REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE BAR BOTTLERS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5054

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

6/14

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# RESOLUTION

Pending before Us for resolution is a "Motion to Dismiss" dated March 23, 1994 seeking for the dismissal of the instant petition on the ground that there is no final decision of the respondent appealable to this Court.

It appears from the records that on September 3, 1993, the petitioner received from the respondent a demand letter and an assessment notice dated August 31, 1993 and September 3, 1993 respectively, assessing it for deficiency income tax amounting to P5,000,986.78, to which the petitioner filed its protest on October 22, 1993.

On November 10, 1993, the petitioner once again received from the respondent a demand letter and assessment notices all dated October 14, 1993, this time assessing it liable for deficiency expanded withholding tax (EWT) and value added tax (VAT) in the total amount of P864,505.25, to which the petitioner similarly fileD a protest on December 3, 1993.

However, before the filing of the second protest, the respondent, on November 15, 1993 issued a final notice for the payment of all the deficiency taxes the petitioner is being held liable for, which We reproduce hereinbelow:

November 15, 1993
(date)

F I N A L   N O T I C E

* The Bar Bottlers Corp.
213 C. Santos
* Bo. Ugong Pasig,
Metro Manila

Sir/Madam:

Your revenue tax liability for the year/s 1988 amounting to P5,865,490.03 including increments under Ass./Demand No/s. FAS-2-88-93-003227 and FAS-2-88-93-003740 to 003741 dated 09-03-93/10/14/93 which is still outstanding inspite of several notices will be referred for issuance of warrant and/or judicial action.

"Before doing so, and to avoid inconvenience, you are requested to settle the said liability on or before 11-25-93 to the Accounts Receivable/Billing Division, Room 203, BIR Building, Diliman, Quezon City in order that the case can be closed and terminated.

Please give this your preferential attention.

Very truly yours,

FOR THE COMMISSIONER OF
INTERNAL REVENUE

(Signed)
MANUEL B. MINA
Asst. Chief, Accounts
Receivable/Billing Division

The petitioner received the above notice on December 7, 1993 which it considered as the final decision of the respondent on the assessments issued. Consequently, it filed the instant petition on January 5, 1994.

The respondent now contends that this Court has no jurisdiction to adjudicate on the matters being prayed for, as the "Final Notice" is not her final decision on the subject assessments.

We agree with the respondent.

It is a settled rule in this jurisdiction that only the final decision of the Commissioner of Internal Revenue can be appealed to this Court (Surigao Electric Co., Inc. vs. Court of Tax Appeals, 57 SCRA 523; Supercars Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 5040, May 6, 1994).

A careful analysis of the "Final Notice" sent by the respondent reveals that it is a mere follow-up notice for the collection of the deficiency tax assessed and not a decision on the protest filed by the petitioner. This can easily be inferred from the fact that when the notice was issued on November 15, 1993, the respondent has not received the petitioner's second protest nor has the 30 day period for filing the same has lapsed. It must be noted that the "Final Notice" likewise seek to collect the alleged deficiency VAT and EWT subject of the second protest. The respondent cannot possibly issue a final decision without first giving the petitioner an opportunity to file a protest on the issued assessments. To hold otherwise will be tantamount to depriving the taxpayer of his statutory right to dispute an assessment as provided for under Sec. 229 of the Tax Code.

Neither the threat of an issuance of a warrant of distraint and/or levy as embodied in the "Final Notice" can be construed as a final action by the respondent on the subject assessments, considering that even the actual issuance of a warrant of distraint and/or levy, under certain circumstances, cannot be construed as a final decision appealable to this Court, although in some circumstances it was held as the final decision of the Commissioner of Internal Revenue (Solid Cement Corporation vs. Jose Ong in his capacity as Commissioner of Internal Revenue, Resolution, CTA Case No. 4850, September 10, 1993; Commissioner of Internal Revenue vs. Union Shipping Corporation, 185 SCRA 547). Moreover, we cannot infer from the said final notice that it is an implied denial because it did not even made reference to the protest already filed and as a matter of fact the said notice was sent even before the Petitioner has filed its second protest. These letters of the Accounts Receivable Decision are *pro-forma* demand letter which in many cases are sent by the BIR without considering the protest filed by the taxpayer. However, following the ruling of the Supreme Court in the Surigao case above cited, We hereby enjoined the respondent to rule in a clear and unequivocal language her final decisions in the protests filed. Any coercive measures instituted by her to enforce collection, administrative or judicial, shall be interpreted by the Court as her final decision on the matter appealable to this Court.

In the light of the foregoing discussion, We hold that the filing of the instance petition is premature and the petitioner should await for the respondent's rendition of her final decision on the protests that it had made, particularly on the issue on whether the right to assess the petitioner had indeed, prescribed.

WHEREFORE, the instant petition is hereby dismissed, without prejudice to the refiling of this case before this Court.

SO ORDERED.

Quezon City, Metro Manila, June 14, 1994.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

(On Leave)
MANUEL K. GRUBA
Associate Judge