REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ALLIED BANKING CORPORATION,
Petitioner,

C.T.A. E.B. NO. 167
(C.T.A. CASE NO. 7062)

Present:

- versus -

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 23 2006 [signature]

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on February 22, 2006 of the Resolutions promulgated on October 12, 2005 and February 1, 2006 rendered by the First Division of this Court pursuant to Section 11 of Republic Act No. 9282, the dispositive portions of which read as follows:

> "**WHEREFORE**, the Motion to Dismiss is **GRANTED**. The Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

> **SO ORDERED**."[1]
>
> "**WHEREFORE**, Petitioner's Motion for Reconsideration is hereby **DENIED** there being no justifiable reason to modify, much less reverse the assailed Resolution dated October 12, 2005. The **DISMISSAL** of the Petition for Review is hereby reiterated.
>
> **SO ORDERED**."[2]

Culled from the records of the case, the antecedent facts are as follows:

On April 30, 2004, respondent issued a Preliminary Assessment Notice (PAN) finding petitioner liable for deficiency documentary stamp and gross receipt taxes on industry issue for the taxable year 2001. Petitioner received the PAN on May 18, 2004. Petitioner filed a protest against the PAN on May 27, 2004.

Thereafter, respondent released a Formal Letter of Demand with Assessment Notices received by petitioner on August 30, 2004. In the said Formal Letter of Demand, respondent ordered petitioner to pay the amounts covered by the assessment notices immediately upon receipt thereof. The letter also stated that the same is the final decision based on investigation and that, if petitioner disagrees, it may appeal within thirty (30) days from receipt thereof.

Thus, on September 29, 2004, petitioner filed the Petition for Review with this Court docketed as CTA Case No. 7062. On December 7, 2004, within the period granted by the Court, respondent filed his Answer.

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[1] Assailed Resolution promulgated on October 12, 2005, Rollo, p.29.
[2] Assailed Resolution promulgated on February 1, 2006, Rollo, p.33.

On July 28, 2005, respondent filed the instant Motion to Dismiss. The Opposition thereto was filed by petitioner on August 18, 2005.

On October 12, 2005, the First Division of this Court rendered its assailed Resolution granting respondent's Motion to Dismiss. It ruled that the subject assessments did not become disputed assessments which may be the subject of this Court's review under Section 7(a)(1) of Republic Act No. 9282 considering that petitioner failed to file an administrative protest on the subject formal letter of demand with the corresponding assessment notices within the prescribed period.

Likewise, finding no compelling reasons to either modify or alter the assailed Resolution dated October 12, 2005, the First Division of this Court denied petitioner's Motion for Reconsideration thereof in the assailed Resolution dated February 1, 2006.

Hence, this recourse before the Court *En Banc* praying "that the Resolutions dated October 12, 2005 and February 1, 2006 of the First Division of the Honorable Court in CTA Case No. 7062 be REVERSED AND SET ASIDE and a new one entered REINSTATING the Petition for Review in CTA Case No. 7062".[3]

Petitioner submits the lone issue for the resolution of the Court *En Banc*, to wit: "whether or not the subject Formal Letter of Demand should be construed as a final decision of the Commissioner of Internal Revenue appealable to the Honorable Court under Republic Act No. 9282 and thus

[3] Rollo, p.21.

conferring upon it jurisdiction to take cognizance of the Petition in CTA Case No. 7062".[4]

In support of its Petition for Review, petitioner presents the following arguments:

a. "The Formal Letter of Demand was intended by the respondent to be a final decision which is thus appealable."

b. "Assuming arguendo that the Formal Letter of Demand is not yet the final decision, the applicable laws should be relaxed in favor of the Petitioner considering that the omission was caused by the Respondent."

c. "It is inequitable to demand strict compliance from the Petitioner when the same standard is not demanded of the Respondent."

For failure of respondent to file his comment thereto within the given period,[5] the case was submitted for resolution.

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review, and its annexes, would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the First Division of this Court which had already been exhaustively discussed and passed upon by it in its assailed Resolutions promulgated on October 12, 2005 and February 1, 2006.

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[4] Rollo, pp.14-15.
[5] Resolution promulgated March 20, 2006, Rollo, p.74.

Be that as it may, with the end view of further clarifying the conclusions reached by the First Division, We adopt its pronouncements, quoted hereunder as follows:

> "The Tax Court's jurisdiction is over disputed assessments, and an assessment which has not been questioned in the administrative level, cannot be said to be a disputed one. The taxpayer should first exhaust all available administrative remedies before going to Court. Failing in this regard, the petition can be dismissed for lack of cause of action *(Regalado, Remedial Law Compendium, 7th Rev. Ed., Vol. I, page 254)*."[6]

Moreover, an administrative protest made against a Preliminary Assessment Notice (PAN) is not the "valid protest" contemplated under Section 228 of the National Internal Revenue Code (NIRC) of 1997. As correctly explained in the assailed Resolution, to wit:

> "Thus, a preliminary assessment notice is issued merely to inform the taxpayer of the findings of the Bureau of Internal Revenue ("BIR") anent his tax liabilities. All that is required of a taxpayer upon receipt of a preliminary assessment is to respond thereto if it wishes within fifteen days from receipt. **If after such response by the taxpayer, the BIR still finds that correct taxes is yet to be paid, or if no response was sent by the taxpayer in the first place, the BIR shall issue a formal assessment notice based on the investigation. It is this assessment which should be administratively protested.**
>
> **Otherwise stated, a taxpayer may or may not dispute or protest the preliminary assessment against him. The BIR still has to issue a formal assessment notice since it is this assessment which attains finality in the absence of a valid protest against it**." [7] *(Emphasis Ours)*

We are consistent in ruling that an assessment, whether valid or void, shall become final and executory, when no administrative protest is filed

[6] Assailed Resolution promulgated on February 1, 2006, supra on page 33.
[7] Assailed Resolution promulgated on October 12, 2005, supra on page 28.

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within thirty (30) days from receipt thereof, for the very reason that an administrative protest is an integral part of the remedies given to the taxpayer in challenging the legality or validity of an assessment. It is absolutely necessary for the taxpayer to file an administrative protest in order for this Court to acquire jurisdiction.

In ***Subic Bay Motors, Corp., Inc. vs. Commissioner of Internal Revenue***,[8] this Court had the occasion to explain the consequences of failure to validly protest a formal assessment notice, in this fashion:

> "**Unfortunately, based on the records and documents submitted, there is no indication that petitioner ever protested the said Formal Assessment Notices. In fact, the allegations and evidence presented by petitioner merely showed that preliminary assessment notices were received and protested but the Formal Assessment Notices, although received were not protested**. Based on its allegations, petitioner even considered the subject Formal Assessment Notices as preliminary assessment notices for which it admittedly received. As a result of this inattentiveness, the Formal Assessment Notices have become final and could not be the subject of appeal to this Court. **As provided for by Section 228 of the 1997 Tax Code, if the taxpayer fails to file an administrative protest within the 30-day reglementary period, the assessment becomes final and unappealable. This means that after the lapse of the said thirty-day period, the assessment may no longer be disputed either administratively or judicially through an appeal to this Court. The effect is thus to make the assessed taxes collectible. Incidentally, inasmuch as there is no disputed assessment to speak of, appeal to this Court is no longer available**." *(Emphasis Ours)*

Likewise, in another case,[9] We even went further by saying that the taxpayer is duty-bound to file an administrative protest even against a void

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[8] CTA EB No. 98 (CTA Case No. 7042), Decision promulgated on October 11, 2005.
[9] Singer Finance Corporation vs. Commissioner of Internal Revenue, CTA EB No. 10 (CTA Case No. 6743), Decision promulgated on March 4, 2005; citing Republic of the Philippines vs. Manila Port Service, G.R. No. L-18208, November 27, 1964.

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assessment. Precisely, one of the grounds that a taxpayer can raise in protesting an assessment is the defense of prescription, which if found meritorious, provides legal justification for the Commissioner of Internal Revenue to revoke an assailed assessment. Clearly, even an assessment which is contrary to law can attain finality if the same is not protested. Being not jurisdictional, it is a mere defense that must be invoked at the proper time; otherwise, it shall be considered waived.

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the First Division of this Court when it rendered the assailed Resolutions dated October 12, 2005 and February 1, 2006.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
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 conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice