

REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

EN BANC

COLLEGE ASSURANCE PLAN
PHILS., INC., represented by its
Senior Vice President, ALFREDO R.
COLLADO,

Petitioner,

-versus-

Hon. RENE G. BAÑEZ, in his
capacity as COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

C.T.A. EB NO. 475
(C.T.A. CASE NO. 6522)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUN 01 2010 *[Signature]*
2:30pm

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

A motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA (*Fishwealth Canning Corporation vs. Commissioner of Internal Revenue, G.R. No. 179343, January 21, 2010*).

[Signature]

THE CASE

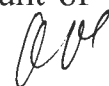
This is a Petition for Review filed by College Assurance Plan Phils., Inc., represented by its Senior Vice President Alfredo R. Collado, (hereafter “petitioner”), under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to set aside the Decision dated July 10, 2008 and Resolution dated March 10, 2009 rendered by the Former First Division of this Court in C.T.A. Case No. 6522, the respective dispositive portions of which read, as follows:

“**WHEREFORE**, the Petition for Review is hereby **DENIED** for lack of merit. Moreover, considering that the Petition for Review was not timely filed, it is likewise **DENIED** for lack of jurisdiction by this Court. Even without the question of jurisdiction, the Court, upon a careful scrutiny of the records, found out that the Petition for Review is unmeritorious.

Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of P135,723,103.00 representing the following deficiency tax assessments for the taxable year 1998, computed as follows:

<u>Type of Tax</u>	<u>Basic</u>	<u>Interest</u>	<u>Total</u>
Expanded Withholding Tax	P 6,532,606.14	P3,923,143.19	P 10,455,749.33
Withholding Tax on Compensation	4,830,671.19	2,964,576.29	7,795,247.48
VAT	73,394,931.13	44,077,175.06	117,472,106.19
	<u>P84,758,208.46</u>	<u>P50,964,894.54</u>	<u>P135,723,103.00</u>
	=====	=====	=====

In addition, petitioner is **ORDERED TO PAY** respondent 20% delinquency interest on the total amount of



P135,723,103.00 computed from September 2, 2002 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997.

SO ORDERED.”

“**WHEREFORE**, for lack of jurisdiction, petitioner’s “Motion for Reconsideration” is hereby **DENIED**.

SO ORDERED.”

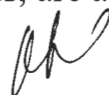
THE PARTIES

Petitioner is a domestic corporation duly created and existing under Philippine laws, with principal office at CAP Bldg., 126 Amorsolo Street, Legaspi Village, Makati City. It is duly represented by its Senior Vice President, Alfredo R. Collado.

Respondent Commissioner of Internal Revenue, on the other hand, is the Chief Official of the Bureau of Internal Revenue (BIR), mandated by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC), as well as related tax statutes and their implementing rules and regulations, including inter alia, the power to decide disputed assessments.

THE FACTS

The facts, as culled from the records, are as follows:



On January 11, 2002, petitioner received a Pre-Assessment Notice (PAN) dated November 19, 2001, which notice may be assailed or protested, within fifteen (15) days from receipt or until January 26, 2002.

On January 24, 2002, respondent issued a Formal Letter of Demand and Assessment Notice dated January 17, 2002.

On January 25, 2002, petitioner, through counsel, filed a request for reinvestigation.

On June 10, 2002, petitioner's counsel received the "Final Decision on Disputed Assessment" dated May 13, 2002, duly signed by ACIR-Large Taxpayer's Service, Edwin R. Abella, denying petitioner's protest on the deficiency assessment.

On July 09, 2002, petitioner, through counsel, filed a request for reconsideration of the "Final Decision on Disputed Assessment", which was granted through a letter dated July 10, 2002.

On August 13, 2002, a decision was issued by Assistant Commissioner for Large Taxpayer's Service Edwin R. Abella, denying petitioner's second request for reinvestigation, which was received by petitioner, through counsel, on September 02, 2002.

On August 9, 2002, petitioner filed a Petition for Review with the Former First Division of this Court, docketed as C.T.A. Case No. 6522.



In his Answer, petitioner CIR alleged by way of special and affirmative defenses that as regards the expanded withholding tax deficiency assessment, verification of the expenses subject to expanded withholding tax per the adjusted trial balance of petitioner disclosed that it has a deficiency in the amount of P10,455,749.33, including increments, pursuant to *RR 2-98*, in relation to *Section 57 of the Tax Code*; that as regards the withholding tax on compensation assessment, verification disclosed that after comparing the salaries subjected to withholding tax on compensation per petitioner's alpha list against the expenses claimed as salaries or remuneration per Financial Statement, a deficiency was found on withholding tax on compensation in the amount of P7,795,247.48; that as regards the VAT assessment, verification disclosed that collections from installment contract receivables, representing receipt from sale of condominium units, were not included in the gross receipt of petitioner, which resulted to an understatement of output VAT; that receipts from other income of petitioner were not included in the gross receipt, thereby resulting to an understatement of output VAT; that with regard to receipts in excess of contribution to trust fund, verification disclosed that not all revenues from sale of educational plans were subjected to VAT; that petitioner was not able to present



evidence to dispute such findings; that petitioner was informed of the law and facts on which the assessments were made, in compliance with *Section 228 of the Tax Code*; and all presumptions are in favor of the correctness of tax assessments.

After trial on the merits, on July 10, 2008, the former First Division rendered the assailed Decision denying the Petition for Review for lack of jurisdiction and for lack of merit.

On September 18, 2008, petitioner filed a “Motion for Reconsideration” on the ground that it has availed of the tax amnesty under *RA 9480*, which was denied by the former First Division in a Resolution dated March 10, 2009 for lack of jurisdiction.

On March 30, 2009, petitioner filed the instant Petition for Review raising the following:

ISSUES

I

WHETHER OR NOT THE ASSESSMENT HAS
ALREADY BECOME FINAL AND EXECUTORY.

II

WHETHER OR NOT THE ASSESSMENT OF THE
ACIR LARGE TAXPAYER’S SERVICE AND NOT
EVEN BY THE COMMISSIONER HIMSELF CAN BE
SUBJECT TO THE LATEST TAX AMNESTY.



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III

WHETHER OR NOT THE DECISION ON DISPUTED ASSESSMENT ISSUED BY THE ACIR LARGE TAXPAYER'S SERVICE EDWIN ABELLA CAN BE LEGALLY AND VALIDLY CONSIDERED AS A DECISION OF THE COMMISSIONER OF INTERNAL REVENUE WHICH COULD BE THE BASIS OF THE FILING OF PETITION FOR REVIEW BEFORE THE HONORABLE COURT OF TAX APPEALS.

IV

WHETHER OR NOT THE TAXPAYER HAS AN OPTION TO FILE THE PETITION FOR REVIEW WITHIN THE 180 DAY PERIOD FOR THE COMMISSIONER OF INTERNAL REVENUE TO ACT UPON THE PROTEST OF THE ASSESSMENT WITHOUT WAITING FOR THE COMMISSIONER OF INTERNAL REVENUE TO ACT ON THE PROTEST.

V

WHETHER OR NOT NON INDICATION IN THE OFFICIAL RECEIPT OF THE AMOUNT TO BE DEPOSITED TO THE TRUST FUND WILL MAKE THE ENTIRE PAYMENT SUBJECT TO VALUE-ADDED TAX.

VI

WHETHER OR NOT THE APPOINTMENT OF A COMMISSIONER TO VALIDATE THE DISPUTED ASSESSMENT AND THE CLAIMS FOR DEDUCTIONS OF EXPENSES OF PETITIONER IS NECESSARY TO ARRIVE AT A TRUE AND ACCURATE TAX ASSESSMENT, IF ANY, AGAINST THE PETITIONER INSTEAD OF JUST RELYING ON



THE TABLE ASSESSMENT MADE BY REVENUE
TAX EXAMINER EDISON LLARIN.

Records show that this case was originally dismissed by the Former Court *En Banc* for failure to comply with the requirements of a valid certification against forum shopping. However, upon petitioner's Motion for Reconsideration and submission of its Compliance showing the authority of its representative to sign the certification of non-forum shopping, this case was reinstated in a Resolution dated January 7, 2010. On even date, we ordered respondent to file his comment to the Petition for Review, within ten (10) days from notice. Considering the report of the Judicial Records Division dated February 3, 2010 that respondent failed to file his comment despite notice, the Court ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice.

Considering respondent's "Memorandum" filed on March 16, 2010 and the "Memorandum For the Petitioner" filed on March 19, 2010, the case was deemed submitted for decision on March 24, 2010.

Hence, this decision.

Petitioner's arguments

Petitioner contends that the assessment has not yet prescribed because of the timely filing of petitioner's Motion for Reconsideration



with the Commissioner of Internal Revenue, which was granted in a letter dated July 10, 2002; that the Final Decision on Disputed Assessment signed by ACIR Large Taxpayer's Service Edwin Abella is not the decision appealable to this Court; that it has availed itself of the tax amnesty under RA 9480, hence, this case should be considered closed and terminated; that it has the option of whether or not to file a Petition for Review within the 180 day period for the CIR to act upon its protest without waiting for the decision of the CIR; that contributions to trust fund, as mandated by law, being a mere return of capital to plan holders, are not income of the petitioner and should not be subjected to VAT; and that the documentary evidence pertaining to "de minimis benefits" was already examined by the Court Commissioned ICPA, who refused to testify in court.

Respondent CIR's Counter-Arguments

On the other hand, respondent CIR maintains that an assessment that has become final, executory and demandable produces no other effect than collection; and that where assessed tax liabilities are due and collectible, as a result of finality concerning a protest, the avilment of the tax amnesty is an improper and futile remedy.



THE COURT *EN BANC*'S RULING

The petition is bereft of merit.

The principal issue to be resolved is whether the Court in Division has jurisdiction over the petition filed in C.T. A. Case No. 6522.

It must be emphasized that this Court is a court of special jurisdiction and can only take cognizance of such matters, as are clearly within its jurisdiction. *Section 7 of RA 9282*, otherwise known as “*An Act Expanding the Jurisdiction of the Court of Tax Appeals*”, amending *RA 1125*, provides:

“*SEC. 7. Jurisdiction.* — 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;

(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;

xxx xxx”

Corollary thereto, *Section 228 of the NIRC of 1997, as amended*, provides:

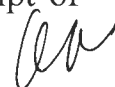
“SEC. 228. Protesting of Assessment. -

xxx xxx

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.”

Pursuant to the above provision, decisions, rulings or inaction of the Commissioner are appealable to the Court of Tax Appeals, within thirty (30) days from receipt of such decision or ruling, or within thirty (30) days from the lapse of the 180-day period fixed by law for the Commissioner to act on the disputed assessment. The 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same (*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, 491 SCRA 293).

Records show:

- 1) On January 11, 2002, petitioner received a Pre-Assessment Notice (PAN) dated November 19, 2001;
- 2) On January 24, 2002, petitioner received a Formal Letter of Demand dated January 17, 2002;



- 3) On January 25, 2002, petitioner filed a formal protest requesting for a reinvestigation;
- 4) On June 10, 2002, petitioner received the Final Decision on Disputed Assessment dated May 13, 2002 denying the protest;
- 5) On July 9, 2002, petitioner filed a Request for Reconsideration of the Final Decision on Disputed Assessment dated July 6, 2002;
- 6) On July 10, 2002, respondent, through Assistant Commissioner Edwin Abella, granted the request;
- 7) On August 5, 2002, petitioner submitted the pertinent documents supporting the request for reinvestigation; and
- 8) On August 9, 2002, petitioner filed a Petition for Review with the Former First Division, docketed as C.T.A. Case No. 6522.

From the above, it is clear that petitioner timely protested the formal letter of demand and was given an opportunity for a reinvestigation of the case before the Final Decision on Disputed Assessment was issued by respondent. However, petitioner's administrative protest was denied by respondent in his Final Decision on Disputed Assessment dated May 13, 2002, a copy of which was received by petitioner on June 10, 2002.



Pursuant to *Section 228 of the NIRC of 1997*, as amended, petitioner has thirty (30) days to appeal respondent's denial to the CTA. Since petitioner received the Final Decision on Disputed Assessment on June 10, 2002, it had until July 10, 2002 to file a petition for review with the CTA in Division.

However, instead of appealing to the Court In Division the Final Decision on Disputed Assessment dated May 13, 2002, denying petitioner's protest, within the 30-day period from the date of receipt, records show that on July 9, 2002, petitioner filed a Request for Reconsideration/Reinvestigation of the Final Decision on Disputed Assessment with ACIR-Large Taxpayer's Service, Edwin R. Abella (*BIR Records*, p. 728). In this regard, *Section 3.1.5 of Revenue Regulations (RR) 12-99* implementing *Section 228 of the NIRC of 1997, as amended*, provides that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory, and demandable. Pursuant thereto, a final decision of the Commissioner's duly authorized representative shall be considered as final, when a protest (request for reconsideration of the Final Decision on Disputed Assessment of the Commissioner's



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authorized representative) is filed before the Commissioner, and not with the same authorized representative of the Commissioner. Since in the present case, petitioner filed a Request for Reconsideration of the Final Decision on Disputed Assessment dated May 13, 2002 with the ACIR Large Taxpayer's Service, Edwin R. Abella, and not with the Commissioner, said Final Decision on Disputed Assessment is considered as the final decision which is appealable to the CTA. The request for reconsideration did not toll the running of the 30-day period to appeal the Final Decision on Disputed Assessment dated May 13, 2002 to the CTA in Division, pursuant to *Revenue Regulations 12-99*.

Considering that it was only on August 9, 2002, or thirty (30) days way beyond the 30-day reglementary period to appeal to the CTA, that petitioner filed a Petition for Review with the Former First Division of this Court, the Final Decision on Disputed Assessment dated May 13, 2002 had become final, executory, and demandable.

In the recent case of *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue* (G.R. No. 179343, January 21, 2010), the Supreme Court ruled that "a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA." Hence, pursuant to said ruling, petitioner's filing of the request



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for reconsideration/reinvestigation of the Final Decision on Disputed Assessment dated May 13, 2002 did not toll the running of the 30-day period to appeal, even if the same was granted by ACIR-Large Taxpayer's Service, Edwin R. Abella.

Petitioner cannot also claim that the basis of its Petition for Review is inaction on the part of the Commissioner, since respondent had already acted on its administrative protest when he issued the Final Decision on Disputed Assessment on May 13, 2002. It is basic that jurisdiction over the subject matter in a judicial proceeding is conferred by the sovereign authority, which organizes the court; it is given only by law and in the manner prescribed by law (*Hasegawa, Kazuro vs. Kitamura, Minoru*, 538 SCRA 261). Either party nor this Court cannot extend the period provided by law, thus, failure to comply with the mandatory statutory period would divest this Court of jurisdiction to issue a valid judgment over the assessment. For petitioner's failure, therefore, to file a petition for review with this Court within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment.

Considering that the assessment had long become final and executory, petitioner cannot avail of the tax amnesty under RA 9480.

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Records further show that the Former First Division also ruled on petitioner's liability based on the tax assessment, over which it has no jurisdiction to pass upon, since the assessment had already become final, executory and demandable. To rule on the merits of the Petition for Review filed before the Court in Division, which has no jurisdiction over the subject matter of the case, would render the judgment void and without legal effect. Pursuant to the well settled rule that a judgment rendered by a court without jurisdiction over the subject matter is void, this Court **AFFIRMS** the Decision of the Former First Division dated July 10, 2008 and Resolution dated March 10, 2009, only insofar as it dismissed the case for lack of jurisdiction.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED**, and accordingly **DISMISSED**. With the modification deleting the ruling on petitioner's liability on the tax assessment, the assailed decision dated July 10, 2008 is hereby **AFFIRMED** in so far as the Petition for Review was dismissed for lack of jurisdiction.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

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WE CONCUR:

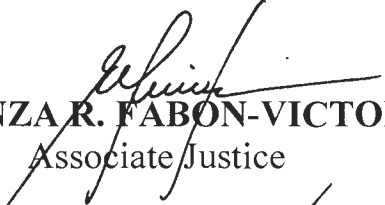
(On Leave)
ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice

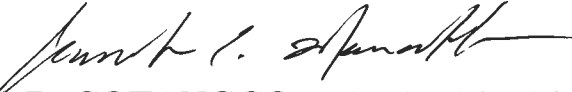

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


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. CASTANEDA, JR.
Acting Presiding Justice

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