REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SOLID-ONE MILLS, PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1562
(CTA Case No. 8559)

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

JUN 01 2018 4:05 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This Petition for Review filed by petitioner Solid-One Mills, Phils. Inc., seeks to reverse and set aside the Decision[1] dated June 21, 2016 and the Resolution[2] dated November 7, 2016, respectively, of the CTA Third Division.

For easy reference, the dispositive portion of the assailed Decision reads:

[1] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino concurring, CTA *En Banc* Docket, pp. 32-45.
[2] CTA *En Banc* Docket, pp. 46-50.

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[4]

THE FACTS

The facts[5] as found by the CTA Third Division, are as follows:

> "Petitioner Solid-One Mills, Phils., Inc. is a corporation organized and existing under and by virtue of Philippine laws, with address at Km. 68 Laurel Highway, Barangay Darasa, Tanauan City, Batangas.
>
> On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner filed its Annual Income Tax Return (ITR) for taxable year 2007 on April 15, 2008.
>
> On August 5, 2008, petitioner received a Letter of Authority dated July 16, 2008 issued by BIR Revenue Region No. 9, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes from January to December 2007. *JC*

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[3] See Note 1, p. 44.
[4] See Note 2, p. 50.
[5] See Note 1, pp. 33-37.

In the letter dated February 15, 2010, Revenue Officers Aileen Grace Parra and Thelma Hernandez were assigned to continue the examination of petitioner's tax liabilities for taxable year 2007.

A Notice of Informal Conference dated November 23, 2010 was issued to petitioner, stating that after investigation it was found that petitioner has the following deficiency taxes:

Income Tax	₱ 796,847.51
Expanded Withholding Tax	10,894.01
Withholding Tax on Compensation	144,979.92
Improperly Accumulated Earnings Tax	1,917,611.31
GRAND TOTAL	₱ 2,870,332.75

Subsequently, a Details of Discrepancy for Taxable Year 2007 dated March 31, 2011 was issued to petitioner, which indicated a reduced assessment of the total deficiency taxes in the amount of ₱461,381.34, xxx

On July 25, 2011, petitioner received a Formal Letter of Demand dated June 30, 2011 from respondent, assessing it for various tax liabilities covering taxable year 2007, xxx

Consequently, petitioner filed a protest letter dated August 16, 2011, with the BIR Revenue Region No. 9 on August 24, 2011.

On September 30, 2011, petitioner received a letter dated September 6, 2011 issued by BIR Revenue Region No. 9, stating that the docket will be forwarded to Revenue District Office (RDO) No. 59-Lipa City for further evaluation. On the same date, petitioner received a letter dated September 20, 2011 issued by RDO No. 59, stating that the docket was being referred to them for reinvestigation.

On March 16, 2012, petitioner received a letter dated January 11, 2012 issued by BIR Revenue Region No. 9, stating that since petitioner failed to submit supporting documents, the assessment was deemed final and executory.

Petitioner received a Warrant of Distraint and/or Levy dated May 14, 2012 on May 31, 2012, issued against it by respondent for its alleged tax liabilities for taxable year 2008.

Finally, on September 19, 2012, petitioner received a Demand Letter dated September 17, 2012, stating that its internal revenue tax liabilities in the assessment notice dated June 30, 2011 remains unpaid and must be paid immediately.

Consequently, on October 18, 2012, petitioner filed the instant Petition for Review before this Court.

Respondent filed her Answer on January 2, 2013, interposing that the right of respondent to assess petitioner has not prescribed; that petitioner miserably failed to substantiate its protest with sufficient documents to prove the validity of its claim; that the assessments issued against petitioner have legal and factual bases; and that the assessments issued against petitioner are valid and lawful.

xxx xxx xxx

In the Notice of Pre-Trial Conference, the Pre-Trial Conference was set on March 15, 2013. Thereafter, on May 27, 2013, both the petitioner's Pre-Trial Brief and the respondent's Pre-Trial Brief were filed. However, during the hearing on May 30, 2013, petitioner's incomplete Pre-Trial Brief was considered withdrawn and the pre-trial conference was reset to June 20, 2013. On June 4, 2013, petitioner filed, through registered mail, its Pre-Trial Brief, which was received by the Court on June 19, 2013.

On August 12, 2013, the parties filed their Joint Stipulation of Facts and Issues. Subsequently, on August 30, 2013, the Court issued the Pre-Trial Order which terminated the pre-trial.

During the September 26, 2013 hearing for the initial presentation of petitioner's evidence, petitioner and its witness failed to appear. Thus, in the Resolution dated September 27, 2013, the Court dismissed the case for failure to prosecute. On October 10, 2013, petitioner filed a Motion for Reconsideration. This was granted by the Court in the Resolution dated November 19, 2013.

Thereafter, petitioner presented Mr. Ronnie N. Arojado, its accountant, as its lone witness.

Petitioner filed its Formal Offer of Evidence on January 28, 2014. xxx

On the other hand, respondent presented Revenue Officers Aileen Grace C. Parra and Ana Marie D. Perez as her witnesses.

On August 8, 2014, respondent filed a Motion for Leave to File and Admit Attached Formal Offer of Evidence. xxx

Subsequently, on February 2, 2015, respondent filed an Offer of Proof and prayed that her excluded evidence, xxx be put and made part of the records of the case. This was noted by the Court in the Order dated February 17, 2015, which deemed respondent's Offer of Proof as a tender of excluded evidence.

xxx xxx xxx

Thus, in the Resolution dated July 9, 2015, the instant case was declared by the Court as submitted for decision."

On June 21, 2016, the Court in Division rendered the assailed Decision which dismissed the Petition for Review for lack of jurisdiction. On July 12, 2016, petitioner filed its Motion for Reconsideration, which was denied by the Court in Division in the assailed Resolution.

Thus, on December 21, 2016, petitioner filed the instant Petition for Review.

On January 23, 2017, the Court issued a Resolution[6] requiring respondent to file his Comment, which he failed to file as per records verification.[7] On June 15, 2017, petitioner filed its Memorandum,[8] while respondent still failed to file the same.[9] Thus, on July 17, 2017,[10] the instant case was submitted for decision. Hence, this Decision.

THE ISSUES

The issues presented by the instant Petition are: (1) Whether the subject assessment had already prescribed; and (2) Whether the assessment is void for violation of due process.

THE RULING

The Court *En Banc* denies the instant Petition.

[6] Court *En Banc* Docket, pp. 72-73.
[7] Records Verification, Court *En Banc* Docket, p. 74.
[8] Court *En Banc* Docket, pp. 82-107.
[9] Records Verification, Court *En Banc* Docket, p. 108.
[10] Court *En Banc* Docket, pp.110-111.

The CTA has no jurisdiction to entertain the instant Petition

The Court *En Banc* observes that petitioner veered away from the issue of jurisdiction which is the essence of the assailed Decision and Resolution. Instead, petitioner preferred to argue on the issue of prescription of respondent's right to assess as well as its due process rights. Yet, before the Court *En Banc* may give consideration to the issues raised by petitioner, it is incumbent for it to first determine whether it may validly adjudicate on the merits of the case by determining whether it has jurisdiction therefor.

However, after careful review of the records, the Court *En Banc* finds that the CTA has no jurisdiction over the instant case.

Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, pertinently provides that any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue (CIR) may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling. Meanwhile, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides that if the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the CIR, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable.

In this case, records reveal that on March 16, 2012,[11] petitioner received the letter dated January 11, 2012 issued by BIR Revenue Region No. 9. Said letter categorically declared that petitioner's failure to submit supporting documents in connection with its request for reinvestigation rendered the assessment final and executory. Thus:

> "Please be informed that your failure to respond on the letter dated September 20, 2011 of the Revenue District Officer, RDO No. 59-Lipa City on the submission of supporting documents in connection with your request for reinvestigation made our assessment final and executory.
>
> xxx xxx xxx
>
> In view of the foregoing, your case will be forwarded to the Collection Division, this Region, for the enforcement of collection in accordance with law." ge

[11] Exhibit "P-6", Court in Division Docket, p. 314.

Based on the subject letter, it was categorically stated that the assessment had already become final and executory. This decision of respondent is further echoed by the fact that the letter already informed petitioner that its case shall already be forwarded to the BIR's Collection Division.

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*,[12] the Supreme Court ruled that a demand letter may be considered the final decision on a disputed assessment, if the language used or the tenor thereof shows a character of finality, which is tantamount to a rejection of the request for reconsideration.

Applying the *Oceanic case* in the instant case, the Court *En Banc* rules that the subject letter constitutes the final decision of respondent that is appealable to the CTA. In other words, said letter demonstrated a character of finality, such that there can be no doubt that respondent had already made a conclusion to deny petitioner's request and he had the clear resolve to collect the subject taxes.

Considering that the January 11, 2012 BIR letter constitutes the final decision of respondent, petitioner had thirty (30) days from March 16, 2012, or until April 15, 2012, within which to file its Petition for Review. However, petitioner filed its Petition before the Court in Division only on October 18, 2012. Since the Petition was belatedly filed, the CTA did not acquire jurisdiction over this case.

Consequently, since the Court *En Banc* has no jurisdiction to entertain the instant Petition, it follows that the Court *En Banc* likewise has no power to decide upon the issues presented by petitioner.

WHEREFORE, the instant Petition for Review is **DISMISSED** for lack of jurisdiction. Accordingly, the Decision dated June 21, 2016 and the Resolution dated November 7, 2016, respectively, of the CTA Third Division are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[12] G.R. No. 148380, December 9, 2005.

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With all due respect, please see my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SOLID-ONE MILLS, PHILS. INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1562
(CTA Case No. 8559)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JUN 01 2018 4:05 p.m.

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DISSENTING OPINION

MANAHAN, *J.*:

The ponencia dismissed the Petition for Review as it affirmed the Court in Division's Decision that the Court has no jurisdiction to decide upon the issues presented by the petitioner.

I am unable to join the majority opinion that decided to rule against the petitioner on the basis of the tenor of the letter of the Bureau of Internal Revenue (BIR) dated January 11, 2012 asserting finality in its decision. I quote portions of the majority opinion:

> "In this case, records reveal that on March 16, 2012, petitioner received the letter dated January 11, 2012 issued by BIR Revenue Region No. 9. Said letter categorically declared that petitioner's failure to submit supporting documents in connection with its request for reinvestigation rendered the assessment final and executory. xxx xxx xxx
>
> xxx xxx xxx
>
> Considering that the January 11, 2012 BIR letter constitutes the final decision of respondent, petitioner had thirty (30) days from March 16, 2012 or until April 15, 2012, within which to file its Petition for Review. However, petitioner filed its Petition for Review before the Court in Division only on October 18, 2012. Since the Petition was belatedly filed, the CTA did not acquire jurisdiction over this case."

I respectfully dissent.

Viewed from another perspective, I am inclined to consider the Demand Letter signed by Revenue Officer, Rebe D. Detablan dated September 17, 2012 (which was received by petitioner on September 19, 2012) as the final decision appealable to this Court making the Petition for Review filed on October 18, 2012 as having been filed on time.

The facts of this case present a jurisdictional issue, the resolution of which is intertwined with the determination of which letter should be considered as the Final Decision on Disputed Assessment (FDDA) appealable before this Court. The disparity between the majority's interpretation and petitioner's position as to what constitutes the FDDA is central to the resolution of whether or not the Court has jurisdiction to take cognizance of the case.

Section 228 of the 1997 NIRC provides as follows:

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

Relative thereto, the "Implementing Rules and Regulations" referred to in the foregoing provision is embodied in Revenue Regulations (RR) No. 12-99 which lays down, under Section 3 thereof, the due process requirement in the issuance of a deficiency tax assessment, thus:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.-
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment: xxx xxx xxx
>
> 3.1.2 Preliminary Assessment Notice (PAN). - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof.) If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. xxx xxx xxx
>
> 3. 1 .4. Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. xxx xxx.
>
> 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, 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. xxx xxx xxx

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

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.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

xxx xxx xxx

3.1.6 . Administrative Decision on a Disputed Assessment . – The decision of the Commissioner or his duly authorized representative shall: (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void, in which case, the same shall not be *considered a decision on a disputed assessment, and (b) that the same is his final decision."* (italics ours.)

Philippine jurisprudence is rich with decisions interpreting certain language used and actions taken by revenue officials to be the final decision appealable to this Court. The reason for the variety in decisions of this nature stems from the fact that in some instances, no such letter with the title "Final Decision on Disputed Assessment" is issued. Instead a Warrant of Garnishment (WOG) or a Warrant of Distraint/Levy (WDL)or a Final Notice Before Seizure (FNBS) etc., is issued leaving the taxpayers and ultimately the courts in a quandary on how to interpret which letter or action is contestable before this Court.

In a case decided by the Supreme Court (SC), it ruled that the issuance of a WDL was construed to be a final decision appealable to the CTA.[1] Subsequently, however, the SC, in another case, stated that the issuance of the WDL without any declaration on the part of the BIR that it is its final decision is not tantamount to a final decision appealable to this Court.[2] And in a later case, the SC held that a FNBS is equivalent to a denial because of the use of the words "last opportunity to pay, otherwise its properties would be subject to distraint and levy."[3]

In spite of the variety of decisions on what may be treated as a final decision appealable to this Court, the unifying rule is that **there must be finality in the tenor of the language which should be communicated unequivocally to the taxpayer.** In short, the taxpayer must be made aware, in no uncertain terms, that its protest has been denied giving the impression that recourse to the courts becomes a necessity. The law and the implementing rules require no less.

With this as a guide, it becomes imperative to analyze the two letters in contention.

The majority as well as the Court in Division considered the Demand Letter dated January 11, 2012[4] to be the FDDA appealable to this Court. I quote portions of the said letter, thus:

"Sir/Madam:

This refers to your 2007 tax liabilities involving the amounts of P858,177.58, P156,049.91 and P3,337,578.80 representing deficiency income, expanded withholding, withholding on compensation and accumulated earnings taxes, respectively per assessment notice dated June 30, 2011.

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[1] CIR vs. Algue, Inc. and the CTA, G.R. No. L-28896, February 17, 1988.
[2] CIR vs. Union Shipping Corporation and the Court of Tax Appeals, G.R. No. L-66160, May 21, 1990.
[3] CIR vs. Isabela Cultural Corporation, G.R. No. 135210 dated July 11, 2001.
[4] Exhibit P-6, Court Docket, page 314.

Please be informed that your failure to respond on (sic) the letter dated September 20, 2011 of the Revenue District Officer, RDO No. 59-Lipa City on the submission of supporting documents in connection with your request for reinvestigation made our assessment final and executory.

Pursuant to Section 3.1.5 of Revenue Regulations No. 12-99 the taxpayer may file a protest within thirty (30) days from receipt of the Formal Letter of Demand and Assessment Notice and shall submit the required documents in support of his protest within sixty (60) days from filing of his letter of protest.

In view of the foregoing, your case will be forwarded to the Collection Division, this Region, for the enforcement of collection in accordance with law.

Jose N. Tan
Regional Director"

In contrast, I quote significant portions of the Demand Letter dated September 17, 2012, thus:

"Sir/Madame:

Our records show that we sent to you an assessment notice dated June 30, 2011 for the collection of your internal revenue tax liabilities described here under (sic) which remains unpaid to date:

xxx xxx xxx

To avoid the accumulation of interest and surcharges pursuant to RMO 68-98 dated August 27, 1998 it is requested that you pay the aforesaid tax liability/ies within ten (10) days from receipt hereof at the Revenue District Office No. 59, Lipa City. However, if payment has already been made, please send or bring to us your copies of the receipts of payment together with this letter to be the basis for cancelling/closing your liability/ies. **Otherwise, we shall constrained (sic) to enforce the collection thereof through the administrative summary remedies provided for the law (sic) without further notice.**

We will appreciate your preferential attention hereon.

Very truly yours,

Rebe D. Detablan
Revenue District Officer"
(Emphasis supplied)

Guided by the law, regulations and jurisprudence on the type of decisions/actions which are contestable in the CTA, the wordings used in the aforequoted letter dated September 17, 2012 are descriptive of the tone which would impress upon the taxpayer that failure to heed the call for payment will result to the final action of collection through administrative remedies. Note the words '*otherwise, we shall be constrained to enforce collection through administrative remedies*" coupled with the words "*without further notice*" cannot but be interpreted by the taxpayer to be the final decision leaving the latter with no recourse but to seek judicial redress to restrain or at least delay the collection efforts of the BIR. In contrast, I find that the January 11, 2012 Demand Letter did not contain any definitive call for payment but rather a general threat to refer the case to the Collection Division for enforcement of collection *sans* any date or deadline for payment.

In the case of *CIR vs. Isabela Cultural Corporation*[5], the SC ascribed importance to the wordings used in the letter and the "threat" of collection to determine whether or not the letter is to be considered as the final decision, and I quote:

> "The letter itself clearly stated that respondent was being given this LAST OPPORTUNITY to pay, otherwise its properties would be subject to distraint and levy. How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?"

In CIR vs. *Ayala Securities Corporation and the Honorable Court of Tax Appeals*[6], the SC made mention that finality is to be construed in the letter's reiteration of the assessment issued against the taxpayer and the subsequent demand for its immediate payment, two elements which are present in the letter dated September 17, 2012, i.e., a reiteration of the assessment issued and a demand for its payment within ten (10) days from receipt thereof.

In *Advertising Associates, Inc. vs. Court of Appeals*[7], the SC reiterated the importance of communicating, in no uncertain terms, the finality of the decision on the protest so

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[5] G.R. No. 135210, July 11, 2001.
[6] CIR vs. Ayala Securities Corporation and the Honorable Court of Tax Appeals, G.R. No. L-29485, March 31, 1976.
[7] G.R. No. L-59758, December 26, 1984.

as to guide the taxpayer as to the steps to be taken all in the interest of fair play and regularity and I quote, thus:

> "The directive is in consonance with this Court's dictum that the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment. That procedure is demanded by the pressing need for fair play, regularity and orderliness in administrative action."

Further, it must be noted that the amount in the two letters in contention are different. In the letter dated January 12, 2012 and signed by the Regional Director, the total amount of taxes to be paid is Php4,351,806.29, detailed as follows:

Deficiency income tax	P 858,177.58
Expanded withholding tax	P 156,049.91
Withholding tax and IAET	P 3,337,578.80
TOTAL	P 4,351,806.29

Whereas in the Demand Letter dated September 17, 2012, the total amount of taxes to be paid inclusive of increments is P4,363,440.69. Apparently, the letter dated January 12, 2012 is not the last and final decision of the respondent as it subsequently issued *another* letter dated September 17, 2012 through its revenue officer in a slightly higher amount.

The fact that a subsequent letter dated September 17, 2012 was issued by respondent's representative, after the letter dated January 11, 2012 demanding payment of deficiency taxes, proves that the earlier letter was not yet the final decision. It was the later letter dated September 17, 2012 which constituted the final decision appealable to this Court

Petitioner could not be faulted when it considered the letter dated September 12, 2012 to be the final decision on its protest which is appealable to this Court, firstly because of the finality of the tone as evidenced by the language used by the representative of respondent and the "threat" of administrative summary remedies for collection if payment is not made within the prescribed period of ten (10) days, leading it to believe that the only recourse left is to appeal this "decision" to the Court. Secondly, the letter dated January 12, 2012 was not the final decision as evidenced by the subsequent letter dated September 17, 2012. Any confusion caused by the two letters should be resolved against the party who caused the confusion which in this case is the respondent.

The SC has admonished the Commissioner of Internal Revenue and his representatives for not using clear and unequivocal language in denying protests filed by the taxpayer and required that they use clear and unequivocal language, thus:

> "The Commissioner of Internal Revenue (CIR) as well as his duly authorized representative must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment. Words must be carefully chosen in order to avoid any confusion that could adversely affect the rights and interest of the taxpayer.
>
> xxx xxx xxx
>
> We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Viewed in the light of the foregoing, respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision."[8]

In the same case, it resolved any doubt as to the finality of the decision in favor of the taxpayer and against the Commissioner of Internal Revenue who apparently caused the confusion, as quoted hereinbelow:

> "Besides any doubt in the interpretation or use of the word appeal in the Formal Letter of Demand with Assessment Notices should be resolved in favor of petitioner, and not the respondent who caused the confusion."

WHEREFORE, in view of the foregoing, I humbly believe that the Court has jurisdiction over the Petition for Review filed on October 18, 2012 as the appeal was filed

[8] Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010.

within the thirty (30)-day period from receipt of the final decision of the respondent on September 19, 2012.

Accordingly, I vote that this case be **REMANDED** to the Court in Division for a complete determination of petitioner's tax liabilities, if any, for taxable year 2007.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice