REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SINGER FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6743

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 29 2004

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RESOLUTION

Before us for resolution is petitioner's Motion to Cancel Assessments filed on October 28, 2003 seeking the cancellation of Pre-Assessment Notices dated January 21, 1999 and Assessment Notices Nos. 33-1-000598-94 and 34-1-000598-94 issued by the BIR on March 8, 1999.

The antecedent facts of the case are as follows:

On August 22, 1995, petitioner received a Letter of Authority No. 87068 (LOA) dated August 9, 1995. The LOA, signed by Revenue District Officer Jaime Q. Concepcion of Revenue District Office No. 33 of Revenue Region No. 6, authorized Revenue Officers Julieta Tubilla and Group Supervisor Ariston Ybañez to examine the books of accounts and other accounting records of the petitioner for all internal revenue taxes for the calendar year 1994. According to the petitioner, the examination was conducted and resulted to a finding that petitioner is liable for a deficiency income tax of P33,925.00 and a deficiency percentage tax of P22,020.80. The petitioner paid these deficiency taxes on January 22, 1998 and thereafter sought a certification from Revenue District Officer Jaime Q. Concepcion to the effect that the audit and investigation of the

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books of accounts of petitioner for the year 1994 have already been satisfactorily completed.

However, sometime in February 1999, petitioner received from the Assessment Division of Revenue Region No. 6 two Pre-Assessment Notices dated January 21, 1999 for deficiency income and expanded withholding taxes covering the year 1994. In March 1999, petitioner received Assessment Notice No. 33-1-000598-94 for deficiency income tax of P3,971,493.71 and Assessment Notice No. 34-1-000598-94 for deficiency expanded withholding tax in the amount of P2,684,633.14 both dated March 8, 1999. A compromise penalty in the amount of P25,000.00 for each of the assessments was likewise imposed.

On March 16, 1999, petitioner filed a protest-letter against the Pre-Assessment Notices stating that the assessments have already been resolved and that the audit was satisfactorily completed.

Petitioner in its Motion to Cancel Assessments argues that the Pre-Assessment Notices as well as the Assessment Notices are invalid and prohibited by law since prescription had set in, relying on Section 203, Title VIII of the National Internal Revenue Code of 1997 which provides:

> "Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, that in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

The assessments refer to taxable year ending December 1994 and the last day of filing the final adjustment/annual income tax return for said taxable year was April 15,

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1995, the same day that petitioner filed its income tax return. Therefore, the three (3)-year prescriptive period referred to in the above-quoted section should have ended on April 15, 1998. But as stated above, the Pre-Assessment Notices were received sometime in February 1999 and the Assessment Notices were received on March 1999. Petitioner denies having issued any waiver of the prescriptive period provided by law.

The respondent, however, argues that the petitioner issued a waiver of the prescriptive period by signing a "Waiver of the Statute of Limitation under the National Internal Revenue Code" which extended the period for assessment until March 30, 1999 (page 34 BIR Records and ANNEX Q of the petition for review). Thus, respondent is of the view that the assessment notices are valid because they were made within the extended period.

Likewise, respondent argues that in petitioner's case, the right to assess is not three (3) years but ten (10) years since petitioner filed false returns citing the following matters as indications thereof:

> "1) Based on the report of investigation dated January 22, 1998 (p. 57, BIR Records), the 1994 income tax and the percentage tax returns were false because the examiner, Juliet T. Jubilla, assessed the petitioner of deficiency income tax in the amount of P18,561.99 for failure to substantiate the Repairs and Maintenance declared as deductible expenses, and deficiency percentage tax of P22,020 for mathematical errors in the computation of the gross receipts subject of the percentage tax. The falsity of such returns was admitted when petitioner paid on January 22, 1998 the tax liabilities based on such findings even before the review of the same by the Assessment Division;
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> 2) Based on the Assessment Notices Nos. 33-1-000598-94 and 34-1-000598-94, dated March 8, 1999, the 1994 income tax return and expanded withholding tax returns were false, because the Assessment Division, upon review of the report of investigation, assessed additionally the petitioner of deficiency income tax in the amount of P3,971,493.71 for over-claiming the amount declared as Salaries and Wages (per F/S and Alpha List) and for unsupported Bad Debts. On the other hand, peititioner filed false EWT returns being assessed with deficiency expanded withholding tax of P2,684,633.14 for failure to remit withholding tax per income statement and BIR Form 1743W."

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The respondent likewise raises the issue of jurisdiction, claiming that this court has no jurisdiction, since the assessments have become final because of petitioner's failure to protest the same within the period allowed by law, citing Section 228 of the NIRC of 1997 which, in part, provides:

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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 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."

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Respondent asseverates that petitioner failed to file an appeal with this court within 30 days after the lapse of the 180-day period from the filing of the protest-letter on March 16, 1999, if the same could be considered as a protest at all. According to the respondent, the petitioner could have appealed to this court up to, more or less, October 16, 1999 only, the last day of the 30-day period after the lapse of the 180-day period. Consequently, the failure of the petitioner to file an appeal rendered the assessments as final, demandable and unappealable.

The case at bar squarely falls within the class of unprotested assessments. Hence, petitioner's Motion to Cancel Assessments is not meritorious.

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Section 228 of the National Internal Revenue Code of 1997 (NIRC of 1997) prescribes the periods within which a taxpayer can contest an assessment. The law clearly defined three instances when an assessment becomes final, to wit:

1. When it is not administratively protested within thirty (30) days from receipt of the assessment;

2. When the adverse decision on the protest is not appealed to the Court of Tax Appeals within thirty (30) days from receipt thereof; and

3. When taxpayer fails to appeal the inaction of the Commissioner of Internal Revenue within thirty (30) days after the lapse of one hundred eighty (180) days from the time of filing his protest.

The taxpayer is given the right to file a protest against the final assessment of the Commissioner of Internal Revenue (CIR) within thirty (30) days from receipt of the assessment. Thereafter, the taxpayer can appeal the decision of the CIR or his inaction to this court under circumstance number 2 or 3 above. Failure on the part of the taxpayer to contest an assessment or upon denial thereof, to appeal within the prescribed period shall operate to make the assessment final, executory and demandable.

Petitioner admitted receiving the pre-assessment notices in February 1999 and the assessment notices in March 1999. On March 16, 1999 petitioner protested the pre-assessment notices dated January 21, 1999, however, petitioner did not file any administrative protest with respect to the assessment notices dated March 8, 1999. This omission of the petitioner is fatal to its cause of action against the respondent. What is required to be protested is the final assessment notice and not the pre-assessment notice. In ***Republic vs. Ledesma, 19 SCRA 455***, the Supreme Court said:

> "In other words, appellee failed to dispute the assessment effectively, and the same therefore became final and properly collectible by means of ordinary action. Had appellee complied with the conditions required of him by the Bureau of Internal Revenue in its letter of June 14, 1957, or had he even challenged the validity of those conditions, the assessment would have been a disputed one which the Collector of

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> Internal Revenue would have to decide, and from his decision the recourse would have been to the Court of Tax Appeals according to Section 7 (1) of Republic Act No. 1125. As it was, appellee's failure to dispute the assessment in the manner prescribed by law has barred his right to do so in the present case."

Applying Section 228 of the NIRC of 1997 and the above-cited decision, clearly, the assessments have become final, executory and demandable.

With regard to the issue of prescription, petitioner denies that it had executed a Waiver of the Statute of Limitations and therefore the assessment was made beyond the three (3)-year prescriptive period. Granting, for the sake of argument, that the waiver is invalid as alleged by the petitioner, nevertheless, the issue of prescription raised by the petitioner should have been invoked as a defense in the protest that should have been filed but was never done. Therefore, it could not be considered as a valid ground to cancel the assessments that have become final, executory and unappealable.

Section 228 of the NIRC of 1997 serves as a safeguard for the taxpayer against assessments. All that the taxpayer has to do is to avail of the remedies within the periods stated therein. In fact, it imposes upon the taxpayers the duty to timely raise their defenses against the assessment, "otherwise, the decision shall become final, executory and demandable". Petitioner, however, did not avail of the remedies at the proper time.

Parenthetically, granting this was a valid protest, sometime in March 2002, petitioner received a Final Notice Before Seizure dated March 15, 2002. Petitioner could have appealed said Final Notice to this court within 30 days from receipt thereof in view of the ruling of the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Isabela Cultural Corporation, G.R. No. 135210, July 11, 2001:***

> "In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the Commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the notice the only response received; its content

> and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that respondent was being given "the LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy."

Petitioner, however, did not do so. What was appealed to this court is the issuance of the Warrant of Distraint and/or Levy issued by the Commissioner of Internal Revenue. Petitioner's notion that the Warrant of Distraint and/or Levy constitutes the final decision of its protest is not in accord with what the law provides. It is not the decision referred to in Section 228. The Warrant of Distraint and/or Levy is already a part of the collection phase in the system of taxation.

This court, in ***Protectors Services, Inc. vs Commissioner of Internal Revenue, CTA Case No. 4514, July 21, 1993***, ruled:

> "But whether the subject assessment had prescribed or not, petitioner, still could not escape liability since the said assessment had already become final and unappealable."

The above-cited decision was affirmed by the Court of Appeals in ***Protectors Services, Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals, CA G.R. SP No. 31825, Nov. 28, 1994***, and was ultimately affirmed by the Supreme Court in ***Protector's Services, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 118176, April 12, 2000***. The Supreme Court upheld this court's dismissal of the petition for review for lack of jurisdiction.

Since the assessments in the present action have become final, executory and demandable long before the petitioner filed this present action, this court no longer has jurisdiction to hear the same. There is no disputed assessment to speak of.

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The other issue tendered by the respondent that petitioner filed false returns thereby extending the assessment period to (10) years, instead of three (3) years only, has been rendered immaterial in view of the lack of jurisdiction of this court.

WHEREFORE, in light of all the foregoing, petitioner's Motion to Cancel Assessments is hereby **DENIED** and this case is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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