REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ALABANG COMMERCIAL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 314
(C.T.A. CASE NO. 6754)

Present:

ACOSTA, Presiding Justice
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

MAR 24 2008

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DECISION

PALANCA-ENRIQUEZ, J.:

A final demand letter from the Bureau of Internal Revenue, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals *(Commissioner of Internal Revenue vs. Isabela Cultural Corporation, 361 SCRA 72).*

THE CASE

This is a Petition for Review filed by Alabang Commercial Corporation (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *Revised Rules of Court* seeking to set aside the Decision dated May 31, 2007 and Resolution dated September 3, 2007 rendered by the First Division of this Court in C.T.A. Case No. 6754, the respective dispositive portions of which read as follows:

> "**IN VIEW OF THE FOREGOING,** the subject Petition for Review is hereby **DENIED**. Petitioner is **ORDERED TO PAY** the total amount of **ONE MILLION ONE HUNDRED THIRTY SEVEN THOUSAND NINE HUNDRED EIGHTEEN AND 21/100 PESOS (P1,137,918.21)** representing petitioner's unpaid interests on its deficiency income and value-added taxes for the taxable year 1999, computed as follows:
>
> | | | |
> |---|---|---|
> | Deficiency Income Tax-Interest | P | 3,602.05 |
> | Deficiency VAT-Interest | | 1,134,316.16 |
> | **Total Amount Due and Demandable** | **P** | **1,137,918.21** |
>
> In addition, a twenty percent (20%) delinquency interest on the total amount is imposed from July 31, 2003 until such time the amount is fully paid.
>
> **SO ORDERED.**"

> "**WHEREFORE,** there being no new matters or arguments advanced in petitioner's Motion for Reconsideration which may compel this Court to reverse, modify or amend the assailed Decision, the same is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

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

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, authorized to engage in the theater and cinema management, among others, with principal place of office located at the 5th Floor, Makati Stock Exchange Building, Ayala Avenue, Makati City, Metro Manila.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue with exclusive and original jurisdiction to (i) interpret the provisions of Republic Act No. 8424 (The Tax Code); (ii) to decide disputed assessments; (iii) to refund internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code and other laws administered

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by the Bureau of Internal Revenue, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

On February 26, 2003, petitioner received by registered mail the Formal Assessment Notice (hereafter "FAN") issued on January 24, 2003 by the respondent for deficiency 10% VAT on gross receipts derived from cinema and theater operations for calendar year 1999 in the amount of P2,609,281.32 inclusive of 20% interest from January 26, 2000 to February 24, 2003.

On March 10, 2003, petitioner filed its protest on the FAN.

Thereafter, on March 13, 2003 respondent issued his reply thereto, copy of which was received by petitioner on May 19, 2003, reiterating the deficiency VAT assessment against petitioner and amending the deficiency income tax assessment.

On July 22, 2003 petitioner received a letter dated July 15, 2003 from respondent acknowledging receipt of the payment of petitioner on July 8, 2003 of deficiency income tax, but stating that the same does not suffice the total amount due and reiterating petitioner's liability for deficiency VAT assessment with adjusted interest.

On July 31, 2003, petitioner paid under protest the amount of P1,614,763.65 representing the basic amount of VAT due on its 1999 cinema gross receipts pursuant to the BIR letter dated July 15, 2003.

On August 30, 2003 petitioner received the BIR Preliminary Collection Letter dated August 26, 2003 requesting payment of the amounts of P2,749,079.81 and P3,602.05, representing deficiency VAT and income tax for the year 1999.

On August 21, 2003, petitioner filed its Petition for Review before this Court, docketed as C.T.A. Case No. 6754, questioning the liability of petitioner to 10% VAT on gross receipts from the sale of cinema or theater tickets.

On May 31, 2007, the First Division rendered the assailed Decision dismissing the Petition for Review for being filed out of time.

On June 29, 2007, petitioner filed a Motion for Reconsideration, which was denied by the First Division in a Resolution dated September 3, 2007.

ISSUES

Hence, the present Petition for Review raising the following issues:

I

THE FIRST DIVISION OF THIS HONORABLE COURT COMMITTED AN ERROR IN FINDING THAT THE MARCH 13, 2003 LETTER OF RESPONDENT'S AUTHORIZED REPRESENTATIVE TO PETITIONER AS THE FINAL DECISION ON THE DISPUTED ASSESSMENT.

II

THE FIRST DIVISION OF THIS HONORABLE COURT COMMITTED AN ERROR IN NOT FINDING THAT THE PETITIONER WAS CORRECT IN CONSIDERING THE JULY 15, 2003 LETTER OF RESPONDENT'S AUTHORIZED REPRESENTATIVE (COPY OF WHICH WAS RECEIVED ONLY BY PETITIONER ON JULY 22, 2003) AS THE FINAL DECISION ON THE DISPUTED ASSESSMENT. HENCE, THE FILING OF PETITIONER'S PETITION FOR REVIEW ON AUGUST 21, 2003 WAS WITHIN THE STATUTORY PERIOD ALLOWED BY THE TAX CODE.

III

THE FIRST DIVISION OF THIS HONORABLE COURT COMMITTED AN ERROR IN DENYING THE PETITION FOR REVIEW BASED SOLELY ON TECHNICALITY AND NOT ON THE MERITS OF THE CASE.

On October 30, 2007, without necessarily giving due course to the petition, We required the respondent to file her comment, not a motion to dismiss, within ten (10) days from notice.

Respondent failed to file her comment thereto within the prescribed period.

Hence, the petition is now deemed submitted for decision.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not the letter dated March 13, 2003 of respondent constitutes the final decision of the CIR appealable to this Court.

THE COURT *EN BANC'S* RULING

The petition is not meritorious.

The March 13, 2003 letter sent by the Bureau of Internal Revenue to petitioner reads as follows:

> "This is in reply to your letter dated March 6, 2003 which was received by this office on March 10, 2003 concerning your protest against our Formal Assessment Notice (FAN) dated January 24, 2003 covering the amounts of P82,226.82 and P2,609,281.32 representing your deficiency income tax and value added tax for the taxable year 1999.
>
> In reply, please be informed that after evaluation of your justification, this office hold its position, in reference to your income tax liability, that the interest is still due and demandable from you pursuant to Section 249 (B) of the NIRC as amended. However, as previously issued assessment on income tax is hereby modified and amended to properly reflect the payment together with the interest. Shown below is the modified computation:

Taxable income per investigation	P	661,587.13
Add: Net Operating Loss Carry Over (NOLCO)		158,547.00
Adjusted taxable income	P	820,134.13

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Tax due thereon	P	270,644.26
Add: Interest (04.16.00 to 07.05.02)		120,269.86
Total amount still due	P	390,914.12
Less: Tax paid on July 5, 2002		331,322.81
Deficiency Tax	P	59,591.31
Add: Interest (07.06.02 to 03.20.03)		8, 424.41
Amount still due	P	68,015.72

The above computation clearly reflects that the interest you paid per investigation amounting to P96,999.06 for the period covering April 16, 2000 to July 5, 2002 as compared to interest computed above was understated by P23,270.80. However, this office found that you are not subject to the suggested compromise penalty as imposed by our Revenue Examiner of P16, 000 for late payment of such deficiency tax pursuant to RMC 46-99. However, your payment of P16,000 was applied in your deficiency tax liabilities.

Proof/Reconciliation:

Tax Effect of NOLCO			
Net Loss	P 158,547.00	Understatement of interest payment	P 23,270.80
Tax Rate	33%	Application of the Compromise penalty collected	16,000.00
Tax Consequence P	**52,320.51**	Amount due	P 7,270.80
		Deficiency Tax computed per Recomputation	59,591.31
		Diferrence	P 52,320.51

From the above, it would show that both computation is correct and would yield the same tax consequence, however, the interest resulted otherwise since there was an understatement interest payment.

With regards to your VAT liability, it is the opinion of this Office that you are still subject to VAT pursuant to Section 108 (A) of the NIRC which provides that "There shall be levied assessed and collected, a VAT equivalent to ten (10%) percent of gross receipts derived from the sale or exchange of services...'sale of exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by...lessors or distributors of cinematographic films..." Under Revenue Memorandum Circular No. 028-2001 quoting VAT Review Committee Ruling No. 031-2000 dated September 8, 2000, the dispositive portion of which reads: "...Gross receipts from admission of persons to places of amusement operated in the course of taxpayer's trade or business such as but not limited to cinema houses, become subject to 10% VAT beginning January 1, 1996".

With regards to the issue of double taxation, in the case of San Miguel Brewery, Inc. vs. City of Cebu, 43 SCRA 275, there is double taxation; "when the same person is taxed by the same jurisdiction for the same purpose." In your case, while you are subject to amusement tax collected by the Local Government pursuant to Section 13 of the Local Tax Code, making you subject to VAT as provided by the National Internal Revenue Code (NIRC), will not constitute double taxation since the Local Government pursuant to the Local Government Code and the BIR pursuant to the NIRC, are two different and distinct taxing authorities and with distinct and separate jurisdiction.

In view of the foregoing, our aforementioned assessment on income tax is hereby modified and amended and the corresponding assessment on VAT is hereby reiterated. In view of such, it is therefore requested that you pay your deficiency income tax and value added tax liability to a duly authorized agent bank in which you are enrolled on or before March 20, 2003 by accomplishing Payment Form (BIR Form 0605) and furnished this office a photocopy of the official receipt and duly received payment form as proof of your payment thereof.

Very truly yours,

(SGD.) ANSELMO G. ADRIANO
Assistant Regional Director"
(Exhibit "D")

Petitioner maintains that the First Division erred in considering the March 13, 2003 letter sent by respondent's authorized representative as the final decision on the disputed tax assessment. The language of the final decision must be clear and unequivocal in order to prevent the taxpayer to assume or speculate as to which actions or findings constitutes a final decision appealable to the Court of Tax Appeals.

[illegible]

Petitioner contends that the tenor of the March 13, 2003 letter conveys that it is just a reply to the protest it filed, which can still be modified or amended upon presentation of proper documents. In effect, said letter is only an advice made by respondent's authorized representative to the petitioner about the denial of its protest that is tentative in character. Further, petitioner has sufficient basis to believe that the July 15, 2003 letter sent by the respondent constituted the final decision on the assessment as such contained an express statement and strong warning that respondent would exhaust all legal remedies provided by the law in order to enforce the collection of deficiency tax.

Petitioner's contentions are devoid of merit.

Under the Tax Code, the revenue district officer sends the taxpayer a notice of delinquent taxes, indicating the period covered, the amount due including interest, and the reason for the delinquency. If the taxpayer disagrees with or wishes to protest the assessment, it sends a letter to the BIR indicating its protest, stating the reasons therefor, and submitting such proof as may be necessary. That letter is considered as the taxpayer's request for reconsideration of the delinquent assessment. After the request is filed and received by the BIR, the assessment becomes a disputed assessment on which it must render a decision. That decision is appealable to the Court of Tax Appeals for review *(Commissioner of Internal Revenue vs. Isabela Cultural Corporation, 361 SCRA 76)*.

Indisputably, petitioner received the Formal Assessment Notice dated January 24, 2003, stating that it had delinquent taxes due; and it subsequently filed its protest on March 6, 2003. The next communication petitioner received was already the March 13, 2003 letter and in consideration of such letter petitioner paid its assessed deficiency tax.

As aptly ruled by the First Division, the March 13, 2003 letter-reply was the final decision on the protest of petitioner to the Formal Assessment Notice, reiterating its deficiency taxes and effectively demanding its payment. In said letter dated March 13, 2003, respondent properly addressed the issues raised by petitioner in its protest letter. Respondent's position regarding the disputed assessment was clearly indicated in the final decision. It is this decision that is properly appealable to the Court of Tax Appeals for review, under RA 9282, in relation to *Section 3* of the *Revised Rules of the Court of Tax Appeals.*

Contrary to petitioner's view, the subsequent letter dated July 15, 2003 cannot be construed as the final decision of respondent regarding the assessed deficiency taxes, as said letter is a mere acknowledgement of the payment made by petitioner. The second letter of respondent was only an incident to the incomplete payment made by petitioner as it was alleged therein that the interest paid was not properly computed until the time of payment and no other new matters were raised therein, it being a mere reiteration of the previous letter.

In the light of the foregoing facts and circumstances, the letter dated March 13, 2003 is tantamount to a denial of the reconsideration or protest of the petitioner on the assessment made by the respondent, considering that said letter is in itself a reiteration of the demand by the BIR for the settlement of the assessment already made, and for the immediate payment thereof, despite the vehement protest of petitioner on March 6, 2003. This certainly is a clear indication of the firm stand of respondent against the reconsideration of the disputed assessment, for the continued refusal of the petitioner to pay the assessed deficiency taxes, hence, considered as the final decision of respondent. Furthermore, after the March 13, 2003 letter of respondent, the next thing petitioner did was to pay the assessed income tax. Thereafter, no further action was taken by petitioner.

Section 228 of the *National Internal Revenue Code of 1997* (hereafter "NIRC of 1997"), as amended, provides:

> "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: xxx
>
> xxx xxx.
>
> 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."

The law is explicit that the taxpayer is given thirty (30) days to appeal the decision to the Court of Tax Appeals and failure to do so would make the assessment and decision final and executory. Jurisprudence dictates that a final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested

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assessment (*Surigao Electric Co., Inc. v. Court of Tax Appeals, 57 SCRA 523, 526; CIR vs. Union Shipping Corp., 185 SCRA 547; Commissioner of Internal Revenue v. Ayala Securities Corporation, 70 SCRA 204, 209; Commissioner of Internal Revenue v. Isabela Cultural Corporation, 361 SCRA 77-79*).

The First Division correctly ruled that petitioner has thirty (30) days counted from May 19, 2003, petitioner's receipt of the final demand letter dated March 13, 2003 *(Joint Stipulation of Facts, CTA Case No. 6754)*, or until June 18, 2003 within which to appeal said final decision. However, records reveal that petitioner appealed the final decision to this Court only on August 21, 2003, way beyond the 30-day reglementary period. For failure of the petitioner to appeal the decision within thirty (30) days from receipt thereof, the final decision on the disputed assessment had long become final, executory and unappealable, pursuant to *Section 228* of the *NIRC of 1997*, as amended. As such, this Court cannot take cognizance of the present appeal. Thusly:

> "It is obviously unjustifiable for petitioner to take the July 15, 2003 letter of respondent as his final decision on its protest, and likewise deal with the March 13, 2003 letter also as a final decision on the matters raised. It is clear from the records of the case that when petitioner protested to the FAN issued against it, respondent issued his decision through the March 13, 2003 letter. The March 13, 2003 letter-reply not only reconsidered petitioner's protest on its deficiency income taxes, but likewise reiterated respondent's stand on

petitioner's liability for the value-added taxes on its gross receipts derived from its cinema/theater operations and demanded payment of the same. When respondent reiterated to petitioner his previous demand for petitioner to pay the deficiency tax assessments, this is deemed as his denial of petitioner's protest, thus, this denial is the decision appealable directly to this Court, or to the Commissioner, for that matter.

Futhermore, when petitioner settled the deficiency income tax assessment issued against it, it logically implies that petitioner must then have considered the March 13, 2003 letter as the final decision of the respondent on its protest. Thus, it cannot come to this Court and argue that the March 13, 2003 letter is not the final decision of the respondent when by its act of partially setting its tax liabilities, it had definitely considered the letter to be so.

It is extremely unfair for the government if the decision to choose which among the letters of the respondent should be considered as the final decision is left to the whims of the taxpayer.

The prescriptive periods allowed by law are made to benefit both the taxpayer and the government. For one, the government is benefited because tax officers would be obliged to act properly and promptly in making assessments. On the other hand, the taxpayer is benefited because after the lapse of the period of prescription, it would have the feeling of security against unscrupulous tax agents who would find an excuse to inspect its books, not to determine the latter's real liability, but to take advantage of every opportunity to molest law-abiding citizens. Even though laws on prescription are liberally construed in favor of the taxpayer in order to afford the aforementioned protection, this, however, does not mean that the taxpayer may sleep on its rights. anl

Petitioner argued that no mention of finality was written on both the March 13, 2003 and July 15, 2003 letters of respondent, and that, the reason why it opted to take the July 15, 2003 letter as the final decision was on the basis of the subsequent issuance of a Preliminary Collection Letter.

This is untenable.

As discussed earlier, it is not disputed by petitioner that it paid the deficiency income taxes assessed against it. No rational explanation may be derived from such act except that petitioner deemed the March 13, 2003 letter as the final decision of the respondent. By the issuance of the Preliminary Collection Letter, respondent was merely enforcing all the legal remedies provided for by law to enforce the collection of the deficiency tax assessments of petitioner.

Equally worth noting is the fact that the July 15, 2003 letter was issued not as a reply to the protest of petitioner, but rather, as an acknowledgment letter of petitioner's partial payment of deficiency income taxes. The letter may have mentioned petitioner's unpaid deficiency value-added tax assessment, nevertheless, prior to the July 15, 2003 letter, respondent already denied petitioner's protest on the said matter. In other words, the July 15, 2003 letter was not respondent's decision to petitioner's protest, nor can it be considered as the denial of protest for there was already a denial on the protest made, that is, through the March 13, 2003 letter-reply. To rule otherwise would then be allowing petitioner to circumvent the provisions of Section 228 of the NIRC of 1997 and in effect, render the said provision nugatory."

In the light of the laws and jurisprudence on the matter, We see no reason to reverse the assailed Decision dated May 31, 2007 and Resolution dated September 3, 2007 of the First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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 the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice