REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MOOG CONTROLS CORPORATION PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

C.T.A. EB No. 44
(C.T.A. Case No. 6700)

PRESENT:

ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAY 10 2005 [signature]

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DECISION

CASTAÑEDA, JR., *J.:*

This is a Petition for Review, pursuant to Section 18 of Republic Act No. 1125 as amended by Section 11 of Republic Act No. 9282, of the Resolution of the First Division of this Court promulgated on May 27, 2004 affirmed in a Resolution promulgated on October 14, 2004 covering petitioner's Motion for Reconsideration of the first-mentioned Resolution in C.T.A. Case No. 6700. The dispositive portion of the assailed Resolution reads as follows:

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> WHEREFORE, in view of the foregoing, this court hereby RESOLVES to GRANT respondent's Motion to Dismiss. Accordingly, petitioner's instant Petition for Review is hereby DISMISSED without prejudice for lack of jurisdiction.

The facts of the case are as follows:

On January 8, 2003, petitioner received the Formal Letter of Demand dated January 7, 2003 with Assessment Notices LA#11377, assessing it for deficiency income and final withholding taxes for the period covering October 1998 to September 1999 in the total amount of P38,604,536.94, inclusive of surcharges and interest.

On February 7, 2003, petitioner filed a Letter Protest addressed to Jaime Q. Concepcion, the Revenue Regional Director of BIR Revenue Region No. 2 of the Cordillera Administrative Region. On April 4, 2003, petitioner submitted the relevant documents in support of its protest.

On May 9, 2003, petitioner received a letter dated April 21, 2003 from the Regional Director denying with finality its protest and request for cancellation of the assessment notices for lack of legal basis pursuant to the recommendation of the Revenue District Officer Amado Q. Navarro of Revenue Region No. 08, Baguio City.

On June 9, 2003, the petitioner appealed the Regional Director's denial of the protest to respondent Commissioner of Internal Revenue. On the same date, petitioner also filed a Petition for Review with this Court praying for the cancellation and withdrawal of the deficiency income tax and withholding tax assessment against the petitioner.

Respondent filed an Answer on August 1, 2003, thereafter, he filed a Motion to Dismiss on January 30, 2004 on the ground of lack of jurisdiction.

In a Resolution promulgated on May 27, 2004, the Court Granted Respondent's Motion to Dismiss and Ordered the Dismissal without prejudice of the Petition for Review for lack of jurisdiction.

Petitioner filed a Motion for Reconsideration on June 17, 2004 relying on the following arguments:

1. The Honorable Court has jurisdiction over the Petition for Review. Respondent, through his duly authorized representative – the Regional Director – denied Petitioner's protest on the assessment with finality. Under the National Internal Revenue Code (NIRC), Petitioner has the right to appeal the denial of the protest to this Honorable Court.

2. Lack of Jurisdiction is not the proper ground for dismissal of this case. The absence of a decision or inaction of Respondent does not affect the jurisdiction of the Honorable Court over this Petition. At best, it is merely an issue involving the rule on exhaustion of administrative remedies.

3. This case involves an exception to the rule on exhaustion of administrative remedies. The assessment was made in violation of the applicable provisions of the Tax Code and BIR rules and regulations, depriving petitioner of its right to due process or law. Hence, Petitioner had the legal right to file the Petition for Review without exhausting the remedy of appeal from the decision of the Regional Director to Respondent.

4. Granting *arguendo* that the filing of the Petition for Review was premature, it has been cured by the inaction of Respondent on Petitioner's appeal from the decision of the Bureau of Internal

Revenue (BIR) Regional Director for more than one hundred eighty (180) days.

The Court denied petitioner's Motion for Reconsideration on the ground that the arguments raised therein are only a rehash of the grounds and arguments set forth in its Opposition (to Respondent's Motion to Dismiss) passed upon by the Court in its Resolution promulgated on October 14, 2004.

Petitioner filed this present Petition for Review *En Banc* on November 24, 2004, within the extended period granted by the Court, assailing the dismissal of its original Petition for Review.

ASSIGNED ERROR

RESPONDENT FIRST DIVISION OF THE CTA ERRED IN GRANTING RESPONDENT'S MOTION TO DISMISS AND RULING THAT THE COURT HAS NO JURISDICTION OVER THE CASE.

ARGUMENTS

a. The Honorable Court has jurisdiction over the Petition for Review. With the denial of Petitioner's protest on the assessment with finality, the right of the Petitioner to appeal the said denial to the Honorable Court of Tax Appeals accrued.

Petitioner claims that pursuant to Section 228 of the NIRC and Revenue Regulations (RR) No. 12-99, the cases which may be appealed to this Court are not limited to decisions or inaction of the Commissioner but also decisions or inaction of the duly authorized representative of the Commissioner of Internal Revenue. According to the petitioner, it is clear from Section 228 of the NIRC

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of 1997 that decisions of Respondent and his authorized representatives may be appealed directly to this Honorable Court. Section 228 of the NIRC provides:

> "When the Commissioner ***or his duly authorized representative*** finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> ...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 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 and underscoring supplied*)
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> In addition, Sec. 3.1.5 of RR No. 12-99 provides that:
>
> If the Commissioner ***or his duly authorized representative*** fails to act on the taxpayer's protest within one hundred eighty days (180) 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.

Section 7 of the NIRC authorizes the Commissioner of Internal Revenue to delegate his powers under the NIRC, including the authority to act on requests for reinvestigation or reconsideration of disputed or protested assessments, to subordinate officials of Respondent's Bureau.

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It is clear from Section 228 of the NIRC that decisions of Respondent and his authorized representatives may be appealed directly to this Honorable Court. Nowhere in Section 228 is it required that a taxpayer may appeal the final decision of Respondent's duly authorized representative to Respondent himself. Hence, the express statement of decision or inaction by the Commissioner or his duly authorized representative in said

> section. Why call it a final decision by the authorized representative when it is appealable to Respondent after all? If Petitioner would be required to appeal the decision of the Regional Director, who is an authorized representative of the Commissioner, to the Respondent, such requirement would constitute an amendment to the procedure under Section 228 of the NIRC.

Although petitioner cited the foregoing provisions of Section 228 of the NIRC and Section 3.1.5 of RR. No. 12-99, it later on asserted that:

> "[I]t is the issuance of Revenue Regulations No. 12-99, which made the entire procedure ambiguous, and in effect amended Section 228, when it stated, thus:
>
> Sec. 3.1.5. ... 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, executory 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 and demandable,* ***in which case, the protest shall be decided by the Commissioner*** ... (*Underscoring Supplied*)
>
> It is this doubt and ambiguity in the said Revenue Regulations which made the Petitioner decide to appeal to this Honorable Court and to Respondent."

According to the petitioner, the above proviso is a mere surplusage that made Revenue Regulations No. 12-99 patently ambiguous and constitutes "administrative legislation" which should not be countenanced.

> ***b. The absence of a decision or inaction of Respondent does not affect the jurisdiction of the Honorable Court over this Petition. At best, it is merely an issue involving the rule on exhaustion of administrative remedies.***

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Petitioner argues that the effect of non-compliance with the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the Court as held by the Supreme Court in Rosario vs. Court of Appeals, G. R. No. 89554, July 10, 1992, as follows:

> "Failure to exhaust administrative remedies is not necessarily fatal to an action. Thus did we rule in *Soto vs. Jareno, 144 SCRA 116*: Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it." (*Emphasis and underscoring supplied*)."

Petitioner argues that dismissal of its Petition for Review "was due to prematurity or non-exhaustion of administrative remedies. However, the ground for the dismissal, likewise stated in the subject Resolution, was lack of jurisdiction, which is clearly contrary to the pronouncement of the Supreme Court in the above-cited case. Based on the ruling of the Supreme Court in Rosario vs. CA (supra) failure to comply with the doctrine of exhaustion of administrative remedies results in the absence of a cause of action, but does not affect the jurisdiction of the Honorable Court. **Thus, it was improper to dismiss this case on the ground of lack of jurisdiction**".

c. The assessment was made in violation of the applicable provisions of the Tax Code and BIR rules and regulations, thus, Petitioner was deprived of its right to due process of law. Hence, Petitioner had the legal right to file the Petition for Review without exhausting the remedy of appeal from the decision of the Regional Director to Respondent.

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Petitioner avers that "the aggrieved party may validly resort to immediate judicial action in any of the following cases:

(a) question raised is purely legal;
(b) when the act complained of is patently illegal;
(c) when there is an urgent need for judicial intervention;
(d) when the disputed act is performed without jurisdiction or in excess of jurisdiction;
(e) the administrative remedy does not provide for a plain, speedy and adequate remedy; and
(f) when due process is disregarded.
(Aurillo vs. Rabi, G.R. No. 120014 dated 26 November 2002)

In this case, the acts of Respondent and his representatives are patently illegal and in violation of the right of Petitioner to due process of law. Consequently, this case involves two (2) exceptions to the doctrine of exhaustion of administrative remedies. Accordingly, Petitioner had the legal right to file the Petition for Review with the Honorable Court without exhausting the remedy of appeal to Respondent.

As stated in the Petition for Review, the formal letter of demand and final assessment notices were issued in clear violation of Petitioner's right to procedural due process as provided in the NIRC and the applicable rules and regulations."

Petitioner further avers that:

"**In this case, neither a Notice of Informal Conference nor a PAN was ever issued by Respondent's Bureau**. Consequently, the Petitioner was not only inadequately informed of the bases of the assessment but it has also been deprived of the right to defend itself within the period specifically provided in Revenue Regulations No. 12-99. This is a clear and patent indication of the arbitrary and hasty manner of the issuance by the Respondent's duly authorized representative of the formal letter of demand and assessment notices. The conduct of Respondent prior to the issuance of the formal letter of demand clearly shows that due process was utterly and unreasonably disregarded, to the prejudice of Petitioner. **Thus, the act or acts of Respondent or his duly authorized representative were patently illegal**."

d. Granting arguendo that the filing of the Petition for Review was premature, it has been rendered cured by the inaction of Respondent on Petitioner's appeal from the decision of the Bureau of Internal Revenue (BIR) Regional Director for more than one hundred eighty (180) days.

Petitioner asserts that under Section 228 of the NIRC, a taxpayer may appeal to this Honorable Court after denial of the protest or after inaction of Respondent or his duly authorized representative for a period of one hundred eighty (180) days from submission of the required documents related to the protest. According to the petitioner:

> "It is undisputed that on 4 April 2003, Petitioner submitted to respondent the documents in support of its protest. When Respondent filed the Motion to Dismiss dated 30 January 2004, Respondent had not yet resolved Petitioner's protest despite the lapse of more than 180 days from the date of submission of documents. In fact, to date, despite the lapse of more than one (1) year from the submission of documents and filing of the appeal, Respondent has not resolved the protest. Contrary to the finding in the subject Resolutions, Respondent had ample opportunity to decide on the protest.
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> xxx xxx xxx
>
> In this case, the purported issue of lack of inaction by Respondent on the protest has been rendered moot and academic by the lapse of the period of 180 days from the submission by petitioner to Respondent of documents in support of the protest. The case should not have been dismissed, but should have been allowed to take its course.
>
> Moreover, Respondent should have been deemed estopped and to have waived his right to raise the issue of prematurity or non-exhaustion of administrative remedies when he actively participated in the trial of the case.
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> xxx xxx xxx
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> In the instant case, the records will show that prior to the filing of the Motion to Dismiss, Respondent had actively

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participated in the proceedings. In fact, Respondent has filed an Answer and Pre-trial Brief and was represented by counsel during the Pre-Trial Conference. Through these acts, Respondent should be deemed to have waived any objection to the cause of action of Petitioner. Furthermore, Respondent can also be deemed to have recognized and acknowledged the jurisdiction of this Honorable Court."

The respondent, on the other hand, argues that the decision of the Regional Director did not become final considering that the same was elevated to the Commissioner of Internal Revenue citing Section 3.1.5 of Revenue Regulations No. 12-99 and Section 7 of Republic Act No. 1125, An Act Creating the Court of Tax Appeals which provide:

> Sec. 3.1.5. xxx "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, executory 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 and demandable, in which case, the protest shall be decided by the Commissioner**.
>
> Section 7. Jurisdiction. – the Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

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Respondent argues that "it was never disputed that on June 9, 2003, petitioner filed an appeal from the decision of the Regional Director of Revenue Region No. 2 to the Commissioner of Internal Revenue. On even date, petitioner filed a Petition for Review before the Honorable Court". Hence, the decision of the Regional Director did not become final considering that the same was elevated to the Commissioner of Internal Revenue.

To further support its position, respondent cited the case of Commissioner of Internal Revenue vs. Villa, 22 SCRA 3, where the Supreme Court said:

> "Note that the law uses the word "decisions" and not assessments, thus, further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment but not the assessment itself."

Considering the undisputed fact that petitioner appealed the Regional Director's denial of its protest to the respondent on June 9, 2003 and that petitioner likewise filed its Petition for Review with this Court on the same date, We find the present Petition for Review bereft of merit.

The Court of Tax Appeals is a court of special appellate jurisdiction (***Commissioner of Internal Revenue v. Ayala Securities Corporation and the Honorable Court of Tax Appeals, No. L-29485, March 31, 1976, [70 SCRA 204]***), as such, the Court's jurisdiction may only be invoked in the particular instances enumerated in Section 7 of Republic Act No. 1125, the law creating the Court of Tax Appeals, as amended by Section 7 of Republic Act No. 9282 otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax

Appeals (CTA), Elevating its Rank To The Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise known as the Law Creating the Court of Tax Appeals, And For Other Purposes". Republic Act No. 9282 took effect on April 22, 2004.

Under R.A. No. 1125, the appellate jurisdiction of the Court of Tax Appeals is limited to the review of:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

Under Sec. 7 of R.A. No. 9282, 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;

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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 provides a specific period of action, in which case the inaction shall be deemed a denial;

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7. Decisions of the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

b. Jurisdiction over cases involving criminal offenses as herein provided:

1. xxx xxx xxx

Thus, in order to successfully invoke the jurisdiction of the Court of Tax Appeals a "*decision of the Commissioner of Internal Revenue*" on a disputed

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assessment is necessary except when the ground relied upon is the inaction of the Commissioner of Internal Revenue. In which case, Sec. 7 (a) 2 of R.A. No. 9282 now provides that the inaction by the Commissioner of Internal Revenue shall be deemed a denial of the disputed assessment. Hence, as stated at the outset, the Court of Tax Appeals is a court of special appellate jurisdiction. As such, the Court can only try cases permitted by statute. Therefore, petitioner's argument that "failure to comply with the doctrine of exhaustion of administrative remedies results in the absence of a cause of action but does not affect the jurisdiction of the Honorable Court" is untenable. The above-mentioned laws require a decision by the Commissioner of Internal Revenue before the Court could acquire jurisdiction over a disputed assessment.

Moreover, the NIRC of 1997 provides in Section 228 thereof that:

> xxx xxx xxx
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> 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 decision shall become final, executory and demandable.
>
> 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. (Italics supplied)

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The foregoing provision also requires a ***decision*** on the administrative protest before judicial relief from the Court can be sought. And since the law itself calls for the adoption of its implementing rules and regulations, the Department of Finance issued Revenue Regulations No. 12-99. Section 3.1.5 of Revenue Regulations No. 12-99 provides:

> 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 the 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. The taxpayer shall submit the required documents in support of his protest within sixty (60) days from 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 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.
>
> 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, executory 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 and demandable, in which case, the protest shall be decided by the Commissioner.*
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) 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. (Italics and emphasis supplied).

The Court finds that the above-cited provision of Revenue Regulations No 12-99 is not inconsistent with Sec. 228 of the NIRC of 1997. On the contrary, it merely implements Sec. 228 by establishing a clear guideline on the nature of a decision rendered by the *authorized representative* of the Commissioner of Internal Revenue on a disputed assessment. The taxpayer is given a choice whether to appeal the decision to the Commissioner of Internal Revenue or to the Court of Tax Appeals. It further provides that the decision of the authorized representative *will not attain finality* if the taxpayer appeals the same to the Commissioner of Internal Revenue who shall then be required to decide the protest himself.

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In the case at bar, the petitioner appealed the decision of the Regional Director of the Bureau of Internal Revenue to the Commissioner of Internal Revenue. In doing so, the decision of the Regional Director cannot be considered as the *final decision* on petitioner's protest since the power of the Commissioner of Internal Revenue to review the acts of his subordinates was invoked by the petitioner itself. It is as if the Regional Director did not render any decision on petitioner's protest at all. There being no decision to speak of, the petitioner could not yet invoke the appellate jurisdiction of the Court pursuant to Section 7 of R.A. No. 1125 as amended by R.A. No. 9282. As stated in the Court's Resolution promulgated on October 14, 2004, the premature invocation of the Court's intervention is fatal to one's cause of action.

Lastly, petitioner argues that even if the filing of the Petition for Review was premature, it has been rendered cured by the inaction of respondent on petitioner's appeal from the decision of the Regional Director for more than 180 days.

Well-settled is the rule that the 30-day period within which a taxpayer may question any ruling of the Commissioner of Internal Revenue before the Court of Tax Appeals is jurisdictional (*The Acting Commissioner of Internal Revenue v. Joseph, No. L-14034, August 30, 1962 [5 SCRA 895]* citing Johnston Lumber vs. Court of Tax Appeals, L-9292, April 23, 1957; Gibbs v. Collector, L-13453, February 29, 1960). In *Ker & Company, Ltd. v. The Court of*

Tax Appeals and the Collector of Internal Revenue, L-12396, January 31, 1962 [4 SCRA 160] the Supreme Court ruled as follows:

> "The right to appeal from the decision of the Collector being a statutory right, the same can be invoked only in accordance with the requisites provided by law."

Sec. 228 of the NIRC of 1997 requires that the taxpayer shall comply with the periods indicated therein defining the stages of the protest. One of those periods is the 180-day time frame given to the Commissioner of Internal Revenue to decide the protest. Thereafter, the taxpayer has thirty (30) days to appeal to this Court which, as explained above, is jurisdictional. The petitioner's right to seek judicial relief accrues only upon the lapse of the 180-day period in cases of inaction by the Commissioner. Therefore, since petitioner did not comply with the 180-day period, petitioner's right to file an action has not yet accrued when it filed its Petition for Review and the lapse of the 180-day period occurring after the filing of the petition had not cured such defect.

WHEREFORE, the Petition for Review *En Banc* is hereby **DISMISSED** for lack of merit and the rulings in the assailed Resolutions promulgated on May 27, 2004 and October 14, 2004 which ordered the **DISMISSAL WITHOUT PREJUDICE** of the Original Petition for Review are hereby **AFFIRMED**.

SO ORDERED.

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

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We Concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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