REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DA-REGION 02, MULTI-PURPOSE COOPERATIVE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND VIRGINIA P. TOMAS, OIC REGIONAL DIRECTOR, BIR REGION 02,
Respondent.

C.T.A. EB No. 163
(C.T.A. CASE NO. 7041)

Present:

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

Promulgated:

SEP 15 2006 Gris Apolinario

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DECISION

ACOSTA, P.J.:

This is a Petition for Review filed pursuant to Section 18 of Republic Act No. 1125, as amended by Section 11 of Republic Act No. 9282, brought to question the Resolution of the Second Division of this Court dated January 11, 2006, which denied petitioner's Motion for Reconsideration on the September 06, 2005 Resolution dismissing the case for lack of jurisdiction due to the failure of petitioner to file its protest within the prescribed period, rendering the assessment final, executory and unappealable, pursuant to Section 228 of the 1997 National Internal Revenue Code.

The facts of the case as culled from the records are as follows:

On October 15, 2003, petitioner received a Notice of Informal Conference from respondent, Virginia P. Tomas, regarding the findings on the former's internal revenues liabilities for the year 2000 found by Revenue Officer Zenaida B. Gacias, based on the investigation conducted pursuant to the Letter of Authority No. 61166 dated November 6, 2001. In this letter, petitioner was invited to an informal conference on October 21, 2003, 9:00 a.m. at the Office of the Regional Director, Revenue Region No. 03, Tuguegarao City and was likewise informed that its failure to come and present objections thereto will result to the issuance of a Preliminary Assessment Notice on the found discrepancies.[1]

In response thereto, on October 20, 2003, petitioner wrote respondent requesting the deferment of the informal conference until such time this Court has rendered a decision on the Petition for Review it previously filed regarding its tax liabilities for the year 1999.[2]

[1] Notice of Informal Conference, Annex "B" of the Amended Petition for Review, docket pages 99-100
[2] Annex "C", Amended Petition for Review, docket page 101

Not heeding to the request of petitioner, respondent on October 28, 2003 issued a Preliminary Assessment Notice, which the former received on November 6, 2003.[3]

On November 21, 2003, petitioner, through counsel, filed with the Bureau of Internal Revenue, a Motion for Reconsideration/Reinvestigation disputing the Preliminary Assessment Notice.[4]

As a result, in a letter dated July 15, 2004 and received by petitioner on July 21, 2004, respondent informed the former of the result of the reinvestigation. Pertinent portions of the said letter are hereunder quoted for excellent reference:

> "This refers to the result of the reinvestigation of the 2000 internal revenue tax liabilities of DA Multipurpose Cooperative of Tuguegarao City conducted by Revenue Officers E. Carayugan and M. Mangawil pursuant to TVN No. 78938 in response to motion for reconsideration/reinvestigation filed by your counsel Atty. R. Deray on the Preliminary Assessment Notice issued to the cooperative. The following discrepancies were reiterated:
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> 1. Failure to register as VAT taxpayer, file VAT returns and pay the VAT due in violation of Section 109 U of the National Internal Revenue Code as amended. Cooperatives are exempted from payment of VAT provided that share capital contribution of each member does not exceed P15,000.00. Since there are members with share capital of more than P15,000.00 the cooperative is subject to VAT.

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[3] Annex "D", Amended Petition for Review, docket pages 102-103
[4] Annex "E", Amended Petition for Review, docket pages 104-109

2. The cooperative failed to withhold taxes from compensation income of all its employees and file annual information return in violation of Section 79 A of 1997 National Internal Revenue Code as implemented by Revenue Regulations 2-98.

3. The cooperative failed to withhold expanded withholding tax on professional/legal fee of P34,370.00, Audit fee of P20,000.00 and security fee of P125,712.11 in violation of Section 57 (A) and as implemented by Revenue Regulations 2-98.

In view of this, there is assessed against the DA-RO2 Multipurpose Cooperative the amount of P1,859,604.28 and P277,468.28 as deficiency VAT and withholding taxes computed as follows:

xxx xxx xxx

Pursuant to Section 255 of the same Code, you may pay the amount of P37,500.00 as Compromise Penalties provided under RMO 1-90 in lieu of legal action for violation of Sections 109 U, 79A and 57 A of the NIRC of 1997 and RR 2-98. This is in addition to the deficiency VAT and withholding tax assessment of P1,859,604.28 and P277,468.28.

Demand is hereby made against the DA Multipurpose Cooperative for the payment of the amounts of P1,859,604.28 and 277,468.28 not later than August 16, 2004 to our duly Authorized Agent Bank or to our Collection Agent stationed thereat by presenting to him/her the attached Assessment Notice."[5]

On August 20, 2004, petitioner filed a Petition for Review with the Court of Tax Appeals, docketed as CTA Case No. 7041 and raffled to the Second Division,

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[5] Annex "G", Amended Petition for Review, docket pages 111-113

asking for the review of the Bureau of Internal Revenue's "Final Decision on Disputed Assessment dated July 15, 2004".[6]

Then, on September 6, 2005, the Second Division resolved respondents' "Motion to Set Case for Preliminary Hearing" filed on February 28, 2005. In the said Motion, respondent prayed that the special and affirmative defense pleaded in respondents' answer that the assessment has become final and appealable for failure of petitioner to protest the assessment within the reglementary period as prescribed in Section 228 of the National Internal Revenue Code (hereafter 'NIRC') of 1997, as amended, be resolved by the Court

The Second Division ruled that the word "decisions" in paragraph 1, Section 7 of Republic Act No. 9282 has been interpreted to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment. Thus, it found:

> "As correctly pointed out by the respondents, petitioner did not file a protest to the assessment, within thirty (30) days from receipt thereof on July 21, 2004. Instead of protesting the assessment, petitioner filed the present Petition for Review on August 20, 2004, based on the wrong premise that the letter dated July 15, 2004 is the final decision on the disputed assessment.
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> Hence, for failure of the petitioner to file its protest within the prescribed period, the assessment had become final, executory and unappealable, pursuant to Section 228 of the NIRC of 1997, as amended. As such, this Court cannot take cognizance of the present appeal.

[6] Annex "H", Amended Petition for Review, docket pages 114 - 125

147

In view hereof, the Court is left with no recourse, but to grant the motion."[7]

Petitioner filed a Motion for Reconsideration but was denied via a Resolution promulgated on January 11, 2006.[8] Hence, this present Petition for Review filed before the Court En Banc on February 16, 2006.

In a Resolution promulgated on March 7, 2006, the Court En Banc dismissed the petition due to petitioner's failure to implead any respondent both in the caption and in the body thereof, in violation of Sec. 6, Rule 43 of the 1997 Rules of Civil Procedure, as amended and due to petitioner's failure to tender an explanation as to why the petition was served on respondent by registered mail in violation of Sec. 11, Rule 13 of the same rule.

On April 5, 2006, petitioner filed a Motion for Reconsideration which was granted on April 26, 2006. Thus, on May 15, 2006, an Amended Petition for Review was filed impleading the Commissioner of Internal Revenue and Virginia P. Tomas, OIC Regional Director, BIR-Region 02.

In a Resolution promulgated on July 11, 2006, the Court required respondents to file their Comment which was complied with on July 28, 2006.

In their Comment respondents aver that as found by the Second Division, it is undisputed that petitioner did not file a protest on the Formal Letter of Demand

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[7] docket page 132
[8] Annex "A' Amended Petition for Review, docket pages 93-97

and Assessment Notice which it received on July 25, 2004. And that the records will reveal that what petitioner duly protested was the Preliminary Assessment Notice issued against it. Thus, according to respondent, no error was committed by the Second Division in dismissing the case.

The resolution of this petition therefore rests in the determination of one issue, *i.e.*, whether the July 15, 2004 letter of respondent is the "final decision on the disputed assessment" that can be the subject of a Petition for Review before this Court.

At this point, the Court deems it appropriate to discuss the applicable provision of the National Internal Revenue Code. It reads:

> "**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:
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> (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
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> (d) When the excise tax due on excisable articles has not been paid; or
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> (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.
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> 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.
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> 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.
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> 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."

From the foregoing, the steps in protesting the assessment may be outlined as follows:

1. Issuance of a pre-assessment notice by the BIR informing the taxpayer of the taxes ought to be assessed against him, except under the circumstances enumerated in paragraphs (a) to (e) of Section 228. The taxpayer is given fifteen (15) days from receipt of the pre-assessment notice, within which to respond;

(150)

2. If the taxpayer fails to respond or despite the response, the BIR is still of the opinion that the taxpayer ought to be assessed for deficiency taxes, the BIR shall issue the assessment notice;
3. The taxpayer may file an administrative protest against the assessment within thirty (30) days from the receipt of the assessment. Within sixty (60) days from the filing of the protest, all relevant documents should be submitted; otherwise, the assessment shall become final and unappealable; and,
4. From receipt of the adverse decision of the Commissioner, or from the lapse of one hundred eighty (180) days from the submission of the documents, the taxpayer may appeal to this Court within thirty (30) days, otherwise, the decision or the assessment shall become final.

In this case the following facts are clear:

First, a Notice of Informal Conference was received by petitioner on October 15, 2003. Since petitioner failed to come and present its objections to the proposed assessments, the Preliminary Assessment Notice dated October 28, 2003 was issued.

Second, after receiving the said Preliminary Assessment Notice, petitioner filed on November 21, 2003, a Motion for Reconsideration/Re-investigation praying "that the Preliminary Assessment Notice dated October 28, 2003 be reconsidered, that the Cooperative be declared VAT exempt and the Preliminary Assessment Notice indicated under Deficiency Withholding Tax Compensation and the professional fees to be paid under the Deficiency Withholding Tax Expanded amounting to P245,033.90 and P12,060.58 respectively be re-computed".

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Third, in response, respondent issued the July 15, 2004 letter which the subject of this controversy. The said letter informed petitioner of the result of the reinvestigation and demanded payment of its deficiency taxes.

And lastly, after receiving this letter petitioner filed a Petition for Review with the CTA on August 20, 2004.

Therefore, no protest was ever made on the July 15, 2004 letter. In this case, petitioner immediately elevated the matter to this Court arguing that this letter was the final decision of respondent.

This Court does not agree with petitioner's contention.

It has long been settled that the word "decision" in paragraph 1, Section 7 of Republic Act No. 1125, (as amended by Republic Act No. 9282)[9] refers to the decision of the Commissioner on the protest of the taxpayer against the assessments. And definitely, said word does not signify the assessment itself.

Applicable is *Commissioner of Internal Revenue vs. Villa*, 22 SCRA 3 where the Supreme Court explained that since the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and thus the Court of Tax Appeals

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9 Section 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, xxx.

152

had no jurisdiction to entertain said appeal. For, under this provision[10], the jurisdiction of the CTA is to review decisions of the Commissioner of Internal Revenue on disputed assessments. The CTA is a court of special jurisdiction and as such it can take cognizance only of such matters as are clearly within its jurisdiction.

In other words, the CTA only has jurisdiction over (the decision or non-action of the Commissioner) on a disputed assessment.

Accordingly, finding no reversible error committed by the Second Division in dismissing the case, the instant Petition for Review is hereby **DENIED** for lack of merit.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[10] Referring to Sec. 7 (a) (1) of R.A. 1125 as amended by R.A. 9282

N3

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

NT4