REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HONDA CARS MAKATI, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5561

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 14 1998

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RESOLUTION

Before Us is respondent's motion to dismiss sent thru registered mail on March 13, 1998, praying that the petition for review filed by petitioner be dismissed on the ground of lack of jurisdiction. She contends that the action filed by petitioner before this Court is premature because the respondent has not yet rendered a final decision on the protest filed against the assessment for allegedly deficiency value-added taxes, hence this Court has no jurisdiction to take cognizance of this appeal.

Petitioner on its part contradicts respondent's contention by saying that "as an alter ego of the Commissioner of Internal Revenue, the final denial made by the Chief of Assessment Division of the BIR, constitutes a final denial of the Commissioner which warrants a review by this Court."

The provision of law in point is Section 7 of Republic Act No. 1125 and Section 10 of Revenue Regulations No. 12-85, which states:

> "*Section 7. Jurisdiction*-The Court of Tax Appeals shall exercise exclusive

> appellate jurisdiction to review by appeal, as herein provided-
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue (Underscoring supplied).
>
> x x x x x x x x x
>
> Section 10. Appeals of Decision of Commissioner or Regional Director to the Court of Tax Appeals. Final decision issued by the Commissioner or Regional Director may be appealed to the Court of Tax Appeals within 30 days from receipt thereof otherwise, the same shall become final and executory (Revenue Regulations No. 12-85).

The situation in this case is not of first impression. This Court had occasion to settle this controversy in the case of ***Anscor Land Management and Development Corporation vs. Commissioner of Internal Revenue***, CTA Case No. 5463 in a Resolution, dated July 30, 1997. Since the case at bar is likened under similar facts and circumstances obtaining, with the same principal question to contend with, We hereby adopt our ruling in said case and hereunder quote pertinent portions of said resolution:

> "It is unmistakably clear and vivid from the aforementioned provisions of law and regulations that what is reviewable by this Court on appeal, among others are the decisions of the Commissioner of Internal Revenue and Regional Directors. It is the

> intention of the law to give the taxpayer an opportunity to exhaust all administrative remedies before coming to this Court and on the other hand, give the Commissioner or the Regional Directors, as the case may be an opportunity to correct the mistakes committed, if any, by his subordinates. Thus, a party dissatisfied with the decision of the Chief of Assessment Division may appeal to the Commissioner or Regional Director, whose decisions are appealable to this Court in the manner and within the period prescribed by law and regulations. Since petitioner did not exhaust his administrative remedies, his recourse to this Court is premature.

In the most recent case of ***National Steel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5574 dated June 3, 1998***, this Court had the occasion to rule on a similar issue where it was reiterated that only the final decisions of the Commissioner of Internal Revenue and Regional Directors are appealable to the Court of Tax Appeals. We quote pertinent portions of said decision hereunder, thus:

> "As correctly pointed by the respondent Commissioner, this Court in the case of Anscor Land Management and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5463, July 30, 1997, resolved that what is reviewable by the Court on appeal, among others, are the final decision of the Commissioner of Internal Revenue and Regional Directors, giving emphasis to the official rendering the decision and the tenor of the decision."

In fine, a mere decision on a disputed assessment by the Chief of the Assessment Division of Revenue Region

No. 8 of respondent's Bureau, is not the one that is appealable to this Court.

WHEREFORE, in view of the foregoing, respondent's motion to dismiss is hereby **GRANTED**. The instant petition for review is hereby **DISMISSED**, without prejudice to petitioner's future recourse to this Court in the event that the respondent Commissioner of Internal Revenue or the Regional Director shall have finally render an adverse decision on the protest filed.

SO ORDERED.

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

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DISSENTING OPINION

In resolving the instant motion to dismiss filed by the respondent on April 01, 1998, the majority decided to grant the same on the ground that only the decision of the Commissioner or Regional Directors of the Bureau of Internal Revenue (BIR) on disputed assessment is appealable to this Court pursuant to BIR Revenue Regulations No. 12-85. In fine, a mere decision on a disputed assessment by the Chief of the Assessment Division of Revenue Region No. 8 of respondent's Bureau, which is the one presently appealed to this Court, has been held to be insufficient and not in accordance with law and regulations. With due respect, I beg to disagree with my esteemed colleagues.

It is well established and recognized in a number of cases that lower ranking officials of the BIR, acting for and in behalf of the Commissioner, have the delegated authority to act with finality on matters involving request for reinvestigation or reconsideration of protested assessments. In the case of Commissioner of Internal Revenue vs. Ayala Securities Corporation and the Honorable Court of Tax Appeals, 70

SCRA 209, the high Court considered a plain letter of the Chief of Manila Examiners of the Office of the Commissioner of Internal Revenue, wholly reiterating the demand by the BIR for the settlement of the assessment already made, as a clear indication of the final decision of the Commissioner against the reconsideration of the disputed assessment. The same was true when the Chief of the Income Tax Division issued assessment notices for and in behalf of the Commissioner (*Collector of Internal Revenue vs. Bohol Land Transportation Co. GR No. L-13099 April 29, 1960*).

In addition, this Court has had the opportunity to declare as respondent's final decision the acts and signatures of the Acting Regional director, Chief of the Assessment Department, and Chief of Accounts Receivable/Billing Division, all of the BIR. (Tomas B. Villamin vs. The Collector of Internal Revenue, CTA Case No. 258, Resolution, promulgated on July 31, 1956, pp.6-7; Philippine Rock Products, Inc. vs. The Collector of Internal Revenue, CTA Case No. 546, Resolution, promulgated on December 22, 1958, p.4; Cleomenes Fortaleza, Jr. vs. Collector, CTA Case No. 1527, Resolution, promulgated on December 22, 1964; Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, CTA Case 4668, promulgated on September 16, 1994)

The aforecited cases prove the point that not only the decisions of the Commissioner or the Regional Director of the BIR are appealable to this Court. Although Revenue Regulations No. 12-85 has specified that the final decision of the latter two persons are the ones appealable, it doesn't mean, however, that the same is exclusive especially considering that in the particular case the incumbent Commissioner herself has delegated further said authority to even lower officials of the BIR.

I always adhere to the pronouncement enunciated by the Supreme Court in *Advertising Associates vs. Commissioner of Internal Revenue, 133 SCRA 765*, which provides that:

> " 'The decision is in accordance with this Court's dictum that **the Commissioner should always indicate to the taxpayer in clear and**

> **<u>unequivocal language what constitutes his final determination of disputed assessment. That fair play, regularity and orderliness in administrative action</u>**. (*Surigao Electric Co., Inc. vs. Court of Tax appeals, L-25289, June 28, 1972, 57 SCRA 523*).' (Emphasis provided)"

This means that irregardless of the literal and exclusive mention of the Commissioner or the Regional Director in Revenue Regulations No. 12-85, the controlling factor in the determination of a final decision on a disputed assessment is founded on the Commissioner's clear and unequivocal language on what constitutes final decision on the same.

A review paragraph II.D of Revenue Memorandum Order (RMO) No. 37-94 duly issued by herein respondent Commissioner herself clearly states:

> "II.D The **Assistant Division Chief/Division Chief of Assessment Divisions in the Regional Offices for regional cases** or the Assistant Commissioner, Intelligence and Investigation Service for Tax Fraud Division cases **shall decide whether or not the protest to an assessment notice in accordance with the provisions of Section 229 and its implementing regulations, should be given due course** and whether the protest involves a question of fact or of law or both:" (Emphases supplied)

To my mind, the abovecited excerpt on the respondent's RMO is a crystal clear delegation of authority to the Assistant Division Chief/Division Chief of Assessment Division in the various Regional Offices to act for and in behalf of the Commissioner, in resolving protest cases. This view is expressly demonstrated in the final decision issued by Ms. Virginia P. Tomas, Chief of Assessment Division of Revenue Region No. 8 (Exh. "D"), thus:

"Sir/Madam:

> *Referring to your letter dated February 12, 1997 concerning your protest against the deficiency value added tax for the taxable year 1993 under Assessment/Demand Notice No. 01-946-93B-96-313 in the amount of P11,402,652.11, the subject matter of our assessment/demand notice dated January 17, 1997,* ***please be informed that after evaluation of the***

> ***facts in relation to law and regulations applicable on this case, this Office finds nonbases, legal or factual, to justify the reversion or even modification of the aforesaid deficiency tax assessment.***
>
> ***In view thereof, your protest is denied.*** *You are requested to settle/pay your aforesaid deficiency tax liability to the office of the Chief, Assessment Division, 5th Flr., Atrium Bldg., Makati City, Metro Manila, on the appointed date shown below, inclusive of 20% interest per annum for late payment, which shall be computed from due date of the assessment as shown in our assessment/demand notice until date of payment, pursuant to Sec. 249 (3) (c) of the NIRC, amended, in order that this case may be considered closed.*
>
> ***This is our final decision.***
>
> *Very truly yours,*
>
> *(SGD) Virginia P. Tomas*
> *Chief, Assessment Division*
>
> *Appointment date:*
>
> *October 08, 1997*
> (Emphasis supplied)

One thing is patently obvious in the above letter, Ms. Tomas is duly authorized to deny for and in behalf of her office (Revenue Region No. 8) the said request for reconsideration, otherwise, she would not officially have done it. Besides, if the authority of Ms. Tomas is merely recommendary, then she has no business sending a letter of final decision on the denial of said request for reconsideration to the petitioner. The presumption of law is that official duty has been regularly performed and, in this case, the presumption stands that ms. Tomas is so authorized to deny with finality letters of protest. As it is, the letter is too plain to be misconstrued. it simply denied with finality the request for reconsideration and correspondingly set an appointment date, not for any possibility of further review, but for the payment of the alleged deficiency tax liabilities therein.

Furthermore, the questioned RMO did not provide any administrative remedy or procedure whereby a taxpayer aggrieved by the decision of the Chief Assessment Division would be able to obtain an equal and speedy remedy in the administrative level. So that in the case of **Municipality of Trinidad vs. CFI, L-33899, June 28, 1993**, it was held that the rule of exhaustion of administrative remedies is inapplicable to cases where the question involved is essentially judicial, the act is patently illegal or performed without jurisdiction, or <u>the respondent official acted in utter disregard of due process.</u> In the absence of express administrative remedies, a recourse to such remedies become purely one of convenience or practicability and the rules on administrative remedies, as the case may be, would be inapplicable (Jose C. Vitug, Compendium of Tax Law and Jurisprudence, Third Ed., pp. 43-44).

ACCORDINGLY, I vote to **DENY** the instant motion for being untenable and without merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge