REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

BPI CARD FINANCE CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 7309**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** SEP 0 5 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

The taxpayer may protest administratively a disputed assessment by filing a request for reconsideration or reinvestigation within thirty days from receipt of the assessment in such form and manner as may be prescribed by the implementing rules and regulations *(Section 228, NIRC of 1997, as amended)*. If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable *(Section 3.1.5 of Revenue Regulations 12-99).*

Additionally, 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 *(Section 3.1.5 of Revenue Regulations 12-99).*

When the assessment becomes final, executory and demandable, the taxpayer is precluded from disputing the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits *(Manila Electric Company vs. Barlis, 433 SCRA 33).*

THE CASE

This is a Petition for Review filed by the BPI Card Finance Corporation (hereafter "petitioner"), which seeks the cancellation and withdrawal of the deficiency tax assessments covering deficiency income tax, percentage tax and withholding tax on compensation in the total amount of P68,562,774.23 issued against petitioner.

THE FACTS

In their "Amended Joint Stipulation of Facts and Issues", the parties stipulated as follows:

"1. Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at the 16th Floor, BPI Card Center, Ayala Avenue corner Paseo de Roxas, Makati City. It is a subsidiary of the Bank of the Philippine Islands, a universal banking corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at the BPI Building, Ayala Avenue corner Paseo de Roxas, Makati City.

2. Respondent is the duly appointed Commissioner of Internal Revenue mandated to perform the duties and responsibilities of said office and empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws or portions thereof administered by the Bureau of Internal Revenue, hereinafter referred to as the "BIR".

3. On 10 October 2004, petitioner received a Formal Letter of Demand, for alleged deficiency income tax, deficiency percentage tax, deficiency expanded withholding and deficiency withholding tax on compensation in the total amount of P64,098,964.69, inclusive of surcharge, interest and compromise penalties.

4. Petitioner, thru its tax counsel, filed a protest letter with the BIR dated 24 November 2004.

5. In said protest letter, BPI raised questions on the validity of the assessments since they lacked the necessary details and factual and legal bases. Petitioner also moved, following said protest letter, for reconsideration/reinvestigation of the same and to submit documents in support thereof.

6. Petitioner then received a Tax Verification Notice dated 9 February 2005 from the BIR Large Taxpayers

Service Revenue District Office No. LTDO-122, Makati, granting petitioner's request for re-investigation.

7. On 28 April 2005, petitioner made partial payments on some items in the disputed assessment specifically the deficiency annual registration fee in the amount of P4,750.00 and deficiency expanded withholding tax in the amount of P3,127.31, inclusive of surcharge, interest and compromise.

8. On 14 July 2005, petitioner received respondent's Final Decision on Disputed Assessment (FDDA) dated 7 June 2005 still holding petitioner liable for 1999 deficiency income, percentage and withholding tax assessments inclusive of surcharge, interest and compromise penalty.

9. Section 228 of the Tax Code of 1997.

10. Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, in relation to Section 7 of the same Acts."

At the hearing on February 2, 2006, the parties further stipulated the following:

"1) The existence due execution and authenticity of respondent's Formal Letter of Demand. The existence and due execution of the respondent's Formal Letter of Demand, attached and marked in the Petition as Annex "A".

2) The existence and due execution of Petitioner's Protest Letter dated 24 November 2004, filed with the BIR, attached and marked in the Petition as Annex "B".

3) The existence and due execution and authenticity of a Tax Verification Notice, dated 9 February 2005, issued by the Bureau of Internal Revenue Large

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Taxpayers Service Revenue District Office No. LTDO-122, Makati, granting Petitioner's request for re-investigation, attached and marked in the Petition as Annex "C".

4) The existence, authenticity, and due execution of Respondent's Final Decision on Disputed Assessment [FDDA] dated 7 June 2004, attached and marked to the Petition as Annex "E"; still holding Petitioner liable for 1999 deficiency income, percentage and withholding tax assessments inclusive of surcharge, interest and compromise penalty, as follows:

I. Deficiency Income	PHP 37,071,889.50
II. Deficiency Percentage	PHP 30,852,334.03
III. Withholding Tax Assessments	PHP 638,550.70
TOTAL AMOUNT	PHP 68,562,774.23

In his "Answer" filed on May 30, 2006, respondent denied the material allegations of the petition, and by way of special and affirmative defenses, averred that petitioner's failure to file a protest within the prescribed period has rendered the assessment final, executory and demandable; assuming petitioner was able to file a timely protest, its failure to submit documents in support thereto within sixty days has rendered the assessment final; assuming petitioner was able to file a timely protest and its failure to submit documents in support thereto within sixty days has not rendered the assessment final, still petitioner's appeal to this Honorable Court was filed beyond the prescribed period;

and the assessment for deficiency percentage, income and withholding tax on compensation was made in accordance with law.

Petitioner presented Feliciana S. Cruz, Senior Manager of the BPI Unibank Central Accounting, as witness, and formally offered documentary evidence, marked as *Exhibits "A" to "N"*, inclusive of their submarkings, which were admitted by the Court, except for *Exhibits "A-3"* and *"E-3"*, which were denied for petitioner's failure to submit the documents marked by the Court, and *Exhibits "D-10", "N", "N-1", "N-1-A", "N-1-B"* and *"N-1-C"*, which were denied for petitioner's failure to present the originals for comparison.

For the repeated failure of counsel for respondent to appear at the initial presentation of the evidence for the respondent, respondent was deemed to have waived the right to present his evidence. Thereafter, both parties were granted twenty days from notice to file their simultaneous memoranda, afterwhich the case shall be deemed submitted for decision.

Both parties having complied thereto, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration: abl

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WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT CASE:

1.1 WHETHER OR NOT PETITIONER FILED A PROTEST AGAINST THE SUBJECT ASSESSMENT WITHIN THE THIRTY DAY PERIOD PRESCRIBED IN SECTION 228 OF THE 1997 TAX CODE AND REVENUE REGULATIONS NO. 12-99.

1.2 WHETHER OR NOT THE FAILURE TO FILE A PROTEST AGAINST THE SUBJECT ASSESSMENT WITHIN THE THIRTY DAY PERIOD PRESCRIBED IN SECTION 228 OF THE 1997 TAX CODE AND REVENUE REGULATIONS NO. 12-99, HAS RENDERED THE ASSESSMENT FINAL, EXECUTORY, AND DEMANDABLE.

1.3 WHETHER OR NOT PETITIONER'S FAILURE TO SUBMIT THE RELEVANT DOCUMENTS IN SUPPORT OF ITS PROTEST WITHIN THE SIXTY-DAY PERIOD FROM FILING OF SAID PROTEST HAS RENDERED THE ASSESSMENT FINAL AND UNDISPUTABLE.

1.4 WHETHER OR NOT THE INSTANT PETITION WAS FILED WITHIN THE PERIOD PRESCRIBED BY LAW.

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WHETHER OR NOT RESPONDENT HAD LEGAL AND FACTUAL BASIS TO ASSESS PETITIONER THE DEFICIENCY INCOME TAX IN THE TOTAL AMOUNT OF PHP 37,071,889.50.

III

WHETHER OR NOT RESPONDENT HAD LEGAL AND FACTUAL BASIS TO ASSESS PETITIONER DEFICIENCY PERCENTAGE TAX IN THE TOTAL AMOUNT OF 30,852,334.03

IV

WHETHER OR NOT RESPONDENT HAD LEGAL AND FACTUAL BASIS TO ASSESS PETITIONER DEFICIENCY WITHHOLDING TAX ON COMPENSATION IN THE TOTAL AMOUNT OF 638,550.70.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not the assessment had become final, executory and unappealable.

THE COURT'S RULING

We rule in the affirmative.

Protest Letter Was Filed Way Beyond The Reglementary Period, As Such The Assessment Had Become Final, Executory And Demandable

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Respondent claims that petitioner failed to file a protest against the subject assessment within the thirty-day period prescribed in *Section 228 of the NIRC of 1997, as amended*, and *Revenue Regulations 12-99*. Hence, the assessment had become final, executory and demandable.

On the other hand, petitioner counters that it received the formal letter of demand with the final assessment notices only on October 26, 2007.

We agree with the respondent.

In this regard, *Section 228 of the NIRC of 1997, as amended*, provides:

"SEC. 228. Protesting of Assessment. –

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> 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 prescribed by implementing rules and regulations. xxx"

Corollarily, *Section 3.1.5 of Revenue Regulations 12-99* provides:

> "3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. 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,

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> 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.
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> xxx xxx
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> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable."

Pursuant to the aforequoted law and revenue regulations, the prescribed period to protest an assessment is thirty (30) days from receipt of the formal letter of demand and assessment notice.

In this case, records show and as stipulated upon by the parties in paragraph 3 of their Amended Joint Stipulation of Facts and Issues, petitioner received the formal letter of demand on October 10, 2004. Attached to the formal letter of demand are Details of Discrepancy *(Exhibits "D-3" and "D-4")* and Final Assessment Notices *(Exhibits "D-5" to "D-9")*.

There being no dispute that the formal letter of demand and assessment notices were received by the petitioner on October 10, 2004,

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petitioner had 30 days from October 10, 2004, or until November 9, 2004 within which to file its protest to the subject assessment.

Records show, however, that petitioner filed its protest letter only on November 24, 2004 *(paragraph 4, Amended Joint Stipulations of Facts and Issues dated July 4, 2006, and Exhibit "E")*. Hence, the protest letter was filed fifteen (15) days way beyond the 30-day reglementary period.

Thus, in *Republic vs. Hizon (320 SCRA 581-582)*, the Supreme Court ruled:

> "The contention has no merit. Sec. 229 of the Code mandates that a request for reconsideration must be made within 30 days from the taxpayer's receipt of the tax deficiency assessment, otherwise the assessment becomes final, unappealable and, therefore, demandable. The notice of assessment for respondent's tax deficiency was issued by petitioner on July 18, 1986. On the other hand, respondent made her request for reconsideration thereof only on November 3, 1992, without stating when she received the notice of tax assessment. She explained that she was constrained to ask for a reconsideration in order to avoid the harassment of BIR collectors. In all likelihood, she must have been referring to the distraint and levy of her properties by petitioner's agents which took place on January 12, 1989. Even assuming that she first learned of the deficiency assessment on this date, her request for reconsideration was nonetheless filed late since she made it more than 30 days thereafter. Hence, her request for reconsideration did not suspend the running of the prescriptive period provided under §223(c). Although the Commissioner acted on her request by eventually denying it on August 11, 1994, this is of no moment and does not detract from the fact that the assessment had long become demandable."

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Considering, therefore, that petitioner's protest letter was filed way beyond the 30-day reglementary period, the deficiency assessment for income, percentage and withholding tax on compensation had long become final, executory and demandable.

Petitioner's Failure to Submit The Relevant Supporting Documents Within the Time Prescribed Has Rendered The Assessment Final, Executory and Demandable

Furthermore, petitioner's failure to submit the relevant supporting documents within sixty days from filing of the protest has rendered the assessment final, executory and demandable.

Section 228 (e) of the NIRC of 1997, as amended, provides in part, "Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final." In conjunction thereto, *Section 3.1.5 of Revenue Regulations 12-99* provides, "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. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for

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scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation."

Records disclose that after petitioner's filing of its protest letter on November 24, 2004, petitioner did not submit any supporting document in support of its request for reinvestigation, which was granted by the BIR thru a Tax Verification Notice dated February 9, 2005 *(Exhibit "F")*. In fact, in the final decision on disputed assessment, petitioner's Protest Letter dated November 24, 2004 was denied for petitioner's failure to submit all the relevant supporting documents within sixty days from filing of the protest, pursuant to *Section 228 of the NIRC of 1997, as amended (Exhibit "K")*. Hence, the subject disputed assessment had long become final, executory, and demandable, and therefore unappealable.

As such, petitioner is, therefore barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of its tax liability on the merits *(Manila Electric Company vs. Barlis, 433 SCRA 33)*. The validity and correctness of the assessment had become binding and conclusive upon petitioner, as ruled by the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands (G.R. No. 134062, April 17, 2007),* to wit:

> "The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits *(Republic v. Court of Appeals, 149 SCRA 357)*. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments."

The foregoing conclusion makes it unnecessary for Us to pass on the other issues raised in this case by the petitioner for being moot and academic.

WHEREFORE, premises considered, the present Petition For Review is hereby **DISMISSED.**

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice