REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

CEBU CFI COMMUNITY COOPERATIVE,
Petitioner,

- versus -

HON. JOSE MARIO BUÑAG, COMMISSIONER OF INTERNAL REVENUE, and HON. ESTRELLA LOPEZ, REVENUE DISTRICT OFFICER OF DISTRICT OFFICE NO. 13,
Respondents.

C.T.A. Case No. 7396

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *J.*

Promulgated:

DEC 06 2006, 3:20 PM

x - x

RESOLUTION

For resolution is respondent's **"Motion to Dismiss"** filed on October 23, 2006, *sans* any comment/objection on the part of petitioner.

Respondent moves for the dismissal of the instant petition on the ground of lack of jurisdiction to take cognizance of this case there being no decision on a disputed assessment as provided in Section 228 of the National Internal Revenue Code of 1997 (NIRC), in relation to Rule 4 Section 3 (a)(1) of the Revised Rules of the Court of Tax Appeals.

The pertinent facts, as contained in the Joint Stipulation of Facts and Issues, are as follows:

"3. On March 22, 2005, petitioner received the Letter of Authority No. LOA 2000 00076530, dated March 8, 2005, authorizing Revenue Officers Dedima Vasquez and Group Supervisor Margie Aurelio of the Revenue District Office No. 81, Cebu City North, to examine the books of accounts and other accounting records of petitioner for the calendar year 2003;

4. Respondent Revenue District Officer sent a letter addressed to petitioner dated September 15, 2005, duly received by the petitioner on October 25, 2005, informing the latter of the examiner's, Revenue Officer Dedima V. Vasquez, findings and that she has recommended an all internal revenue tax deficiency in the total amount of Six Million Eight Hundred Twenty Two Thousand Four Hundred Eighty Three Pesos & 68/100 (P6,822,483.68) including incremental penalties, computed as follows:

xxx xxx xxx

5. Petitioner wrote a Letter Request/Motion for Reconsideration dated November 19, 2005 addressed to the Hon. Estrella S. Lopez, Revenue District Officer, Revenue Region No. 13, BIR, making reference to her letter dated September 15, 2005, and received by petitioner on October 25, 2005;

6. On December 9, 2005, petitioner received the letter, dated December 8, 2005, from the respondent Estrella S. Lopez, Revenue District Officer. The dispositive portion of which reads:

> 'Based on the foregoing premises, contrary to all your assertions, this office is in the opinion that our proposed assessments are valid and well-founded, hence, the payment thereof is hereby reiterated.'

7. In a letter dated December 28, 2005, and sent by registered mail the following day, December 29, 2005, petitioner elevated the matter to respondent Commissioner of Internal Revenue as the ultimate administrative authority under the law to decide and rule on disputed assessments. In this letter, petitioner refuted the grounds relied upon by respondent Revenue District Officer in her denial of the Motion for Reconsideration filed by Petitioner. Among others, petitioner pointed out:

(a) The scope of a tax exemption is expressed and defined by law and not by the certificate of exemption issued by a Revenue District Officer; and

(b) The history and evolution of Sec. 175 of the Tax Code unmistakably shows that it applies to corporations and the certificates or shares of stock issued by the latter; and

8. On January 5, 2006, petitioner filed the instant petition for review before this Honorable Court."

After a careful examination of the records of the case, this Court **RESOLVES** to **GRANT** respondent's Motion to Dismiss.

Section 228 of the NIRC provides:

"**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:

x x x

The taxpayers 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."

In relation thereto, Section 3 of Revenue Regulations No. 12-99 provides:

"**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. **If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case.** If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

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** (see illustration in ANNEX A hereof). 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.

3.1.3 Exceptions to Prior Notice of the Assessment. — xxx

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 (see illustration in ANNEX B hereof). 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.** 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.

x x x

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.

> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.
>
> x x x [Boldface supplied]"

In the instant case, petitioner had only reached the early stage of informal conference when it filed its Motion for Reconsideration of the proposed assessment. When its Motion for Reconsideration was denied, petitioner elevated the matter to the Commissioner of Internal Revenue instead of waiting for the issuance of a Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Assessment Notice (FAN). Hence, there can be no disputed assessment to speak of, much less a decision thereon, as no FAN had been issued from which petitioner could have filed an administrative protest. The letter sent by Revenue District Officer Estrella S. Lopez denying petitioner's Motion for Reconsideration is not the decision contemplated under Section 228 of the NIRC and Revenue Regulations No. 12-99, which may be appealed to this Court. What is appealable to this Court is the decision denying the administrative protest to the FAN.

As provided in Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, and Section 3 of Rule 4(a)(1) of the Revised Rules of the CTA, the Court has exclusive appellate jurisdiction to review by appeal, among others, the "**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". Under the present set of facts, the Court has no jurisdiction to entertain the instant petition as the same was prematurely filed.

WHEREFORE, respondent's Motion to Dismiss is hereby **GRANTED.** Accordingly, the Petition for Review filed by petitioner on January 5, 2006 is hereby **DISMISSED** for lack of jurisdiction, without prejudice to refiling once the formal letter of demand and assessment and, thereafter, final decision of the Commissioner is received by the Petitioner on his protest.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice