REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ST. ANTHONY ACADEMY OF IRIGA, INC.,
Petitioner,

\- versus -

C.T.A. CASE NO. 4569

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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R E S O L U T I O N

This Court is tasked to resolve the issue of whether or not the assessment issued by the respondent Commissioner of Internal Revenue against the petitioner St. Anthony Academy of Iriga, Inc., a non-stock educational institution, is already final, executory and demandable.

In a letter dated February 5, 1987 which was received by the petitioner on February 14, 1987, respondent issued a preliminary assessment to petitioner in the amount of P112,699.00 for the alleged 1985 deficiency income tax.

The letter claimed that the "deficiency arises from the disallowances of your claim for expansion of school facilities due to your non-compliance with

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the provision of BIR-MECS Regulation No. 6-84." (Petitioner's Exhibit "A"; C.T.A. Records, p. 71.)

On February 16, 1987, petitioner wrote respondent a letter-request dated February 9, 1987 explaining that:

> "(W)hile we had claimed in our 1985 Income Tax Return for deduction of expenses incurred in the expansion of school facilities, because of our ignorance of the existence of the said BIR-MECS Regulation No.6-84, we failed to submit and attach in our 1985 Income Tax Return the Information Return required by Section 4 of the said BIR-MECS Regulation No. 6-84. We wish to assure you however that the deductions for expenses incurred for expansion of facilities can easily be proven by an ocular inspection of the facilities constructed.
>
> Premises considered, may we respectfully request for your authority to allow us to submit the Information Return to substantiate our expenses for expansion of school facilities in our 1985 Income Tax Return. (Petitioner's Exhibit "B"; C.T.A. Records, p. 72)

Respondent, on January 22, 1988 formally issued an assessment notice dated January 5, 1988 in the amount of P163,907.01 computed as follows:

Net income per return	P 37,798.63
Add: Disallowance	
Expansion of facilities	1,089,190.22
Net income per review	P1,126,988.89
Tax due thereon	P 112,698.89
Add: Interest from 9-15-85	
to 1-5-88 (20%)	51,208.12
Total amount due and collectible	P 163,907.01

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Petitioner, on January 25, 1988, wrote the respondent requesting that the school be furnished a certified true copy of the BIR-MECS Regulation No. 6-84.

Another letter of July 29, 1988 was sent by the petitioner to the respondent questioning the validity of the said regulation.

In response to the first two letters sent by petitioner (dated February 9, 1987 and January 25, 1988), respondent issued his decision received by the petitioner on June 30, 1989, affirming the assessment in the amount of P163,907.01. He further stated that "(t)his constitutes the final decision of this office on the matter." (Petitioner's Exhibit "E-1"; C.T.A. Records, p.77)

Petitioner, however, did not appeal the decision before this Court but instead wrote respondent on July 10, 1989, requesting for a reconsideration of the decision.

After a Warrant of Distraint and/or Levy was served against petitioner on December 18, 1990, it filed this Petition for Review.

In his Answer, respondent prayed that the Petition for Review be dismissed since:

> "Petitioner failed to lodge its protest against the herein tax assessment within the 30-day period from receipt thereof on January 22, 1988 as provided for under Section 229 of the Tax Code thereby making the assessment final and unappealable" (Answer; C.T.A. Records, p. 55)

A "Motion to Dismiss" was thereafter filed on May 5, 1993 where respondent contended that:

> "It was only after the lapse of almost two (2) years from receipt of respondent's letter-decision on June 30, 1989, that petitioner instituted the instant appeal on January 16, 1991. xxx Clearly, the assessment has already become final, executory and demandable and the same is now beyond the powers of judicial review. Simply stated, this Honorable Court has no jurisdiction at this stage to take cognizance of the petition." .(Motion to Dismiss, p. 6; C.T.A. Records, p.119)

The pertinent provision of the Tax Code provides:

> "**Sec.** 229. *Protesting of assessment.*- When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulation within thirty (30)days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

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> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable. (Underscoring supplied)

The action had already prescribed.

This Court cannot interpret the petitioner's letter of January 25, 1988 as a protest because it merely requested respondent that the school be furnished a certified true copy of the aforesaid BIR-MECS Regulation No. 6-84 for information and guidance.

Protest is defined as "a complaint, objection or display of unwillingness usually to an idea or a course of action xxx; a gesture of extreme disapproval." (**Webster's Third New International Dictionary**, 1976 Ed.)

A mere request cannot be considered a protest as contemplated in the second paragraph of Section 229 of the Tax Code.

Furthermore, the July 29, 1988 letter does not deserve respondent's attention since it was filed beyond the 30-day period from the date of assessment.

With regard to the instant petition, it was filed beyond the period allowed by the Tax Code.

Petitioner is mandated to appeal before this Court the respondent's final decision within 30 days from receipt of the said decision or not later than July 30, 1989; otherwise, "the decision shall become final, executory and demandable." (Section 229)

His failure is fatal to his case since this Court cannot now take jurisdiction of the case on grounds of prescription and lack of a cause of action. (**Commissioner of Internal Revenue vs. Western Pacific Corp.**, 14 SCRA 105; **Republic vs. Lim Tian Teng Sons and Co. Inc.**, 16 SCRA 584)

Petitioner's claim that its request for reconsideration of the final decision forestalled the running of the prescriptive period is without merit. The respondent's letter of denial clearly indicates that it constitutes the final decision of the respondent on the matter.

The provision of law is clear and leaves no doubt as to its interpretation. The Supreme Court, through Justice Isagani A. Cruz, held in a similar case of **Elegado vs. Court of Tax Appeals** (173 SCRA 285) that:

> "(T)he most compelling consideration in this case is the fact that the first assessment is already final and executory and can no longer be questioned at this late hour. The assessment was made on February 9, 1978. It was protested on March 7, 1978. The protest was denied on July 7, 1978. As no further action was

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> taken thereon by the decedent's estate, there is no question that the assessment has become final and executory.
>
> xxx xxx xxx
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> In view of the finality of the first assessment, the petitioner cannot now raise the question of its validity before this Court any more than he could have done so before the Court of Tax Appeals."

Moreso, even assuming that the respondent did not categorically answered all the points raised by petitioner in his request, the latter cannot be excused from the requirements of Section 229 of the Tax Code since it is not precluded in raising the same points anew before this Court.

With regard to petitioner's opposition to respondent's "Motion to Dismiss", petitioner, quoting the cases of **Alonso vs Villamar**, 16 Phil 313; **Fonseca vs. Court of Appeals,** 165 SCRA 40; **Hernandez vs. Quintana**, 168 SCRA 99; **Serina vs. Court of Appeals**, 170 SCRA 421; and **Rinconada Telephone Co., Inc. vs. Buenviaje**, 184 SCRA 701, advanced the argument that each case should be decided on the merits free from the constraints of technicalities.

A cursory perusal, however, of the cases above cited reveals that the facts are different with the present case. The cases merely involved formal defects such as substitution of real party in

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interest and late filing of the approved record on appeal unlike in the instant case where prescription had already set in.

Lastly, petitioner opposed the motion since it contains no notice of hearing. It quoted the ruling of the Supreme Court in the case of **Bank of the Philippine Island vs. Far East Molasses Corporation**, 198 SCRA 689, thus:

> "The unrippled doctrine in this jurisdiction is that a motion that does not contain a notice of hearing is but a mere scrap of papers; it presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules and hence, the clerk has no right to receive it." (Opposition, p. 8; C.T.A. Records, p. 133)

Contrary to petitioner's allegation, notice of hearing was issued by this Court on May 11, 1993 received by petitioner through registered mail on May 12, 1993.

Furthermore, in the case of **Commissioner of Internal Revenue vs. Villa**, 22 SCRA 3, the Supreme Court held:

> "Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*.

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WHEREFORE, in view of all the foregoing, this Court hereby RESOLVES to GRANT the respondent's "Motion to Dismiss" of the instant Petition for Review for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, August, 26, 1993.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge

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