REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GLOBAL BUSINESS HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB No. 217
(CTA Case No. 7058)

Present:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
NOV 28 2008 Apolinario 2:25 p.m.

x - x

DECISION

CASANOVA, J:

This is a Petition for Review,[1] filed by the petitioner- GLOBAL BUSINESS HOLDINGS, INC., with the Court *En Banc*, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Rule 43 of the Revised Rules of Court, from the Resolution[2] (*First Assailed Resolution*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated May 17, 2006 in CTA Case No. 7058 entitled, *"Global Business Holdings, Inc., petitioner vs. Commissioner of Internal Revenue, respondent,"* granting respondent's "Motion to Dismiss"[3] on the ground of lack of jurisdiction and accordingly, dismissing the Petition for Review[4] filed by the petitioner in the above-mentioned case, and

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[1] CTA En Banc Rollo, pp. 9-35
[2] Annex "A", CTA En Banc Rollo, pp. 38-42
[3] CTA Second Division Rollo, pp. 383-391
[4] CTA Second Division Rollo, pp.1-10

from the Resolution[5] (*Second Assailed Resolution*) dated September 15, 2006 denying petitioner's Motion for Reconsideration[6] for lack of merit.

The facts of the case, as jointly stipulated by the parties[7], are as follows:

> *"1.01 This is a Petition for Review[8] ('Petition') of Respondent's Collection Letter ('Collection Letter) dated 23 August 2004, which was received by the Petitioner on 27 August 2004 of the assessments for deficiency Gross Receipts Tax on its onshore income for calendar year 2000 in the amount of Php2,758,098.50, as stated in Respondent's Formal Letter of Demand and Assessment Notice dated 10 June 2004. In accordance with Section 228 of the National Internal Revenue Code (NIRC), this petition is filed.*
>
> *1.02 Petitioner Global Business Holdings, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 3rd Floor Remittance Center Building, Metro Bank Plaza, Sen. Gil Puyat Ave., Makati City 1200.*
>
> *1.03 Respondent Commissioner of Internal Revenue is the official duly authorized under Section 4 of the NIRC to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Honorable Court.*
>
> *1.04 On 18 December 2003, Petitioner received a Preliminary Assessment Notice (PAN) dated 09 December 2003 for deficiency Gross Receipt Tax on onshore income for the calendar year ended 31 December 2000 in the amount of Php2,239,441.60.*
>
> *1.05 on 05 January 2004, Petitioner through its Finance Officer, Edith C. Encarnacion, filed a protest letter, for which reasons stated therein, requested for the cancellation and/or reconsideration and/or reinvestigation of the disputed portions of the tax assessments.*

[5] Annex "B", CTA En Banc Rollo, pp. 44-47
[6] CTA Second Division Rollo, pp. 193-204
[7] Joint Stipulation of Facts (JSF), duly approved by the Court in a Resolution dated November 17, 2004
[8] Ibid

> *1.06 On 17 May 2004, Petitioner received a Revised Preliminary Assessment Notice for deficiency Gross Receipts Tax on onshore income for the calendar year ended 31 December 2000, in the amount of Php2,716,109.00.*
>
> *1.07 On 25 May 2004, Petitioner through its Finance Officer, Edith C. Encarnacion, filed a second protest letter, which for reasons stated therein, again requested for the cancellation and/or reconsideration and/or reinvestigation of the disputed portions of the tax assessments.*
>
> *1.08 Petitioner received the Formal Letter of Demand and Assessment Notice No. GRT-00-000035 (hereinafter referred to as ('FAN'), dated 10 June 2004 and signed by Estelita C. Aguirre, Deputy Commissioner OIC Large Taxpayer's Service, covering alleged deficiency Gross Receipts Tax on onshore income for the calendar year ended 31 December 2000 for the total amount of Php2,758,098.50, inclusive of interests and penalties.*
>
> *1.09 On 27 August 2004, the Petitioner received the Collection Letter dated 23 August 2004 and signed by Ma. Gracia B. Javier, Chief of the Large Taxpayer's Collection and Enforcement Division. The said letter requested the Petitioner to pay the assessment in the amount of Php2,758,098.50 as deficiency gross receipts tax for 2000 under Assessment Notice No. GRT-00-000035, within ten (10) days from receipt of the letter. Otherwise, their office will be constrained to enforce the collection thereof through the administrative summary remedies provided for by law, without further notice."*

On February 14, 2006, respondent filed a "Motion to Dismiss" stating therein that the Court *"lacks jurisdiction for failure on the part of petitioner to file an administrative protest against the Formal Letter of Demand with attached Assessment Notice dated 10 June 2004, in violation of Section 228 of the National Internal Revenue Code (NIRC), in relation to Rule 4, Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals"*[9].

Petitioner, on the other hand, filed an "Opposition to the Motion to Dismiss"[10] alleging that, *"there was no representation or misrepresentation made by the Petitioner that it filed a protest to the Formal Assessment Notice and*

[9] CTA Second Division Rollo, pp. 164-172
[10] CTA Second Division Rollo, pp. 176-186

230

Letter of Demand. In fact, paragraph 1 of the Petition treats the Collection Letter as 'effectively denying Petitioner's protest to the assessments for deficiency Gross Receipts Tax in the amount of Php2,758,098.50, as stated in Respondent's Formal Letter of Demand and Assessment Notice dated 10 June 2004. Nowhere in said Paragraph 1 did Petitioner claimed that a formal protest was filed specifically in respect of the Formal Letter of Demand and Assessment Notice dated 10 June 2004, because to begin with, no such formal protest is necessary since, as pointed out above, the Formal letter of Demand and Assessment Notice has already prescribed".

On May 17, 2006, the *CTA Second Division* promulgated the *First Assailed Resolution*[11], the dispositive portion of which reads:

> *"**WHEREFORE,** premises considered, the "Motion To Dismiss" is hereby **GRANTED**. Accordingly, the present Petition for Review is hereby **DISMISSED**.*
>
> ***SO ORDERED**."*

Aggrieved by the above pronouncement of the *CTA Second Division*, petitioner filed a "Motion for Reconsideration"[12] on June 13, 2006, praying that the Court reconsider its Resolution dated May 17, 2006. On July 13, 2006, respondent filed a "Motion for Extension of Time to File Comment", which was granted by the *CTA Second Division* in an Order dated July 19, 2006. In compliance with the said Order, respondent filed a Comment (To Petitioner's Motion for Reconsideration) on July 25, 2006. On September 15, 2006, the *CTA Second Division* rendered the *Second Assailed Resolution*[13], to wit:

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[11] CTA En Banc Rollo, 38-42
[12] Ibid
[13] Ibid

231

> "***WHEREFORE****, premises considered, petitioner's Motion for Reconsideration is hereby* ***DENIED*** *for lack of merit.*
>
> ***SO ORDERED.***"

The *Second Assailed Resolution* was received by the petitioner on October 4, 2006, thus, it has fifteen (15) days from said date within which to file a Petition for Review with the CTA *En Banc* pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Rule 43 of the Revised Rules of Court. On October 19, 2006, petitioner filed a "Motion for Extension of Time to File Petition for Review on Certiorari"[14], which was granted by the CTA *En Banc* in a Resolution dated October 19, 2006. On November 3, 2006, petitioner filed the instant Petition for Review with the CTA *En Banc*, submitting the following assignment of errors committed by the *CTA Second Division*, to wit:

A. THE HONORABLE SECOND DIVISION OF THE CTA COMMITTED GRAVE ERRORS IN FINDING THAT PETITIONER'S FAILURE TO PROTEST THE FORMAL ASSESSMENT NOTICE HAS DIVESTED THE HONORABLE CTA WITH JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT PETITION WHICH ASSAILS A VOID ASSESSMENT.

B. THE HONORABLE SECOND DIVISION OF THE CTA COMMITTED GRAVE ERRORS IN FAILING TO CONSIDER THAT AN ASSESSMENT WHICH HAS PRESCRIBED IS PATENTLY VOID AND CANNOT GIVE RISE TO ANY ENFORCEABLE RIGHT AND IS WITHOUT LEGAL FORCE OR EFFECT.

C. THE HONORABLE SECOND DIVISION OF THE CTA COMMITTED GRAVE ERRORS IN UPHOLDING PROCEDURAL REQUIREMENTS OVER THE SUBSTANTIVE

[14] CTA Second Division Rollo, pp. 333-336

RIGHTS OF A TAXPAYER AGAINST PATENTLY VOID ASSESSMENTS.

D. THE HONORABLE SECOND DIVISION OF THE CTA COMMITTED GRAVE ERRORS IN FAILING TO CONSIDER THAT THE ASSAILED FORMAL ASSESSMENT NOTICE AND LETTER OF DEMAND IS MANIFESTLY VOID FOR ASSESSING THE FOREIGN CURRENCY DEPOSIT UNIT OF THE PETITIONER FOR ALLEGED DEFICIENCY GROSS RECEIPTS TAX, CONTRARY TO THE CLEAR INTENT OF THE LAW TO EXEMPT SUCH ENTITIES FROM ALL TAXES.

Pending resolution of the instant Petition for Review by the CTA *En Banc*, petitioner filed a Manifestation[15] on August 23, 2007, stating, among others, that it had availed of the Abatement Program of the BIR pursuant to Revenue Regulations No. 15-2006. Petitioner's Manifestation was duly noted by the Court in a Resolution[16] dated August 28, 2007.

On October 1, 2007, a Resolution[17] was promulgated by the Court ordering petitioner to submit the Termination Letter or a certified true copy thereof within thirty (30) days from receipt of said resolution and setting aside the July 24, 2007 Resolution[18] submitting the instant case for decision.

Petitioner filed several Compliance with Motion of different dates all of which were granted by the Court, thus, extending the time for submission of the Termination Letter the final extension of which was granted by the Court per Resolution[19] dated April 22, 2008, giving petitioner a final and non-extendible period of fifteen (15) days from April 11, 2008 or up to April 26, 2008, within which to submit the Termination Letter.

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[15] CTA Second Division Rollo, pp. 398-401
[16] CTA Second Division Rollo, p. 411
[17] CTA Second Division Rollo, pp. 413-415
[18] CTA Second Division Rollo, p. 397
[19] CTA Second Division Rollo, p. 444

On June 10, 2008, the Court promulgated a Resolution[20] submitting the case for decision as of promulgation date in view of petitioner's non-submission of the Termination Letter on even date.

Thus, the instant decision.

After a careful and thorough evaluation and consideration of the records of the case, the CTA *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Resolutions. The arguments raised by the petitioner were exhaustively discussed in the *CTA Second Division's First Assailed Resolution*.

In resolving respondent-Commissioner's "Motion to Dismiss", the *CTA Second Division* correctly found and We quote with approval a portion of the *First Assailed Resolution*, to wit:

> *"Section 7 of Republic Act No. 9282 provides:*
>
> *'Sec. 7. Section 7 of the same Act is hereby amended to read as follows:*
>
> *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 internal (sic) 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.*
> >
> > *x x x x x x x x x'*

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[20] CTA Second Division Rollo, pp. 446-448

The word decisions in paragraph 1, Section 7 of R.A. No. 9282, quoted above, has been interpreted to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment. Definitely, said word does not signify the assessment itself (Commissioner of Internal Revenue v. Villa, 22 SCRA 6).

The same interpretation finds support in Section 9 of R.A. No. 9282, which states:

'Sec. 9. Section 11 of the same Act is hereby amended to read as follows:

Sec. 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 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 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 of Internal Revenue on the protest against an assessment, but, not the assessment itself (Villamin vs. Court of Tax Appeals, 107 Phil 896 [1960] cited in Commissioner of Internal Revenue vs. Villa, supra).

x x x x x x x x x"

As correctly pointed out by the respondent, petitioner did not file an administrative protest to the Formal Letter of Demand with attached Assessment Notice, in violation of above-quoted Section 228 of the NIRC of 1997, as amended. Petitioner filed the present Petition for Review of respondent's Collection Letter dated August 23, 2004, instead of protesting the assessment immediately upon receipt of the Formal Letter of Demand and Assessment Notice.

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.

WHEREFORE, premises considered and finding no reversible error in the assailed Resolutions dated May 17, 2006 and September 15, 2006 of the *CTA Second Division*, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice