REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, Petitioner,	**CTA CASE NO. 8552**
	Members:
-versus-	**DEL ROSARIO** *Chairperson* **UY,** and **MINDARO-GRULLA** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 02 2013 3:00 pm

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RESOLUTION

For resolution is respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* filed on March 7, 2013, with petitioner's *Comment (To Respondent's Motion for Early Resolution)* filed on March 25, 2013.

In respondent's Answer dated December 26, 2012, respondent questioned the jurisdiction of this Court as part of her Special and Affirmative Defense, hence, the instant *Motion*.

According to respondent, petitioner is aware that the lapse of the 180-day period was on September 4, 2012. It follows that the thirty (30) day period within which to file the Petition for Review should be computed from September 5, 2012. Counting 30 days from September 5, 2012, respondent maintains that the 30th day fell on October 4, 2012, citing as her basis Section 1, Rule 22 of the Revised Rules of Court and the ruling of the Supreme Court in the case of *Spouses Napoleon Flores and Veronidia*

Flores, et. al. vs. Stronghold Insurance Company, Inc.[1] (*Spouses Flores case*).

In citing the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[2] (*RCBC case*), respondent adds that the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessments.

Further, on the basis of the Supreme Court's ruling in the case of *Commissioner of Internal Revenue vs. Raul M. Gonzalez*[3], respondent alleges that a taxpayer's failure to file a petition for review with this Court within the statutory period renders the disputed assessment final, executory and demandable thereby precluding the taxpayer from interposing the defenses of legality or validity of the assessment and prescription of the government's right to assess.

Considering that the Petition for Review was allegedly filed out of time on October 5, 2012, respondent concludes that the assessments have become unappealable, final and executory. Thus, this Court has no jurisdiction to entertain the appeal brought by petitioner.

On the other hand, petitioner filed its *Comment* incorporating the arguments interposed in its *Reply to Respondent's Answer* filed on January 25, 2013. In its Comment, petitioner maintains that it filed its protest on March 8, 2012. Thus, the 180th day within which the Commissioner of Internal Revenue (CIR) could have acted on the protest was on September 4, 2012. Petitioner claims that on September 4, 2012, the CIR's 180-day period has neither lapsed nor expired and that it could not have reasonably assumed the CIR's inaction on the protest as the CIR could still issue her decision on this day. Thus, petitioner concludes that the 180-day period is considered to have expired only on September 5, 2012.

Petitioner likewise cited Section 1, Rule 22 of the 1997 Rules of Civil Procedure which provides:

> "**Section 1**. *How to compute time*. – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. xxx"

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[1] G.R. No. 167131, September 12, 2006.
[2] G.R. No. 168498, April 24, 2007.
[3] G.R. No. 177279, October 13, 2010.

In relation thereto, petitioner posits that pursuant to Section 9 of Republic Act (RA) 9282 and Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended, the "day of the event from which the designated period of time begins to run" is the expiration of the 180-day period. Thus, petitioner contends that the 30th day from September 5, 2012 falls on October 5, 2012, the same day on which the Petition was filed.

In addition, petitioner argues that the *Spouses Flores case*, cited in respondent's *Motion,* is inapplicable in this case. In that case, the "day of the event from which the designated period of time begins to run", to perfect an appeal, is the receipt of the adverse decision; while in the instant case, the "day of the event" is the expiration of respondent's 180-day period to act on a protest. Petitioner alleges that it had to wait and see if the CIR would act on its protest within the 180-day period provided by law.

Likewise, petitioner posits that respondent's cited *RCBC case* is inapplicable in the instant case because petitioner timely filed its Petition.

Lastly, petitioner in its *Reply to Respondent's Answer*, avers that granting respondent is correct in contending that the reckoning of the 30-day period for filing petitioner's appeal is on September 4, 2012; petitioner, in the alternative, asks this Court to exercise jurisdiction over its petition in the interest of justice and fair play. According to petitioner, the Supreme Court, in certain exceptional cases, has relaxed the rules on the reglementary periods of appeal for strong and compelling reasons such as serving the ends of justice and preventing a grave miscarriage.

Petitioner contends that it believed in good faith on the legality of its reckoning point for the 30-day period within which to file its appeal and that it raised meritorious grounds that should cause the outright cancellation of the assessment for being contrary to law and jurisprudence. Also, the issues involved and the huge amount of assessed deficiency taxes involved in the instant case are allegedly strong and adequate considerations to justify an exception to the procedural rule for filing the appeal.

Based on the foregoing allegations, it can be deduced that the issue on hand concerns the timeliness of the filing of the instant Petition for Review and consequently, the jurisdiction of this Court over the said Petition.

In resolving the above issues, it must be pointed out that this Court's exclusive appellate jurisdiction to review by appeal the inaction of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessment is conferred under Section 7 (a)(2) of Republic Act No. 9282. Furthermore, Section 11 of the same law provides that **"[a]ny party**

adversely affected by xxx inaction of the Commissioner of Internal Revenue, xxx may appeal with the CTA within thirty (30) days after the xxx expiration of the period fixed by law xxx. 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 case of inaction xxx, **from the expiration of the period fixed by law to act thereon. xxx"**

In relation thereto, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "Sec. 228. **Protesting of Assessment.** — . . .
>
> 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."

It is clear from the above-mentioned provisions of law that in case of inaction by respondent on the protest and the taxpayer chooses to appeal to this Court, the same must be made within thirty (30) days from the lapse of the one-hundred eighty (180) day period and failure on the part of petitioner to file a Petition for Review within the said period renders the assessment final, executory and demandable.

The Court likewise finds applicable the ruling of the Supreme Court in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[4], wherein it was held that the appeal therein from the inaction of the CIR before this Court was filed beyond the 30-day period provided by law. In the said case, the Supreme Court quoted a portion of the ruling of this Court's Second Division, which showed how the periods provided under Section 228 of the NIRC of 1997 were computed, to wit:

> "The CTA Second Division held:
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> > Following the periods provided for in the aforementioned laws, from July 20, 2001, that is, the date of petitioner's filing of protest, it had until

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[4] G.R. No. 168498, June 16, 2006.

> September 18, 2001 to submit relevant documents and from September 18, 2001, **the Commissioner had until March 17, 2002 to issue his decision. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. Therefore, it had until April 16, 2002 within which to elevate the case to this court.** Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) period.

As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment."

From the foregoing, the 30-day period provided under Section 228 of the NIRC of 1997, as amended, was counted from March 18, 2002, the day following March 17, 2002 which is the last day for the CIR to issue a Decision. It was not counted from March 19, 2002 or the next day following the day when the 180-day period is considered to have lapsed. Thus, April 16, 2002 was found to be the last day from which the administrative protest can be elevated to this Court.

Applying by analogy the manner of computing the period to appeal in the above case, it is apparent that the counting of the 30-day period to appeal respondent's inaction should start from the expiration of the period to act on the administrative protest or the day following the last day of the period prescribed by law to decide on the administrative protest (*i.e.* 180 day period).

In the instant Petition, petitioner admits that it filed its protest on March 8, 2012. Accordingly, the last day from which respondent could have acted on the protest was on September 4, 2012. Counting the 30-day period to appeal from September 5, 2012, the day following the last day of the 180-day period or the day the 180-day period is considered to have expired; petitioner only had until October 4, 2012 within which to file its appeal. Thus, the filing of the instant Petition for Review on October 5, 2012 was indeed beyond the mandated period to appeal.

On petitioner's alternative request for this Court to take cognizance of the instant Petition in the interest of justice and fair play, let it be emphasized that aside from the fact that petitioner failed to sufficiently establish the existence of strong and compelling circumstances which would warrant the relaxation of the application of the period prescribed by law to appeal, this Court is a court of special jurisdiction and as such it can take cognizance only of such matters as are clearly within its jurisdiction.[5]

As correctly cited by respondent, in the case of *Ker & Company, Ltd. v. Court of Tax Appeals*[6], the Supreme Court held that while the right to appeal a decision of the CIR to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.

To reiterate, the thirty-day period to appeal is jurisdictional.[7] Consequently, petitioner's failure to comply with the 30-day statutory period deprived this Court of its jurisdiction to entertain the instant Petition.[8]

WHEREFORE, respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* is hereby **GRANTED**. Accordingly, the instant Petition is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

[5] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.
[6] G.R. No. L-12396, January 31, 1962.
[7] Pangasinan Transportation Co. vs. Blaquera, L-13101, April 29, 1960.
[8] Commissioner of Internal Revenue vs. Western Pacific Corporation, G.R. No. L-18804, May 27, 1965.