

## THIRD DIVISION

[ G.R. No. 221780, March 25, 2019 ]

### COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. V.Y. DOMINGO JEWELLERS, INC., RESPONDENT.

#### DECISION

##### PERALTA, J.:

This is petition for review on *certiorari* under Rule 45 seeking to reverse and set aside the Court of Tax Appeals (CTA) *En Banc* Decision<sup>[1]</sup> dated July 1, 2015 in CTA EB Case No. 1170, which granted respondent V.Y. Domingo Jewellers, Inc.'s (V.Y. Domingo) petition for review, and ordered the remand of the case to the CTA First Division for further proceedings; and the Resolution<sup>[2]</sup> dated December 3, 2015 which denied petitioner Commissioner of Internal Revenue's (CIR) motion for reconsideration.

The facts are as follows:

On September 9, 2009, the Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice<sup>[3]</sup> (PAN) against V.Y. Domingo, a corporation primarily engaged in manufacturing and selling emblematic jewelry, assessing the latter the total amount of P2,781,844.21 representing deficiency income tax and value-added tax, inclusive of interest, for the taxable year 2006.

V.Y. Domingo filed a Request for Re-evaluation/Re-investigation and Reconsideration<sup>[4]</sup> dated September 17, 2009 with the Regional Director of BIR - Revenue Region No. 6, requesting a "thorough re-evaluation and re-investigation to verify the accuracy of the computation as well as the accounts included in the Preliminary Assessment Notice."

V.Y. Domingo then received a Preliminary Collection Letter<sup>[5]</sup> (PCL) dated August 10, 2011 from the Revenue District Office (RDO) No. 28 - Novaliches, informing it of the existence of Assessment Notice No. 32-06-IT-0242 and Assessment Notice No. 32-06-VT-0243, both dated November 18, 2010, for collection of its tax liabilities in the amounts of P1,798,889.80 and P1,365,727.63, respectively, for a total amount of P3,164,617.43. The PCL likewise stated:

If you want to know the details and/or settle this assessment, may we invite you to come to this office, within ten (10) days from receipt of this notice. However, if payment had already been made, please send or bring us copies of the receipts of payment together with this letter to be our basis for canceling/closing your liability/ies.

We will highly appreciate if you can give this matter your preferential attention, otherwise we shall be constrained to enforce the collection

thereof thru Administrative Summary Remedies provided for by the law, without further notice.<sup>[6]</sup>

On September 12, 2011, V.Y. Domingo sent a letter to the BIR Revenue District Office No. 28 in Quezon City, requesting certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243. Upon receipt of the requested copies of the notices on September 15, 2011, V.Y. Domingo filed on September 16, 2011 a Petition for Review<sup>[7]</sup> with the CTA in Division, under Section 7(1) of RA No. 1125 and Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals (*RRCTA*), praying that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 and the PCL dated August 10, 2011 be declared null and void, cancelled, withdrawn, and with no force and effect, for allegedly having been issued beyond the prescriptive period for assessment and collection of internal revenue taxes.

During trial, the CIR filed her Motion to Dismiss<sup>[8]</sup> the petition for lack of jurisdiction. She argued that under Republic Act (R.A.) No. 1125 ("*An Act Creating the Court of Tax Appeals*"), as amended, and the *RRCTA*, it is neither the assessment nor the formal letter of demand that is appealable to the CTA but the decision of the CIR on a disputed assessment. Claiming that V.Y. Domingo's petition was anchored on its receipt of the PCL, which it treated as a denial of its Request for Re-evaluation/Re-investigation and Reconsideration, the CIR further argued that there was no disputed assessment to speak of, and that the CTA had no jurisdiction to entertain the said Petition for Review.

In a Resolution<sup>[9]</sup> dated January 29, 2014, the CTA First Division granted the CIR's motion and dismissed V.Y. Domingo's Petition for Review. It held that it was without jurisdiction to entertain the petition, as the rule is that for the CTA to acquire jurisdiction, as assessment must first be disputed by the taxpayer and either ruled upon by the CIR to warrant a decision, or denied by the CIR through inaction. The CTA First Division ruled that what were appealed to it were the subject assessments, not a decision or the CIR's denial of its protest; thus, the said assessments had attained finality, and the CTA in Division was without jurisdiction to entertain the appeal.

V.Y. Domingo's motion for reconsideration having been denied in a Resolution dated April 23, 2014, it filed on May 30, 2014 a petition for review before the CTA *En Banc*. It argued that the CTA First Division erred when it upheld the CIR's position that V.Y. Domingo should have administratively protested the Assessment Notices first before filing its Petition for Review. Furthermore, V.Y. Domingo claimed that it was denied due process when the CIR failed to send the Notice of Final Assessment to it.

In its Decision dated July 1, 2015, the CTA *En Banc* granted V.Y. Domingo's Petition for Review, reversing and setting aside the January 29, 2014 and April 23, 2014 Resolutions of the CTA First Division. It remanded the case to the CTA First Division for further proceedings to afford the CIR full opportunity to present her evidence. It held —

Petitioner's case did not fall within the usual procedure in the issuance of an assessment as respondent failed to serve or send the FAN to petitioner. Section 228 of the NIRC of 1997, as amended, and Section 3

of Revenue Regulations No. 12-99 are silent as to the procedure to be followed in case the taxpayer did not receive the FAN but instead receives a preliminary collection letter or a warrant of distraint/levy or similar communications, informing the taxpayer of the existence of a FAN for the first time. Understandably, this would cause some confusion as to what the next step is. Hence, petitioner cannot be faulted for not filing an administrative protest before filing a petition for review before the Court in Division since it did not receive the FAN and the language of the PCL shows that the respondent is already demanding payment from petitioner presupposing that the assessment has become final.<sup>[10]</sup>

Thus, the present petition raising the sole issue of whether the First Division of the CTA has jurisdiction to entertain V.Y. Domingo's petition for review.

The CIR argues that assessment notices are not appealable to the CTA as the power to decide disputed assessments is vested in the CIR, subject only to the exclusive appellate jurisdiction of the CTA. The CIR adds that a thorough review of V.Y. Domingo's petition for review before the CTA First Division would readily show that it was an *original protest* on the assessment made by the petitioner, a matter that, under R.A. No. 1125, is not within the jurisdiction of the CTA.

The CIR likewise claims that a close scrutiny of V.Y. Domingo's petition for review before the CTA would reveal that it was anchored on its receipt of the PCL issued by the BIR, which V.Y. Domingo mistakenly treated as a denial of its motion for reinvestigation of the PAN.<sup>[11]</sup> Before V.Y. Domingo filed its petition for review before the CTA First Division on September 16, 2011, it had already received copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06- VT-0243 and the Formal Letter of Demand (*FLD*) dated September 9, 2010. However, instead of challenging the contents of the said assessment notices by filing the appropriate protest or motion for reinvestigation within thirty (30) days from September 15, 2011, the date it received the copies of the notices, the CIR laments that V.Y. Domingo opted to immediately institute a petition for review on the basis of the PCL.<sup>[12]</sup> This, argues the CIR, is in clear violation of the doctrine of exhaustion of administrative remedies.

This Court, through a Resolution<sup>[13]</sup> dated March 7, 2016, required respondent V.Y. Domingo to comment on the Petition for Review.

In its Comment,<sup>[14]</sup> V.Y. Domingo contends that contrary to the CIR's allegation, the CTA has jurisdiction to take cognizance of its Petition for Review. Citing Section 7 of R.A. No. 1125, as amended, V.Y. Domingo suggests that the CIR may have disregarded the fact that the jurisdiction of the CTA is not limited to review of decisions of the CIR. in cases involving disputed assessments only, but also includes "other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue."<sup>[15]</sup> V.Y. Domingo reiterates that its case does not involve an appeal from a decision of the CIR on a disputed assessment since in the first place, there is no "disputed" assessment to speak of.<sup>[16]</sup>

Furthermore, V.Y. Domingo also claims that the tenor of the PCL forecloses any opportunity for it to file its administrative protest as a reading of the same will show

that the CIR had already decided to deny any protest as regards the assessment made against the respondent taxpayer.<sup>[17]</sup>

We rule for the petitioner.

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.<sup>[18]</sup> Section 7 of R.A. No. 1125, as amended by R.A. No. 9282, specifically provides:

**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;

(2) Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

x x x.<sup>[19]</sup>

In relation thereto, Section 228 of R.A. No. 8424 or *The Tax Reform Act of 1997*, as amended, implemented by Revenue Regulations No. 12-99,<sup>[20]</sup> provides for the procedure to be followed in issuing tax assessments and in protesting the same. Thus:

**Section 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 pre-assessment 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.

**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 one hundred eighty (180)-day period; otherwise, the decision shall become final., executory and demandable.**<sup>[21]</sup>

On the other hand, Section 3.1.5 of Revenue Regulations No. 12-99,<sup>[22]</sup> implementing Section 228 above, provides:

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. . .**

x x x x

**If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**