REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATTY. WILFREDO T. SIAO,
Petitioner,

- versus -

C.T.A. CASE NO. 6397

COMMISSIONER OF INTERNAL REVENUE, ET AL.,
Respondents.

Promulgated:

SEP 10 2002

x - x

RESOLUTION

Submitted for resolution is a Motion to Dismiss filed by the respondents on July 18, 2002, on the ground that this court has no jurisdiction to act on the petition.

It is the position of the respondents that under Section 228 of the Tax Code, as amended, the assessment must be protested within thirty (30) days from receipt thereof, otherwise, it shall become final. Since petitioner had not administratively protested the assessment after his receipt thereof on January 30, 2002, the same had become final. Its validity and correctness could no longer be questioned. And this court has no jurisdiction to act on the petition.

In his Opposition to the Motion to Dismiss filed on August 20, 2002, petitioner argues that there was substantial compliance with the administrative protest, that there was a waiver on the part of the respondents for petitioner to file an administrative protest and that the procedural technicalities is to ensure the attainment of substantial justice and not to defeat the same.

We do not subscribe to petitioner's view of substantial compliance with the administrative protest. To clearly illustrate, Section 228 of the Tax Code, as amended, is partly quoted hereunder:

> **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 preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void.
>
> Within a period 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 investigation 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 the filing of the protest, all relevant documents shall have been submitted; otherwise, the assessment shall become final. (Underscoring ours.)

Prescinding from the above law, the taxpayer after having been notified of the preassessment result, shall respond to said preassessment notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. The assessment referred to this time which shall be issued by the Commissioner or his duly authorized representative, is the final assessment notice.

64

In the case at bar, petitioner responded to the preassessment notice by filing his protest (*Annex C, Petition for Review*). But despite said response, respondents proceeded to issue a final assessment notice against herein petitioner which the latter no longer protested. Because it is the contention of the petitioner that the protest he earlier made is a substantial compliance of the law as there was no new matter brought in the final assessment notice dated January 2, 2002 (*Annex D, Petition for Review*).

We do not agree. Naturally, the law and facts relied upon by the respondents in their preliminary assessment as well as in the final assessment would be the same. Whether or not petitioner will only have to reproduce the letter he already sent to the respondents is inconsequential. For it only happened that there was a few changes made in the final assessment notice. But this is not always so. That is why the requirement under Section 228 is being categorically provided. Anyway, it cannot be denied that petitioner would not be merely reproducing his letter, as in reprinting his letter or have it photocopied. He needed to make some changes if he had protested the final assessment issued against him. For one, he would be protesting the final assessment notice and not the pre assessment notice. For another, the amount to be protested would be different as the period involved already varied.

It must be pointed out that Section 228 provides that the assessment may be protested administratively by filing a request for reconsideration or reinvestigation. This only reinforces our view that the assessment referred to here is the final assessment notice which is the proper subject for reconsideration or reinvestigation, the same being a final decision of the Commissioner. Furthermore, said Section 228 does not allow a substantial compliance thereof as it clearly provides that failure to file a protest within thirty days from receipt of the assessment shall render the same final.

In addition, Section 7(1) of the Republic Act No. 1125 (The Act Creating the Court of Tax Appeals) provides that the Court of Tax Appeals shall have exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, among others. Thus, if the final assessment notice had not been protested as in this case, there would be no decision of the Commissioner to elevate to this court for review. In short, we acquired no jurisdiction over the case.

Petitioner likewise maintains that there was a waiver of the administrative protest due to the instruction written in the Details of Discrepancies appended to the Assessment Notice, *viz*:

> "If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency percentage tax assessment shall become final executory and demandable." (*Annex F, Petition for Review*).

We are not convinced. If Section 228 does not allow for a substantial compliance of the administrative protest requirement, with more reason that it does not permit a waiver of the requirement for administrative protest. The law is distinctly clear on the matter that failure on the part of the taxpayer to file a protest within thirty days from receipt of the assessment, the assessment shall become final.

A mere instruction of a Regional Director, albeit, erroneously, cannot override the clear mandate of the law. A statute is superior to an administrative directive and the former cannot be repealed or amended by the latter (*China Banking Corporation vs. Court of Appeal, 265 SCRA 327*). Besides, settled is the rule that the State is not bound

66

or estopped by the mistakes or inadvertence of its officials and employees (*Cudia vs. Court of Appeals, 284 SCRA 173; Philippine Bank of Communications vs. CIR, 302 SCRA 241).*

Finally, we concur with the petitioner that procedural technicalities are to ensure the attainment of substantial justice and not to defeat the same. We also agree that rules of technicality must be liberally construed. However, failure to comply with a mandatory requirement of Section 228 of the Tax Code, as amended, is not a mere procedural defect. It deals with the very substance of the law. And it cannot be over emphasized that the law provides that failure to file a protest within thirty days from receipt of the assessment, the assessment becomes final. The assessment having become final, this court has no jurisdiction to entertain the present petition.

IN VIEW OF ALL THE FOREGOING, the Motion to Dismiss is hereby **GRANTED**. Accordingly, the Petition for Review filed on February 20, 2002 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

ERNESTO D. ACOSTA
Presiding Judge

67