REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ALABANG COMMERCIAL CORPORATION,
Petitioner,

C.T.A. CASE NO. 6754

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 3 1 2007; 9:n Am

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DECISION

BAUTISTA, L., J.:

This case seeks the refund of petitioner's tax payment made under protest in the amount of **ONE MILLION SIX HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED SIXTY THREE AND 65/100 PESOS (P1,614,763.65)** representing the basic amount of value-added tax due on its 1999 cinema gross receipts it allegedly erroneously paid and, to effectively cancel 1999 deficiency value-added tax assessment issued on January 24, 2003 against it.

The facts as culled from the records are as follows:

Petitioner, Alabang Commercial Corporation, is a corporation duly organized and existing under the laws of the Philippines, authorized to engage in the theater and cinema management, among others, with principal place of office located at the 5th Floor, Makati Stock Exchange Building, Ayala Avenue, Makati City, Metro Manila.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with exclusive and original jurisdiction (i) to interpret the provisions of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997" (hereinafter referred to as "Tax Code") and other tax laws, subject to the review of the Secretary of Finance; (ii) to decide disputed assessments; (iii) to refund internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code and other laws administered by the Bureau of Internal Revenue, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals (Section 4, Tax Code).

On February 26, 2003, petitioner received through registered mail respondent's Formal Assessment Notice (FAN) dated January 24, 2003 issued against it for deficiency income and value-added taxes (VAT) on the gross receipts derived from its cinema and/or theater operations for the calendar year 1999 in the amounts of P82,226.82 and P2,609,281.32, respectively, inclusive of the 20% interest from January 26, 2000 to February 24, 2003.

On March 10, 2003, petitioner filed its protest letter[1] questioning the subject deficiency income and VAT assessments. To this, respondent issued his letter-reply[2] dated March 13, 2003, which was received by petitioner on May 19, 2003, thereby amending his original deficiency income tax assessment to show the modified amount of P68,015.72, inclusive of the interest, however, denying petitioner's arguments as regards the deficiency VAT and reiterating his stand on petitioner's liability to pay VAT on its gross receipts derived from its cinema and/or theater operations.

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[1] Exhibit "C" and "C-1"
[2] Exhibit "D"

Subsequently, on July 8, 2003, petitioner paid through the Bank of the Philippine Islands the amount of P68,015.72[3] representing its deficiency income taxes for the taxable year 1999.

On July 22, 2003, petitioner received a facsimile copy of respondent's letter dated July 15, 2003 acknowledging his receipt of petitioner's deficiency income tax payment in the amount of P68,015.72. The same letter, however, further informed petitioner that its payment of P68,015.72 "*does not suffice the total amount due on you up to the time of payment. The amount you paid for interest was only up to March 20, 2003. Therefore, the interest covering the period March 21, 2003 up to July 8, 2003 remains to be unpaid.*"[4] Moreover, respondent reiterated his demand for the payment of petitioner's unpaid deficiency income and VAT assessments pursuant to its previous letters on or before July 31, 2003.

Petitioner then, on July 31, 2003, paid under protest the amount of P1,614,763.65 representing the basic amount of VAT due on its 1999 cinema gross receipts pursuant to BIR's letter dated July 15, 2003.[5]

Hence, this petition filed on August 21, 2003.

The issues as stipulated by the parties are as follows:

1. Whether or not the BIR letter dated July 15, 2003 denying the petitioner's protest against the alleged 10% deficiency VAT assessment on petitioner's cinema gross receipts for 1999 is the respondent's final decision on the matter.

2. Whether or not cinema gross receipts are subject to 10% VAT.

As regards the first issue raised by the parties, petitioner submits that respondent's letter of July 15, 2003[6] denying petitioner's protest against its deficiency value-added tax

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[3] As acknowledged by respondent in his letter dated July 15, 2003, Exhibit "F"
[4] Exhibit "F"
[5] Par. 6, Joint Stipulation of Facts and Restatement of Issues, Rollo, p.77
[6] Exhibit "H"

assessment for the taxable year 1999, is the final decision of the respondent which is the decision appealable to this Court. Accordingly, respondent's August 26, 2003[7] letter was already a Preliminary Collection Letter. Thus, it is clear from this act of respondent that he has resolved to deny with finality petitioner's protest against the deficiency VAT assessment and has proceeded with the collection of the amounts he had alleged to be deficiency taxes. Moreover, during the course of the trial, respondent did not adduce any evidence to support his allegation that the July 15, 2003 letter is not his final decision on petitioner's protest.

This Court disagrees.

Based on the records of the case, a Formal Assessment Notice (FAN) dated January 24, 2003[8] was issued by respondent against petitioner for deficiency income and value-added taxes for the taxable year 1999. This FAN was indisputably received by petitioner on February 26, 2003. Said FAN provided for the request that payment must be made otherwise a 25% surcharge shall be imposed pursuant to Section 248 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended. Consequently, petitioner, on March 10, 2003 filed its protest to the said FAN admitting its liability for the deficiency income taxes, but partially protesting the amount of interest imposed. On the same protest letter, the deficiency value-added tax assessment was likewise protested on the ground, among others, that gross receipts derived from admissions of persons to cinemas and theaters are subject only to the 30% amusement tax imposed under the Local Government Code and not to the 10% VAT under the Tax Reform Act of 1997.

As a reply to the said protest, respondent issued its March 13, 2003[9] letter acknowledging petitioner's protest on the interest due on its deficiency income tax assessment, while on the other hand, reiterating his deficiency value-added tax assessment against petitioner and effectively demanding its payment. This letter-reply was received by

[7] Exhibit "O"
[8] Exhibit "A"
[9] Exhibit "D"

petitioner on May 19, 2003[10].

Petitioner paid its deficiency income tax assessment in the amount of P68,015.72 through the Bank of the Philippine Islands on July 8, 2003. However, no other action to resolve the issue on its deficiency value-added tax assessment was taken by petitioner as regards the demand for the settlement of its deficiency valued-added tax assessment. What petitioner did was only to pay the deficiency income tax assessment without further appealing or seeking reconsideration of respondent's decision on petitioner's protest on the deficiency value-added tax assessment.

Pursuant to Section 228 of the NIRC of 1997, "*if the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from the 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.*"

In relation to this, Revenue Regulations No. 12-99, more particularly, Section 3.1.5, provides for the administrative remedies available to a taxpayer in cases where protests against assessments issued are filed before the Commissioner's duly authorized representatives. For expediency, the said section is quoted below, to wit:

> **Sec. 3.1.5**
>
> xxx xxx xxx
>
> In general, if the protest is denied in whole or in part, by the Commissioner of his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of the receipt of said decision, otherwise, the assessment shall become final, executory and demandable: **Provided**, however, **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from the date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and**

[10] Par. 4, Joint Stipulation of Facts & Issues, Rollo, p. 76.

> **demandable, in which case the protest shall be decided by the Commissioner.**
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable." (*Emphasis supplied*)

Clearly, from the foregoing provisions of law, petitioner, upon its receipt of the March 13, 2003 letter on May 19, 2003, had until June 18, 2003, or thirty (30) days from May 19, 2003, within which to elevate its appeal directly to this Court, or to the Commissioner of Internal Revenue himself. The law is clear. Petitioner has the option of either elevating its appeal to this Court or seek a reconsideration of the decision rendered by the Commissioner's authorized representative directly to the Commissioner. In other words, the petitioner is not wanting in remedies. The finality of the decision of the respondent's authorized representative may only be stayed once a motion for reconsideration is filed by petitioner directly to the Commissioner within thirty days from its receipt of the assailed decision. Otherwise, the decision denying in whole or in part petitioner's protest shall become final, executory and demandable.

However, petitioner failed to avail of the remedies as provided for by law. From the records of the case, petitioner, upon receipt of the March 13, 2003 letter-reply of the respondent to its protest, paid its deficiency income tax assessments without further taking any action on the reiterated findings by the respondent of its deficiency value-added tax assessment. Its failure then to timely elevate its appeal effectively made the deficiency tax assessments final and demandable.

It is obviously unjustifiable for petitioner to take the July 15, 2003 letter of respondent as his final decision on its protest, and likewise deal with the March 13, 2003 letter also as a final decision on the matters raised. It is clear from the records of the case that when petitioner protested to the FAN issued against it, respondent issued his decision through the March 13, 2003 letter. The March 13, 2003 letter-reply not only reconsidered petitioner's protest on its deficiency income taxes, but likewise **reiterated** respondent's stand on petitioner's liability for the value-added taxes on its gross receipts derived from its cinema/theater operations and demanded payment of the same. When respondent reiterated to petitioner his previous demand for petitioner to pay the deficiency tax assessments, this is deemed as his denial of petitioner's protest, thus, this denial is the decision appealable directly to this Court, or to the Commissioner, for that mater.

Furthermore, when petitioner settled the deficiency income tax assessment issued against it, it logically implies that petitioner must then have considered the March 13, 2003 letter as the final decision of the respondent on its protest. Thus, it cannot come to this Court and argue that the March 13, 2003 letter is not the final decision of the respondent when by its act of partially settling its tax liabilities, it had definitely considered the letter to be so.

It is extremely unfair for the government if the decision to choose which among the letters of the respondent should be considered as the final decision is left to the whims of the taxpayer.

The prescriptive periods allowed by law are made to benefit both the taxpayer and the government. For one, the government is benefited because tax officers would be obliged to act properly and promptly in making assessments. On the other hand, the taxpayer is benefited because after the lapse of the period of prescription, it would have the feeling of security against unscrupulous tax agents who would find an excuse to inspect its books, not to determine the latter's real liability, but to take advantage of every opportunity to molest law-abiding citizens. Even though laws on prescription are liberally construed in favor of the taxpayer in order to afford the aforementioned protection, this, however, does not mean that the taxpayer may sleep on its rights.

Petitioner argued that no mention of finality was written on both the March 13, 2003 and July 15, 2003 letters of respondent, and that, the reason why it opted to take the July 15, 2003 letter as the final decision was on the basis of the subsequent issuance of a Preliminary Collection Letter.

This is untenable.

As discussed earlier, it is not disputed by petitioner that it paid the deficiency income taxes assessed against it. No rational explanation may be derived from such act except that petitioner deemed the March 13, 2003 letter as the final decision of the respondent. By the issuance of the Preliminary Collection Letter, respondent was merely enforcing all the legal remedies provided for by law to enforce the collection of the deficiency tax assessments of petitioner.

Equally worth noting is the fact that the July 15, 2003 letter was issued not as a reply to the protest of petitioner, but rather, as an acknowledgment letter of petitioner's partial payment of deficiency income taxes. The letter may have mentioned petitioner's unpaid deficiency value-added tax assessment, nevertheless, prior to the July 15, 2003 letter, respondent already denied petitioner's protest on the said matter. In other words, the July 15, 2003 letter was not respondent's decision to petitioner's protest, nor can it be considered as the denial of the protest for there was already a denial on the protest made, that is, through the March 13, 2003 letter-reply. To rule otherwise would then be allowing petitioner to circumvent the provisions of Section 228 of the NIRC of 1997 and in effect, render the said provision nugatory.

In a nutshell, petitioner only had until June 18, 2003 within which to elevate its appeal to this Court. When this petition was filed on August 21, 2003, it was clearly beyond the period allowed by law. Accordingly, the same resulted in the finality of the deficiency value-added tax assessment issued against it. Petitioner then is liable for the deficiency value-added tax assessment, as well as, the balance on the deficiency income tax assessment. However, considering that petitioner has already paid under protest its basic deficiency value-added taxes for the taxable year 1999, it may only then be ordered to settle the interests on its deficiency income and value-added taxes it failed to pay.

As regards the second issue raised, this Court deemed it unnecessary to further discuss the same.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DENIED.** Petitioner is hereby **ORDERED to PAY** the total amount of **ONE MILLION ONE HUNDRED THIRTY SEVEN THOUSAND NINE HUNDRED EIGHTEEN AND 21/100 PESOS (P1,137,918.21)** representing petitioner's unpaid interests on its deficiency income and value-added taxes for the taxable year 1999, computed as follows:

Deficiency Income Tax-Interest	P 3,602.05
Deficiency VAT-Interest	1,134,316.16
Total Amount Due and Demandable	**P 1,137,918.21**

In addition, a twenty percent (20%) delinquency interest on the total amount is imposed from July 31, 2003 until such time the amount is fully paid.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division