REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

SINGER FINANCE CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 10
[C.T.A. CASE NO. 6743]

Present:

ACOSTA, *PJ.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
MAR 04 2005

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *en banc* filed on June 3, 2004 under Republic Act No. 9282, seeking a review of the resolutions rendered by the then Court of Tax Appeals, which under R.A. 9282, is now a Division of the current Court of Tax Appeals, in C.T.A. Case No. 6743, entitled "Singer Finance Corporation vs. Commissioner of Internal Revenue", to wit:

1. Resolution promulgated on January 29, 2004, denying petitioner's Motion to Cancel Assessment and dismissed the case for lack of jurisdiction; and

2. Resolution promulgated on May 7, 2004, denying petitioner's Motion for Reconsideration of the aforementioned Resolution and affirming said Resolution.

Petitioner contends that this Court committed the following errors:

I

"The Original Members of the Court of Tax Appeals gravely erred in holding and ruling that failure to file an administrative protest to a patently void and illegal assessment (assessment issued after prescription had set in) is a pre-requisite in filing a petition, hence, the court has no jurisdiction over the petition.

II

The Original Members of the Court of Tax Appeals gravely erred in holding and ruling that the assessment notices issued after prescription had set in, hence void and illegal, have become final, executory and demandable."

Petitioner argues that the requirement for filing of an administrative protest as embodied in Section 228 of the National Internal Revenue Code presupposes a valid and legal assessment issued within the time prescribed by law. Otherwise, such assessment is considered void, illegal and non-existent or not having been issued at all. As such, petitioner claims that there will be no assessment to be protested and logically there is no assessment that will become final, executory and demandable. Moreover, petitioner contends that since the subject assessments were issued beyond the prescriptive period, they were void and illegal, and there was nothing to protest upon.

In his Comment/Opposition to the Petition for Review, respondent raises, among others, the principal argument that tax assessments must be protested, whether the right to assess has prescribed or not, as the filing of an administrative protest is mandatory under Section 228 of the Tax Code, whether or not the assessment is validly issued because even prescribed tax assessments may attain finality. The unprotested and prescribed assessments divest the CTA of jurisdiction because said assessments were undisputed thereby allowing it to attain finality.

The issues raised in this petition are: (1) whether or not it is a mandatory requirement to file an administrative protest to the patently void and illegal assessments issued after prescription had set in; (2) whether or not subject assessment notices issued after prescription have become final, executory and demandable.

A close examination of the petition and its annexes, as well as respondent's comment thereto, reveals that the foregoing issues have already been exhaustively tackled in the assailed Resolutions promulgated on January 29, 2004 and May 7, 2004.

For purposes of this petition for review however, We reiterate Our ruling that an assessment, whether valid or void, shall become final and executory, when no administrative protest is filed within thirty (30) days from receipt thereof, for the very reason that:

> "[An] administrative protest is an integral part of the remedies given to the taxpayer in challenging the legality or validity of an assessment. It is absolutely necessary for the taxpayer to file an administrative protest in order for this court to acquire jurisdiction."[1]

It must be stressed that Section 228 of the Tax Code of 1997 does not qualify that only valid assessments should be protested in order that the same shall not become final. The pertinent provisions of Section 228 read:

> "**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: x x x x
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> x x x 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 the 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

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[1] Assailed resolution of May 7, 2004, p. 3.

documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days form receipt of the decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Significantly, petitioner should have invoked the issue of prescription as a defense at the administrative level, by filing a protest before respondent Commissioner of Internal Revenue, to prevent the assailed assessments from becoming final and executory. Failing in this regard is procedurally detrimental to petitioner.

Petitioner's argument that it is not duty-bound to file an administrative protest against a void assessment is misplaced. Precisely, one of the grounds that a taxpayer can raise in protesting an assessment is the defense of prescription, which if found meritorious, provides legal justification for the Commissioner of Internal Revenue to revoke an assailed assessment.

As held by the Supreme Court in the case of **Republic of the Philippines vs. Manila Port Service,**[2] prescription is only a defense which must be raised in the proper forum and at the proper time. Thus, an assessment which is contrary to law, can attain finality, if the same is not protested. It is a mere defense that must be invoked at the proper time, otherwise, it shall be considered waived. It is not jurisdictional.

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[2] G.R. No. L-18208, November 27, 1964 likewise cited in Our resolution of May 7, 2004, p. 3.

All the foregoing considered, the Court finds no reversible error committed by the then Court of Tax Appeals, in rendering the assailed Resolutions dated January 29, 2004 and May 7, 2004 when it effectively denied petitioner's Motion to Cancel Assessments filed on October 28, 2003 and dismissed CTA Case No. 6743 for lack of jurisdiction.

WHEREFORE, this Petition for Review is **DENIED DUE COURSE** and is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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 this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice