REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

***EN BANC***

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| CENTRAL SERVICES INTEGRATED COOPERATIVE, Petitioner, | C.T.A. EB No. 583 (C.T.A. CASE NO. 7931) |
| | Members: |
| - versus - | ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.* |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: AUG 18 2011 1:00 p.m. |

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## DECISION

***Fabon-Victorino, J.:***

This is a Petition for Review filed by Central Services Integrated Cooperative praying to set aside the (1) Resolution dated November 11, 2009, which dismissed the instant Petition for Review for having been filed out of time, and the subsequent (2) Resolution of January 05, 2010, which denied petitioner's Motion for Reconsideration, for lack of merit. The assailed resolutions were issued by the former First Division of the Court in C.T.A. Case No. 7931.

Petitioner states that it is a cooperative duly established under Republic Act (R.A.) No. 6938, otherwise known as the Cooperative Code of the Philippines, with postal address at 1st Street corner Phil-Am Street, Barangay Kapitolyo, Pasig City. It has been issued a Certificate of Registration No. C-521-4579[1] dated November 18, 2004 by the Cooperative Development Authority (CDA).

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) vested with authority to act as such, holding office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

In its letter dated August 28, 2007, petitioner, as a registered cooperative, requested respondent for tax exemption under Section 62 of Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines (CCP). The said request was favorably acted upon by respondent through the issuance of

[1] Annex A, Petition for Review dated May 26, 2009 before the Court in Division.

a Certificate of Tax Exemption dated February 18, 2009[2] and received by petitioner on February 26, 2009, indicating that it is exempted from paying taxes but only for the following:

1. Income tax on income from operations;
2. Value-added tax (VAT) under Section 109(N) of the Tax Code of 1997, as amended, provided that the share capital contribution of each member does not exceed fifteen thousand pesos (P15,000.00) and regardless of the aggregate capital and net surplus ratably distributed among the members;
3. Percentage tax under Section 116 of the Tax Code of 1997;
4. Donor's tax on donations to duly accredited charitable, research and educational institutions, and reinvestment to socio-economic projects within the area of operation of the cooperative (Sec. 62(2)(d), RA 6938);
5. Documentary stamps tax imposed under Title VII of the Tax Code of 1997, provided, however, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax (Sec. 173, Tax Code of 1997, as amended); and
6. Annual registration fee of P500.00 under Section 236(B) of the Tax Code of 1997.

The Certification likewise qualified that petitioner is required to pay taxes in the following cases:

[2] Annex B, Petition for Review dated May 26, 2009 before the Court in Division.

1. In case the cooperative will distribute interest on capital, such interest shall be taxable to the recipient member and shall be declared in his individual income tax return for tax purposes [Sec. 4(B)(u) of RR No. 6-97].

2. Its interest income from Philippine currency bank deposits, yield form deposit substitutes, trust funds and similar arrangements, and royalties derived from sources within the Philippines shall be subject to 20% final tax imposed under Section 27(D)(1) of the Tax Code of 1997. It shall also be taxed on prizes, winnings and net gains realized on sales or exchange of property.

3. The cooperative shall be constituted as withholding agent if it acts as an employer and its employees receive compensation income subject to withholding tax provided for in Section 79 of the Tax Code, or if it makes income payments to individuals or corporations subject to Expanded Withholding Tax provided for in Section 57(B) of the Tax Code, and as implemented by RR No. 2-98, as amended.

Further, petitioner is liable to pay 12% VAT billed to it on its purchases of goods and services as it is an indirect tax that can be passed on or shifted as part of the cost of the goods sold/services rendered.

Not satisfied with respondent's ruling, petitioner, in a letter dated February 26, 2009 filed with respondent the day after, requested for an amendment of the Certificate of Tax Exemption to eliminate all restrictions and limitations contained therein.[3]

On June 2, 2009, or about three months from receipt of the request for amendments of the Certificate of Tax Exemption, petitioner filed the instant Petition for Review with the Court in Division.

In her Answer filed on July 10, 2009, respondent interposed the following Special and Affirmative Defenses:

> 5. This instant Petition for Review was filed out of time, and therefore, should be dismissed *motu propio* for lack of jurisdiction of this Honorable Court to resolve this case, in accordance with Sec. 11 of R.A. 1125, as amended, x x x.
>
> 6. The taxes sought to be exempted from are imposable in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.
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> 7. The National Internal Revenue Code of 1997 (R.A. No. 8424) so states:
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> > "Sec.2 Powers and Duties of the Bureau of Internal Revenue. – The Bureau of Internal Revenue shall be under the supervision and control of the Department of

[3] Paragraph 4, Petition for Review dated May 26, 2009 filed before the Court in Division.

> Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith, including the execution of judgments in all cases decided in its favour by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."

> 8. Controversy on the issues of taxes is better addressed to the sound judgment of the agency concerned (BIR); by the nature of its functions, the BIR should be given a free hand to resolve an issue which is well within its jurisdiction.

On October 1, 2009, respondent filed a Motion to Dismiss on the ground that the Petition was filed out of time, effectively divesting the Court in Division of jurisdiction to determine the Petition pursuant to Republic Act No. 1125, as amended. Respondent claimed that petitioner acknowledged receipt of respondent's ruling in ECCP-02-2002/COOP(M-30)110-2009 dated February 18, 2009 in its letter dated February 26, 2009. However, it took petitioner more than two months to assail such ruling through a Petition for Review filed on June 2, 2009. According to respondent, at that time that petitioner sought judicial intervention, its right to appeal had already prescribed justifying the dismissal of the Petition for lack of jurisdiction.

In a Resolution dated November 11, 2009, the Court in Division **granted respondent's Motion to Dismiss,** albeit not by reason of prescription as invoked by respondent in her Motion to Dismiss but on ground of prematurity. The Court in Division explained that since petitioner sought a reconsideration of respondent's ruling, it should have waited for the resolution of the incident and not precipitately ran to the Court during its pendency. Citing *Asia International Auctioneers, Inc. and Subic Bay Motors Corporation v. Hon. Guillermo L. Parayno. Jr. et al.*,[4] the Court in Division ruled that the premature invocation of the court's intervention was fatal rendering the petitioner's appeal dismissible.

On January 5, 2010, the Court in Division **denied** petitioner's **Motion for Reconsideration**, for lack of merit.

Hence, the instant Petition for Review raising the following grounds, to wit:

[4] G.R. No. 163445, December 18, 2007.

I. The subject Resolutions dated November 11, 2009 and January 05, 2010, respectively, are not in accord with the established facts on record and constitute therefore, grave abuse of discretion in the appreciation of the clear evidence in this case as shown by the records.

II. The subject Resolutions are contrary to established jurisprudence and therefore constitute grave abuse of discretion amounting to excess or lack of jurisdiction.

The petitioner argues that contrary to the Court's ruling, it did not prematurely file its Petition for Review with the Court in Division. Allegedly, it was constrained to seek redress from the Court due to respondent's inaction for more than two (2) months from the time it moved for a reconsideration of the Certification of Tax Exemption dated February 18, 2009. Petitioner points out that the Supreme Court in several cases chastised respondent for failure to act with dispatch on motion for reconsideration filed by taxpayers and upheld the right of the latter to resort to court action. Thus, the failure or respondent to act on petitioner's request for reconsideration for more than two months is sufficient for purposes of filing an appeal with the Court in Division.

Moreover, the principle laid down in *Asia International Association, Inc. and Subic Bay Motors Corporation vs. Hon. Guillermo L. Parayno*, upon which the Resolution of November 11, 2009 was based was not on all fours with the present case, hence inapplicable. Unlike in this case, the petitioner therein failed to ask for a reconsideration of the revenue memorandum circular issued by respondent.

In its Memorandum, petitioner added the issues below, thus:

> I. The Resolution of November 11, 2009 of the First Division violates the mandatory Rules of Court which ordain the courts to state clearly the law and the facts on which a ruling is made.
>
> II. In violation of the Court's avowed vision of liberal construction of the Rules "to promote their objective of securing a just, speedy and inexpensive determination of every action and proceeding before the Court." (Section 2, Rule 1, Revised Rules of the Court of Tax Appeals as amended), the First Division erred in examining minor technicalities (such as the alleged timeliness of the petition) rather than concentrating on the substance of the reason why the petitioner-appellant was constrained to file this case in the first place.

Petitioner contends that the Resolution of November 11, 2009 is flawed for it failed to indicate the legal basis for ruling that the Petition was prematurely filed under the principle of exhaustion of administrative remedies, in violation of Section 1, Rule 36 of the Rules of Court. Moreover, prematurity is not among the grounds for a motion to dismiss enumerated in Section 1, Rule 16 of the Rules of Court.

In addition, petitioner invokes Section 8 of Republic Act (R.A.) No. 9485, also known as the Anti-Red Tape Act of 2007, which requires officers or employees assigned in government frontline services to act on request or application within five (5) working days for simple transactions and ten (10) working days for complex ones. This is to prevent needless and indefinite waiting for action on requests and applications filed in government offices. Respondent's inaction on its motion for reconsideration for more than two (2) months propelled the filing of the Petition for Review before the Court in Division.

To cap its arguments, petitioner asks the Court to consider the merit of its case on ground of substantial justice and set aside technicalities, after all respondent went beyond her authority by amending the provision of the CCP which declares that cooperatives are exempt from all taxes of whatever nature. The provision is clear and respondent needs only to implement it.

The instant Petition for Review was deemed submitted for decision *sans* comment or memorandum from respondent who failed to file any, despite the Court's directive.

The critical point to consider – was the Petition for Review before the Court in Division prematurely filed on June 2, 2009, justifying its dismissal.

The answer is in the affirmative.

The pertinent provision is Section 11 of Republic Act No. 9282,[5] which provides, 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

[5] 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.

> Assessment Appeals or the Regional Trial Courts **may file an Appeal with the CTA within thirty (30) 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.
>
> **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 the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. x x x" (emphasis ours)

Further, Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals states, thus:

> "SEC. 3. *Who may appeal; period to file petition.* - **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. x x x" *(emphasis ours)*

Clear from the foregoing provisions that an aggrieved taxpayer may appeal to the Court in Division a final decision or ruling of respondent within thirty (30) days from receipt thereof, or in cases where she was unable to act accordingly, upon expiration of the period prescribed by the NIRC, as amended.[6]

Petitioner admitted that it sought a reconsideration of respondent's ruling in ECCP-02-2002 COOP(M-030)110-2009 dated February 18, 2009. Pending resolution of the incident, petitioner filed its Petition for Review with the Court in Division effectively asking the Court to set aside respondent's ruling which granted it tax exemptions with some qualifications and limitations. Obviously, petitioner accelerated to the Court without giving respondent the opportunity to review its ruling and possibly correct errors committed, if there were any.

To be sure, respondent's ruling having been assailed in the administrative level was yet to gain finality at the time the Petition for Review was instituted before the Court in Division.

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[6] Adamson vs. Court of Appeals, G.R. No. 120935, CIR vs. Court of Appeals, G.R. No. 124557, May 21, 2009.

Under Section 11 of Republic Act No. 9282, and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, there was yet no final decision or ruling of respondent that could be the subject of an appeal when petitioner filed its Petition for Review, rendering its action premature.

It is unfortunate though that the law is tellingly silent on the period within which respondent may act on a motion for reconsideration under the obtaining circumstances. But note, the request for tax exemption was made by petitioner on August 28, 2007 and was endorsed for determination a month after. The assailed ruling was issued about two years thereafter.

It is well established that exhaustion of administrative remedies is applicable when there is competence on the part of the administrative body to act upon the matter complained of.[7] Under the doctrine of exhaustion of administrative remedies, an administrative decision must first be appealed to the administrative superiors at the highest level before it may be elevated to a court of justice for review. This Court has consistently held that before a party is allowed to seek the

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[7] Regino vs. Pangasinan Colleges of Science and Technology, G.R. No. 156109, November 18, 2004.

intervention of the court, it is a pre-condition that he should have availed himself of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be first exhausted before the court's judicial power can be sought. The premature invocation of the court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for lack of cause of action.[8]

This doctrine of exhaustion of administrative remedies is not without its practical and legal reasons; for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[9]

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[8] Arendain vs. Gil, G.R. No. 172585, June 26, 2008.
[9] *Ibid.*

While exhaustion of administrative remedies is not an ironclad rule and there are many exceptions, the alleged delay of respondent in taking action on petitioner's motion for reconsideration is not one of the exemptions, thus the Court sees no reason or rhyme to deviate from the application of this principle. For to allow resort to the Court in haste when the relief prayed for is still available at the administrative level means unnecessary clogging of court dockets, especially since at present, no prejudice to the parties is imminent. Respondent has not even actually issued an assessment against petitioner.

Pertinently, the right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[10]

As to the woefully naïve assertion that the Rules of Court does not provide prematurity as a ground for dismissal, suffice it to say that the case was dismissed for lack of cause of action pursuant to Section 1(g), Rule 16 of the Rules of Court.

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[10] CIR vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.

Petitioner failed to exhaust available administrative remedies which was required rendering its action premature, warranting its dismissal grounded on lack of cause of action.[11]

On the contention that the Court erroneously applied the case of *Asia International Auctioneers, Inc. and Subic Bay Motors Corporation vs. Hon. Guillermo L. Parayno,*[12] in resolving respondent's motion to dismiss, plainly, petitioner failed to consider that in the cited case and the subject Petition for Review, both petitioners were not appealing a final decision or ruling of respondent as something was yet to be done at the administrative level. Evidently, there was failure to exhaust administrative remedies on the part of herein petitioner, thus there can be no ruling other than the dismissal of its Petition.

Contrary to petitioner's contention, the Court in Division, by citing the case of *Asia International Auctioneers vs. Parayno,* and by stating the grounds and the circumstances surrounding the filing of the incident has sufficiently complied with the requirement that a judicial decision must state the law and the facts upon which it is based.

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[11] RP vs. Sandiganbayan, G.R. No. 112708-09, March 29, 1996.
[12] G.R. No. 163445, December 18, 2007.

Finally R.A. No. 9485 or the Anti-Red Tape Act of 2007 cited by petitioner is simply not pertinent to the present case. To a greater extent insofar as the cited opinions in the June 07, 2010 edition of the Philippine Star is concerned.

**WHEREFORE**, the Petition for Review dated January 18, 2010 filed by Central Services Integrated Cooperative, is **DENIED**, for lack of merit. Consequently, the assailed Resolutions promulgated on November 11, 2009 and January 05, 2010, issued by the former First Division in C.T.A. Case No. 7931, are hereby AFFIRMED *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

*(on leave)*
ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
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 the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice