625 Phil. 530

SECOND DIVISION

[G.R. No. 175097, February 05, 2010]

ALLIED BANKING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

The key to effective communication is clarity.

The Commissioner of Internal Revenue (CIR) as well as his duly authorized representative must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment.[1] Words must be carefully chosen in order to avoid any confusion that could adversely affect the rights and interest of the taxpayer.

Assailed in this Petition for Review on *Certiorari*[2] under Section 12 of Republic Act (RA) No. 9282,[3] in relation to Rule 45 of the Rules of Court, are the August 23, 2006 Decision[4] of the Court of Tax Appeals (CTA) and its October 17, 2006 Resolution[5] denying petitioner's Motion for Reconsideration.

Factual Antecedents

On April 30, 2004, the Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN) to petitioner Allied Banking Corporation for deficiency Documentary Stamp Tax (DST) in the amount of P12,050,595.60 and Gross Receipts Tax (GRT) in the amount of P38,995,296.76 on industry issue for the taxable year 2001.[6] Petitioner received the PAN on May 18, 2004 and filed a protest against it on May 27, 2004.[7]

On July 16, 2004, the BIR wrote a Formal Letter of Demand with Assessment Notices to petitioner, which partly reads as follows:[8]

> It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal the final decision within thirty (30) days from receipt hereof, otherwise said

deficiency tax assessment shall become final, executory and demandable.

Petitioner received the Formal Letter of Demand with Assessment Notices on August 30, 2004.[9]

Proceedings before the CTA First Division

On September 29, 2004, petitioner filed a Petition for Review[10] with the CTA which was raffled to its First Division and docketed as CTA Case No. 7062.[11]

On December 7, 2004, respondent CIR filed his Answer.[12] On July 28, 2005, he filed a Motion to Dismiss[13] on the ground that petitioner failed to file an administrative protest on the Formal Letter of Demand with Assessment Notices. Petitioner opposed the Motion to Dismiss on August 18, 2005.[14]

On October 12, 2005, the First Division of the CTA rendered a Resolution[15] granting respondent's Motion to Dismiss. It ruled:

> Clearly, it is neither the assessment nor the formal demand letter itself that is appealable to this Court. It is the decision of the Commissioner of Internal Revenue on the disputed assessment that can be appealed to this Court (*Commissioner of Internal Revenue vs. Villa,* 22 SCRA 3). As correctly pointed out by respondent, a disputed assessment is one wherein the taxpayer or his duly authorized representative filed an administrative protest against the formal letter of demand and assessment notice within thirty (30) days from date [of] receipt thereof. In this case, petitioner failed to file an administrative protest on the formal letter of demand with the corresponding assessment notices. Hence, the assessments did not become disputed assessments as subject to the Court's review under Republic Act No. 9282. (See also *Republic v. Liam Tian Teng Sons & Co., Inc.,* 16 SCRA 584.)
>
> **WHEREFORE,** the Motion to Dismiss is **GRANTED.** The Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**[16]

Aggrieved, petitioner moved for reconsideration but the motion was denied by the First Division in its Resolution dated February 1, 2006.[17]

Proceedings before the CTA En Banc

On February 22, 2006, petitioner appealed the dismissal to the CTA *En Banc.*[18] The case was docketed as CTA EB No. 167.

Finding no reversible error in the Resolutions dated October 12, 2005 and February 1, 2006 of the CTA First Division, the CTA *En Banc* denied the Petition for Review[19]as well as petitioner's Motion for Reconsideration.[20]

The CTA *En Banc* declared that it is absolutely necessary for the taxpayer to file an administrative protest in order for the CTA to acquire jurisdiction. It emphasized that an administrative protest is an integral part of the remedies given to a taxpayer in challenging the legality or validity of an assessment. According to the CTA *En Banc,* although there are exceptions to the doctrine of exhaustion of administrative remedies, the instant case does not fall in any of the exceptions.

Issue

Hence, the present recourse, where petitioner raises the lone issue of whether the Formal Letter of Demand dated July 16, 2004 can be construed as a final decision of the CIR appealable to the CTA under RA 9282.

Our Ruling

The petition is meritorious.

Section 7 of RA 9282 expressly provides that the CTA exercises exclusive appellate jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments

The CTA, being a court of special jurisdiction, can take cognizance only of

matters that are clearly within its jurisdiction.[21] Section 7 of RA 9282 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; (Emphasis supplied)

x x x x

The word "decisions" in the above quoted provision of RA 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessments. [22] Corollary thereto, Section 228 of the National Internal Revenue Code (NIRC) provides for the procedure for protesting an assessment. It states:

SECTION 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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.

In the instant case, petitioner timely filed a protest after receiving the PAN. In response thereto, the BIR issued a Formal Letter of Demand with Assessment Notices. Pursuant to Section 228 of the NIRC, the proper recourse of petitioner was to dispute the assessments by filing an administrative protest within 30 days from receipt thereof. Petitioner, however, did not protest the final assessment notices. Instead, it filed a Petition for Review with the CTA. Thus, if we strictly apply the rules, the dismissal of the Petition for Review by the CTA was proper.

The case is an exception to the
rule on exhaustion of administrative remedies

However, a careful reading of the Formal Letter of Demand with Assessment Notices leads us to agree with petitioner that the instant case is an exception to the rule on exhaustion of administrative remedies, *i.e.*, estoppel on the part of the administrative agency concerned.

In the case of *Vda. De Tan v. Veterans Backpay Commission*,[23] the respondent contended that before filing a petition with the court, petitioner should have first exhausted all administrative remedies by appealing to the Office of the President. However, we ruled that respondent was estopped from invoking the rule on exhaustion of administrative remedies considering that in its Resolution, it said, "The opinions promulgated by the Secretary of Justice are advisory in nature, which may either be

accepted or ignored by the office seeking the opinion, and any aggrieved party has the court for recourse". The statement of the respondent in said case led the petitioner to conclude that only a final judicial ruling in her favor would be accepted by the Commission.

Similarly, in this case, we find the CIR estopped from claiming that the filing of the Petition for Review was premature because petitioner failed to exhaust all administrative remedies.

The Formal Letter of Demand with Assessment Notices reads:

> Based on your letter-protest dated May 26, 2004, you alleged the following:
>
> 1. That the said assessment has already prescribed in accordance with the provisions of Section 203 of the Tax Code.
>
> 2. That since the exemption of FCDUs from all taxes found in the Old Tax Code has been deleted, the wording of Section 28(A)(7)(b) discloses that there are no other taxes imposable upon FCDUs aside from the 10% Final Income Tax.
>
> Contrary to your allegation, the assessments covering GRT and DST for taxable year 2001 has not prescribed for [sic] simply because no returns were filed, thus, the three year prescriptive period has not lapsed.
>
> With the implementation of the CTRP, the phrase "exempt from all taxes" was deleted. Please refer to Section 27(D)(3) and 28(A)(7) of the new Tax Code. Accordingly, you were assessed for deficiency gross receipts tax on onshore income from foreign currency transactions in accordance with the rates provided under Section 121 of the said Tax Code. Likewise, deficiency documentary stamp taxes was [sic] also assessed on Loan Agreements, Bills Purchased, Certificate of Deposits and related transactions pursuant to Sections 180 and 181 of NIRC, as amended.
>
> The 25% surcharge and 20% interest have been imposed pursuant to the provision of Section 248(A) and 249(b), respectively, of the National Internal Revenue Code, as amended.
>
> It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. **This is our final decision based on investigation. If you disagree, you may appeal this final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final,**

executory and demandable.[24] (Emphasis supplied)

It appears from the foregoing demand letter that the CIR has already made a final decision on the matter and that the remedy of petitioner is to appeal the final decision within 30 days.

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue,*[25] we considered the language used and the tenor of the letter sent to the taxpayer as the final decision of the CIR.

In this case, records show that petitioner disputed the PAN but not the Formal Letter of Demand with Assessment Notices. Nevertheless, we cannot blame petitioner for not filing a protest against the Formal Letter of Demand with Assessment Notices since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter. We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues.[26] Viewed in the light of the foregoing, respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision.

Moreover, we cannot ignore the fact that in the Formal Letter of Demand with Assessment Notices, respondent used the word "appeal" instead of "protest", "reinvestigation", or "reconsideration". Although there was no direct reference for petitioner to bring the matter directly to the CTA, it cannot be denied that the word "appeal" under prevailing tax laws refers to the filing of a Petition for Review with the CTA. As aptly pointed out by petitioner, under Section 228 of the NIRC, the terms "protest", "reinvestigation" and "reconsideration" refer to the administrative remedies a taxpayer may take before the CIR, while the term "appeal" refers to the remedy available to the taxpayer before the CTA. Section 9 of RA 9282, amending Section 11 of RA 1125,[27] likewise uses the term "appeal" when referring to the action a taxpayer must take when adversely affected by a decision, ruling, or inaction of the CIR. As we see it then, petitioner in appealing the Formal Letter of Demand with Assessment Notices to the CTA merely took the cue from respondent. Besides, any doubt in the interpretation or use of the word "appeal" in the Formal Letter of Demand with Assessment Notices should be resolved in favor of petitioner, and not the respondent who caused the confusion.

To be clear, we are not disregarding the rules of procedure under Section 228 of the NIRC, as implemented by Section 3 of BIR Revenue Regulations No. 12-99.[28] It is the Formal Letter of Demand and Assessment Notice that must be administratively protested or disputed within 30 days, and not the PAN. Neither are we deviating from our pronouncement in *St. Stephen's Chinese Girl's School v. Collector of Internal*

Revenue,[29] that the counting of the 30 days within which to institute an appeal in the CTA commences from the date of receipt of the decision of the CIR on the disputed assessment, not from the date the assessment was issued.

What we are saying in this particular case is that, the Formal Letter of Demand with Assessment Notices which was not administratively protested by the petitioner can be considered a final decision of the CIR appealable to the CTA because the words used, specifically the words "final decision" and "appeal", taken together led petitioner to believe that the Formal Letter of Demand with Assessment Notices was in fact the final decision of the CIR on the letter-protest it filed and that the available remedy was to appeal the same to the CTA.

We note, however, that during the pendency of the instant case, petitioner availed of the provisions of Revenue Regulations No. 30-2002 and its implementing Revenue Memorandum Order by submitting an offer of compromise for the settlement of the GRT, DST and VAT for the period 1998-2003, as evidenced by a Certificate of Availment dated November 21, 2007.[30] Accordingly, there is no reason to reinstate the Petition for Review in CTA Case No. 7062.

WHEREFORE, the petition is hereby **GRANTED.** The assailed August 23, 2006 Decision and the October 17, 2006 Resolution of the Court of Tax Appeals are **REVERSED** and **SET ASIDE**. The Petition for Review in CTA Case No. 7062 is hereby **DISMISSED** based solely on the Bureau of Internal Revenue's acceptance of petitioner's offer of compromise for the settlement of the gross receipts tax, documentary stamp tax and value added tax, for the years 1998-2003.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and *Perez, JJ.,* concur.

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[1] *Surigao Electric Co., Inc. v. Court of Tax Appeals,* 156 Phil. 517, 522-523 (1974).

[2] *Rollo,* pp. 7-21.

[3] 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.

[4] *Rollo*, pp. 23-30; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta, and Associate Justices Juanito C. Castañeda, Jr.,

Lovell R. Bautista, and Caesar A. Casanova. Associate Justice Olga Palanca-Enriquez inhibited herself and did not take part.

[5] Id. at 32-34.

[6] Id. at 53-54.

[7] Id. at 24.

[8] Id. at 35-36.

[9] Id. at 24.

[10] Id. at 37-61.

[11] Id. at 24.

[12] Id.

[13] Id. at 62-66.

[14] Id. at 25.

[15] Id. at 67-72.

[16] Id. at 71-72.

[17] Id. at 25.

[18] Id. at 23.

[19] Id. at 29.

[20] Id. at 34.

[21] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144, 150.

[22] *Commissioner of Internal Revenue v. Villa,* 130 Phil. 3, 6 (1968).

[23] 105 Phil. 377, 383 (1959).

[24] *Rollo*, p. 36.

[25] G.R. No. 148380, December 9, 2005, 477 SCRA 205, 211.

[26] *Surigao Electric Co., Inc. v. Court of Tax Appeals,* supra note 1.

[27] Section 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 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.

x x x x

[28] Section 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* -

x x x x

3.1.2 Preliminary Assessment Notice (PAN). - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

x x x x

3.1.4 Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. The same shall be sent to the taxpayer only by registered mail or by personal delivery. x x x

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 x x x.

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 x x x.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final and executory and demandable x x x

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.

If the protest is denied, in whole or in part, by the Commissioner, 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.

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 said 180-day period, otherwise, the assessment shall become final, executory and demandable.

x x x x

[29] 104 Phil. 314, 317 (1958).

[30] Annex "A" of petitioner's Memorandum.