REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TRANS-ASIA POWER GENERATION CORPORATION,
Petitioner,

-versus-

C.T.A. CASE NO. 7005

Members:

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

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 10 2004

x - x

RESOLUTION

For resolution are respondent's Motion to Dismiss filed on September 8, 2004 praying for the dismissal of the Petition for Review filed by petitioner on June 18, 2004, and petitioner's Opposition thereto filed on October 14, 2004.

In his motion, respondent alleges that petitioner received an unsigned letter, dated April 26, 2004, on May 19, 2004 requiring petitioner to pay the amount of P52,647.04 for an alleged under withholding of tax on compensation and petitioner treated such letter as a denial of their protest, resulting to the filing of the instant petition. Respondent further claims that the aforesaid letter, which bears no signature of respondent's authorized representative, has no probative value and is a mere scrap of paper. It therefore should not be treated as the respondent's action on the protest. He claims that petitioner filed the Petition for Review in violation of Section 228 of the Tax Code which provides that if the protest is not acted upon within 180 days, the taxpayer may appeal to this Court within 30 days from the lapse thereof.

On the other hand, in its Opposition, petitioner avers that the Petition for Review is not anchored on the inaction of the respondent. It claims that the unsigned letter emanating from the Bureau is not to be treated as a mere scrap of paper and that the April 26, 2004 letter of the BIR is an official correspondence denying its protest. Besides, petitioner opted to wait until respondent decided on its protest before elevating the latter's decision to this Court within the reglementary period, as provided in Section 228 of the Tax Code.

The antecedent facts, as claimed by the petitioner, are as follows:

> 1. Petitioner received on November 17, 2000 a preliminary assessment notice, dated October 26, 2000, for an alleged deficiency withholding tax for the year 1998 in the amount of P44,155.43;
>
> 2. On December 1, 2000, BIR received from petitioner a letter dated November 29, 2000 protesting the said preliminary assessment with Annexes 1 to 6;
>
> 3. BIR sent a correspondence, dated December 12, 2000, informing the petitioner of its alleged non-receipt of Annexes 1 to 6

and requested petitioner to furnish anew the respondent with said annexes;

4. Petitioner, in its letter dated January 18, 2001 and received by the BIR on January 22, 2001, complied with the above-mentioned request;

5. On February 4, 2002, petitioner received from the BIR a final assessment notice No. WHT-823-98-02-949, dated January 29, 2002, for an alleged deficiency withholding tax on compensation for the taxable year 1998 in the amount of P45,647.04 (including interest as of February 28, 2002) and for an alleged compromise penalty of P7,000;

6. On March 5, 2002, BIR received a letter from petitioner reiterating its protest of the assessment;

7. On May 19, 2004, petitioner received an unsigned letter from the BIR, dated April 26, 2004, requiring petitioner to pay the amount of P52, 647.04. Otherwise, collection remedies will be initiated against it; and

8. On June 18, 2004 the present Petition for Review was filed.

In submitting the motion for resolution, both parties rely on Section 228 of the Tax Code, pertinent portions of which provide as follows:

> "**Section 228.** *Protesting of Assessment.* — . . .
>
> xxx xxx xxx
>
> **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 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 one hundred eighty (180) day period; otherwise, the decision shall become final, executory and demandable.**

The last paragraph of Section 228 contemplates two situations. In the first situation, the Commissioner denies, in whole or in part, the protest filed by the taxpayer; while in the second situation, the Commissioner did not act upon the protest of the disputed assessment, within one hundred eighty (180) days from the submission of all the documents relative to the protest. If either of these two events occur, Section 228 of the Tax Code provides that the taxpayer may appeal to the Court of Tax Appeals, within thirty (30) days from the occurrence of any of the two events (*Lascona Land Co. Inc. vs. CIR, CTA Case No. 5777, January 4, 2000*).

In cases of inaction, Section 228 of the Tax Code gives the taxpayer two options: first, he may appeal to the Court of Tax Appeals, within thirty (30) days from the lapse of the one hundred eighty (180)-day period provided for under the said section; or second, he may wait until the Commissioner decides on his protest before he elevates his case. This Court believes that the taxpayer is given this option so that in case his protest is not acted upon within the 180-day period, he may be able to seek immediate relief and need not wait for an indefinite period of time for the Commissioner to decide. But if he chooses to wait for a positive action on the part of the Commissioner, then the same could not result in the assessment becoming final, executory and demandable (*Lascona* case, *ibid.*).

The provision of Section 228 of the Tax Code is explicit that it is only the decision not appealed by the taxpayer that becomes final, executory and demandable. Otherwise, the authors of the law could have easily included the word assessment as also becoming final, executory and demandable should the BIR fail to act on the protest within 180 days.

Thus, in *Commissioner of Internal Revenue vs. Villa* (22 SCRA 3), the Supreme Court held that:

> "xxx The word 'decisions' in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the *decisions* of the Commissioner of Internal Revenue on the *protest* of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself. We quote what this Court said aptly in a previous case:
>
>> 'In the first place, *we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it*, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, xxx'
>
> "The same interpretation finds support in Section 11 of Republic Act 1125, which states:
>
>> 'Section 11. *Who may appeal; effect of appeal.* — Any person, association or corporation adversely

> affected by a *decision* or *ruling* of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such *decision* or ruling (Emphasis supplied).' xxx
>
> "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 on the protest against an assessment but not the assessment itself"

In this regard, paragraph F (2), Section III of Revenue Memorandum Order ["RMO"] No. 27-85 or the "Revision of Procedures on the Preparation and Release of Assessment Notices and Demand Letters" provides:

> "xxx xxx xxx
>
> "2) The letters of demand and assessment notices prepared in the National Office shall be signed by the Revenue Service Chief, Collection, in accordance with the provisions of Revenue Administrative Order No. 2-85. xxx" [Emphasis supplied.]"

Corollary thereto, Revenue Administrative Order [RAO] No. 2-85 provides:

> "TO: All Revenue Service Chiefs, Division Chiefs and All Others Concerned
>
> SUBJECT: Delegation of Authority to Sign Assessment Notices and Letters of Demand Prepared in the National Office
>
> In line with the new policies and procedures on the issuance of Assessment Notices and Letters of Demand enunciated in Revenue Memorandum Order 27-85 dated September 25, 1985, the signing of such documents is hereby delegated to the Revenue Service Chief, Collection.

The Revenue Service Chief, Collection, shall sign the letters and notices as follows:

For the Commissioner of Internal Revenue:

Revenue Service Chief
(Collection)

xxx xxx xxx

It is clear from the above-quoted RMO and RAO that the demand letter shall be signed by the respondent. Otherwise, there would have been no need to delegate the authority to sign such letters.

As aptly said by the respondent, the letter in question is a mere scrap of paper with no probative value and should not be treated as a denial of petitioner's protest since it is unsigned by him or his authorized representative. Just as an unsigned pleading produces no legal effect (Sec. 3, Rule 7 of the Rules of Court), so does an unsigned letter. It is not an official correspondence, nor is it an official act emanating from the Bureau.

Clearly from the foregoing, the instant petition is one that arose from the inaction of the respondent on the taxpayer's protest, and therefore the same should be filed within 30 days from the lapse of the 180-day period. As the 180-day period had lapsed, petitioner has to wait for a final decision on the protest by the respondent before filing its appeal.

WHEREFORE, premises considered, the "Motion to Dismiss" is hereby **GRANTED**. Accordingly, the Petition for Review is hereby **DISMISSED**, without prejudice.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice