Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

DA- REGION O2 MULTI-PURPOSE COOPERATIVE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and VIRGINIA P. TOMAS, OIC REGIONAL DIRECTOR, BIR REGION 02,
Respondents.

C.T.A. CASE NO. 7041

Members:

Castaneda, Jr., *Chairman,*
Uy, *and*
Enriquez, *JJ.*

Promulgated:
SEP 0 6 2005

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RESOLUTION

This resolves respondents' "Motion to Set Case for Preliminary Hearing" filed on February 28, 2005 praying that the special and affirmative defense pleaded in their answer that the assessment has become final and unappealable for failure of petitioner to protest the assessment within the reglementary period as prescribed in Section 228 of the National Internal Revenue Code (hereafter "NIRC") of 1997, as amended, be resolved by this Court.

In their motion, respondents allege that petitioner did not file a protest to the assessment within thirty (30) days from receipt thereof on July 21, 2004. Thus, contrary to petitioner's allegation that there is a Final Decision, the disputed assessment had become final, executory and unappealable for failure of the petitioner

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to file its protest within the prescriptive period, pursuant to Section 228 of the NIRC of 1997, as amended.

Records show:

Respondents, through its OIC-Regional Director V.P. Tomas of Revenue Region 3, Tuguegarao City, issued a Preliminary Assessment Notice ("PAN") dated October 28, 2003 against petitioner for deficiency value-added tax (VAT), withholding tax on compensation and expanded withholding tax in the total amount of P1,986,049.44 for taxable year 2000 (*BIR Records, p. 151*). Petitioner received the said PAN on November 6, 2003 (*BIR Records, p. 205*).

On November 21, 2003, petitioner through counsel filed a Motion for Reconsideration/Re-investigation seeking reconsideration of the October 28, 2003 PAN and praying that it be declared VAT-exempt (*BIR Records, p. 205*).

Respondents sent petitioner a letter dated July 21, 2004 demanding payment of deficiency VAT, withholding tax on compensation and expanded withholding taxes in the amounts of ₱1,859, 604.28, ₱277,468.28 and ₱13,016.35, respectively (*BIR Records, p.241*).

Claiming that said letter is a Final Decision on Disputed Assessment of BIR Regional Office No. 2, petitioner filed the present Petition for Review on August 20, 2004.

To date, petitioner has failed to file its comment, despite the expiration of the prescribed period.

We rule for the respondents.

Section 7 of Republic Act No. 9282 provides:

> "**SEC. 7.** Section 7 of the same Act is hereby amended to read as follows:

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> **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
>
> xxx xxx"

The word "decisions" in paragraph 1, Section 7 of R.A. No. 9282, quoted above, has been interpreted to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment. Definitely, said word does not signify the assessment itself. *(Commissioner of Internal Revenue vs. Villa, 22 SCRA 6)*.

The same interpretation finds support in Section 9 of R.A. No. 9282, which states:

> **"SEC. 9** Section 11 of the same Act is hereby amended to read as follows:
>
> **Sec. 11.** ***Who May Appeal; Mode of Appeal; Effect of Appeal.*** - Any party adversely affected by a ***decision***, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. (*italics supplied*)
>
> xxx 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

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Commissioner of Internal Revenue on the protest against an assessment, but, not the assessment itself. *(Villamin vs. Court of Tax Appeals, of L-11536, Oct, 31, 1960 cited in Commissioner of Internal Revenue vs. Villa, supra).*

Corollary thereto, Section 228 of the NIRC of 1997, as amended 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:
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
> (d) When the excise tax due on excisable articles has not been paid; or
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> 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.*** *(italics supplied)*

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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."

As correctly pointed out by the respondents, petitioner did not file a protest to the assessment, within thirty (30) days from receipt thereof on July 21, 2004. Instead of protesting the assessment, petitioner filed the present Petition for Review on August 20, 2004, based on the wrong premise that the letter dated July 15, 2004 is the final decision on the disputed assessment.

Hence, for failure of the petitioner to file its protest within the prescribed period, the assessment had become final, executory and unappealable, pursuant to Section 228 of the NIRC of 1997, as amended. As such, this Court cannot take cognizance of the present appeal.

In view hereof, the Court is left with no recourse, but to grant the motion.

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED**.

SO ORDERED.

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA
Associate Justice

(On leave)
ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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