Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SOUTHERN NEGROS DEVELOPMENT CORPORATION, Petitioner,	**C.T.A. CASE NO. 7075**
	Members:
- versus -	**Castañeda, Jr.**, *Chairman* **Uy**, and **Palanca-Enriquez**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 0 6 2005

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RESOLUTION

This resolves:

a) respondent's "Motion To Dismiss" filed on April 21, 2005 anchored on the ground that the subject assessments had already become final, executory and unappealable, for failure of the petitioner to protest the assessments within thirty (30) days from receipt thereof; and

b) petitioner's "Comment/Opposition (to Respondent's Motion to Dismiss dated 20 April 2005)" filed on May 5, 2005.

In its Comment/Opposition, petitioner argues that: (a) respondent is barred from filing a Motion to Dismiss, pursuant to Section 1, Rule 6 of the CTA Rules; (b) void assessments never attain finality; and (c) this Court has jurisdiction to hear the case, under Section 7(a)(1) of Republic Act No. 9282.

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The motion is meritorious.

In his Answer filed on November 16, 2004, respondent alleged by way of special and affirmative defenses:

> "11. The assessments had already become final, executory and unappealable due to the failure of the Petitioner to protest the assessments within thirty (30) days from receipt thereof, as provided in Section 228 of the Tax Code. Hence, their correctness can no longer be disputed (Protectors Services, Inc. vs. Court of Appeals, 330 SCRA 404)."

Section 6, Rule 16 of the 1997 Revised Rules of Civil Procedure, as amended, provides:

> "**SECTION 6.** ***Pleading grounds as affirmative defense***. – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, <u>in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed</u>.

Pursuant to the above provision, an affirmative defense contained in an answer, such as prescription, may be regarded as having the effect of a motion to dismiss, and the complaint may be dismissed.

The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of R.A. No. 9282, the pertinent part of which states:

> "SEC. 7. Section 7 of the same Act is hereby amended to read as follows:
>
> Sec. 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

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Revenue or other laws administered by the Bureau of Internal Revenue;

xxx xxx xxx"

The word decisions in paragraph 1, Section 7 of R.A. 9282, quoted above, has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself *(Commissioner of Internal Revenue vs. Villa, 22 SCRA 6)*.

The same interpretation finds support in Section 9 of R.A. 9282 which provides:

> "**SEC. 9**. Section 11 of the same Section is hereby amended to read as follows:
>
> **Sec. 11.** ***Who May Appeal; Mode of Appeal; Effect of Appeal.*** - Any party <u>adversely affected by a decision</u>, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts <u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision</u> or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. *(Underscoring ours)*
>
> xxx xxx xxx"

The term "assessment" should not be confused with the term "decision" of the Commissioner. It is to be noted that assessment is the official action of an administrative officer in determining the amount of tax due from a taxpayer, or it may be a notice to the effect that the amount therein stated is due from the taxpayer as a tax with a demand for payment of the tax or deficiency stated therein ***(Aban, Law of Basic Taxation in the Philippines, Revised Edition)***. On the other hand, the word

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"decision" has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself ***(Commissioner of Internal Revenue vs. Villa, 22 SCRA 3 [1968])***. Without protest, the assessment becomes final, executory and demandable and could not be subject of an appeal to the Court of Tax Appeals. The Court of Tax Appeals can no longer amend, modify, much less set aside such final assessment. Thus, a taxpayer is now barred from disputing the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits ***(Republic vs. Court of Appeals, 149 SCRA 351)***.

Records show that on August 18, 2003, petitioner received the amended Assessment Notices dated July 2, 2003 from Regional Director Lirio A. Cabsaba, covering fiscal year 1997 and 1999, requiring it to pay deficiency income tax, value added tax, and documentary stamp tax. Without filing a protest or request for reconsideration thereof with respondent, petitioner filed the present Petition for Review before this Court on October 12, 2004.

As correctly pointed out by the respondent, petitioner did not file a protest to the assessment, within thirty (30) days from receipt of the assessment on August 18, 2003. Hence, for failure of the petitioner to file its protest within thirty (30) days from receipt of the assessment, makes the assessment in question final, executory and demandable, pursuant to Section 228 of the NIRC of 1997. Considering that the assessment had already become final and executory, the same is unappealable. As such, this Court cannot take cognizance of the present appeal.

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In view hereof, the Court is left with no recourse but to grant the motion.

WHEREFORE, premises considered, respondent's Motion to Dismiss is hereby **GRANTED**. Accordingly, the present Petition for Review is hereby **DISMISSED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On leave)
ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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