REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KHI DESIGN & TECHNICAL SERVICE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. **6328**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 24 2002

x - x

RESOLUTION

At bar for resolution are two separate but interrelated motions filed by Respondent, both seeking for the dismissal of the instant Petition for Review on the ground of lack of jurisdiction.

Respondent's averments are premised on the following grounds:

1. **That Petitioner's protest is considered void and without force and effect as if no protest was filed** *(Respondent's "Motion to Dismiss" filed through registered mail on October 8, 2001, CTA docket pp.25-26).*

2. **That Petitioner's filing of the instant Petition for Review had already prescribed** *(Respondent's "Supplemental Motion to Dismiss" filed on December 7, 2001, CTA docket, pp. 30-31).*

Respondent explained that Petitioner's letter dated February 2, 2001 cannot be considered as one disputing the assessment because Petitioner failed to state the facts, the applicable law, rules and regulations and jurisprudence on which its alleged protest was based. Hence, the subject assessment has become final, executory and demandable.

As to the second ground, Respondent argues that Petitioner's action has been barred by prescription considering that it filed an appeal to this Court beyond the 30-day period counted from the date when the 180-day period expired pursuant to Section 228 of the 1997 Tax Code. Respondent asseverates that the 180-day period lapsed on August 1, 2001 counted from the time Petitioner filed its protest with the BIR on February 2, 2001. Thus, from August 1, 2001, Petitioner had only 30 days within which to appeal to this Court, or until August 31, 2001. Since the Petition was filed only on September 3, 2001, Respondent opines that it was clearly filed out of time.

We disagree with the argument propounded by Respondent in his first "Motion to Dismiss."

The letter sent by Petitioner to the Commissioner as a response to the assessment issued against it can be sufficiently taken as an administrative protest in itself. Although the letter was worded in such a manner that would need a reference to its January 18, 2001 letter, it is evident that there is still, on the part of the Petitioner, an intention to dispute the assessment.

The specific tenor of the two letters, if taken together, suffices to establish the intention to contest the substance of the assessment notice issued by the BIR. The prior letter made by the Petitioner embodies the explanation and a clarification of the erroneous findings of the BIR as contained in the pre-assessment notice. The second letter, which is a response to the final assessment, is a reiteration of the explanation already stated in the first letter, with emphasis for a request to review the same.

When a taxpayer takes a different stance on the assessment issued against him and asks the Commissioner to review its findings because he (the taxpayer) believes that he is not liable thereof, the assessment becomes a "disputed assessment" which could be valid contents of a protest letter. A protest letter need not expressly indicate the word "protest." It is sufficient that there is an intention to dispute the assessment in any manner or form, for as long as the facts, the law, rules and regulations and jurisprudence on which the protest is based must be stated. In this case, the letter-protest actually contained Petitioner's dissent to the factual aspect of the Commissioner's findings, with reference to documents previously submitted.

However, We find merit on the second ground relied upon by Respondent in his "Supplemental Motion to Dismiss." The wordings of Section 228 insofar as prescriptive period in filing protest is concerned was aptly interpreted by this Court in the case of ***Lascona Land Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5777, January 4, 2000, thus:***

> "The wordings of Section 228 of the Tax Code clearly provide that it is only the decision not appealed by the taxpayer that becomes final, executory and demandable. Otherwise, the authors of the law could have easily included the word assessment as also becoming final, executory and demandable should the BIR fail to act on the protest within 180 days. As aptly cited, in Commissioner of Internal Revenue vs. Villa, 22 SCRA 3, the Supreme Court held:
>
> > "The word 'decisions' in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment. Definitely, said word does not signify the assessment itself. We quote what this Court said aptly in a previous case:
> >
> > x x x x x x
> >
> > Note that the law uses the word 'decisions', not 'assessments', thus further indicating the legislative intention to subject to judicial review the decision of the

> Commissioner on the protest against an assessment but not the assessment itself."
>
> Verily, in cases of inaction, Section 228 of the Tax Code merely gave the taxpayer an option: first, he may appeal to the Court of Tax Appeals within thirty (30) from the lapse of the one hundred eighty (180) day period provided for under the said section, or second, he may wait until the Commissioner decides on his protest before he elevates his case. This Court believes that the taxpayer was given this option so that in case his protest is not acted upon within the 180-day period, he may be able to seek immediate relief and need not wait for an indefinite period of time for the Commissioner to decide. But if he chooses to wait for a positive action on the part of the Commissioner, then the same could not result in the assessment becoming final, executory and demandable.
>
> We agree with Petitioner that to adopt the interpretation of Respondent will not only sanction inefficiency, but will likewise condone the Bureau's action. This is especially true in the instant case when despite the fact that Respondent found Petitioner's arguments to be in order, the assessment will become final, executory and demandable for Petitioner's failure to appeal before Us within the thirty (30) day period."

It is evident that the scenario besetting the case at bar contemplates a situation where the Commissioner did not act upon the protest. As such, Petitioner has the option either to appeal to this Court within 30 days from the lapse of the 180-day period or wait for the Commissioner to decide the protest. In the case at bar, Petitioner sought judicial relief without waiting for the decision of the Commissioner. In so doing, Petitioner should have complied with the provisions set forth under Section 228 of the Tax Code of 1997, particularly the 30-day period within which to appeal to this Court in case there is no action on the part of the Respondent. Since the letter of protest was filed by Petitioner on February 2, 2001 and Respondent is given 180 days to decide, the latter, therefore, had until August 1, 2001 within which to act upon the protest. Since there was no such action, Petitioner should have filed its case within 30 days from August 1, 2001, or until

August 31, 2001. Verily, since the instant Petition for Review was filed only on September 3, 2001, this Court could no longer take cognizance of the case.

WHEREFORE, in view of the foregoing, Respondent's "Motion to Dismiss" is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

AMANCIO Q. SAGA
Associate Judge