested that the amount of SEVEN MILLION THREE HUNDRED EIGHTY FIVE THOUSAND TWO HUNDRED NINE PESOS ONLY (P7,385,209.00) be paid within ten (10) days upon receipt of this notice, thru the Electronic Filing and Payment System (EFPS) to any Authorized Agent Bank (AAB) for large taxpayers. Otherwise, we shall be constrained to enforce the collection thereof thru the administrative summary remedies provided for by law, without further notice."

In the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*[14], the Supreme Court held that when there

[9] Par. 10, Stipulation of Facts, JSFI, docket, p. 254; BIR Records, p. 100.
[10] Par. 11, Stipulation of Facts, JSFI, docket, p. 254.
[11] Par. 12, Stipulation of Facts, JSFI, docket, p. 254, 148.
[12] Par. 8, Stipulation of Facts, JSFI, docket, p. 254; BIR Records, p. 80.
[13] Par. 10, Stipulation of Facts, JSFI, docket, p. 254; BIR Records, p. 100.
[14] G.R. No. 148380, December 9, 2005, 477 SCRA 205.

is a reiteration of the demand for payment and the tenor of the letter specifically indicate that resort to legal remedies for collection of taxes would soon follow, the said action constitutes respondent's final determination of the matter in question. To reiterate, the Supreme Court held:

> "We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment, thus:
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>> '. . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioners communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.
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>> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment - and, consequently, the collection of the amount demanded as taxes - by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the

> taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.'

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.

The above conclusion finds support in *Commissioner of Internal Revenue v. Ayala Securities Corporation*, where we held:

> '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 ₱11,533.53 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 petitioners 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.'" *(Emphasis supplied)*

We find that the tenor of the letters dated October 3, 2013, and February 10, 2014, specifically the statement therein regarding the resort to legal remedies, sufficiently indicated the final nature of the determination made by respondent. Although the most recent letter dated April 3, 2014 contained the word "final", the said letter is only a reiteration of her earlier denial as expressly indicated therein.

Hence, as ruled by this Court in the Assailed Decision, when petitioner filed the instant Petition for Review on May 8, 2014, the CTA lost jurisdiction over the case.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Of the Decision dated 22 January 2016)** is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice