THIRD DIVISION

[G.R. No. 135210. July 11, 2001]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs.* ISABELA CULTURAL CORPORATION, *respondent*.

D E C I S I O N

PANGANIBAN, *J.*:

A final demand letter from the Bureau of Internal Revenue, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals (CTA).

The Case

Before this Court is a Petition for Review on *Certiorari*[1] pursuant to Rule 45 of the Rules of Court, seeking to set aside the August 19, 1998 Decision[2] of the Court of Appeals[3] (CA) in CA-GR SP No. 46383 and ultimately to affirm the dismissal of CTA Case No. 5211. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, the assailed decision is REVERSED and SET ASIDE. Accordingly, judgment is hereby rendered REMANDING the case to the CTA for proper disposition."[4]

The Facts

The facts are undisputed. The Court of Appeals quoted the summary of the CTA as follows:

"As succinctly summarized by the Court of Tax appeals (CTA for brevity), the antecedent facts are as follows:

'In an investigation conducted on the 1986 books of account of [respondent, petitioner] had the preliminary [finding] that [respondent] incurred a total income tax deficiency of ₱9,985,392.15, inclusive of increments. Upon protest by [respondent's] counsel, the said preliminary assessment was reduced to the amount of ₱325,869.44, a breakdown of which follows:

Deficiency Income Tax	₱321,022.68
Deficiency Expanded Withholding Tax	4,846.76
Total	₱325,869.44

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(pp. 187-189, BIR records)'

On February 23, 1990, [respondent] received from [petitioner] an assessment letter, dated February 9, 1990, demanding payment of the amounts of P333,196.86 and P4,897.79 as deficiency income tax and expanded withholding tax inclusive of surcharge and interest, respectively, for the taxable period from January 1, 1986 to December 31, 1986. (pp. 204 and 205, BIR rec.)

In a letter, dated March 22, 1990, filed with the [petitioner's] office on March 23, 1990 (pp. 296-311, BIR rec.), [respondent] requested x x x a reconsideration of the subject assessment.

Supplemental to its protest was a letter, dated April 2, 1990, filed with the [petitioner's] office on April 18, 1990 (pp. 224 & 225, BIR rec.), to which x x x were attached certain documents supportive of its protest, as well as a Waiver of Statute of Limitation, dated April 17, 1990, where it was indicated that [petitioner] would only have until April 5, 1991 within which to asses and collect the taxes that may be found due from [respondent] after the re-investigation.

On February 9, 1995, [respondent] received from [petitioner] a Final Notice Before Seizure, dated December 22, 1994 (p. 340, BIR rec.). In said letter, [petitioner] demanded payment of the subject assessment within ten (10) days from receipt thereof. Otherwise, failure on its part would constrain [petitioner] to collect the subject assessment through summary remedies.

[Respondent] considered said final notice of seizure as [petitioner's] final decision. Hence, the instant petition for review filed with this Court on March 9, 1995.

The CTA having rendered judgment dismissing the petition, [respondent] filed the instant petition anchored on the argument that [petitioner's] issuance of the Final Notice Before Seizure constitutes [its] decision on [respondent's] request for reinvestigation, which the [respondent] may appeal to the CTA."[5]

Ruling of the Court of Appeals

In its Decision, the Court of Appeals reversed the Court of Tax Appeals. The CA considered the final notice sent by petitioner as the latter's decision, which was appealable to the CTA. The appellate court reasoned that the final Notice before seizure had effectively denied petitioner's request for a reconsideration of the commissioner's assessment. The CA relied on the long-settled tax jurisprudence that a demand letter reiterating payment of delinquent taxes amounted to a decision on a disputed assessment.

Hence, this recourse.[6]

Issues

In his Memorandum,[7] petitioner presents for this Court's consideration a solitary issue:

"Whether or not the Final Notice Before Seizure dated February 9, 1995 signed by Acting Chief Revenue Collection Officer Milagros Acevedo against ICC constitutes the final decision of the CIR appealable to the CTA."[8]

The Court's Ruling

The Petition is not meritorious.

Sole Issue: *The Nature of the Final Notice Before Seizure*

The Final Notice Before Seizure sent by the Bureau of Internal Revenue (BIR) to respondent reads as follows:

"On Feb.9, 1990, [this] Office sent you a letter requesting you to settle the above-captioned assessment. To date, however, despite the lapse of a considerable length of time, we have not been honored with a reply from you.

In this connection, we are giving you this LAST OPPORTUNITY to settle the adverted assessment within ten (10) days after receipt hereof. Should you again fail, and refuse to pay, this Office will be constrained to enforce its collection by summary remedies of Warrant of Levy of Road Property, Distraint of Personal Property or Warrant of Garnishment, and/or simultaneous court action.

Please give this matter your preferential attention.

Very truly yours,

ISIDRO B. TECSON, JR.
Revenue District Officer

By:

(Signed)
MILAGROS M. ACEVEDO
Actg. Chief Revenue Collection Officer"[9]

Petitioner maintains that this Final Notice was a mere reiteration of the delinquent taxpayer's obligation to pay the taxes due. It was supposedly a mere demand that should not have been mistaken for a decision on a protested assessment. Such decision, the commissioner contends, must unequivocably indicate that it is the resolution of the taxpayer's request for reconsideration and must likewise state the reason therefor.

Respondent, on the other hand, points out that the Final Notice Before Seizure should be considered as a denial of its request for reconsideration of the disputed assessment. The Notice should be deemed as petitioner's last act, since failure to comply with it would lead to the distraint and levy of respondent's properties, as indicated therein.

We agree with respondent. In the normal course, the revenue district officer sends the taxpayer a notice of delinquent taxes, indicating the period covered, the amount due including interest, and the reason for the delinquency. If the taxpayer disagrees with or wishes to protest the assessment, it sends a letter to the BIR indicating its protest, stating the reasons therefor, and submitting such proof as may be necessary. That letter is considered as the taxpayer's request for reconsideration of the delinquent assessment. After the request is filed and received by the BIR, the assessment becomes a disputed assessment on which it must render a decision. That decision is appealable to the Court of Tax Appeals for review.

Prior to the decision on a disputed assessment, there may still be exchanges between the commissioner of internal revenue (CIR) and the taxpayer. The former may ask clarificatory questions or require the latter to submit additional evidence. However, the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review.

Indisputably, respondent received an assessment letter dated February 9, 1990, stating that it had delinquent taxes due; and it subsequently filed its motion for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the CIR additional documents on April 18, 1990. The next communication respondent received was already the Final Notice Before Seizure dated November 10, 1994.

In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a *final* notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy. How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?

Furthermore, Section 228 of the National Internal Revenue Code states that a delinquent taxpayer may nevertheless *directly appeal* a disputed assessment, if its request for reconsideration remains unacted upon 180 days after submission thereof. We quote:

"Sec. 228. ***Protesting an Assessment***. – x x x

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 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 (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."[10]

In this case, the said period of 180 days had already lapsed when respondent filed its request for reconsideration on March 23, 1990, without any action on the part of the CIR.

Lastly, jurisprudence dictates that a final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. In *Commissioner of Internal Revenue v. Ayala Securities Corporation*, this Court 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] x x x 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*, in view of the continued refusal of the respondent corporation to execute the waiver of the period of limitation upon the

assessment in question.

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."[11]

Similarly, in *Surigao Electric Co., Inc. v. Court of Tax Appeals*[12] and again in *CIR v. Union Shipping Corp.*,[13] we ruled:

"x x x. The letter of demand dated April 29, 1963 unquestionably constitutes the final action taken by the commissioner on the petitioner's several requests for reconsideration and recomputation. 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 petitioner's deficiency franchise tax liability."

As in *CIR v. Union Shipping*,[14] petitioner failed to rule on the Motion for Reconsideration filed by private respondent, but simply continued to demand payment of the latter's alleged tax delinquency. Thus, the Court reiterated the dictum that the BIR should always indicate to the taxpayer in clear and unequivocal language what constitutes final action on a disputed assessment. The object of this policy is to avoid repeated requests for reconsideration by the taxpayer, thereby delaying the finality of the assessment and, consequently, the collection of the taxes due. Furthermore, the taxpayer would not be groping in the dark, speculating as to which communication or action of the BIR may be the decision appealable to the tax court.[15]

In the instant case, the second notice received by private respondent verily indicated its nature – that it was *final*. Unequivocably, therefore, it was tantamount to a rejection of the request for reconsideration.

Commissioner v. Algue[16] is not in point here. In that case, the Warrant of Distraint and Levy, issued to the taxpayer without any categorical ruling on its request for reconsideration, was not deemed equivalent to a denial of the request. Because such request could not in fact be found in its records, the BIR cannot be presumed to have taken it into consideration. The request was considered only when the taxpayer gave a copy of it, duly stamp-received by the BIR. Hence, the Warrant was deemed premature.

In the present case, petitioner does not deny receipt of private respondent's protest letter. As a matter of fact, it categorically relates the following in its "Statement of Relevant Facts":[17]

"3. On March 23, 1990, respondent ICC wrote the CIR requesting for a reconsideration of the assessment on the ground that there was an error committed in the computation of interest and that there were expenses which were disallowed (Ibid., pp. 296-311).

"4. On April 2, 1990, respondent ICC sent the CIR additional documents in support of its protest/reconsideration. The letter was received by the BIR on April 18, 1990. Respondent ICC further executed a Waiver of Statute of Limitation (dated April 17, 1990) whereby it consented to the BIR to assess and collect any taxes that may be discovered in the process of reinvestigation, until April 3, 1991 (Ibid., pp. 296-311). A copy of the waiver is hereto attached as Annex 'C'."

Having admitted as a *fact* private respondent's request for reconsideration, petitioner must have passed upon it prior to the issuance of the Final Notice Before Seizure.

WHEREFORE, the Petition is hereby *DENIED* and the assailed Decision *AFFIRMED*.

SO ORDERED.

Melo, (Chairman), Vitug, and *Sandoval-Gutierrez, JJ.,* concur.
Gonzaga-Reyes, J., on leave.

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[1] *Rollo*, pp. 7-16. The Petition was signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Roman G. del Rosario and Sol. Irahlyn P. Sacupayo-Lariba.

[2] *Rollo*, pp. 20-27.

[3] Second Division. Written by J. Artemio G. Tuquero; concurred in by JJ Emeterio C. Cui (Division chairman) and Eubulo G. Verzola (member).

[4] Assailed Decision, p. 8; *rollo*, p. 27.

[5] Assailed Decision, pp. 1-3; *rollo*, pp. 20-22.

This case was deemed submitted for resolution on July 14, 1999, upon receipt by the Court of petitioner's Memorandum, which was signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Roman G. del Rosario and Sol. Irahlyn P. Sacupayo-Lariba. Respondent's Memorandum was received on the same date and was signed by Atty. Mary Jane B. Austria of Bengzon Narciso Cudala Jimenez Gonzales and Liwanag.[6]

[7] *Rollo*, pp. 364-373. Petitioner's Memorandum was signed by Solicitor Irahlyn P. Sacupayo-Lariba.

[8] Memorandum for Petitioner, p. 4; *rollo*, p. 367.

[9] Memorandum for Petitioner, p. 8; *rollo*, p. 371.

[10] Section 228, National Internal Revenue Code.

[11] 70 SCRA 204, 209, March 31, 1976, per Esguerra, *J.*

[12] 57 SCRA 523, 526, June 28, 1974, per Castro, *J.*

[13] 185 SCRA 547, May 21, 1990.

[14] *Supra*.

[15] Surigao Electric Co., Inc. v. CTA, *supra*.

[16] 158 SCRA 9, February 17, 1988.

[17] Petition, p. 4. See also petitioner's Memorandum, pp. 3-4.