REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SUBIC BAY MOTORS, CORP., INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 98
(C.T.A. Case No. 7042)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ*.

Promulgated:

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DECISION

ACOSTA, PJ.:

This is a Petition for Review of the Resolution dated December 21, 2004 of the Second Division of this Court, in CTA Case No. 7042 which dismissed the Petition for Review on the ground that the assessments have become final and the subsequent Resolution dated May 19, 2005, denying the Motion for Reconsideration.

The antecedent facts as culled from the records are as follows:

Petitioner is a corporation organized under the laws of the Philippines with principal place of business as Bldg. 1457, Argonaut Highway, Subic Bay Free Port Zone, Olongapo City. Its principal business concerns the sale, through public auction, of imported motor vehicles, heavy equipment, construction equipment and other items of commerce. It conducts its auction sale and business exclusively within the confine area of the Subic Special Economic Zone (SSEZ) *(Paragraphs 8 and 9, Petition for Review)*.

Respondent, on separate dates, issued various administrative regulations and orders, imposing guidelines on the taxation of business enterprises within the ECOZONES of Subic, Clark, John Hay, Poro Point, and other Special Economic Zones under PEZA, more particularly those enterprises connected with the sale of imported vehicles through public auction, namely:

1. Revenue Regulations 1-95 dated January 24, 1995;
2. Revenue Regulations 12-97 dated August 7, 1997;
3. Revenue Regulations 16-99 dated September 27, 1999;
4. Revenue Memorandum Circular No. 31-2003 dated June 3, 2003; and
5. Revenue Memorandum Circular No. 32-2003 dated June 5, 2003.

The administrative orders in effect imposed excise and value-added taxes against petitioner's income received from its conducted auction sales.

Petitioner, together with another company, filed on June 18, 2003 before the Regional Trial Court of Olongapo City a civil case docketed as Civil Case No. 275-0-2003, to declare unconstitutional and *ultra vires* the questioned administrative issuances. And during the pendency of the civil case, the petitioner prayed for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the respondent from proceeding with the imposition of the excise and value-added taxes. The lower Court granted the said prayer in its Order dated August 1, 2003.

Consequently, herein respondent elevated the case to the Court of Appeals by way of a Petition for Certiorari under Rule 65 of the Rules of Court. The Court of Appeals via a Resolution dated March 31, 2004, declared the lower court as having no jurisdiction over the case, annulling the August 1, 2003 Order.

Petitioner went up to the Supreme Court raising the principal issue of "which court has jurisdiction to hear the challenge on the lack of power and unconstitutionality and *ultra vires* nature of the action of the respondent. The case was docketed as G.R. No. 163445.

On January 7, 2004, a ten (10)-day Preliminary Notice was sent by respondent to herein petitioner assessing it the amounts of P56,673,000.00 as excise taxes and P28,309,422.17 as value-added tax, or an aggregate amount of P 84,982,422.17, for its July 5 and 6, 2003 auction sales.

On April 13, 2004, respondent issued two separate Preliminary Assessment Notices assessing petitioner the total amount of P89,039,820.94 and P30,356,142.11 for excise and value-added taxes for the auction sales conducted by petitioner on July 5 and 6, 2003 and November 15 and 16, 2003, respectively. For the above-mentioned assessments, petitioner submitted its protest-letter.

Consequently, on May 11, 2004, respondent issued Formal Assessment Notices assessing petitioner the amounts of P90,529,327.11 as excise and valued added taxes for the auction sales conducted by petitioner on July 5 and 6, 2003 and the total amount of P30,929,604.09 as excise and valued added taxes for the auction sales conducted by petitioner on November 15 and 16, 2003. Subsequently, Warrants of Garnishment were issued against petitioner.

On August 27, 2004, petitioner filed before this Court a Petition for Review with an Action to Declare Unconstitutional, Void, and an *Ultra Vires* Act the Revenue Regulations issued by respondent, as mentioned above. Likewise, an "Urgent Motion to Set Petitioner's Motion to Lift Garnishment and/or Issue TRO" on September 2, 2004.

The respondent, instead of filing an answer, filed an opposition to the said motion on the ground that petitioner failed to protest the Formal Assessment Notices issued on May 11, 2004. Accordingly, the assessments had become final, executory and unappeallable.

This Court's Second Division resolved that for failure of herein petitioner to comply with the thirty (30)-day period within which to file its protest to the Formal Assessment Notices, the said assessments have become final and executory, thus leaving this Court with no jurisdiction to entertain the case. Consequently, the Court had no other recourse but to dismiss the action. The petitioner filed a Motion for Reconsideration which was likewise eventually denied. Hence, this Petition for Review *en banc*.

Basically, the petitioner's contention is anchored on the lone ground that the finding of this Court that petitioner did not file any protest to the Formal Assessment Notices is not based on the evidence and records presented.

At this juncture, **Section 228 of the 1997 Tax Code** is hereunder quoted to clear the question regarding the proper period for filing a protest, to wit:

> **Section 228. Protesting an Assessment.** – x x x
>
> The taxpayer 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.**

> 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)*

When petitioner received the Final Assessment Notice on May 18, 2004, it had a period of thirty (30) days to file its administrative protest with the respondent, which it clearly and admittedly did not comply. In its petition, petitioner alleged that preliminary assessment notices issued by herein respondent were received by it. Accordingly, there has yet been no formal assessment issued or received. Apparently, the Formal Assessment Notices of May 11, 2004 for excise and value added taxes in the aggregate amounts of P90,529,327.11 for the auction sales conducted on July 5 and 6, 2003 and P30,929,604.09 for the auction sales of November 15 and 16, 2003, were erroneously, or as this Court would like to assume, regarded by petitioner as Preliminary Assessment Notices. However, mere error or not, the fact remains that respondent had issued these Formal Assessment Notices and as petitioner admitted in its Petition for Review, these very same Formal Assessment Notices were indeed received by it.

Incidentally, there has been no allegation as to when the Formal Assessment Notices were received by petitioner, so as to commence the counting of the thirty (30)-day period allowed by law within which to protest the said notices. Well settled is the rule that the date of issuance is the date of filing, unless another date of receipt is proven or shown. Thus, considering that there is no dispute as to whether or not the assessment notices were received by petitioner, the date of issuance of the Formal Assessment Notices shall be deemed the date of filing and receipt by petitioner, which was on May 11, 2004. And pursuant to Section 3 (v), Rule 131 of the Revised Rules of Court, one of the disputable presumptions is that "a letter duly directed and mailed was received in the regular course of the mail." Evidently, petitioner had a period of thirty (30) days from May 11, 2004, or until June 10, 2004, within which to file its protest with respondent Commissioner.

Unfortunately, based on the records and documents submitted, there is no indication that petitioner ever protested the said Formal Assessment Notices. In fact, the allegations and evidence presented by petitioner merely showed that preliminary assessment notices were received and protested but the Formal Assessment Notices, although received were not protested. Based on its allegations, petitioner even considered the subject Formal Assessment Notices as preliminary assessment notices for which it admittedly received. As a result of this inattentiveness, the Formal Assessment Notices have become final and could not be the subject of appeal to this Court. As provided for by Section 228 of the 1997 Tax Code, if the taxpayer fails to file an administrative protest within the 30-day reglementary period, the assessment becomes final and unappealable. This means that after the lapse of the said thirty-day period, the assessment may no longer be disputed either administratively or judicially through an appeal to this Court. The effect is thus to make the assessed taxes collectible. Incidentally, inasmuch as there is no disputed assessment to speak of, appeal to this Court is longer available.

Section 7 of R.A. No. 9282 (*An Act Expanding the Jurisdiction of the Court of Tax Appeals*) which enumerates the legal mandate of this Court is quoted hereunder for easy reference, thus:

> **Section 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 or other laws administered by the Bureau of Internal Revenue;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds or 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x (*Emphasis supplied)*

Clearly from the foregoing, the Court's jurisdiction covers only those assessments which are disputed. In this case, failure of herein petitioner to file its protest on time makes the said assessment undisputed, thus, cannot be the subject of appeal to this Court. Also, it must be stressed that the Court of Tax Appeals is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction (***Commissioner of Internal Revenue vs. Villa****, 22 SCRA 3*), the filing of a protest within the period prescribed under Section 228 of the 1997 Tax Code being a jurisdictional matter. In fine, failure of the petitioner to comply with the thirty (30)-day statutory period would bar appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessment (**Commissioner vs. Western Pacific Corp.**, *L-18804, May 27, 1965*). The assessments having become final, such may no longer be amended, modified, much less, set aside by this Court.

The petitioner further argues that there was in fact a letter-protest filed dated June 24, 2003. It had submitted for the perusal of this Court a copy of the said protest-letter as Annex "D". Moreover, the petitioner contends that the date on the letter-protest of June 24, 2003 and the failure to include the name of herein petitioner in the body of the letter-protest were mere typographical errors which allegedly were already explained by petitioner in its subsequent letters to the respondent.

It is noteworthy that mere "clerical errors" pertain to mistakes which do not in any manner change the substance of the document and "typographical errors" are those that do not substantially alter the document where the said errors are found.

Here, the alleged "typographical error" made by petitioner pertained to the failure to include the name of herein petitioner as the corporation responsible for the letter-protest. This Court cannot comprehend how such an error can be disregarded as a "mere typographical error". The name of the proper taxpayer is one which deserves great importance and attentiveness. The absence of petitioner's name on the letter-protest is a clear case of herein petitioner not forming part of the same. Common sense has it that a protest letter written and filed by another entity can never be the protest letter of another corporation, unless the latter corporation's name is clearly included as part of the document.

Additionally, the alleged letter-protest, as Annex "D", did not in any way "clearly" show that it was the letter-protest of herein petitioner. What is evident is that the nowhere in the body of the letter does it indicate or even mention in passing the name of herein petitioner. In fact, the first paragraph of the letter-protest emphasized that the said letter was written **"in representation of AIA, with proper authority per Board Resolution through a Secretary's Certificate"**. Likewise, the letter-protest even ended with "kindly give us a date in the allowable month, about the later part, to submit our other evidence why AIA is not liable for the item of taxes referred to in your Notices". Again, no mention of petitioner's name was seen. Clearly then, the said letter-protest was filed in representation of Asia International Auctioneers, Inc. (AIA) which is a separate and distinct corporation as that of petitioner, and not for and in behalf of petitioner or both corporations, as what petitioner is trying to argue.

However, petitioner argues further that there were several communications sent to respondent, allegedly for the purpose of explaining the typographical errors it had made on its letter-protests. Annexes "D" and "E" were submitted by petitioner to bolster its claim.

A close scrutiny of the documents and records of the case would reveal otherwise. Annex "D" is the letter-protest allegedly filed by petitioner but, as this Court had already discussed above, did not really pertain to petitioner. Similarly, Annex "E" suffers from the same defect. The fact that it was written in behalf of Asia International Auctioneers, Inc. (AIA) is clearly indicated. We quote, "In reply to your Notices of May 11, 2004, in representation of AIA, with proper authority per Board Resolution through a Secretary's Certificate, AIA states that it is not liable to the payment of the taxes specified in your Notices for the following reasons xxx".

To recapitulate, Formal or Final Assessment Notices must be protested within thirty (30) days from receipt, otherwise, the assessment will become final and executory. Petitioner's failure to file its protest or comply with the thirty (30)-day statutory period cancelled his chance to appeal and deprived this Court of its jurisdiction to entertain and determine the correctness of the assessment. The assessments having become final, such may no longer be amended, modified or set aside by this Court.

WHEREFORE, finding no reversible error in the assailed Resolution promulgated on December 21, 2004 and Resolution of the Motion for Reconsideration dated May 19, 2005, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice