REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CALBAYOG CITY WATER DISTRICT (CCWD) Rep. by its General Manager ARNULFO W. BANZON,
Petitioner,

C.T.A. CASE NO. 7145

Members:

\- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

THE REGIONAL DIRECTOR and THE REVENUE, DISTRICT OFFICER BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 03 2006

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RESOLUTION

For resolution is respondent's Motion to Dismiss filed on September 15, 2005 sans Comment/Opposition from petitioner. Respondent argues that the Court lacks jurisdiction over the instant case since the assessment attained finality for failure of petitioner to file an administrative protest against it.

The pertinent facts borne by the records are as follows:

On April 23, 2004, respondent issued a Preliminary Assessment Notice ("PAN") finding petitioner liable for deficiency taxes for the year 2000.[1]

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[1] BIR Records, page 0139

Thereafter, respondent released a Formal Letter of Demand with Assessment Notices dated April 26, 2004[2] which was received by petitioner on May 3, 2004[3].

Respondent then issued an Amended Assessment Notice with the corresponding Amended Formal Letter of Demand dated August 2, 2004.[4]

On October 21, 2004, respondent issued a Preliminary Collection Letter demanding the immediate payment of petitioner's unpaid tax liabilities under Amended Assessment Notice/Demand Letter. [5] Then, on October 26, 2004, respondent issued a Warrant of Garnishment received by petitioner on November 3, 2004[6].

On November 17, 2004, respondent received petitioner's request for reinvestigation filed thru the Office of the Government Corporate Counsel. This request for reinvestigation is dated November 10, 2004.[7]

As a consequence of the issuance of the said Warrant, petitioner filed with the Regional Trial Court of Calbayog City an Action for Injunction with Prayer for Temporary Restraining Order docketed as Civil Case No. 887. On December 8, 2004, during the pendency of the Action for Injunction, respondent denied petitioner's request for reinvestigation for petitioner's failure to move for reinvestigation within the period prescribed by law.[8]

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[2] BIR Records pages 140-143
[3] Annex I of the Petition for Review
[4] BIR Records, pages145-147
[5] Annex A of the Petition for Review
[6] Annexes B & C of the Petition for Review
[7] BIR Records pages 176-191
[8] BIR Records, page 0197

The RTC of Calbayog rendered a Decision on January 13, 2005 dismissing the case upon finding that it had "no power, authority or jurisdiction to treat, grant, or give due course" to it.[9]

On January 14, 2005 petitioner received another Warrant of Garnishment dated January 12, 2005 which includes computed interest until January 31, 2005.[10]

Thus, this Petition for Review filed on February 14, 2005. On May 31, 2005, respondent filed an Answer and on September 15, 2005 this Motion to Dismiss.

Applicable are the following provisions of law:

First, *SEC. 228 of the National Internal Revenue Code of 1997* ("NIRC") which reads:

> "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*: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> (a) XXX
> (b) XXX
> (c) XXX
> (d) XXX
> (e) XXX
>
> 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.
>
> 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.***

[9] BIR Records, pages 209-217
[10] Annexes D, E, F, G and H of the Petition for Review

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." *(Emphasis Supplied)*

Second, *Revenue Regulations No. 12-99*:

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

xxx xxx xxx

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

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. 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. XXX

> ***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.*** xxx"

And lastly, *Section 7 (a) (1) Republic Act 9282* which provides that the Court of Tax Appeals exercise appellate jurisdiction to review by appeal **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 Revenue or other laws administered by the Bureau of Internal Revenue.

In sum, for the Court to acquire jurisdiction, the assessment should be a disputed one. This means that the assessment was administratively protested within the period provided for by law.

In this case, the receipt of the original assessment notice on May 3, 2004 is clearly stamped on petitioner's copy of the said notices which is annexed to the Petition for Review. Anent the amended assessment, petitioner categorically declared in its letter dated August 31, 2004 that it received the amended assessment notice on August 18, 2004.[11]

Sec. 228 of the NIRC of 1997 requires that the taxpayer shall comply with the periods indicated therein defining the stages of the protest. One of the periods provided therein is the 30-day period within which to file an administrative protest. It is an integral part of the remedies given to the taxpayer in challenging the legality or validity of an assessment and is

[11] BIR Records, pages 0149-0150

absolutely necessary for the taxpayer to fulfill in order for this court to acquire jurisdictions.[12]

Petitioner has 30 days from the receipt of the assessment on August 18, 2004 within which to administratively protest or request a reinvestigation or reconsideration of the assessment against it. Therefore, the request for reinvestigation by petitioner dated November 10, 2004 and received by respondent on November 17, 2004 did not qualify as a valid protest since it was not timely made. [13] Thus, the assessment attained finality and therefore the same is executory and demandable.

WHEREFORE, the Motion to Dismiss is **GRANTED** and the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[12] Singer Finance Corporation vs. Commissioner of Internal Revenue, CTA EB No. 10 (CTA Case No. 6743), March 4, 2005
[13] BIR Records, pages 0177-0190