REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIANBANK CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4720

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

8/4/94

DECISION

This is a claim for refund allegedly representing excess payment of P486,961.45 as deficiency gross receipts tax (GRT) and P271,035.35 as deficiency documentary stamp taxes (DST) for the taxable year 1986.

On January 10, 1990, Petitioner, a corporation duly organized and existing under the laws of the Philippines, received Assessment Notice Nos. FAS-4-86-90-000039 and FAS-5-86-90-000040 referring to Petitioner's alleged liability for deficiency GRT in the amount of P1,566,681.40 and DST in the amount of P528,138.68 for the taxable year 1986.

After allegedly protesting the assessment by way of a letter of protest dated February 9, 1990, the Petitioner decided to pay the alleged deficiency taxes under protest on March 5, 1990 in the amount of P1,411,801.07 and P303,703.40 to cover the alleged deficiency GRT and DST, respectively. (see BIR Confirmation Receipt Nos. B 18472298 and 18472299, Exhs. "F" and "W").

On April 25, 1990, the Petitioner allegedly filed a claim for refund in the total amount of P757,996.80 representing excess payment of P486,961.45 as deficiency GRT and P271,035.35 as deficiency DST. (It should be noted at this point that this letter- claim for refund, was not formally offered as evidence by the Petitioner's counsel.) Petitioner's claim for refund was not acted upon by the Respondent, hence, this Petition for Review filed on March 3, 1992.

Should the Petitioner be entitled to its claim for refund?

We answer in the negative.

The taxpayer cannot, after assessment has become final and executory, pay the tax and ~~latter~~ claim refund and then appeal to this Court if his claim for refund is denied, otherwise the 30-day period for appeal of disputed assessments would make little sense (**Republic vs. Lopez**, L-18007, March 30, 1963; **Republic vs. Lim Tian Teng**, L-2173, March 31, 1966, 16 SCRA 584; **Morales vs.**

Collector, L-16759, Aug. 31, 1966, 17 SCRA 1018; Commissioner vs. Concepcion, L-23912, March 15, 1968, 22 SCRA 1058). In the case at bar, We believe that the assessments issued on January 10, 1990 remained uncontested within the 30-day prescriptive period. Hence, it already became final and unappealable. Although there was an allegation that said assessments were protested "by way of a letter of protest dated February 9, 1990" (Petition for Review, p. 2) yet said allegation remain as such -- purely unsubstantiated allegation. Court records showed the there was no such letter of protest as alleged by the Petitioner. Section 229 of the Tax Code very clearly provides, thus:

> SEC. 229. *Protesting of assessment.* - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayers shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings. .
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty(30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable. (Underscoring supplied)

Thus, if the taxpayer had already lost his right to appeal to the Court of Tax Appeals, he could not legally pay the taxes in question or assessed against him and avail of Section 243 (now Sec. 230) of the Tax Code by seeking recovery of said taxes (see **Commissioner of Internal Revenue vs. Concepcion**, supra). In fine, he cannot indirectly resurrect this lost right by paying the tax assessed, asking for refund and if denied, appeal to this Court. This is an indirect way of violating the law; it is plain circumvention of the law.

But even granting arguendo that there was indeed a letter of protest, it was never brought to court, much less, formally offered. The same is true to the letter-claim for refund which, although admittedly attached to the Petition for Review, was not also formally offered, hence, both documents are of no value and cannot be considered by this Court. In the recent case of **TMX Philippines, Inc. vs. Commissioner of Internal**, CTA Case No. 4297, March 29, 1993, this Court had already occasioned to rule on this matter when it said, thus:

> The sales taxes paid through Treasure Island Industrial Corp., on the other hand, simply cannot be considered credited since the invoices were not formally offered by the counsel of the Petitioner for sheer neglect. Such evidences, therefore, although identified during the trial are of no value and cannot be considered by the court. Section 35, Rule 132

of the Rules of Court is categorically clear on this matter thus:

> **SEC. 35.** *Offer of Evidence* - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specific. (Emphasis supplied)

> "Where the evidence consisting documents were not formally offered at the hearing, even if they are material to the case, the court must exclude the same from the record; it has no authority to consider them" (Emphasis supplied; **Ayala de Roxas vs. Valencia**, 5 Phil. 182).

The absence of these evidences namely, the letter of protest and letter-claim for refund, are not only procedural but substantive defects since they are jurisdictional in nature and hence, fatal to the cause of the Petitioner. Unfortunately for the Petitioner, well settled is the rule that the client is bound by the mistakes or neglect of his counsel.

WHEREFORE, in all the foregoing, Petitioner's claim for refund is hereby **DENIED** and the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Quezon City. Metro Manila, August 4, 1994.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals