REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ECL FOODS AND CATERING CORPORATION,
Petitioner,

-versus-

HON. COMMISSIONER OF INTERNAL REVENUE AND REGIONAL DIRECTOR OF REVENUE REGION NO. 10,
Respondents.

C.T.A. EB No. 184
(C.T.A. Case No. 7170)

Members:

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

This is a Petition for Review before the Court of Tax Appeals *en banc* (the Court *en banc*), pursuant to Section 18 of Republic Act No. 1125 as amended by Section 11 of Republic Act No. 9282, seeking the reversal of the Resolution promulgated by the First Division of the Court of Tax Appeals (the Court in Division) in C.T.A. Case No. 7170 entitled *"ECL Foods and Catering Corporation vs. Commissioner of Internal Revenue"* promulgated on

May 10, 2006 which denied petitioner's Motion for Reconsideration of the Resolution dated January 25, 2006 wherein the Court in Division dismissed petitioner's Petition for Review for lack of jurisdiction.

The undisputed facts as found by the Court in Division are as follows:

> "On March 18, 2003, petitioner received a copy of a Preliminary Assessment Notice (No. 067-000-004-195-366) dated March 11, 2003 issued by Revenue Region 10 Regional Director Leonardo Q. Sacamos (pp. 115-116 of BIR Records). The assessment was for the taxable year 2000 for deficiency income tax in the amount of Two Hundred Seventy Three Thousand Three Hundred Thirty Eight and Eighty Six Centavos (P273,338.86) and deficiency Value-Added Tax (VAT) in the amount of Two Hundred Seventy One Thousand Six Hundred Ninety Two and Seventy Centavos (P271,692.70) or for a grand total of Five Hundred Forty Nine Thousand Thirty One and Fifty Six Centavos (P549,031.56), inclusive of the compromise penalty *(pars. 4 and 5 Joint Stipulation of Facts and Issues).*
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> Subsequently, in a letter dated March 25, 2003, petitioner's Corporate Representative Ronaldo B. Curiano, informed the BIR Regional Director of its receipt of the Assessment Notice dated March 11, 2003 and that he had already conferred with the Assessment Division Chief for clarificatory purposes. Further, he requested for a reasonable time to analyze and gather the required supporting documents until May 15, 2003.
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> On October 20, 2003, petitioner received a Formal Demand Letter dated October 13, 2003 from Regional Director Sacamos. Said Formal Letter of Demand requested petitioner to pay the assessed tax deficiencies.
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> On February 11, 2004, petitioner received a copy of the February 6, 2004 Preliminary Collection Letter issued by Revenue District Officer Ma. Luisa I. Belen of RDO No. 67, assessing petitioner the same amount as indicated in the Formal Letter of Demand and the Preliminary Assessment Notice *(par. 7 of the Joint Stipulation of Facts and Issues).*
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> On April 5, 2004 petitioner received a copy of the March 24, 2004 Final Notice Before Seizure issued by Revenue District Officer. Thereafter, petitioner received a copy of the June 17, 2004 Warrant of Distraint and/or Levy issued by the RDO No. 67 on July 2, 2004 *(par. 8 of the Joint Stipulation of Facts and Issues).* The said Warrant of Distraint and/or Levy was directed to cover the sum Five Hundred

> Forty Nine Thousand Thirty One and Fifty Six Centavos (P549,031.56) as alleged unpaid internal revenue taxes of the petitioner.
>
> Petitioner filed its Motion for Reconsideration and received by the respondent Commissioner on July 30, 2004. It requested for reinvestigation and reiterated their reservation to submit supplemental position paper with additional arguments and documentation *(pp.175-190 of the BIR Records).*
>
> On February 18, 2005, petitioner received a letter from respondent Regional Director and was informed of the denial of its motion for reconsideration for failure to adduce sufficient evidence to warrant its previous findings." [1]

From this denial, Petitioner ECL Foods filed a Petition for Review before the First Division of the Court of Tax Appeals (the Court in Division) on March 18, 2005 docketed as C.T.A. CASE No. 7170, seeking the reversal of the February 8, 2005 Letter-Decision of the respondents denying petitioner's July 29, 2004 Motion for Reconsideration and that the October 13, 2003 Formal Letter of Demand and the June 17, 2004 Warrant of Distraint and/or Levy be declared null and void.[2]

On September 13, 2005, respondents filed a Motion to Dismiss the Petition for Review on the ground of lack of jurisdiction considering that the assessment had become final, executory and unappealable because petitioner failed to file a timely protest to the assessments.[3] On October 17, 2005, petitioner filed its Comment and/or Opposition (to Respondents' 13 September 2005 Motion to Dismiss). On November 16, 2005, respondents filed a Supplemental Motion to Dismiss reiterating the Court's lack of

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1 Resolution, C.T.A. CASE No. 7170, C.T.A. First Division, January 25, 2006.
2 Petition for Review, C.T.A. CASE No. 7170, p.18
3 Motion to Dismiss, C.T.A. Records, C.T.A. CASE No. 7170, pp. 125-128

jurisdiction over the subject matter of the case and adding that petitioner is not the real party in interest considering that the original Petition for Review was instituted in the name of "ECL Foods Superama, Inc." and not in the name of "ECL Foods & Catering, Inc.". According to the respondent, since the Petition for Review was filed in the name of ECL Foods Superama, Inc. as the petitioner, it (ECL Foods Superama, Inc.) has no cause of action against the respondents because the assessment notice was issued against ECL Foods and Catering Corporation.

On December 7, 2005, petitioner filed an Opposition (to Respondent's Supplemental Motion to Dismiss) with Motion to Allow Formal Amendment praying for the formal amendment of the error in the designation of the petitioner in the caption of the pleadings submitted before the Court and the denial of respondent's Supplemental Motion to Dismiss on the ground that a cause of action is determined by the allegations in the Petition for Review showing that it was brought by the real party-in-interest, ECL Foods and Catering Corporation.

In a Resolution promulgated on January 25, 2006, the Court in Division granted respondent's Motion to Dismiss on the ground of lack of jurisdiction because there is no disputed assessment that could be the subject of the Court's review under Republic Act No. 1125, as amended by Republic Act No. 9282.

On February 22, 2006, petitioner filed a Motion for Reconsideration (of the Resolution of this Honorable Court dated 25 January 2006). In a

Resolution dated May 10, 2006, the Court in Division denied petitioner's Motion for Reconsideration for lack of merit reiterating its ruling that petitioner's failure to file a timely protest on the Formal Letter of Demand within thirty (30) days from receipt thereof rendered the assessment final, executory and demandable, as such, it can no longer be disputed either administratively or judicially.

Hence, petitioner filed this present appeal before the Court *en banc* on June 8, 2006. As stated in the Petition for Review, the grounds relied upon by the petitioner are the following:

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> IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF TAX APPEALS, FIRST DIVISION, GRAVELY ERRED IN ITS DETERMINATION THAT THE ASSESSMENT NOTICES AND FINAL DEMAND LETTER DATED 13 OCTOBER 2003 ISSUED BY THE RESPONDENTS AGAINST PETITIONER ECL FOODS WERE VALID DESPITE OF PATENT INDICATIONS THAT THEY FAILED TO STATE THE FACTS AND LAW UPON WHICH THEY WERE BASED.

II.

> IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF TAX APPEALS, FIRST DIVISION, OBVIOUSLY DISREGARDED THE FACT THAT THE FAILURE OF THE RESPONDENTS TO TIMELY RESPOND TO THE INQUIRIES OF PETITIONER ECL FOODS COUPLED WITH THE DEFECTIVE ASSESSMENT NOTICES AND FINAL DEMAND LETTER, PREVENTED THE LATTER FROM INTELLIGENTLY PREPARING ITS FORMAL PROTEST, HENCE, THIS OMISSION, ASSUMING IF ANY, CANNOT BE TAKEN AGAINST PETITIONER ECL FOODS.

III.

> IT IS HUMBLY SUBMITTED THAT THIS HONORABLE COURT, BY APPLYING THE PRINCIPLES OF THE SUBSTANTIAL COMPLIANCE RULE, RELAXATION OF THE RIGID RULES OF PROCEDURE AND

LIBERAL CONSTRUCTION IN FAVOR OF THE TAXPAYER, SHOULD CONSIDER THE MOTION FOR RECONSIDERATION DATED 29 JULY 2004 AS PETITIONER ECL FOOD'S PROTEST.

PETITIONER'S ARGUMENTS

Petitioner argues that the Preliminary Assessment Notice and Formal Letter of Demand are patently null and void for its failure to state the facts and law upon which the deficiency tax assessments against petitioner were based as required by Section 228 of the National Internal Revenue Code of 1997 and Section 3.1.4 of Revenue Regulations No. 12-99. Therefore, considering the patent defects in the Preliminary Assessment Notice and Formal Letter of Demand, the deficiency tax assessments against petitioner ECL Foods is null and void, thus, cannot attain finality. According to the petitioner, this principle can be applied regardless of any protest filed by the taxpayer, because, as it is, an assessment that is null and void does not have any legal effect whatsoever.[4] Petitioner likewise argues that the Preliminary Assessment Notice (PAN) and Formal Letter of Demand dated 13 October 2003 are defective because the respondents improperly relied on the principle of "best evidence obtainable". According to the petitioner, the PAN and the Formal Letter of Demand commonly stated:

> "Investigation revealed that you failed to present documentary evidence, hence, the 15% of the above-mentioned expenses were disallowed based on estimate rule, in the absence of receipts to prove the actual cost and expenses pursuant to Revenue Memorandum Circular No. 23-2000 section 2.4 (c) in relation to Section 6(b) of the Tax Code."

4 Petition for Review, pp. 19-20.

With respect to the second ground relied upon by the petitioner, it argues that the unilateral action on the part of the respondents to proceed with the summary collection of petitioner's alleged tax deficiencies, notwithstanding its unanswered inquiries, which response is necessary for it to intelligently prepare its formal protest, is a gross violation of petitioner's right to procedural due process.

Petitioner asserts that after it received the Preliminary Assessment Notice dated 11 March 2003, it immediately arranged and attended a Preliminary Conference on 21 April 2003 at the Regional Office of the Bureau of Internal Revenue (BIR) through its authorized representative Ronaldo B. Curiano who gave his reply to the findings of the said BIR Regional Office and asked clarificatory questions which remained unanswered. The Formal Letter of Demand dated 13 October 2003 and Preliminary Collection Letter dated 06 February 2004 had already been issued even though the respondent Regional Director had not answered petitioner's previous inquiries. Thus, petitioner's authorized representative immediately sent a letter dated 13 February 2004 inquiring from the said Regional Office about the status of its inquiries and that it is still waiting for several clarificatory answers. Instead of receiving a reply, petitioner received on 05 April 2004 a Final Notice Before Seizure dated 24 March 2004, thereafter, on 02 July 2004, a Notice of Warrant of Distraint and/or Levy.

Petitioner contends that the foregoing indicates gross negligence on the part of respondent Regional Director in addressing the important concerns of herein petitioner and such inaction is tantamount to a violation of the constitutionally recognized right to due process[5].

Lastly, petitioner argues that because of the principle of the substantial compliance rule, relaxation of the stringent rules of procedure should be applied in this present case in order to prevent any prejudice on petitioner's right as a taxpayer to protest the tax assessment and in order to give substance to the principle of liberal construction of tax laws in favor of the taxpayer[6]. According to the petitioner, nothing will prevent this Honorable Court in equally applying the substantial compliance rule in treating petitioner's Motion for Reconsideration dated 29 July 2004 as its Formal Letter Protest which is justified by the respondent Regional Director's gross violation of petitioner's right to due process coupled with the substantially defective Preliminary Assessment Notice and Formal Letter of Demand dated 13 October 2003 for its non-compliance with the strict requirements of Section 228 of the NIRC and Rev. Reg. No. 12-99.

In a Resolution dated July 11, 2006, this Court ordered the respondents to file their Comment within ten (10) days from receipt thereof and upon receipt of respondent's Comment or the expiration of the period for filing the same, the Petition for Review shall be deemed submitted for resolution. Records show that the aforementioned Resolution was received by respondents on July 17, 2006. On July 28, 2006, respondents filed a

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5 Petition for Review, p. 21

6 *Ibid.,* pp. 23 - 24

Motion for Extension of Time to File Comment praying for an extension of ten (10) days from July 27, 2006, the last day for filing their Comment. In a Resolution dated August 4, 2006, the Court denied respondents' Motion for Extension of Time to File Comment for being filed out of time considering that respondents had only until July 27, 2006 within which to file their Comment and their Motion for Extension was filed on July 28, 2006 which was one (1) day beyond the period granted by the Court. Thus, the present Petition for Review shall be resolved *sans* respondents' Comment.

THIS COURT'S RULING

The petition is bereft of merit.

The National Internal Revenue Code of 1997 (NIRC of 1997) provides for the procedures in protesting assessment notices, thus:

> "SEC. 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
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (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.
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> 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 180-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Pursuant to the above-quoted Section 228 of the NIRC of 1997, a taxpayer may protest the assessment by filing a request for reinvestigation or a motion for reconsideration within thirty (30) days from receipt of the assessment, otherwise, the assessment shall become final. Section 228 of the NIRC of 1997 is implemented by Revenue Regulations No. 12-99 dated September 6, 1999 entitled "Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of

National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty". Section 3.1.5 thereof provides as follows:

> 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. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended. 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. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
>
> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
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> **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 the said 180-day period, otherwise, the assessment shall become final, executory and demandable. *(Emphasis supplied)*

Consistent with Sec. 228 of the NIRC of 1997, Sec. 3.1.5 of Revenue Regulations No. 12-99 provides that a taxpayer may protest the assessment within a period of thirty (30) days from receipt thereof and that failure to contest the assessment within the 30-day period renders the assessment notice final, executory and demandable.

It is not disputed that on October 20, 2003, petitioner ECL Foods and Catering Corporation received a Formal Letter of Demand requesting petitioner to pay the assessed tax deficiencies. As found by the Court in Division, petitioner did not file any protest against the aforementioned Formal Letter of Demand, thus, the Court in Division ruled as follows:

> "As correctly stated by the respondents, **petitioner's right to validly protest the assessment had expired after thirty (30) days from receipt of the assessments contained in the Formal Letter of Demand dated October 20, 2003 or on November 19,**

> **2003. Perforce, for its failure to file a timely protest of the assessment, the same became final, executory and unappealable.**
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> In this regard, Section 7 (a) (1) Republic Act 9282 provides:
>
> (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;
>
> xxx xxx xxx
>
> Thus, the Court of Tax Appeals exercises appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases, among others, *involving disputed assessments*.
>
> 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).* 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 receipt thereof.
>
> In the case at bar, petitioner failed to file an administrative protest on the formal letter of demand. Hence, the assessments did not become disputed assessments subject to the Court's review under Republic Act No. 9282."[7] *(Emphasis supplied)*

Consequently, the Court in Division dismissed the Petition for Review filed by ECL Foods and Catering Corporation for lack of jurisdiction, considering that there is no disputed assessment because the assessment had already become final and executory for failure of the petitioner to protest the same within the 30-day period allowed by law.

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[7] Resolution, C.T.A. CASE No. 7170, C.T.A. First Division, January 25, 2006.

This Court finds no cogent reason to disturb the ruling of the Court in Division. Petitioner failed to protest the assessment within the 30-day period. As provided in Section 228, the failure of a taxpayer to file a timely protest against the assessment rendered the assessment final, executory and unappealable[8]. Once the assessment had attained finality, petitioner is already precluded from disputing the correctness of the assessment pursuant to Section 228 of the NIRC of 1997. Thus, petitioner can no longer seek judicial relief from the Court of Tax Appeals sitting in Division or *en banc* or in any other Court because the assessment is already final, hence, beyond review.

Section 7 (a) (1) of Republic Act No. 1125, otherwise known as An Act Creating the Court of Tax Appeals, as amended by Republic Act No. 9282, limits the jurisdiction of the Court of Tax Appeals to 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. Thus, the Court of Tax Appeals has no jurisdiction to entertain and determine the correctness of an assessment that had attained finality. Corollary to this, the Supreme Court had ruled that "[t]he Tax Court is a court

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[8] *Commissioner of Internal Revenue vs. Tulio,* G.R. No. 139858, October 25, 2005 (474 SCRA 147); *Protector's Services, Inc. vs. Court of Appeals, et al.,* G.R. No. 118176, April 12, 2000 (330 SCRA 404); *Marcos II vs. Court of Appeals, et. al.,* G.R. No.

of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction."[9] The Court in Division, therefore, did not err when it dismissed petitioner's Petition for Review in C.T.A. CASE No. 7170 on the ground of lack of jurisdiction.

Petitioner's argument that the Preliminary Assessment Notice and Formal Letter of Demand are patently null and void for its failure to state the facts and law upon which the deficiency tax assessments against petitioner were based should have been raised by the petitioner in its protest against the assessment, had there been one. But as stated above, no protest was filed by the petitioner within thirty (30) days from its receipt of the assessment.

Petitioner's argument that the unilateral action on the part of the respondents to proceed with the summary collection of petitioner's alleged tax deficiencies, notwithstanding its unanswered inquiries, constitutes a gross violation of petitioner's right to procedural due process is likewise misplaced. The Supreme Court had ruled that the Commissioner of Internal Revenue is bound to rule on a taxpayer's request for reconsideration **only in cases of disputed assessments** where the taxpayer timely protested the assessments against him, thus:

> "The requirement for the Commissioner to rule on disputed assessments before bringing an action for collection is applicable only

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120880, June 5, 1997 (273 SCRA 47); *Tupaz vs. Ulep, et al.,* G.R. No. 127777, October 1, 1999 (316 SCRA 118).

9 *Commissioner of Internal Revenue vs. Villa, et al.,* G.R. No. L-23988, January 2, 1968 (22 SCRA 3)

> in cases where the assessment was actually disputed, adducing reasons in support thereto. In the present case where the petitioners did not actually contest the assessments by stating the basis thereof, the respondent Commissioner need not rule on their request.
>
> Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. We cannot tolerate taxpayers hampering expedient collection of taxes by their failure to act within a reasonable period. No government could exist if all litigants were permitted to delay the collection of its taxes. Thus, this Court ruled earlier that a suit for the collection of internal revenue taxes, as in this case, where the assessment has already become final and executory, the action to collect is akin to an action to enforce the judgment. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon. "[10]

Therefore, there is no reason why the Bureau of Internal Revenue should not enforce its authority to collect petitioner's deficiency taxes covered by an assessment that has become final and executory[11]. There is nothing left to do on the part of the Bureau of Internal Revenue except to initiate collection proceedings.

Finally, petitioner appeals for the relaxation of the stringent rules of procedure in order to prevent any prejudice on petitioner's right as a taxpayer to protest the tax assessment and in order to give substance to the principle of liberal construction of tax laws in favor of the taxpayer. This Court has no power to relax the application of a law, much less, a clear provision of law such as Sec. 228 of the NIRC of 1997. The finality of the assessment against herein petitioner cannot be taken as something that the law imposed upon the petitioner without giving it the opportunity to question or refute the same.

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[10] *Dayrit, et al. vs. Cruz, et al.,* G.R. No. L-39910, September 26, 1988 (165 SCRA 571)

[11] *Marcos II vs. Court of Appeals, et. al., supra.*

The remedies of the taxpayers have already been provided in the NIRC of 1997 and its implementing rules and regulations and the taxpayers are free to utilize them in refuting the assessments for deficiency taxes levied against them. Resort to the taxpayers' remedies provided by the law belongs to the sole and unbridled discretion of the taxpayers themselves. It should be noted that the periods stated in Section 228 are intended for the benefit of both the government and the taxpayers, consequently, neither one should be prejudiced in their operation and application as intended by the framers thereof.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions of the First Division of this Court dated January 25, 2006 and May 10, 2006 are hereby **AFFIRMED**.

SO ORDERED.

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

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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 this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice