REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ALLIED BANKING CORPORATION,
Petitioner,

C.T.A. EB NO. 157
(C.T.A. Case No. 6981)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 0 2 2007 Apolinario

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D E C I S I O N

BAUTISTA, J.:

The Case

This is a Petition for Review under Republic Act ("R.A.") No. 9282, which seeks the review and reversal of the following:

1. The Resolution of the First Division of the Court of Tax Appeals promulgated on August 8, 2005 in C.T.A. Case No. 6981

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entitled "Allied Banking Corporation vs. The Commissioner of Internal Revenue", dismissing petitioner's Petition for Review dated May 3, 2004 for lack of jurisdiction, on the ground that the Formal Letter of Demand dated March 10, 2004 and Assessment Notice No. DST-2-01-000045 assessing petitioner of deficiency documentary stamp tax (DST) for the taxable year 2001 in the amount of P11,452,940.41 had become final and executory.

2. The Resolution of the First Division dated January 3, 2006 denying petitioner's Motion for Reconsideration filed on September 6, 2005, for lack of merit.

Antecedent Facts

Petitioner is a duly licensed commercial banking institution organized and existing under and by virtue of Philippine laws, with principal address at Allied Bank Center, 6754 Ayala Avenue, Makati City.

On February 5, 2004, petitioner received the Preliminary Assessment Notice (PAN) dated January 14, 2004 issued by the respondent notifying the petitioner that after an investigation was conducted by their office, petitioner was found to be liable to pay the amount of P11,255,010.05, inclusive of interests (from January 11, 2002 to February 26, 2004) and compromise penalty (representing deficiency DST on its Special Savings Account Deposits) for taxable year 2001.

On February 18, 2004, petitioner filed its protest to the PAN arguing that its Special Savings Account Deposits were not subject to the DST imposed by the respondent.

Subsequently, petitioner received the Formal Letter of Demand dated March 10, 2004 together with a copy of Assessment Notice No. DST-2-01-000045 assessing petitioner the total amount of P11,452,940.41, plus interest and compromise penalty, for deficiency DST on its Special Savings Account Deposits for taxable year 2001.

On the belief that the Formal Letter of Demand constituted the final decision on the matter of the assessment, petitioner filed a Petition for Review before the Court in Division on May 5, 2004.

On July 19, 2004, respondent filed his Answer and, as his special and affirmative defense, contended that the Court in Division had no jurisdiction to take cognizance of the case as the petition was filed six (6) days after the expiration of the reglementary period provided under Section 228 of the 1997 Tax Code.

On November 9, 2004, respondent filed his Motion to Dismiss. He argued that the Formal Letter of Demand dated March 10, 2004, which was received by petitioner's Tax and Collection Department Head Office on March 30, 2004, as evidenced by the stamp of receipt on respondent's original duplicate copy of the said demand letter had become final and executory for failure of petitioner to seasonably file its protest against said demand letter within thirty (30) days from receipt thereof.

The Ruling of the Court in Division

On August 8, 2005, the Court in Division granted respondent's Motion to Dismiss for the following reasons:

1. The filing of a Motion to Dismiss is allowed even after the filing of an Answer for special reasons i.e. when the court has no jurisdiction over the subject matter.

2. Respondent was able to prove that the date of receipt of the subject Formal Letter of Demand was on March 30, 2004, and not April 5, 2004 as alleged by petitioner. The Court in Division did not give credence to petitioner's sincere belief that the subject letter was actually received on April 5, 2004. According to the Court, the negligence of petitioner's employee who received the subject letter was grossly inexcusable.

3. The Formal Letter of Demand dated March 10, 2004 cannot be considered as the final decision appealable to the Court in Division. The petitioner should have filed a protest to the said assessment within the reglementary period provided by law pursuant to Section 228 of the 1997 Tax Code in order to make the assessment a disputed one. The final decision subject of appeal to the Court in Division must be a disputed assessment pursuant to Section 7(a)(1) of R.A. 9282.

4. Assuming *arguendo* that the subject Formal Letter of Demand was the final decision of the respondent, the petition for review was nonetheless filed beyond the thirty (30) day reglementary period mandated by law. The said Letter was received by the petitioner on March 30, 2004, hence, it had until April 29, 2004 to elevate the case to the Court in Division. Since the petition for review was filed

by petitioner on May 5, 2004, the same was filed out of time. Consequently, the assessment notice already became final and executory.

The dispositive portion of the Court in Division's Resolution of August 8, 2005, states as follows:

> "Wherefore, in view of the foregoing discussions, this instant Motion to Dismiss is hereby **GRANTED**. Accordingly, Petitioner's Petition for Review is **DISMISSED** for lack of jurisdiction, considering that the Formal Demand Letter dated March 10, 2004 and Assessment Notice No. DST-2-01-000045 assessing petitioner of deficiency documentary stamp taxes for the taxable year 2001 in the amount of P11,452,940.41 had become final and executory.
>
> **SO ORDERED**."

Not satisfied, petitioner filed a Motion for Reconsideration on September 6, 2005. In its Motion, petitioner insisted that the wordings of the Formal Letter of Demand issued by the respondent had the nature of finality considering the words "final decision" on the said Letter. Unconvinced, the Court in Division denied the Motion in its Resolution dated January 3, 2006, ratiocinating that the words "final decision" on the subject Letter was actually attached to the phrase "based on investigation." This means that the subject Letter was issued by the respondent in response to the protest against the PAN filed by petitioner on February 18, 2004. The Court in Division emphasized that the "protest" referred to in Section 228 of the 1997 Tax Code contemplates the protest on the final assessment notice (FAN) and not the protest on the PAN. Hence, a Bureau of Internal Revenue (BIR) demand letter sent to the taxpayer after his protest on the FAN is considered as the final decision of the Commissioner on the protest which is appealable to the Court in Division.

The Issues

Hence, the instant appeal via petition for review, with petitioner raising the following assignment of errors:

1. The Honorable First Division of the Court of Tax Appeals grievously erred in not holding that the Formal Demand Letter dated March 10, 2004 constituted the final decision of the Commissioner of Internal Revenue thereby ripening into a disputed assessment appealable to the Court of Tax Appeals; and

2. The Honorable First Division of the Court of Tax Appeals grievously erred in disregarding the acceptable reason of petitioner which excused the tardiness of petitioner, if any, in taking the appeal.

The Ruling of the Court En Banc

We rule that the Court in Division correctly dismissed petitioner's Petition for Review for lack of jurisdiction. Since petitioner failed to file a protest with the BIR under Section 228 of the 1997 Tax Code, the Formal Letter of Demand dated March 10, 2004 and Assessment Notice No. DST-2-01-000045 assessing petitioner deficiency DST for the taxable year 2001 in the amount of P11,452,940.41 had become final and executory.

The Court of Tax Appeals is a court of special appellate jurisdiction,[1] as such, the Court's jurisdiction may only be invoked in the particular instances enumerated in Section 7 of R.A. 1125, the law creating the Court of Tax Appeals, as amended by Section 7 of R.A. 9282.[2]

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[1] Moog Controls Corporation Philippine Branch v. Commissioner of Internal Revenue, C.T.A. E.B. No. 44 (C.T.A. Case No. 6700), May 10, 2005 citing Commissioner of Internal Revenue v. Ayala Securities Corporation and the Honorable Court of Tax Appeals, No. L -29485, March 31, 1976, [70 SCRA 204]).

[2] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank To The Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise known as the Law Creating the Court of Tax Appeals, And For Other Purposes"

Section 7 of R.A. 9282 enumerates the matters that are reviewable by the Court of Tax Appeals in the exercise of its appellate jurisdiction, to wit:

"Section 7. Jurisdiction. The CTA shall exercise:

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.

xxx xxx xxx"

(Emphasis supplied)

The Court in Division ruled that the Formal Letter of Demand dated March 10, 2004 is not a decision of the Commissioner of Internal Revenue in cases involving disputed assessments, pursuant to Section 228 of the 1997 Tax Code. For reference, said Section is partly reproduced as follows:

"Section 228. Protesting an 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:

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 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.
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> **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)

Petitioner argues that "for reasons **solely** attributable to the respondent Commissioner himself, the compliance with the foregoing procedure as demanded by the Honorable Court of Tax Appeals, First Division of taxpayers is rendered impossible." The crux of the controversy is the following paragraph in the Formal Letter of Demand dated March 10, 2004 issued by the respondent:

> "Your **subject protest** was based on the alleged ground that the Special Savings Deposits allegedly not among those enumerated by Section 180 of the NIRC....
>
> xxx xxx xxx
>
> It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. **This is our final decision based on investigation**. If you disagree, you may **appeal this final decision** within thirty (30) days from receipt hereof, otherwise said deficiency assessment shall become final, executory, and demandable." (Emphasis supplied)

Based on the foregoing wordings of the Formal Letter of Demand, petitioner avers that the respondent had already deemed petitioner's protest to the PAN as a "protest" such that its Formal Letter of Demand constituted its final decision based on the investigation. It claims that the respondent, through his

Deputy Commissioner[3] who signed the Formal Letter of Demand, did not direct petitioner to protest administratively said Letter but clearly instructed petitioner to appeal to the Court of Tax Appeals its final decision within thirty (30) days from receipt thereof. Otherwise, the deficiency tax assessment shall become final, executory and demandable.

Petitioner also alleges that the previous Formal Letters of Demand presented by petitioner were "totally different" from the subject Formal Letter of Demand. Thus, while it is true that petitioner is familiar with the procedure in protesting assessments, the peculiarity of the wordings of the subject Formal Letter of Demand led petitioner to act differently. The ambiguity in the wordings was caused by the respondent, hence, it should be construed against the latter. "Indeed, due to the very phraseology used therein, petitioner was impelled to **ADHERE TO AND FOLLOW** the respondent Commissioner's command in the subject Formal Letter of Demand precisely to avoid technicalities and in order to prevent the so-called 'final decision' of the respondent Commissioner from being final, executory and demandable if not 'appealed.' For doing so, it is now being penalized."

Petitioner's arguments are unmeritorious.

We agree with the pronouncement of the Court in Division that the required protest contemplated by the aforequoted Section 228 is the one assailing the Final Assessment Notice (FAN) and the Formal Letter of Demand and not the Preliminary Assessment Notice (PAN). This has been our consistent

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[3] Ms. Estelita C. Aguirre, Deputy Commissioner, OIC-Large Taxpayers' Service.

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stand on the matter.[4] Moreover, this is apparent from the provisions of *Revenue Regulations (RR) No. 12-99*[5], which implements the 1997 Tax Code provisions on assessments of national internal revenue taxes i.e. Section 228, to wit:

> " SECTION 3. **Due Process Requirement in the Issuance of a Deficiency Tax Assessment.** —
>
> **3.1 Mode of procedures in the issuance of a deficiency tax assessment:**
>
> 3.1.1 ***Notice for informal conference***. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes....
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> xxx xxx xxx
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> 3.1.2 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> 3.1.3 Exceptions to Prior Notice of the Assessment. — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:
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[4] Cebu Rosver Pawnshop vs. Commissioner of Internal Revenue, CTA Case No. 6425, March 17, 2003 citing FMF Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 6403, CTA Resolution, June 20, 2002.

[5] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty.

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3.1.4 ***Formal Letter of Demand and Assessment Notice***. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 ***Disputed Assessment*** — The taxpayer or his duly authorized representative **may protest administratively against the aforesaid formal letter of demand and assessment notice** within thirty (30) days from date of receipt thereof. . . .

xxx xxx xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that **if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative**, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." (Emphasis supplied)

Based on the foregoing provisions, it is clear that the protest referred to in a disputed assessment that is properly appealable to the Court of Tax Appeals is

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a protest on the Formal Assessment Notice (FAN) and Formal Letter of Demand as opposed to a protest on the PAN. In this case, petitioner filed only a protest on the PAN. It no longer filed a protest on the FAN and Formal Letter of Demand. Instead, it immediately filed a Petition for Review with the Court in Division since it literally followed the wordings of the subject Formal Letter of Demand signed by the Deputy Commissioner, stating that it is the respondent's final decision after investigation, hence, it should appeal the same within thirty (30) days from receipt thereof.

Petitioner's literal interpretation of the phraseology in the quoted paragraph of the subject Formal Letter of Demand is erroneous and defies logic in the light of relevant provisions of law and regulations. Revenue Regulations No. 12-99 clearly provides that the taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If the taxpayer fails to do so, the assessment shall become final, executory and demandable. Thus, the Court in Division correctly ruled that the DST assessment against petitioner had become final, executory and demandable sans a protest on the FAN and Formal Letter of Demand. Where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[6]

Furthermore, granting that the Formal Letter of Demand constituted the final decision of the Deputy Commissioner who is the Commissioner's duly authorized representative, it bears emphasis that the aforequoted Section 3.1.5

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[6] Ruben E. Agpalo, Statutory Construction Fifth Edition, (2003 ed.), p. 124.

of RR 12-99 **grants the aggrieved taxpayer the administrative remedy of elevating a protest to the Commissioner of Internal Revenue, within thirty (30) days from the date of receipt of the final decision of the Commissioner's duly authorized representative**. Logically, it can be reasonably surmised that this is the "appeal" referred to by the Deputy Commissioner in the subject Formal Letter of Demand. It is mind-boggling that petitioner, who admitted that it is familiar with the procedure in protesting assessments, appears to be unaware of the provisions of RR 12-99 which provides in detail the procedure on disputed assessments. Nevertheless, prudence dictates that a protest on the FAN should have been filed by petitioner either with the Deputy Commissioner or with the Commissioner of Internal Revenue.

In one case[7], the Supreme Court held that it is the Commissioner's decision on a disputed assessment which is properly appealable to the Court of Tax Appeals, to wit:

> "In the normal course, the revenue district officer sends the taxpayer a notice of delinquent taxes, indicating the period covered, the amount due including interest, and the reason for the delinquency. If the taxpayer disagrees with or wishes to protest the assessment, it sends a letter to the BIR indicating its protest, stating the reasons therefor, and submitting such proof as may be necessary. That letter is considered as the taxpayer's request for reconsideration of the delinquent assessment. After the request is filed and received by the BIR, the assessment becomes a disputed assessment on which it must render a decision. That decision is appealable to the Court of Tax Appeals for review.
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> **Prior to the decision on a disputed assessment, there may still be exchanges between the commissioner of internal revenue (CIR) and the taxpayer. The former may ask**

[7] Commissioner of Internal Revenue v. Isabela Cultural Corporation, G.R. No. 135210, July 11, 2001.

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clarificatory questions or require the latter to submit additional evidence. However, the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review." (Emphasis supplied)

The foregoing pronouncement is consistent with the general rule that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to the disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof. [8]

In this regard, Section 3.1.5 of RR 12-99 categorically describes a disputed assessment as follows:

"3.1.5 ***Disputed Assessment*** — The taxpayer or his duly authorized representative **may protest administratively against the aforesaid formal letter of demand and assessment notice** within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

xxx xxx xxx"

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[8] Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et.al., G.R. No 148380, December 9, 2005.

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In the present case, it is undisputed that petitioner received a Formal Letter of Demand and Assessment Notice. Hence, pursuant to the aforequoted provision, it is clear that a disputed assessment will arise only when a protest against the said Letter and Notice is filed by the taxpayer, regardless of any phraseology used therein to the effect that it is the final decision and that it should be appealed. Even if the subject Letter was signed by the Deputy Commissioner and contained the words "final decision," petitioner, nonetheless, should have filed a protest with the Commissioner of Internal Revenue. By failing to do so, there was no disputed assessment to speak of which would confer jurisdiction upon the Court in Division to try and hear the case as provided in Section 7(a) (1) of RA 9282.

Based on the foregoing discussion, We rule that the Court in Division did not err in dismissing petitioner's petition for review for lack of jurisdiction.

In addition thereto, the Court in Division can only take cognizance of an appeal from the decision or inaction of the Commissioner of Internal Revenue on a disputed assessment but not from the final decision of the Commissioner's duly authorized representative i.e. his Deputy Commissioner, where no protest on the FAN is filed by the taxpayer either with the Commissioner's authorized representative or with the Commissioner.

This is in consonance with the principle of exhaustion of administrative remedies which requires that resort be first made to the administrative authorities in cases falling under their jurisdiction to allow them to carry out their functions and discharge their responsibilities within the specialized areas of their competence. This is because the administrative agency concerned is in the best

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position to correct any previous error committed in its forum.[9] Thus, it has been held that it is the duty or legal obligation of the aggrieved party to determine if an appeal is allowed to a superior administrative officer within the agency concerned prior to filing an action in court.[10]

Since the procedure for protesting a disputed assessment of national internal revenue taxes is provided under Sections 228 of the 1997 Tax Code, as implemented by RR 12-99, petitioner's petition for review filed with the Court in Division was premature as it still had a remedy to elevate a protest to the Commissioner of Internal Revenue. As such, it should still be dismissed on the ground that petitioner failed to exhaust the administrative remedy stated above.

In view of the above ruling, the resolution of the second assigned error has been rendered unnecessary.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Resolutions dated August 8, 2005 and January 3, 2006 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[9] Angelita Morcal vs. Antonio Laviña, Teresita Laviña and the Director of Lands, G.R. No. 166753, November 29, 2005.
[10] Quintos vs. National Stud Farm, 54 SCRA 210.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(Inhibited)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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