REPUBLIC OF THE PHILIPPINES
**Court of Tax Appeals**
QUEZON CITY

## *SECOND DIVISION*

| | |
|---|---|
| **CENTRAL METRO TRADE DISTRIBUTORS, INC.,** *Petitioner,* | **C.T.A. CASE NO. 7171** |
| | Members: |
| - versus - | **Castañeda, Jr.**, *Chairperson* **Uy**, and **Palanca-Enriquez**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: OCT 14 2005 *[signature]* |

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# RESOLUTION

This resolves respondent's "*MOTION FOR THE RESOLUTION OF THE ISSUE OF JURISDICTION*" filed on July 11, 2005. Despite notice, to date petitioner has failed to file its Comment.

Respondent alleges that this Court has no jurisdiction to decide this case on the merits on the ground that the assessments had already become final, executory and unappealable for failure of petitioner to protest said assessments within thirty (30) days from receipt thereof.

Record shows:

On November 22, 2002, petitioner, Central Metro Trade Distributors, 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 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 evidenced 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 & Operating Expenses – On this, we would like to state that our records show that all transactions are substantiated with receipts, invoices & OR's. The examiner fails to consider this, and to submit the basis why it has been disallowed. 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".

Thereafter or on September 13, 2003, petitioner received a Preliminary Collection Letter. Then, on September 16, 2003, petitioner filed with 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.

Hence, the present Petition for Review filed on March 18, 2005. Respondent filed his Answer and the instant motion on May 24, 2005 and July 11, 2005, respectively.

In his Motion, respondent quoted in full the March 3, 2003 letter of petitioner and concluded that the said letter cannot qualify as a protest against the assessments because it failed to state the facts, laws, rules and regulations and jurisprudence on which the protest is based.

On the other hand, in its Petition for Review, petitioner avers that the Petition was timely filed because it received the denial of the Motion for Reconsideration by respondent on February 18, 2005. Pursuant to Section 228 of the National Internal Revenue Code, it has thirty days from February 18, 2005 within which to file the Petition for Review.

The Court rules in favor of the respondent and declares that it has no jurisdiction over the case.

Section 7 of R.A. No. 9282 provides that the Court of Tax Appeals shall exercise **exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue on 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.

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 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:
>
> xxx xxx xxx
>
> 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." *(Emphasis Supplied)*

From the above provision, it is clear that it is the assessment that should be protested administratively by a request for reinvestigation or reconsideration within thirty days from receipt thereof. Thereafter, if the protest is denied or not acted upon, the taxpayer may appeal to this Court. Thus, the decision appealable to this Court 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 this case, there is even no valid protest to speak of.

In its letter dated March 5, 2003, petitioner filed what it considered as its *formal protest* on the assessment issued against it. The 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 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 or your representative at your most convenient time. Our firm will be assisting the concerned taxpayer in this endeavor.
>
> xxx xxx xxx"

However, as correctly pointed out by respondent, the same cannot qualify as a protest. *Section 3.1.5 of Revenue Regulations No. 12-99* explicitly requires that the protest should state the facts and law upon which it is based, otherwise, as in this case, the protest shall be considered void and without force and effect.

Pursuant therefore to Section 228 of the National Internal Revenue Code, 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 question. Any objection against the assessments should have been pursued in accordance with Section 228 of the National Internal Revenue Code on protests of internal revenue taxes.

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 in Section 7 of R.A. No. 1125, as amended by Section 7 of R.A. No. 9282. Absent a valid protest on the assessment in the administrative level, the assessment becomes final and the Court is deprived of any authority to rule on its validity.

Furthermore, there is no dispute that petitioner received the Formal Letter of Demand with the corresponding assessment notices thereof.

Petitioner only argues that the assessments issued against it are void for failure to state the law and the facts upon which they are based. Petitioner's contention cannot be sustained.

The Formal Letter of Demand with the corresponding assessment notices thereto complies with the minimum requirements set forth by law that the taxpayer be informed in writing of the law and the facts on which the assessment is made. A taxpayer cannot feign ignorance on an assessment which discloses the details thereof, i.e. kind of tax, the amount of tax payable and the basis thereof and thereafter claim that it was denied due process.

From the foregoing, We conclude that the subject tax assessments had long become final, executory and demandable, and as such, can no longer be questioned and appealed (*Marcos II vs. Court of Appeals, 273 SCRA 47, 63-65*).

The Court therefore is left with no recourse, but to dismiss the present petition.

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

**SO ORDERED**.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice