REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ALLAN O. RAÑOLA,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6885

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
SEP 0 4 2006

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RESOLUTION

For this Court's resolution are:

1. respondent's "Motion to Dismiss" filed on June 7, 2006; and

2. petitioner's "Comment (On Respondent's Motion to Dismiss)" filed on July 5, 2006.

Respondent moves for the dismissal of the instant petition on the ground that the Court has no jurisdiction to take cognizance of the case as there is no decision on a disputed assessment as provided in Section 228 of the 1997 Tax Code and Rule 4, Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals. He argues that Section 228 of the National Internal Revenue Code of 1997 requires that there must be an assessment. Also, it is provided that it is the assessment that is the proper subject of a protest and not the Notice of Informal Conference, as what has happened in this case. As there is no disputed assessment, there is nothing to appeal to this Court.

On the other hand, petitioner opposes this instant Motion to Dismiss on the ground that there was indeed a "disputed assessment" which can be elevated to this Court for review. Based on the letter of the Regional Director of the Bureau of Internal Revenue, Revenue Region 10, dated January 28, 2004,[1] it was explicitly written that "a formal letter of demand was issued by the BIR on December 9, 2003", while making reference to the Notice of Informal Conference as the "Preliminary Assessment Notice" in his letter dated November 25, 2003.[2] Thus, in view of the Regional Director's statements, petitioner was then obliged to act accordingly and assume that the standard procedure was followed in the issuance of assessment notices. Otherwise, he would then have lost his right to protest the same.

Moreover, on the assumption that there was no assessment notice issued by the respondent, the Regional Director's letter of January 28, 2004[3] should be considered as the Final Decision of the respondent on the disputed assessment, which decision is the proper subject of appeal to this Court.

After a most meticulous examination of the records of the case, this Court resolves to grant respondent's Motion to Dismiss.

Section 228 of the National Internal Revenue Code of 1997, in relation to Section 3 of Revenue Regulations No. 12-99, provides that:

Section 228. Protesting of Assessment. – When the Commissioner or his

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[1] Exhibit G
[2] Exhibit E
[3] Exhibit G

duly authorized representative finds that proper taxes should be assessed, he shall notify the taxpayer of his findings: provided, however, That a pre-assessment notice shall not be required in the following cases:

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 such 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 documents shall have been submitted; otherwise, the assessment shall become final.

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Revenue Regulations No. 12-99

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:

3.1.1 **Notice for informal conference**. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing**, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer **fails to respond** within **fifteen (15) days from date of receipt** of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

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 for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> 3.1.3 Exceptions to Prior Notice of the Assessment. — xxx
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> 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 (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
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> 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.
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(Emphasis and underscoring Ours.)

In sum, the respondent first issues a Notice of Informal Conference to the taxpayer based on his findings of tax deficiencies. Subsequently, a Preliminary Assessment Notice (PAN) is issued if, after a review and evaluation by the Assessment Division or the Commissioner himself or his duly authorized representative, it is found that the taxpayer is indeed liable to deficiency taxes. A protest may be filed by the taxpayer in answer to the PAN within fifteen (15) days from its receipt of thereof[4]. In case of the taxpayer's failure to protest or reply the PAN, or if the respondent is not satisfied with the protest or reply of the taxpayer, a Formal Letter of Demand and Final Assessment Notice shall then be issued by the respondent against the taxpayer based in his findings of deficiency taxes[5]. It is this Final Assessment Notice or Formal Letter of Demand which must be protested to by the taxpayer to result in a "disputed assessment."

In this instant case, petitioner is yet to receive the Formal Letter of Demand and Final Assessment Notice for the taxable year 2001 from the respondent. Reliance on the statement of the Regional Director's reply, that a Formal Letter of Demand dated December 9, 2003 has already been issued and sent, is erroneous. It must be emphasized that the filing of the protest is counted not from the knowledge by the petitioner of the issuance of an assessment notice, but rather, as the laws clearly state, from the **date of petitioner's receipt of the final assessment notice.** The period of thirty (30) days within which to file a protest to the final assessment notice is counted from the date of the receipt of the subject final assessment notice[6]. Thus, the decision or inaction on the protest by the respondent is appealable to this Court for proper resolution. Absent any Formal Letter of Demand, there can be no valid protest. It would be absurd to even consider that petitioner validly filed a protest to an assessment which it admittedly did not receive.

It is clear from the records of the case that the protest and correspondence between petitioner and the Regional Director pertain to the

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[4] Sec 3.1.2, Revenue Regulations 12-99
[5] Sec 3.1.4, Revenue Regulations 12-99
[6] Sec 228, National Internal Revenue Code of 1997

Notice of Informal Conference the latter issued on May 29, 2003. The alleged protest filed by petitioner was to question the findings as written on the Notice. Consequently, the denial of its alleged protest likewise pertained to the findings on the Notice. Verily, there was still no receipt of the final assessment notice and the filing of the present petition is pre-mature.

Finally, it is well settled that this Court is a court of special jurisdiction and, thus, may only try cases which are clearly within its jurisdiction as allowed by law.[7] Section 7(a)(1) of Republic Act No. 9282, otherwise known as the Act Expanding the Jurisdiction of the Court of Tax Appeals, specifically provides that:

> Section 7. Jurisdiction. The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 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 Revenue or other laws administered by the Bureau of Internal Revenue.

(Emphasis supplied.)

WHEREFORE, respondent's Motion to Dismiss is hereby **GRANTED**. Accordingly, the Petition for Review filed by petitioner on March 8, 2004 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[7] Commissioner of Internal Revenue vs. Villa, 22 SCRA 3