REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

ALLIED BANKING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7062

Members:

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

Promulgated:
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RESOLUTION

For resolution is respondent's "Motion to Dismiss" filed on July 28, 2005, together with petitioner's "Comment/Opposition" thereto filed on August 18, 2005.

The said motion is based the ground that the Court lacks jurisdiction of the instant case for failure on the part of petitioner to file an administrative protest over the Formal Letter of Demand with the attached Assessment notices it received on August 30, 2004.

The pertinent facts are follows:

On April 30, 2004, respondent issued a Preliminary Assessment Notice ("PAN") finding petitioner liable for deficiency documentary stamp and gross receipt tax on

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industry issue for the taxable year 2001. Petitioner received the PAN on May 18, 2004.[1] Petitioner filed a protest against the PAN on May 27, 2004.[2]

Thereafter, respondent released a Formal Letter of Demand with Assessment Notices received by petitioner on August 30, 2004.[3] In the said Formal Letter of Demand, respondent ordered petitioner to pay the amounts covered by the assessment notices immediately upon receipt thereof. The letter also stated that the same is the final decision based on investigation and that, if petitioner disagrees, it may appeal within thirty days from receipt thereof.

Thus, on September 29, 2004 petitioner filed the Petition for Review with this Court docketed as CTA Case No. 7062. On December 07, 2004, within the period granted by the Court, respondent filed his Answer[4].

On July 28, 2005, respondent filed the instant Motion to Dismiss. The Opposition thereto was filed by petitioner on August 18, 2005.

Applicable is *SEC. 228 of the National Internal Revenue Code of 1997* ("NIRC") which reads:

> "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.

[1] Annex B
[2] Annex C
[3] Annexes A, A-1 and A-2
[4] CTA Records page 42-45

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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)*

In implementation of the above NIRC provision, the BIR issued Revenue Regulations No. 12-99 which sets forth the course of events in the assessment of deficiency taxes against a taxpayer, to wit:

"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 xxx 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

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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 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

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> 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.

Thus, a preliminary assessment notice is issued merely to inform the taxpayer of the findings of the Bureau of Internal Revenue ("BIR") anent his tax liabilities. All that is required of a taxpayer upon receipt of a preliminary assessment is to respond thereto if it wishes within fifteen days from receipt. If after such response by the taxpayer, the BIR still finds that correct taxes is yet to be paid, or if no response was sent by the taxpayer in the first place, the BIR shall issue a formal assessment based on the investigation. It is this assessment which should be administratively protested.

Otherwise stated, a taxpayer may or may not dispute or protest the preliminary assessment against him. The BIR still has to issue a formal assessment notice since it is this assessment which attains finality in the absence of a valid protest against it.

In this regard, *Section 7 (a) (1) Republic Act 9282* dictates that the Court of Tax Appeals exercise appellate jurisdiction to review by appeal **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 or other laws administered by the Bureau of Internal Revenue.

Clearly, 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). As correctly pointed out by respondent, a

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disputed assessment is one wherein the taxpayer or his or his duly authorized representative filed an administrative protest against the formal letter of demand and assessment notice within thirty (30) days from date receipt thereof. In this case, petitioner failed to file an administrative protest on the formal letter of demand with the corresponding assessment notices. Hence, the assessments did not become disputed assessments as subject to the Court's review under Republic Act No. 9282. (See also *Republic vs. Liam Tian Teng Sons & Co., Inc.*, 16 SCRA 584.)

WHEREFORE, the Motion to Dismiss is **GRANTED**. The Petition for Review is hereby **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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