Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CENTRAL METRO TRADE DISTRIBUTORS, INC.,
Petitioner,

-versus-

HON. COMMISSIONER GUILLERMO T. PARAYNO JR., HON. ESTRELLA MARTINEZ,
Respondents.

CTA EB CASE NO. 179
(CTA Case No. 7171)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JAN 03 2007 GrHpolinaw

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DECISION

CASANOVA, J.:

This is a Petition for Review seeking the reversal of the Resolutions dated 14 October 2005 and 14 April 2006, both issued by the Court of Tax Appeals (CTA) Second Division, dismissing the Petition for Review filed by the petitioner in CTA Case No. 7171 entitled, "Central Metro Trade Distributors, Inc. vs. Hon. Commissioner Guillermo T. Parayno Jr., Hon. Estrella V. Martinez," on the ground that the Court has no jurisdiction over the case and denying petitioner's Motion for Reconsideration for lack of merit, respectively.

The facts of the case, as culled from the records, are as follows:

> "On November 22, 2002, petitioner received a copy of the Preliminary Assessment Notice (PAN) dated November 15, 2002.
>
> On November 26, 2002, respondent, through the Revenue District Office (RDO) of Legaspi City, received a letter from petitioner dated

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November 25, 2002, requesting supporting documents and detailed computation of its tax deficiencies.

Then, on February 28, 2003, the RDO sent its Formal Letter of Demand to petitioner.

A few days thereafter, petitioner filed a letter with respondent dated March 5, 2003, requesting for clarification on the items indicated in the assessment notice. Petitioner requested that the said correspondence be considered its FORMAL PROTEST and asked that a conference be held between respondent and petitioner.

In reply thereto, respondent, through a letter dated March 21, 2003, invited petitioner to an informal conference regarding the tax case on April 1, 2003.

Thus, on April 1, 2003, a conference was held between the parties, as evidence by a Certificate of Appearance issued in their favor.

On April 15, 2003, respondent received petitioner's letter which reads:

'This is in connection with our conference with your examiner last April 01, 2003, evidenced by our certificate of appearance & our answer to the assessment (Taxable Year 2000) which we considered as our formal protest. In view thereof, we are again stating our defense on the said case, which we already tackle (sic) in our discussion during the meeting, to wit:

1. Disallowed Purchases and Operating Expenses – On this, we would like to state that our records show that all transactions are substantiated with receipts, invoices & the basis why it has been allowed. We conclude that it has been arbitrarily computed.
2. VAT – There was an understatement of the total Input Tax base done by the examiner, causing a deficiency tax payable, which is highly erroneous if you would go over our VAT computation.

As of this time we are requesting from your good office a written statement from your examiner, stating the basis and computations on the dissallowment (sic).

Xxx xxx xxx'.

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Thereafter or on September 13, 2003, petitioner received a Preliminary Collection Letter. Then, on September 16, 2003, petitioner filed with the respondent the corresponding reply thereto.

On June 28, 2004, petitioner received a Warrant of Distraint and Levy dated June 11, 2004. And on July 28, 2004, petitioner filed its Motion for Reconsideration with respondent, which was denied in the letter dated February 18, 2005."

(CTA Second Division Resolution, pp. 50-51)

Petitioner filed a Petition for Review with the Court on March 18, 2005. On the other hand, respondent filed an Answer and a "Motion for the Resolution of the Issue of Jurisdiction" on May 24, 2005 and July 11, 2005, respectively. On October 14, 2005, the Second Division issued a Resolution granting respondent's motion thereby dismissing the Petition for Review filed by the petitioner. Petitioner filed a Motion for Reconsideration on November 18, 2005 which was subsequently denied by the Second Division in a Resolution dated April 12, 2006.

Hence, this Petition for Review filed with the Court En Banc on May 25, 2006 wherein petitioner raised the following grounds in support of the instant petition:

I.

THIS HONORABLE COURT A QUO COMMITTED AN ERROR WHEN IT RESOLVED THAT THE TAX ASSESSMENT AGAINST PETITIONER HAS BECOME FINAL, EXECUTORY AND DEMANDABLE DESPITE OF THE TIMELY PROTEST MADE BY THE PETITIONER.

II.

THE HONORABLE COURT A QUO ACTED WITH ERROR WHEN IT FAILED TO APPLY THE SUBSTANTIAL COMPLIANCE RULE TO THE 05 MARCH 2003 FORMAL LETTER-PROTEST.

III.

THE HONORABLE COURT A QUO FAILED TO CONSIDER THE MATERIALITY OF THE DEFECTIVE TAX ASSESSMENT ISSUED BY

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RESPONDENTS AGAINST PETITIONER IN RESOLVING THE ISSUE OF JURISDICTION TO HEAR THE PETITIONER'S PETITION FOR REVIEW.

After a careful and thorough perusal, evaluation and study of the instant Petition for Review, the Court *En Banc* finds no cogent reason to disturb the Resolutions of the Second Division promulgated on October 14, 2005 and April 12, 2006.

As correctly found out by the Second Division, The Court of Tax Appeals has no jurisdiction over the instant case.

Section 7 of Republic Act No. 9282, which is quoted hereunder, to wit:

"**Sec. 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 Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial.

Xxx xxx xxx"

Pursuant to the above provision, the appellate jurisdiction of the Court can be invoked if there is a disputed assessment. In this regard, Section 228 of the National Internal Revenue Code (NIRC) provides:

"**Sec. 228. Protesting of Assessment**. – When the Commissioner or his duly authorized representative finds that the proper taxes should be assessed, he shall first notify the taxpayer of his findings:

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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 said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized 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 receipts of the said decision**, or from the lapse of One Hundred Eighty (180) day period; otherwise, the decision shall become final, executory and demandable." (*Emphasis Supplied*)

It is clear that it is the assessment that should be protested administratively by a request for reconsideration or reinvestigation within thirty days from receipt thereof. Thereafter, if the protest is denied or not acted upon, the taxpayer may appeal to the Court of Tax Appeals (CTA). Thus, the decision appealable to the CTA is the decision of the respondent on the disputed assessment and not the decision on the Warrant of Distraint and Levy issued after the assessment has attained finality. In the case at bar, there is even no valid protest to speak of.

Petitioner would like Us to consider its March 5, 2003 letter to respondent as its "Formal Protest" on the assessment issued against the former. The said letter reads:

> "We are writing in behalf of our client – CENTRAL METRO TRADE DISTRIBUTORS, INC. – Legaspi City – relative to your subject assessment notices, with the request that this be kindly considered as a FORMAL PROTEST in behalf of the aforesaid taxpayer.

The above assessments apparently were based on the reportorial submissions of subject taxpayer.

Our client sincerely believes that these assessments could be better rationalized if a conference will be made by the proper BIR authorities – together with our client company's representative to clarify certain items indicated in the assessment notice, coupled with a review of the financial statements and accounting transactions. The management of the company undertakes to fully cooperate in said conference or meeting should it be undertaken.

In the light of the above and in the spirit of fairness, equity and justice – we are respectfully requesting that said conference be held together with you and your representative at your most convenient time. Our firm will be assisting the concerned taxpayer in this endeavor.

Xxx xxx xxx."

However, the above-quoted letter cannot be considered as a protest-letter. Section 3.1.5 of Revenue Regulations No. 12-99, hereunder quoted for reference, 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:

xxx xxx xxx

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.

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> **The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect**. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
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> 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**.
>
> Xxx xxx xxx."(*Emphasis Supplied*)

The above-quoted Revenue Regulation explicitly requires that the protest should state the facts and law upon which it is based, otherwise, as in the instant case the protest shall be considered void and without force and effect.

Thus, there being no protest on the assessments issued by respondent, the same has attained finality by mere lapse of time and is no longer open to dispute and discussion. Any objection against the assessments should have been pursued in accordance with Section 228 of the NIRC.

The Court of Tax Appeals is a court of special appellate jurisdiction, as such, the court's jurisdiction may only be invoked in the particular instances prescribed under Section 7 of R.A. No. 1125, as amended by Section 7 of R.A. No 9282. Without a valid protest on the assessments in the administrative level, the assessment becomes final and the Court is deprived of any authority to rule on its validity.

In sum, what the instant petition asks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which

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unfortunately had been resolved and extensively discussed in the assailed Resolutions.

WHEREFORE, premises considered, the assailed Resolutions of the Second Division are hereby **AFFIRMED *in toto***. The instant Petition for Review is **DENIED DUE COURSE** and is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Sec 13, Art. VIII of the 1987 Constitution, it is hereby certified that the conclusions in the above decision was reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice