

FIRST DIVISION

[G.R. NO. 148380, December 09, 2005]

**OCEANIC WIRELESS NETWORK, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, THE COURT OF TAX
APPEALS, AND THE COURT OF APPEALS, RESPONDENTS.**

D E C I S I O N

AZCUNA, J.:

This is a Petition for Review on Certiorari seeking to reverse and set aside the Decision of the Court of Appeals dated October 31, 2000, and its Resolution dated May 3, 2001, in "Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue" docketed as CA-G.R. SP No. 35581, upholding the Decision of the Court of Tax Appeals dismissing the Petition for Review in CTA Case No. 4668 for lack of jurisdiction.

Petitioner Oceanic Wireless Network, Inc. challenges the authority of the Chief of the Accounts Receivable and Billing Division of the Bureau of Internal Revenue (BIR) National Office to decide and/or act with finality on behalf of the Commissioner of Internal Revenue (CIR) on protests against disputed tax deficiency assessments.

The facts of the case are as follows:

On March 17, 1988, petitioner received from the Bureau of Internal Revenue (BIR) deficiency tax assessments for the taxable year 1984 in the total amount of P8,644,998.71, broken down as follows:

<u>Kind of Tax</u>	<u>Assessment No.</u>	<u>Amount</u>
Deficiency Income Tax	FAR-4- 1984-88- 001130	P8,381,354.00
Penalties for late payment of income and failure to file quarterly returns	FAR-4- 1984-88- 001131	3,000.00
Deficiency Contractor's Tax	FAR-4- 1984-88- 001132	29,849.06
Deficiency Fixed Tax	FAR-4--88- 001133	12,083.65
Deficiency Franchise Tax	FAR-4--84- 88-001134	<u>227,712.00</u>
T o t a l	----- -----	P8,644,998.71

Petitioner filed its protest against the tax assessments and requested a reconsideration or cancellation of the same in a letter to the BIR Commissioner dated April 12, 1988.

Acting in behalf of the BIR Commissioner, then Chief of the BIR Accounts Receivable and Billing Division, Mr. Severino B. Buot, reiterated the tax assessments while denying petitioner's request for reinvestigation in a letter ^[1] dated January 24, 1991, thus:

"Note: Your request for re-investigation has been denied for failure to submit the necessary supporting papers as per endorsement letter from the office of the Special Operation Service dated 12-12-90."

Said letter likewise requested petitioner to pay the total amount of P8,644,998.71 within ten (10) days from receipt thereof, otherwise the case shall be referred to the Collection Enforcement Division of the BIR National Office for the issuance of a warrant of distraint and levy without further notice.

Upon petitioner's failure to pay the subject tax assessments within the prescribed period, the Assistant Commissioner for Collection, acting for the Commissioner of Internal Revenue, issued the corresponding warrants of distraint and/or levy and garnishment. These were served on petitioner on October 10, 1991 and October 17, 1991, respectively.^[2]

On November 8, 1991, petitioner filed a Petition for Review with the Court of Tax Appeals (CTA) to contest the issuance of the warrants to enforce the collection of the tax assessments. This was docketed as CTA Case No. 4668.

The CTA dismissed the petition for lack of jurisdiction in a decision dated September 16, 1994, declaring that said petition was filed beyond the thirty (30)-day period reckoned from the time when the demand letter of January 24, 1991 by the Chief of the BIR Accounts Receivable and Billing Division was presumably received by petitioner, *i.e.*, "within a reasonable time from said date in the regular course of mail pursuant to Section 2(v) of Rule 131 of the Rules of Court."^[3]

The decision cited *Surigao Electric Co., Inc. v. Court of Tax Appeals*^[4] wherein this Court considered a mere demand letter sent to the taxpayer after his protest of the assessment notice as the final decision of the Commissioner of Internal Revenue on the protest. Hence, the filing of the petition on November 8, 1991 was held clearly beyond the reglementary period.^[5]

The *court a quo* likewise stated that the finality of the denial of the protest by petitioner against the tax deficiency assessments was bolstered by the subsequent issuance of the warrants of distraint and/or levy and garnishment to enforce the collection of the deficiency taxes. The issuance was not barred by prescription because the mere filing of the letter of protest by petitioner which was given due course by the Bureau of Internal Revenue suspended the running of the prescription period as expressly provided under the then Section 224 of the Tax Code:

SEC. 224. Suspension of Running of the Statute of Limitations. –
The running of the Statute of Limitations provided in Section 203 and

223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return files upon which a tax is being assessed or collected: *Provided*, That if the taxpayer inform the Commissioner of any change of address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could located; and when the taxpayer is out of the Philippines. [6] (Underscoring supplied.)

Petitioner filed a Motion for Reconsideration arguing that the demand letter of January 24, 1991 cannot be considered as the final decision of the Commissioner of Internal Revenue on its protest because the same was signed by a mere subordinate and not by the Commissioner himself.[7]

With the denial of its motion for reconsideration, petitioner consequently filed a Petition for Review with the Court of Appeals contending that there was no final decision to speak of because the Commissioner had yet to make a personal determination as regards the merits of petitioner's case.[8]

The Court of Appeals denied the petition in a decision dated October 31, 2000, the dispositive portion of which reads:

"WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED."

Petitioner's Motion for Reconsideration was likewise denied in a resolution dated May 3, 2001.

Hence, this petition with the following assignment of errors:[9]

I

THE HONORABLE RESPONDENT CA ERRED IN FINDING THAT THE DEMAND LETTER ISSUED BY THE (THEN) ACCOUNTS RECEIVABLE/BILLING DIVISION OF THE BIR NATIONAL OFFICE WAS THE FINAL DECISION OF THE RESPONDENT CIR ON THE DISPUTED ASSESSMENTS, AND HENCE CONSTITUTED THE DECISION APPEALABLE TO THE HONORABLE RESPONDENT CTA; AND,

II

THE HONORABLE RESPONDENT CA ERRED IN DECLARING THAT THE DENIAL OF THE PROTEST OF THE SUBJECT ALLEGED DEFICIENCY TAX ASSESSMENTS HAD LONG BECOME FINAL AND EXECUTORY FOR FAILURE OF THE PETITIONER TO INSTITUTE THE APPEAL FROM THE DEMAND

LETTER OF THE CHIEF OF THE ACCOUNTS RECEIVABLE/BILLING
DIVISION, BIR NATIONAL OFFICE, TO THE HONORABLE RESPONDENT
CTA, WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF.

Thus, the main issue is whether or not a demand letter for tax deficiency assessments issued and signed by a subordinate officer who was acting in behalf of the Commissioner of Internal Revenue, is deemed final and executory and subject to an appeal to the Court of Tax Appeals.

We rule in the affirmative.

A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.

We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment, thus:

. . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.

The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment – and, consequently, the collection of the amount demanded as taxes – by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.^[10]

In this case, the letter of demand dated January 24, 1991, unquestionably constitutes the final action taken by the Bureau of Internal Revenue on petitioner's request for reconsideration when it reiterated the tax deficiency assessments due from petitioner, and requested its payment. Failure to do so would result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice."^[11] In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.