REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

ROSA PADILLA, INC.,
Petitioner,

-versus-

C. T. A. CASE NO. 4195

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - x

9/15/93

D E C I S I O N

This is a petition for review filed by petitioner, Rosa Padilla, Inc., appealing the assessment of respondent, Commissioner of Internal Revenue, in the amount of P108,161.34 representing deficiency income tax plus increments thereon for the fiscal year ended June 30, 1979, including P600.00 as compromise penalty for violation of bookkeeping regulations committed by said petitioner. The assessment notice addressed to the petitioner was dated January 30, 1984 and signed by Tomas C. Toledo, Deputy Commissioner, and acknowledged to have been received by petitioner on April 9, 1984 [par. 3, Petition for Review].

On October 8, 1984, in an effort to "settle finally" the tax liability of Rosa Padilla, Inc., based on the assessment made by respondent, its authorized representative in the person of Antonio Cruz Chua, paid the amount of P5,529.14 as "compromise" on the aforesaid assessment (No. NARD-79-1-84-00186), covering Fiscal Year 1978-1979 ending June 30, 1979 [Exh. F, F-1 and F-2, pp. 51-52, CTA records]. Clearly, this is not a protest as contemplated by law.

On August 03, 1987, respondent, through his Assistant Commissioner for Collection, responded to petitioner's letter of October 8, 1984, denying the compromise offer and payment for "lack of legal and factual basis," thereby reiterating that if a compromise settlement is to be effected, it should be based on the total assessment of P108,161.34 and not on its own figures and computation. Accordingly, the Bureau of Internal Revenue requested for the payment of P102,632.14 (P108,161.34 less P5,529.14 paid on October 17, 1984) plus increments incident to delinquency and the compromise penalty of P600.00 [Exh. G, p.52, CTA records].

In his Answer to the Petition for Review, respondent averred that all presumptions are in favor of the correctness of tax assessments; that the government cannot be held liable for attorney's fees in the performance of its official functions, particularly in the collection of taxes; that the grounds for compromise of tax deficiency are those stated in Section 295 (1) of the Tax Code and that any offer for compromise must be based on the amount of the deficiency assessment; and finally, that the assessment has become final and executory "when the petitioner failed to protest the assessment dated January 30, 1984 within 30 days from receipt thereof as required by Section 319 of the Tax Code of 1977."

Quaere: Did the Court acquire jurisdiction to review on appeal the disputed assessment of respondent? Regrettably, it did not. Respondent in his Answer did mention that the assessment has become final and executory for failure on the part of the petitioner to protest the assessment citing Section 319 of the Tax Code of 1977.

We agree with respondent. From the evidence on record, it is clear that petitioner received the deficiency tax assessment, dated January 30, 1984, presumably on April 9, 1984. No action was made by petitioner until September 15, 1984, when it answered a letter of demand, dated August 30, 1984, from the Chief of the Accounts Receivable Division, requesting for a "reinvestigation of its Income Tax Returns for the fiscal years 1978-1979, giving us among others, the opportunity to prove such items disallowed" [Exh. E, pp. 49-50, CTA records], and finally, the letter of October 8, 1984 when the offer and payment of a "compromise" in the amount of P5,529.14 was made [Exh. F].

The deficiency assessment made by the respondent on January 30, 1984 is the "decision or ruling" referred to in Section 11, R.A. 1125, which has "adversely affected" the petitioner and the date of receipt of this assessment notice is essential for purposes of elevating an appeal of such decision or ruling of the respondent.

"Assessment" should be distinguished from "collection" which are two different processes.

> "'Assessment' is not an action or proceeding for the collection of taxes. It is merely a notice to the effect that the amount therein stated is due as tax and a demand for the payment thereof. It is a step preliminary, but essential to warrant distraint, if still feasible, and also to establish a cause for 'judicial action' as the

> phrase is used in Section 316 (now 302) of the Tax Code. [**Alhambra Cigar and Cigarette Manufacturing Co. vs CIR,** Nos. L-12026 and L-12131, May 29, 1959].

From the time therefore petitioner received the deficiency assessment, dated January 30, 1984, which adversely affected it, it lost precious time in taking administrative and judicial action which was fatal to its cause. No protest was made at the Administrative level within the thirty-day period from receipt of the assessment of the respondent. *In fine*, the disputed assessment has become final and executory pursuant to Section 229 of the Tax Code (formerly Section 319 of the Tax Code of 1977). Consequently, this Court has no jurisdiction to take cognizance of the case because the assessment has already become final and unappealable.

One final word on jurisdiction. It was actually raised by respondent in his Answer but not effectively challenged by him in the early stages of the proceeding. Be that as it may, jurisdiction is conferred by law and not by consent of the parties. It can be inquired into and raised at any time of the proceeding or looked into by the court *ex proprio motu*.

As decided by our Supreme Court in the case of Commissioner of Internal Revenue vs. Villa, 22 SCRA 4:

> "Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero motu. To inquire into the existence of jurisdiction over the subject matter is the primary concern of the court, for thereon would depend the ability of its proceedings."

Having arrived at the conclusion that this Court has no jurisdiction to entertain the appeal, there is no necessity in further looking into the merits of the petition for review.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby *DISMISSED* for lack of jurisdiction. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, September 15, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII, of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals