REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ECL FOODS SUPERAMA, INC.,
Petitioner,

- versus -

HON. COMMISSIONER GUILLERMO T. PARAYNO, JR. and HON. ESTRELLA V. MARTINEZ,
Respondents.

C.T.A. CASE NO. 7170

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ*

Promulgated:

JAN 25 2006 [signature]

x - x

RESOLUTION

This resolves:

1. Motion to Dismiss filed by respondents on September 13, 2005;
2.) Comment and/or Opposition (to Respondents' 13 September 2005 Motion to Dismiss) filed by petitioner on October 17, 2005;
3.) Supplemental Motion to Dismiss filed by respondents on November 16, 2005; and,
4.) Opposition (to Respondents' Supplemental Motion to Dismiss) with Motion to Allow Formal Amendment filed by petitioner on December 7, 2005.

In sum, respondents submit that the present petition be dismissed on the grounds that: (1) the Court lacks jurisdiction, the assessment having become final, executory and unappealable for failure of petitioner to file its Petition for Review within the reglementary period as provided in Section 228 of the National Internal Revenue Code of 1997 ("Tax Code"); and (2) petitioner is not the real party in interest.

On the other hand, petitioner posits that the Warrant of Distraint and/or Levy dated June 17, 2004, the Preliminary Assessment Notice dated March 24, 2003 and the Final Letter of Demand dated October 13, 2003 are void for non-compliance with Section 228 of the Tax

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Code and Revenue Regulation No. 12-99. Further, under Section 4, Rule 10 of the Revised Rules of Court, defect in the designation of parties may be summarily corrected.

As to the issue on who is the real party in interest, the Court **RESOLVES** in favor of petitioner.

After thoroughly examining the records of the case, it can be easily seen that the petitioner in the present case is ECL Foods and Catering Corp. The allegations in the petition as well as the documents appended to the petition clearly show that the party assailing the Warrant of Distraint and/or Levy dated June 17, 2004, the Preliminary Assessment Notice dated March 24, 2003 and the Final Letter of Demand dated October 13, 2003 is ECL Foods and Catering Corp. The use of "ECL Foods Superama, Inc." as name of petitioner in the caption of the initiatory and subsequent pleadings was a result of clear oversight or mistake on the part of petitioner's counsel.

There being no prejudice on the part of the respondents, petitioner's Motion to Allow Formal Amendment is hereby **GRANTED**. Accordingly, let the above-captioned case be amended to read as follows:

"ECL FOODS and CATERING, CORP.
Petitioner,

C.T.A. CASE NO. 7170

- versus -

HON. COMMISSIONER
GUILLERMO T. PARAYNO, JR. and
HON. ESTRELLA V. MARTINEZ,
Respondents.

The Court however reminds counsel for petitioner, the law offices of BATERINA TOBIA BATERINA & NERPIO, that it must properly observe rules of procedure by filing with

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leave of court an appropriate pleading before making changes as important as the name of petitioner in the above-entitled case.

Now, on the issue as to whether the Court has jurisdiction to hear and decide the present petition.

Records show the following:

On March 18, 2003, petitioner received a copy of a Preliminary Assessment Notice (No. 067-00-004-195-366) dated March 11, 2003 issued by Revenue Region 10 Regional Director Leonardo Q. Sacamos (pp. 115 -116 of BIR Records). The assessment was for the taxable year 2000 for deficiency income tax in the amount of Two Hundred Seventy Three Thousand Three Hundred Thirty Eight and Eighty Six Centavos (₱273,338.86) and deficiency Value Added Tax (VAT) in the amount of Two Hundred Seventy One Thousand Six Hundred Ninety Two and Seventy Centavos (₱271,692.70) or for a grand total of Five Hundred Forty Nine Thousand Thirty One and Fifty Six Centavos (₱549,031.56), inclusive of the compromise penalty *(pars. 4 and 5 Joint Stipulation of Facts and Issues)*.

Subsequently, in a letter dated March 25, 2003, petitioner's Corporate Representative Ronaldo B. Curiano, informed the BIR Regional Director of its receipt of the Assessment Notice dated March 11, 2003 and that he had already conferred with the Assessment Division Chief for clarificatory purposes. Further, he requested for a reasonable time to analyze and gather the required supporting documents until May 15, 2003.

On October 20, 2003, petitioner received a Formal Letter of Demand dated October 13, 2003 from Regional Director Sacamos. Said Formal Letter of Demand requested petitioner to pay the assessed tax deficiencies.

On February 11, 2004, petitioner received a copy of the February 6, 2004 Preliminary Collection Letter issued by Revenue District Officer Ma. Luisa I. Belen of RDO No. 67,

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assessing petitioner the same amount as indicated in the Formal Letter of Demand and the Preliminary Assessment Notice (*par. 7 of the Joint Stipulation of Facts and Issues*).

On April 5, 2004 petitioner received a copy of the March 24, 2004 Final Notice Before Seizure issued by Revenue District Officer. Thereafter, petitioner received a copy of the June 17, 2004 Warrant of Distraint and/or Levy issued by the RDO No. 67 on July 2, 2004. (*par. 8 of the Joint Stipulation of Facts and Issues*). The said Warrant of Distraint and/or Levy was directed to cover the sum Five Hundred Forty Nine Thousand Thirty One and Fifty Six Centavos (P549,031.56) as alleged unpaid internal revenue taxes of the petitioner.

Petitioner filed its Motion for Reconsideration and received by the respondent Commissioner on July 30, 2004. It requested for reinvestigation and reiterated their reservation to submit supplemental position paper with additional arguments and documentation (*pp. 175-190 of the BIR Records*).

On February 18, 2005, petitioner received a letter from respondent Regional Director and was informed of the denial of its motion for reconsideration for failure to adduce sufficient evidence to warrant its previous findings.

Pertinent to the above facts are Section 228 of the Tax Code and Section 3 of Revenue Regulation 12-99. Thus

> "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:
>
> (a) XXX
> (b) XXX
> (c) XXX
> (d) XXX
> (e) XXX
>
> 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.***

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.

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." *(Emphasis Supplied)*

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 Notice for informal conference. — XXX

3.1.2 **Preliminary Assessment Notice (PAN).** — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. *If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.*

XXX XXX XXX

3.1.4 **Formal Letter of Demand and Assessment Notice**. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the

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assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 **Disputed Assessment**. — **The taxpayer or his duly authorized representative may protest administratively <u>against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.</u>** If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. XXX

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. XXX

If the taxpayer fails to file a <u>valid protest against the formal letter of demand and assessment notice</u> within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and **demandable.**

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable."

It is clear from the foregoing that the taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand within thirty (30) days from the date of receipt thereof.

As correctly stated by the respondents, petitioner's right to validly protest the assessment had expired after thirty (30) days from receipt of the assessments contained in the Formal Letter of Demand dated October 20, 2003 or on November 19, 2003. Perforce, for its failure to file a timely protest of the assessment, the same became final, executory and unappealable.

In this regard, *Section 7 (a) (1) Republic Act 9282* provides:

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 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;

xxx xxx xxx

Thus, the Court of Tax Appeals exercises appellate jurisdiction to review by appeal the **decisions** of the Commissioner of Internal Revenue in cases, among others, *involving disputed assessments*.

It is neither the assessment nor the formal demand letter itself that is appealable to this Court. It is the decision of the Commissioner of Internal Revenue on the disputed assessment that can be appealed to this Court (*Commissioner of Internal Revenue vs. Villa*, 22 SCRA 3). A disputed assessment is one wherein the taxpayer or his duly authorized representative filed an administrative protest against the formal letter of demand and assessment notice within thirty (30) days from receipt thereof.

In the case at bar, petitioner failed to file an administrative protest on the formal letter of demand. Hence, the assessments did not become disputed assessments subject to the Court's review under Republic Act No. 9282.

WHEREFORE, respondents' Motion to Dismiss is hereby **GRANTED.** The Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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