REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR LAND MANAGEMENT AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5463

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
JUL 30 1997

x - x

RESOLUTION

Respondent Commissioner of Internal Revenue, through a motion filed on April 10, 1997, seeks the dismissal of petitioner's appeal on the ground of lack of jurisdiction. He contends that the action filed by petitioner before this Honorable Court is premature since the respondent has rendered no final decision on the assessment made by BIR's Revenue Region No. 8, hence, this Court has no jurisdiction to take cognizance of said appeal.

Pertinent to the issue at bar is Section 7 of Republic Act No. 1125 and Section 10 of Revenue Regulations No. 12-85, which states:

> "SEC. 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 thereto, 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) (R.A. No. 1125)
>
> xxx xxx xxx."
>
> **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 thirty (30) days from receipt thereof, otherwise the same shall become final and executory. (Revenue Regulations No. 12-85)

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 <u>decisions of the Commissioner of Internal Revenue and Regional Directors</u>. 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 Director, 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.

Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute, *Verba legis non est recedendum*, or from the words of a statute there should be no departure (Globe-Mackay Cable and Radio Corporation vs. NLRC, G.R. No. 82511, March 3, 1992, 206 SCRA 701). It is also important to point out that it is the respondent Commissioner of Internal Revenue herself, who vehemently insists that there is as yet no final decision on the protest filed by the petitioner which is appealable to this Court. There is no better government official in this country other than the Commissioner of Internal Revenue who is in the best position to declare whether a decision on a protest is final or not, after all, she is the head of the government agency responsible for issuing tax assessments. Petitioner however continued to argue in its "Comment on Respondent's Motion to Dismiss" (pp. 81-83, CTA records) that the decision of the Chief of the Assessment Division of a Revenue Region constitutes the final decision appealable to this Court, pursuant to Revenue Administrative Order No. 10-95 implementing Executive Order No. 132, which provides in part that the Assessment Division of the Revenue Regional Office shall "review and act on all letters of protests, requests for reinvestigation and similar communications".

We disagree with the interpretation made by the petitioner. There is nothing in the abovequoted function of the Revenue Regional Office that would make us think that said office would have the final say on the protests filed by taxpayers. Neither does the respondent Commissioner of Internal Revenue interpret said Revenue Administrative Order in the same manner as the petitioner. However, we commiserate with the petitioner because admittedly the so-called "devolution" scheme of the Bureau of Internal Revenue embodied in large part in Revenue Memorandum Order No. 37-94, tends to confuse the taxpayers, particularly in the determination of the finality of the decision appealable to the Court of Tax

Appeals. Apparently, the respondent Commissioner of Internal Revenue, by virtue of her pronouncements in her Motion to Dismiss and subsequent Reply, pointed out that it is not only the tenor of finality embodied in a decision which is the key element constitutive of its appealability to the Court of Tax Appeals but it is also important to consider the government official who renders such decision. In this case, it should be the final decision of the Commissioner of Internal Revenue or the Regional Director, pursuant to Section 10 of Revenue Regulations No. 12-85 (supra). This particular interpretation is in conformity with Section 7 of Republic Act No. 1125 (supra).

ACCORDINGLY, finding merit with the respondent's proposition, the instant petition for review is hereby **DISMISSED,** without prejudice, for lack of jurisdiction.

SO ORDERED.

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SABA
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 10, 1997, 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.

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 No. 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 decisions 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 unequivocal language what constitutes his final determination of disputed assessment. That procedure is demanded by the pressing need for fair play, regularity and orderliness in administrative action.** (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 of 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:"(Emphasis 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 August 17, 1995 concerning your protest against the deficiency income tax, expanded withholding tax, excise tax and value added tax involving the amounts of P3,330,094.65, P4,055.34, P914,903.15 and P2,251,239.31, under Assessment No. 001653-90-052 and Demand No. 01-134-90B-94-B2-052, the subject of our assessment notices and letter of demands dated December 9, 1994, ***please be informed that after evaluation of the facts in relation to the law and regulations applicable on this case, this Office found no basis, legal or factual, to justify the reversal or even any modification of the aforesaid deficiency tax assessments.***
>
> ***In view thereof, your request for a reconsideration is denied.*** You are requested to pay your aforesaid deficiency tax liabilities 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 until date of payment as shown in our assessment notice/demand letter, pursuant to Sec. 249(3)(c), NIRC, 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:
>
> January 8, 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 the respondent official acted in utter disregard of due process. In the absence of express administrative remedies, a recourse to such remedies become purely one of convenience or practicability and the rules on administrative due process of exhaustion of 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