REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SUBIC BAY MOTORS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 7042

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 2 1 2004

x - x

RESOLUTION

Submitted for resolution are the following motions:

1. petitioner's **"Urgent Motion to Set Petitioner's Motion to Lift Garnishment and/or TRO"** filed on September 2, 2004, and respondent's **Opposition to Application for a Temporary Restraining Order, Etc**. filed on September 7, 2004;

2. Office of the Solicitor General's "**Manifestation and Motion**" filed on September 9, 2004, and "**Addendum to the OSG's Manifestation and Motion dated September 8, 2004**" filed on October 6, 2004.

A brief narration of the history of the case is a follows:

Petitioner is a corporation organized under the laws of the Philippines with principal place of business as Bldg. 1457, Argonaut Highway, Subic Bay Free Port Zone, Olongapo City. Its principal business concerns the sale, through public auction, of imported motor vehicles, heavy equipment, construction equipment and other items of commerce. It conducts its auction sale and business exclusively within the confined area of the SSEZ (pars. 6 & 9, Petition for Review)

On separate dates, respondent issued various administrative regulations and circulars, imposing guidelines on the taxation of business enterprises within the ECOZONES of Subic, Clark, John Hay and Poro Point and other Special Economic Zones under PEZA, more particularly those enterprises connected with the sale of imported vehicles through public auction. The administrative circulars in effect imposed excise and value-added taxes against petitioner's income received from its conducted auction sales.

Aggrieved by such issuances, petitioner, together with another company, filed on June 18, 2003, before the Regional Trial Court of Olongapo City a civil case docketed as Civil Case No. 275-0-2003, to declare unconstitutional and ultra vires the following administrative issuances of herein respondent:

1. Revenue Regulations 1-95 dated January 24, 1995;
2. Revenue Regulations 12-97 dated August 7, 1997;
3. Revenue Regulations 16-99 dated September 27, 1999;
4. Revenue Memorandum Circular No. 31-2003 dated June 3, 2003; and
5. Revenue Memorandum Circular No. 32-2003 dated June 5, 2003.

admittedly used by herein respondent as his bases for the imposition and assessment of the questioned excise and value-added taxes against petitioner.

Pending the resolution of the civil case on the merits, petitioner prayed for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the respondent from proceeding with the imposition of the excise and value-added taxes. The lower court granted the said prayer in its Order dated August 1, 2003.

Aggrieved by said Order, herein respondent elevated the case to the Court of

Appeals by way of a Petition for Certiorari under Rule 65 of the Rules of Court and, subsequently, in a Resolution promulgated on March 31, 2004, the Court of Appeals declared the lower court as having no jurisdiction over the case and thus annulled the Order of August 1, 2003. Petitioner, therein complainant, then went up to the Supreme Court, raising the principal issue of "which court has jurisdiction to hear the challenge on the lack of power and unconstitutionality and ultra vires nature of the action of the respondent". The case was docketed as G.R. No. 163445.

Meanwhile, a 10-day Preliminary Notice, dated January 7, 2004, was sent by respondent to herein petitioner assessing it the amounts of P56,673,000.00 as deficiency excise tax and P28,309,422.17, as deficiency value-added tax or an aggregate amount of P84,982,422.17 for its July 5 & 6, 2003 auction sales.

Subsequently, respondent issued two separate Preliminary Assessment Notices dated April 13, 2004, assessing petitioner the total amount of P89,039,820.94 and P30,356,142.11 for deficiency excise and value-added taxes due from the auction sales conducted by petitioner on July 5 & 6, 2003 and November 15 & 16, 2003, respectively. Petitioner filed its protest-letter against the above-mentioned assessments.

Consequently, on May 11, 2004, respondent issued Formal Assessment Notices assessing petitioner the amounts of P90,529,327.11 as deficiency excise and valued added taxes due from the auction sales conducted by petitioner on July 5 & 6, 2003 and the total amount of P30,929,604.09 as deficiency excise and valued added taxes due from the auction sales conducted by petitioner on November 15 & 16, 2003.

Thereafter, Warrants of Garnishment were issued against petitioner.

Hence, on August 27, 2004, the present petition was filed before this Court.

On September 2, 2004, petitioner filed before this Court an "Urgent Motion to Set Petitioner's Motion to Lift Garnishment and/or Issue TRO". Instead of an answer, respondent filed an opposition to the said motion on the ground that petitioner failed to protest the Formal Assessment Notices issued on May 11, 2004 and, thus, such notices had became final, executory and unappealable. Accordingly, since the assessments had become final, executory and demandable, petitioner owes delinquent taxes which may be collected by respondent through the summary remedy of distraint of personal property pursuant to Section 207 (A) of the Tax Code.

Respondent further argues that an Order was already issued on September 2, 2004 by the Regional Trial Court of Olongapo City, Branch 72, in Civil Case No. 381-O-2004 entitled "Asia International Auctioneers, Inc. and Subic Bay Motors Corp. vs. RCBC, et. al.", wherein the banks served with the Warrant of Garnishment were "ordered to immediately honor and pay all incoming checks against the accounts maintained by the plaintiff with the said banks and to allow withdrawals of monies from the said accounts." (Annex 1, Respondent's Opposition) As such, the Order had practically rendered respondent's Warrants of Garnishment against petitioner's bank accounts ineffective.

After a careful and thorough scrutiny of the records of the case, this Court is inclined to rule against the petitioner.

First and foremost, Section 228 of the 1997 Tax Code provides:

> "**Section 228**. *Protesting an Assessment.* – x x x
>
> (a) x x x
> (b) x x x
> (c) x x x
> (d) x x x
> (e) x x x
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a 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." (Emphasis supplied)

When petitioner received the Final Assessment Notice on May 18, 2004, it had a period of thirty days to file its administrative protest with the respondent which it clearly and admittedly did not comply. In its petition, petitioner alleged that preliminary assessment notices issued by herein respondent were received by it. Therefore, there has been no formal assessment issued or received. Apparently, the Formal Assessment Notices of May 11, 2004 for deficiency excise and value added taxes in the aggregate amounts of P90,529,327.11 due from the auction sales conducted on July 5 & 6, 2003 and P30,929,604.09 due from the auction sales of November 15 & 16, 2003 were erroneously regarded by petitioner as Preliminary Assessment Notices. However, the fact remains that respondent had issued these Formal Assessment Notices and as petitioner admitted in its Petition for Review, these very same Formal Assessment Notices were indeed received by it.

Incidentally, there is no allegation as to when the Formal Assessment Notices were received by petitioner in order to determine when to commence the counting of the thirty (30) day period allowed by law within which to protest the said notices. Well settled is the rule that the date of issuance is the date of receipt unless another date of receipt is proven or shown. Thus, considering that there is no dispute as to whether or not the assessment notices were received by petitioner, the date of issuance, which is May 11, 2004, of the Formal Assessment Notices shall be deemed the date of receipt by petitioner. Pursuant to Section 3 (v) of Rule 131 of the Rules of Court, one of the disputable presumptions is that "a letter duly directed and mailed was received in the regular course of the mail." Consequently, petitioner had a period of thirty days from May 11, 2004 or until June 10, 2004 within which to file its protest with respondent Commissioner.

Unfortunately, a perusal of the records shows that petitioner did not protest the said Formal Assessment Notices within thirty (30) days from its receipt thereof. In fact, the allegations and evidence presented by petitioner merely show that it actually received and protested the preliminary assessment notices. However, petitioner received Formal Assessment Notices but did not file any protest. Based on its allegations, petitioner even considered the subject Formal Assessment Notices as preliminary assessment notices, which it admittedly received. As a result of this oversight or inattentiveness, the Formal Assessment Notices had already become final and could not be the subject of an appeal to this Court. Pursuant to Section 228 of the 1997 Tax Code, if the taxpayer fails to file an administrative protest within the 30-day reglamentary period, the assessment becomes final and unappealable. This means that after the lapse of the said thirty day period, the assessment may no longer be disputed either administratively or judicially through an appeal to this Court. The effect is thus to make the assessed tax collectible. As such, no appeal can be taken to this Court as there is no disputed assessment to speak of pursuant to Section 7 of R.A. No. 9282.

In this regard, Section 7 of R.A. No. 9282 ("An Act Expanding the Jurisdiction of the Court of Tax Appeals") provides in part:

> "**Section 7**. *Jurisdiction*. – The CTA shall exercise:
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> 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 revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> x x x x x x x x x
> (Emphasis supplied)

Under the aforequoted provision, it is clear that this Court's jurisdiction covers only assessments which are disputed. In this case, failure of petitioner to file its protest on time makes the said assessment undisputed and, thus, unappelable. Also, it must be stressed that the Court of Tax Appeals is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction (*Commissioner* *of Internal Revenue vs Villa, 22 SCRA 3*), the filing of a protest within the period prescribed under Section 228 of the 1997 Tax Code being a jurisdictional matter. Hence, failure of the petitioner to comply with the thirty (30) day statutory period would bar appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessment (*Commissioner vs. Western Pacific Corp., L-18804, May 27, 1965*). The assessments having become final, the same may no longer be amended, modified, much less, set aside by this Court.

Consequently, this Court is without competence to entertain the present petition, and is left with no recourse, but to dismiss the petition.

In view of the conclusion thus reached, the Court finds no need to resolve the other pending incidents for being moot and academic.

WHEREFORE, premises considered, 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