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SECOND DIVISION

[G.R. No. 175097, February 05, 2010]

ALLIED BANKING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

The key to effective communication is clarity.

The Commissioner of Internal Revenue (CIR) as well as his duly authorized representative must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment.[1] Words must be carefully chosen in order to avoid any confusion that could adversely affect the rights and interest of the taxpayer.

Assailed in this Petition for Review on *Certiorari*[2] under Section 12 of Republic Act (RA) No. 9282,[3] in relation to Rule 45 of the Rules of Court, are the August 23, 2006 Decision[4] of the Court of Tax Appeals (CTA) and its October 17, 2006 Resolution[5] denying petitioner's Motion for Reconsideration.

Factual Antecedents

On April 30, 2004, the Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN) to petitioner Allied Banking Corporation for deficiency Documentary Stamp Tax (DST) in the amount of P12,050,595.60 and Gross Receipts Tax (GRT) in the amount of P38,995,296.76 on industry issue for the taxable year 2001.[6] Petitioner received the PAN on May 18, 2004 and filed a protest against it on May 27, 2004.[7]

On July 16, 2004, the BIR wrote a Formal Letter of Demand with Assessment Notices to petitioner, which partly reads as follows:[8]

> It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal the final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.

Petitioner received the Formal Letter of Demand with Assessment Notices on August 30, 2004.[9]

Proceedings before the CTA First Division

On September 29, 2004, petitioner filed a Petition for Review[10] with the CTA which was raffled to its First Division and docketed as CTA Case No. 7062.[11]

On December 7, 2004, respondent CIR filed his Answer.[12] On July 28, 2005, he filed a Motion to Dismiss[13] on the ground that petitioner failed to file an administrative protest on the Formal Letter of Demand with Assessment Notices. Petitioner opposed the Motion to Dismiss on August 18, 2005.[14]

On October 12, 2005, the First Division of the CTA rendered a Resolution[15] granting respondent's Motion to Dismiss. It ruled:

> Clearly, it is neither the assessment nor the formal demand letter itself that is appealable to this Court. It is the decision of the Commissioner of Internal Revenue on the disputed assessment that can be appealed to this Court (*Commissioner of Internal Revenue vs. Villa,* 22 SCRA 3). As correctly pointed out by respondent, a disputed assessment is one wherein the taxpayer or his duly authorized representative filed an administrative protest against the formal letter of demand and assessment notice within thirty (30) days from date [of] receipt thereof. In this case, petitioner failed to file an administrative protest on the formal letter of demand with the corresponding assessment notices. Hence, the assessments did not become disputed assessments as subject to the Court's review under Republic Act No. 9282. (See also *Republic v. Liam Tian Teng Sons & Co., Inc.,* 16 SCRA 584.)
>
> **WHEREFORE,** the Motion to Dismiss is **GRANTED.** The Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**[16]

Aggrieved, petitioner moved for reconsideration but the motion was denied by the First Division in its Resolution dated February 1, 2006.[17]

Proceedings before the CTA En Banc

On February 22, 2006, petitioner appealed the dismissal to the CTA *En Banc.*[18] The case was docketed as CTA EB No. 167.

Finding no reversible error in the Resolutions dated October 12, 2005 and February 1, 2006 of the CTA First Division, the CTA *En Banc* denied the Petition for Review[19]as well as petitioner's Motion for Reconsideration.[20]

The CTA *En Banc* declared that it is absolutely necessary for the taxpayer to file an administrative protest in order for the CTA to acquire jurisdiction. It emphasized that an administrative protest is an integral part of the remedies given to a taxpayer in challenging the legality or validity of an assessment. According to the CTA *En Banc,*

although there are exceptions to the doctrine of exhaustion of administrative remedies, the instant case does not fall in any of the exceptions.

Issue

Hence, the present recourse, where petitioner raises the lone issue of whether the Formal Letter of Demand dated July 16, 2004 can be construed as a final decision of the CIR appealable to the CTA under RA 9282.

Our Ruling

The petition is meritorious.

Section 7 of RA 9282 expressly provides that the CTA exercises exclusive appellate jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments

The CTA, being a court of special jurisdiction, can take cognizance only of

matters that are clearly within its jurisdiction.[21] Section 7 of RA 9282 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; (Emphasis supplied)
>
> x x x x

The word "decisions" in the above quoted provision of RA 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessments.[22] Corollary thereto, Section 228 of the National Internal Revenue

Code (NIRC) provides for the procedure for protesting an assessment. It states:

> 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 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.
>
> 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.

In the instant case, petitioner timely filed a protest after receiving the PAN. In

response thereto, the BIR issued a Formal Letter of Demand with Assessment Notices. Pursuant to Section 228 of the NIRC, the proper recourse of petitioner was to dispute the assessments by filing an administrative protest within 30 days from receipt thereof. Petitioner, however, did not protest the final assessment notices. Instead, it filed a Petition for Review with the CTA. Thus, if we strictly apply the rules, the dismissal of the Petition for Review by the CTA was proper.

The case is an exception to the
rule on exhaustion of administrative remedies

However, a careful reading of the Formal Letter of Demand with Assessment Notices leads us to agree with petitioner that the instant case is an exception to the rule on exhaustion of administrative remedies, *i.e.*, estoppel on the part of the administrative agency concerned.

In the case of *Vda. De Tan v. Veterans Backpay Commission*,[23] the respondent contended that before filing a petition with the court, petitioner should have first exhausted all administrative remedies by appealing to the Office of the President. However, we ruled that respondent was estopped from invoking the rule on exhaustion of administrative remedies considering that in its Resolution, it said, "The opinions promulgated by the Secretary of Justice are advisory in nature, which may either be accepted or ignored by the office seeking the opinion, and any aggrieved party has the court for recourse". The statement of the respondent in said case led the petitioner to conclude that only a final judicial ruling in her favor would be accepted by the Commission.

Similarly, in this case, we find the CIR estopped from claiming that the filing of the Petition for Review was premature because petitioner failed to exhaust all administrative remedies.

The Formal Letter of Demand with Assessment Notices reads:

> Based on your letter-protest dated May 26, 2004, you alleged the following:
>
> 1. That the said assessment has already prescribed in accordance with the provisions of Section 203 of the Tax Code.
>
> 2. That since the exemption of FCDUs from all taxes found in the Old Tax Code has been deleted, the wording of Section 28(A)(7)(b) discloses that there are no other taxes imposable upon FCDUs aside from the 10% Final Income Tax.
>
> Contrary to your allegation, the assessments covering GRT and DST for taxable year 2001 has not prescribed for [sic] simply because no returns were filed, thus, the three year prescriptive period has not lapsed.
>
> With the implementation of the CTRP, the phrase "exempt from all taxes" was deleted. Please refer to Section 27(D)(3) and 28(A)(7) of the new