REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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QCD VENTURES, INC.,
Petitioner,

C.T.A. Case No. 7741

Members:

-versus-

ACOSTA, *P.J.*
UY, and
FABON-VICORINO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE, represented herein by Hon. Lilia Hefti,
Respondent.

Promulgated:
OCT 08 2010 ; 1:34 pm

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DECISION

Acosta, PJ:

This Petition for Review, analogous to a petition under Rule 42 of the 1997 Rules of Civil Procedure, seeks to appeal the letter of Revenue District Officer (RDO) Nelson R. Traje dated 17 January 2007 (sic) which was received by petitioner on 08 February 2008. Said letter denied petitioner's request for a reinvestigation of a deficiency assessment of its 2002 income tax, expanded withholding tax, as well as a compromise assessment in the amount of PhP343,619.13.

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Below are the facts as culled from the records of the case:

Petitioner is a domestic corporation duly organized and existing under Philippine laws with principal office address at Block 10, Lot 19, 21, 23 Bankers Village II, Quirino Highway, Caloocan City. Respondent Commissioner of Internal Revenue, on the other hand, is a public officer with principal address at the Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City where he may be served with summons and other legal processes.[1]

In 2003, respondent investigated the books of accounts of the petitioner for the taxable year 2002. On 30 November 2005, the Regional Director Rene Q. Aguas came out with a Preliminary Assessment Notice (PAN) assessing the petitioner for deficiency taxes as of 30 November 2005 in the amount of PhP1,728,349.94[2] , computed as follows:

Taxable Income per Return		P	-
Add: Discrepancies/Adjustments			
Income payments not subjected to EWT	813,237.67		
Donations & Contributions	176,000.00		
Unsupported Expenses	535,563.60		
Materials	380,595.14		
Accrued Expenses	906,669.38		2,812,065.79
Taxable Income per Audit		P	2,812,065.79
Income Tax Due		P	899,861.06
Add: Tax credits – unsupported			220,106.00
Deficiency Income Tax		P	1,119,967.06

[1] *Paragraphs 1.1 and 1.2, Petitioner's Petition for Review, as admitted by Respondent in his Answer*
[2] *Paragraph 3, Joint Stipulation of Facts; Exhibit "BB"*

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Interest	582,382.88		
Compromise Penalty			
Late payment	25,000.00		
Non-filing of Schedule of Taxes & Licenses	1,000.00		608,382.88
TOTAL AMOUNT DUE		P	1,728,349.94

On 14 December 2005, petitioner sent to the Regional Director a letter dated 13 December 2005 disputing each item of the PAN[3]. On 20 December 2005, Regional Director Aguas issued an unnumbered formal notice of assessment for the taxable year 2002 with attached demand letters assessing petitioner of deficiency taxes in the same amount as found in the PAN[4]. Thereafter, petitioner received a letter from the BIR dated 12 January 2006, signed by the OIC-Assistant Regional Director, Atty. Eduardo T. Bajador, informing petitioner to submit a formal request for reinvestigation of the assessment, with the facts, laws, rules and regulations and jurisprudence upon which the request/protest is based cited therein, within fifteen (15) days from receipt of said letter[5]. Pursuant to the same, petitioner submitted a letter dated 02 February 2006 to the BIR requesting for reinvestigation of the assessment for taxable year 2002[6]. Days after or on 08 February 2006, the BIR through Regional Director Anselmo G. Adriano informed the petitioner that its request for reinvestigation is granted and that the case will be forwarded to Revenue District Office No. 27, Caloocan City for appropriate action[7]. On 18 April 2006, RDO Nelson R. Traje of Revenue District No. 27, through a letter signed by Mr. Tomas S. Clemente, requested petitioner to submit the required documents

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[3] *Paragraph 4, Joint Stipulation of Facts, Docket, p. 63; Exhibit "Z".*
[4] *Paragraph 5, Id.; Exhibits "X" and "Y" to "Y-3"*
[5] *Paragraph 6, Id.; Exhibit "AA"*
[6] *Paragraph 7, Id.; Exhibit "W"*
[7] *Paragraph 8, Id.; Exhibit "V"*

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necessary for the reinvestigation, to which petitioner responded via a letter, attention to Revenue Officer Michelle R. Delos Santos, dated 19 May 2006[8].

On 09 June 2006, RDO Traje issued another post reporting notice informing the petitioner that, per audit report of Ms. Delos Santos, the recommended deficiency taxes have gone down to PhP300,822.41[9].

On 04 July 2006, petitioner sent a letter to Anita G. Torres, Chief of the Assessment Division, challenging the findings of the BIR in the Post Reporting Notice of 09 June 2006, specifically the propriety of adding back NOLCO as it was never claimed in the first place[10]. In connection with this latest protest, RDO Traje, through a letter dated 14 August 2006, advised petitioner to submit the necessary documents in order for the BIR to ascertain the correct internal revenue tax liabilities that may still be due for the period under reinvestigation[11]. Sans any reply from petitioner, respondent reiterated its request for documents and for petitioner to present its side in its letter dated 29 August 2006[12]. The petitioner thereafter responded to the BIR letters through a letter dated and received on 15 September 2006, informing Revenue Officer Allan Marasigan that petitioner has already responded to the issues raised in the BIR letters, copying the BIR of its previously submitted letter dated 04 July 2006[13].

On 15 September 2006, a post reporting notice was issued, which, in effect, denied petitioner's protest and reiterated the BIR's earlier findings. An Amended

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[8] *Paragraphs 9 and 10, Joint Stipulation of Facts, Docket, p. 263;*
[9] *Paragraph 11, Id., Docket, p. 264; Exhibit "S"*
[10] *Paragraph 12, Id.*
[11] *Paragraph 13, Id.*
[12] *Paragraph 14, Id.*
[13] *Paragraph 15, Id.*

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Reporting Notice with a minor correction in the computation was also sent by BIR on 21 September 2006.[14]

On 13 March 2007, petitioner received new assessment notices and formal letters of demand, all dated 26 February 2007, demanding payment of deficiency income and expanded withholding taxes in the amounts of PhP326,848.35[15] and PhP370.78[16], respectively computed as follows:

I. Deficiency Income Tax			
Taxable Income per Original Investigation		P	2,812,065.79
Less: Allowed Expenses per Investigation			
Income payments subjected to EWT	813,237.67		
Unsupported Expenses	535,563.60		
Accrued Expenses	906,669.38		
Add: Excess Donation and Contribution	14,786.11		2,240,684.54
Taxable Income per Investigation		P	571,381.25
Income Tax due		P	182,842.00
Less: Tax paid			0.00
Deficiency Income Tax			182,842.00
Interest			144,006.35
Total Amount Due		**P**	**326,848.35**

II. Expanded Withholding Tax			
Taxable Income per Original Investigation		P	813,237.67
Less: Repairs & Maintenance	138,971.90		
Freight Documentation	533,389.77		
Supplies & Photocopying	128,115.00		
Advertising & Promotion	12,761.00		813,237.67
Taxable Income per Investigation		P	-

[14] *Paragraphs 16 and 17, Joint Stipulation of Facts, Docket, p. 264; Exhibits "M" and "N"*
[15] *Paragraph 18, Id., p. 265; Exhibit "CC-1"*
[16] *Paragraph 18, Id.; Exhibit "CC-2"*

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Add: Increments for late filing/remittance for the month of November			
Surcharge	210.78		
Interest	160.00		370.78
Total Amount Due		P	370.78

From receipt of the said formal letters of demand, petitioner failed to protest the same within thirty (30) days. Thus, a collection letter dated 19 July 2007, was issued by the BIR[17] which was received by petitioner sometime July 2007[18].

In a letter dated 10 August 2007, in reply to the 19 July 2007 collection letter, petitioner advised BIR of the pending request for reinvestigation of the assessment. The BIR then, through RDO Traje, responded in a letter dated 31 August 2007, advising petitioner to submit documents that may support its claim that net operating loss for the year 2002 was not carried over for the years 2003-2005. The BIR letter mentioned the *Annual Income Tax Returns for the years 2003-2005 and the audited financial returns for the said years* as the documents to be submitted by petitioner. On 19 September 2007, petitioner sent to RDO Traje the requested documents[19].

On 07 February 2008, petitioner received a letter, erroneously dated 17 January 2007, which should have been 17 January 2008 per Joint Stipulation of Fact of the parties[20], from RDO Traje formally denying petitioner's request for reinvestigation. The letter further states that the assessment has already become

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[17] *Paragraph 19, Joint Stipulation of Facts, Docket, p. 265*
[18] *Paragraph 26, Affidavit of Mr. Eduardo De Guzman, Docket, p. 425*
[19] *Paragraphs 20,21 and 22, Joint Stipulation of Facts, Docket, p. 265*
[20] *Paragraph 23, Id.*

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final and executory for failure on the part of petitioner to file a protest for reinvestigation within thirty (30) days from the receipt of the final assessment.

Petitioner on 10 March 2008 filed the Petition for Review with this Court, challenging the propriety of the assessment made by the BIR.

On 16 May 2008, respondent filed an Answer raising the following Special and Affirmative Defenses:

> "13. The tax Assessment Notice and Formal Letter of Demand No. 29647 both issued on February 2007, which were received by petitioner on March 13, 2007 should be appealed and not the letter of RDO Nelson R. Traje dated January 17, 2007 (2008);
>
> 14. The issues and arguments raised in Title VI and VII are not relevant in the instant petition for the reason that correction in the computation of deficiency taxes attached to the Post Reporting Notice dated June 9, 2006 have (sic) already been made resulting to the cancellation of Assessment Notice and Formal Letter of Demand No. 28853, both dated December 20, 2005, and issuance of new Assessment Notice and Formal Letter of Demand, both dated February 26, 2007."

The issues to be resolved, based on the parties' submitted Pre-trial briefs are:

1. Is the BIR correct in adding NOLCO for the taxable year 2002 although it was not claimed at all by petitioner as a deductible item against gross income?

2. Is the tax credit due to overpayment of petitioner for the taxable year 2001 sufficient to cover any legitimate assessment of the BIR for the year 2002?

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3. Is the petitioner correct in appealing the letter of RDO Traje dated 17 January 2007 (2008) instead of the tax assessment notices and formal letters of demand, all issued on 26 February 2007 and received by petitioner on 13 March 2007?

4. Was there compliance under Section 228 of the Tax Code that the taxpayer shall be informed of the law and the facts on which the assessments were made?

5. Is the petitioner liable to pay the deficiency income, expanded withholding and compromise taxes for the year 2002 in the aggregate amount of P343,619.13?

On 10 August 2010, the case was submitted for decision, taking into consideration the Memorandum for the Respondent filed on 29 July 2010, sans petitioner's Memorandum.

The petition has no merit.

Petitioner should have protested the assessment notices and demand letters dated 26 February 2007 by filing a request for reconsideration or reinvestigation within thirty (30) days from the receipt of the same on 13 March 2007, and thereafter, within sixty (60) days from filing of said protest, all relevant supporting documents, when necessary, should have been submitted; having failed to do so, the assessments have become final. This is pursuant to Section 228 of the National Internal Revenue Code (NIRC), which in part states—

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CHAPTER III – PROTESTING AN ASSESSMENT, REFUND, ETC.

> **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:
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> 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.
>
> 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.
>
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The assessment required by law to be duly protested refers to the respondent's formal letters of demand and assessment notices, which were all received by petitioner on 13 March 2007 but were left unchallenged until the filing of this petition. By not observing the proper administrative procedure of protesting an assessment, petitioner, unfortunately, lost its right to contest the subject assessments as these have already become final and hence can no longer be questioned via a Petition for Review under Section 2, Rule 3 of the 2005 Revised Rules of this Court.

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Needless to state, petitioner's protest of 04 July 2006, sent to Chief Torres of the Assessment Division, is not the administrative protest covered by the provision of the NIRC as it refers to the BIR Post Reporting Notice of 09 June 2006 and not to the issued formal letters of demand and assessment notices all dated 26 February 2007. Also, an examination of the letters between the petitioner and respondent would show that it was this 04 July 2006 protest which was denied by RDO Traje's letter dated 17 January 2007 (2008). As such, this Court agrees with respondent that the letter of RDO Traje, received by petitioner on 07 February 2008, is not the denial of the protest of an assessment contemplated under the NIRC.

Given the lapse of the period within which to protest the subject assessments administratively without any protest being duly filed, petitioner's Petition for Review has no leg to stand on and should therefore be dismissed. All the other issues in the instant case need not be passed upon as the same are rendered moot given the fact that the assessment has already attained finality.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assessments issued by respondent against petitioner on 26 February 2007 for deficiency income and expanded withholding taxes for taxable year 2002 are hereby **UPHELD** in view of their finality. Petitioner is hereby **ORDERED** to **PAY** the amounts of PhP326,848.35 and PhP370.78.

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In addition, petitioner is **ORDERED** to **PAY** 20% delinquency interest per annum on its deficiency income tax from 26 March 2007[21] until full payment thereof, pursuant to Section 249(C)(3) of the National Internal Revenue Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
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 opinion writer of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

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[21] *Exhibit 6, Docket, p. 472*