**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**LASCONA LAND CO., INC.,**
Petitioner,

- versus -

C.T.A. CASE NO. 5777

**COMMISSIONER OF INTERNAL REVENUE and NORBERTO R. ODULIO, Regional Director, Revenue Region No. 8, Makati City, BUREAU OF INTERNAL REVENUE,**
Respondent.

Promulgated:
JAN 04 2000

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# DECISION

This is an appeal from the letter dated March 3, 1999 of the OIC, Regional Director of Revenue Region No. 8, Makati City, denying Petitioner's request to cancel or set aside the assessment notice issued by the Bureau of Internal Revenue and demanding payment of the sum of P753,266.56 representing Petitioner's 1993 deficiency income tax liability.

The facts of the case are not disputed.

On March 27, 1998, the Commissioner issued Assessment Notice No. 0000047-93-407 against Petitioner for alleged deficiency income tax, surcharge, interest and compromise penalty for the year 1993 in the amount of P753,266.56, resulting from the disallowance of certain items claimed by Petitioner as deductions from its gross income specifically taxes and licenses in the amount of P323,600.00 and interest expense in the amount of P618,525.99. Petitioner received a copy of the said assessment on April 1, 1998 and protested the same on April 20, 1998.

Through a letter dated March 3, 1999 and received by Petitioner on March 12, 1999, Respondent informed Petitioner that while they agree with the arguments advanced in the latter's letter of protest, they cannot give due course to its request to cancel or set aside the assessment notice since the case was not elevated to the Court of Tax Appeals as mandated by the provisions of the last paragraph of Section 228 of the Tax Reform Act of 1997. This, according to Respondent, rendered the assessment notice final, executory and demandable.

On April 12, 1999, the instant Petition for Review was filed.

In his Answer, Respondent raised the following Special and Affirmative Defenses:

> "7. The Respondent's letter dated March 3, 1999 considering the 1993 deficiency income tax assessment, dated March 27, 1998, as final, executory and demandable, was issued pursuant to the provision of Section 228 of the NIRC;
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> 8. The pertinent provision of Section 228 provides:
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> "Section 228. Protesting of Assessment. - x x x
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> x x x x x x x x x
>
> 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 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 (30) days from receipt of said decision, or from the lapse of one hundred eighty (180) day period; otherwise, the decision shall become final, executory and demandable."
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> 9. Applying the foregoing provision of the Tax Code to the undisputed facts of the case at bar, Petitioner has 60 days from April 20, 1998, the date it filed a protest against the subject assessment or until June 19, 1998 within which to submit all relevant documents to support its protest. Thereafter, the BIR has 180 days from June 19, 1998 or until December 17, 1998 within which to rule on the protest.
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> Petitioner then has 30 days from December 17, 1998 or until January 16, 1999 within which to appeal to the Court of Tax Appeals.
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> 10.Clearly, the subject 1993 deficiency income tax assessments has already become final, executory and demandable.
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> 11.We find no merit to Petitioner's interpretation of the provision of Section 228 of the NIRC that "x x x a taxpayer has the choice on whether it should appeal or wait for a decision by the Commissioner if the latter fails to act on the protest within the 180-days period x x x." (par. 13 of the petition); and the subsequent phrase "x x x otherwise, the decision shall become final, executory and demandable, which clearly contemplates an actual decision being rendered and become final x x x" (par. 14 of the Petition). To concur with the aforequoted construction would render useless the 180-day rule mandating the BIR to decide on the administrative appeal."

Both parties agree that there is only one issue involved: whether or not the assessment has become final, executory and demandable because of the failure of Petitioner to appeal to this Court within thirty (30) days from the lapse of the one hundred eighty-day period mentioned in Section 228 of the Tax Reform Act of 1997.

For easy reference, the pertinent provisions of the above-mentioned Section 228 are hereby reproduced:

> **Section 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.
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> x x x x x x x x x
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> 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 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."

Petitioner argues that its failure to appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the 180-day period mentioned in the aforequoted Section 228 did not make the assessment final and executory simply because Respondent did not act upon the protest within the 180-day period. In such a situation, Petitioner contends that it had the option to appeal to the Court of Tax Appeals or to continue with the proceedings on its protest in the administrative level. Petitioner added however that once a decision is rendered by the Commissioner on the protest, the 30-day period to appeal from receipt of the decision is mandatory and this is precisely what Petitioner did.

In reaching the foregoing conclusion, Petitioner interprets the last paragraph of Section 228 as contemplating two situations. In the first situation, the Commissioner denies, in whole or in part, the protest filed by the taxpayer, while in the second situation, the Commissioner did not act upon the protest of the disputed assessment within one hundred eighty (180) days from the submission of all the documents relative to the protest. Petitioner maintains that if either of these two events occur, Section 228 of the Tax Code provides that the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the occurrence of any of the two events.

As such, according to Petitioner, the Legislature uses its words "advisedly." It specifically refers to a "decision" as distinguished from the "inaction" of the Commissioner. However, it is only the decision not appealed by the taxpayer that becomes final, executory and demandable and not the fact of the inaction of Respondent on the protest within the 180 day period.

From the foregoing, Petitioner concludes that it is very evident that the precise wording of Section 228 of the Tax Code leaves no room for interpretation beyond the clear and unmistakable language employed in the provision.

On the other hand, Respondent firmly believes that the subject 1993 deficiency income tax assessments dated March 27, 1998, has already become final, executory and demandable for Petitioner's failure to elevate its case to this Court within the period provided for under the said Section 228 of the Tax Code. Respondent disagrees with the Petitioner that a "taxpayer has the choice on whether it should appeal or wait for a decision by the Commissioner if the latter fails to act on the protest within the 180-day period". Such interpretation, according to Respondent, would render useless the 180-day rule mandating the BIR to decide on the administrative appeal.

We rule in favor of the Petitioner.

The wordings of Section 228 of the Tax Code clearly provide that it is only the decision not appealed by the taxpayer that becomes final, executory and demandable. Otherwise, the authors of the law could have easily included the word assessment as also becoming final, executory and demandable should the BIR fail to act on the protest within 180 days. As aptly cited by Petitioner, in Commissioner of Internal Revenue vs. Villa, 22 SCRA 3, the Supreme Court held:

> "The word 'decisions' in paragraph 1, Section 7 of Republic Act 1125, 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. We quote what this Court said aptly in a previous case:
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> > "In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, x x x"
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> The same interpretation finds support in Section 11 of Republic Act 1125, which states:

> "Section 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."
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> Note that the law uses the word 'decisions', not 'assessments', thus further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment but not the assessment itself."

Verily, in cases of inaction, Section 228 of the Tax Code merely gave the taxpayer an option: first, he may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180) day period provided for under the said section, or second, he may wait until the Commissioner decides on his protest before he elevates his case. This Court believes that the taxpayer was given this option so that in case his protest is not acted upon within the 180-day period, he may be able to seek immediate relief and need not wait for an indefinite period of time for the Commissioner to decide. But if he chooses to wait for a positive action on the part of the Commissioner, then the same could not result in the assessment becoming final, executory and demandable.

We agree with Petitioner that to adopt the interpretation of Respondent will not only sanction inefficiency, but will likewise condone the Bureau's inaction. This is especially true in the instant case when despite the fact that Respondent found Petitioner's arguments to be in order, the assessment will become final, executory and demandable for Petitioner's failure to appeal before Us within the thirty (30) day period.

**WHEREFORE**, in the light of all the foregoing, the Court finds the instant petition meritorious. ACCORDINGLY, the collection letter issued by the Respondent dated March 3, 1999 ordering Petitioner to pay its 1993 deficiency income tax liability in the amount of P753,266.56 is considered **WITHDRAWN** and of **NO EFFECT.**

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

**RAMON O. DE VEYRA**
Associate Judge

**AMANCIO Q. SAGA**
Associate Judge

## CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

**ERNESTO D. ACOSTA**
Presiding Judge