REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BLOOMFIELD EDUCATIONAL FOUNDATION, INC., RUDLIN INTERNATIONAL, INC., AND SPS. RODOLFO J. LAGERA AND MA. ERLINDA J. LAGERA,
Petitioners,

- versus -

CTA Case No. 6614

HON. GUILLERMO PARAYNO, COMMISSIONER, BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 30 2003

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RESOLUTION

At bar for resolution is respondent's "Motion to Dismiss", seeking for the dismissal of the instant Petition for Review (With Motion to Suspend or Defer Collection of Alleged Tax Liabilities Pending Appeal) on the ground of lack of jurisdiction.

Petitioner's appeal was premised on the following grounds:

1. That the action of the respondent in executing the writs of garnishment against their accounts is premature and precipitate because respondent have not yet acted on their long pending Consolidated Motion to Dismiss filed on December 22, 1997 to quash the charges against them despite the fact it was uncontested and was even conformed to by the then Assistant Chief of the Prosecution and Litigation Division when he personally affixed his conformity ("Petition for Review", filed March 14, 2003, CTA Docket, p. 14);

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2. That on January 20, 2003, the respondent, through the Collection Enforcement Division Chief Ramon Wilfredo Pagarigan, for the first time resolved to categorically deny petitioner's long pending Consolidated Motion to Dismiss and reiterated the demand for the petitioners to pay;

3. That it is settled that when the taxpayer made many requests challenging the imposition of a tax assessment, the appealable action of the Commissioner or his representative is the last one which disposes of all the issues and reiterates the demand for payment of the disputed tax assessment, therefore, in the case at bar, the appealable action of the respondent Commissioner is the final demand letter dated January 20, 2003 (Petition for Review, filed March 14, 2003, CTA Docket, pp. 14-16).

Respondent, on the other hand, averred that this court has no jurisdiction over the instant case considering that the assessments dated September 27, 2001, had become final for failure of the petitioner to protest the same within thirty (30) days from receipt thereof pursuant to Section 228 of the National Internal Revenue Code of 1997 (Respondent's "Motion to Dismiss", April 10, 2003, CTA records, p. 115). Petitioner received the said assessment on November 20, 2001. Respondent further discussed Section 7 of R.A. No. 1125 (An Act Creating the Court of Tax Appeals), which provides in part:

> **Section 7. *Jurisdiction.*** - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code, or other law or part of the law administered by the Bureau of Internal Revenue.

We resolve to grant respondent's motion to dismiss.

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Petitioners are of the mistaken belief that respondent has to categorically resolve their Consolidated Motion to Dismiss filed on December 22, 1997 before respondent could be able to execute writs of garnishment against their bank accounts. According to herein petitioners, because of the fact that there is yet no final resolution of their motion to dismiss, the actions of the respondent were premature and precipitate, and thus, they urgently requested respondent to resolve first their motion and hold in abeyance any garnishment or seizure of petitioners properties.

We cannot agree with this argument. Evidence showed that, although respondent did not categorically resolve to deny petitioners' Consolidated Motion to Dismiss, herein respondent subsequently issued letters and assessment notices dated September 27, 2001, copies of which were received by petitioners (par. 18, Petition for Review, filed March 14, 2003, CTA Docket, p. 13). With the issuance of the assessment notices, a resolution of the motion is no longer necessary. Expressed otherwise, when the said assessment notices were issued, petitioners' Consolidated Motion to Dismiss was deemed denied. Therefore, after receipt of the assessment notices, what the petitioners should have done was to file an administrative protest or dispute the assessment with the Commissioner of the Bureau of Internal Revenue within thirty (30) days from their receipt thereof, as required by Section 228 of the 1997 Tax Code. The petitioners should have requested for a reconsideration or reinvestigation (Revenue Regulations No. 12-85) of the assessments from the Bureau. However, on the records, there is no showing that the petitioners had complied with such requirements. Failure on the part of the petitioners to comply with

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the protest requirement made the assessments final and unappealable (par 4, Section 228, 1997 Tax Code).

As correctly pointed out by the respondent, for failure of the petitioner to protest the subject assessments, the same did not become disputed assessments. Hence, there is no decision of respondent on disputed assessment/s which can be appealed to this court (Section 7, R.A. No. 1125). The assessments having become final and executory and it could no longer be the subject of an appeal to this court, this court does not acquire jurisdiction over the case. This court cannot amend, modify, much less set aside such final assessment/s.

WHEREFORE, in view of the foregoing, the respondent's Motion to Dismiss is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge