REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

GLOBAL BUSINESS HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7058

Members:

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

Promulgated:

MAY 1 7 2006

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RESOLUTION

This resolves:

1.) respondent's "Motion to Dismiss" filed on February 14, 2006 anchored on the ground of lack of jurisdiction over the case; for failure of petitioner to file an administrative protest against the Formal Letter of Demand;
2.) petitioner's "Opposition to the Motion to Dismiss" filed on March 10, 2006.

The Court finds merit in the motion.

Section 7 of Republic Act No. 9282 provides:

SEC. 7. Section 7 of the same Act is hereby amended to read as follows:

Sec. 7. Jurisdiction. - The CTA shall exercise:

188

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

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The word "decisions" in paragraph 1, Section 7 of R.A. No. 9282, quoted above, has been interpreted to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment. Definitely, said word does not signify the assessment itself. (Commissioner of Internal Revenue v. Villa, 22 SCRA 6).

The same interpretation finds support in Section 9 of R.A. No. 9282, which states:

SEC. 9. Section 11 of the same Act is hereby amended to read as follows:

Sec. 11. Who May Appeal; Mode of Appeal ; Effect of Appeal.- Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

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189

Note that the law uses the word "decisions," not "assessments" thus further indicating the legislative intention to subject to judicial review the decision of the Commissioner of Internal Revenue on the protest against an assessment, but, not the assessment itself. (Villamin vs. Court of Tax Appeals, 109 Phil. 896 [1960] cited in Commissioner of Internal Revenue vs. Villa, supra.)

Corollary thereto, Section 228 of the NIRC of 1997, as amended, provides:

> SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
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> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

190

> Within the period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said 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 supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from 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.

As correctly pointed out by the respondent, petitioner did not file an administrative protest to the Formal Letter of Demand with attached Assessment Notice, in violation of above-quoted Section 228 of the NIRC of 1997, as amended. Petitioner filed the present Petition for Review of respondent's Collection Letter dated August 23, 2004, instead of protesting the assessment immediately upon receipt of the Formal Letter of Demand and Assessment Notice.

Hence, for failure of the petitioner to file its protest within the prescribed period, the assessment had become final, executory and unappealable, pursuant to Section 228 of the NIRC of 1997, as amended. As such, this Court cannot take cognizance of the present appeal.

In view hereof, the Court is left with no recourse, but to grant the Motion to Dismiss.

91

WHEREFORE, premises considered the "Motion To Dismiss" is hereby **GRANTED**. Accordingly, the present Petition for Review is hereby **DISMISSED.**

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

192