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FIRST DIVISION

[G.R. No. 148380. December 9, 2005]

OCEANIC WIRELESS NETWORK, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE, THE COURT OF TAX APPEALS, and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. TAXATION; PROTESTED ASSESSMENT; DEMAND LETTER FOR PAYMENT OF DELINQUENT TAXES MAY BE CONSIDERED FINAL DETERMINATION OF DISPUTED ASSESSMENT; MUST BE IN A CLEAR AND UNEQUIVOCAL LANGUAGE; CASE AT BAR. — 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. 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." In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.

2. ID.; COMMISSIONER OF INTERNAL REVENUE; MAY DELEGATE POWER VESTED UPON HIM TO DIVISION CHIEFS OR OFFICIALS OF HIGHER RANK; ISSUANCE OF DEMAND LETTER BY CHIEF OF ACCOUNTS RECEIVABLE AND BILLING DIVISION, INCLUDED. — The general rule is that the Commisssioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers

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granted to him under the National Internal Revenue Code (NIRC) enumerated in Section 7. The act of issuance of the demand letter by the Chief of the Accounts Receivable and Billing Division does not fall under any of the exceptions that have been mentioned as non-delegable. Further, under Section 6 of the same Code, the authority to make tax assessments may be delegated to subordinate officers. Said assessment has the same force and effect as that issued by the Commissioner himself, if not reviewed or revised by the latter such as in this case.

3. **ID.; TAX DEFICIENCY ASSESSMENT; REQUEST FOR RECONSIDERATION; PERIOD.** — A request for reconsideration must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise, the decision becomes final, unappealable and therefore, demandable. A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested.

4. **ID.; COURT OF TAX APPEALS; APPEAL; PERIOD; CASE AT BAR.** — Petitioner failed to avail of its right to bring the matter before the Court of Tax Appeals within the reglementary period upon the receipt of the demand letter reiterating the assessed delinquent taxes and denying its request for reconsideration which constituted the final determination by the Bureau of Internal Revenue on petitioner's protest. Being a final disposition by said agency, the same would have been a proper subject for appeal to the Court of Tax Appeals. The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.

APPEARANCES OF COUNSEL

Tarriela Tagao Ona & Associates for petitioner.

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DECISION

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 ₱8,644,998.71, broken down as follows:

Kind of Tax	*Assessment No.*	*Amount*
Deficiency Income Tax	FAR-4-1984-88-001130	₱8,381,354.00
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	227,712.00
Total	-------	₱8,644,998.71

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.

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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 ₱8,644,998.71 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]

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[1] Annex "C' of Petition, *Rollo*, p. 48.

[2] *Rollo*, p. 7.

[3] CA *Rollo*, pp. 38-39.

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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] (Italics supplied.)

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[4] L-25289, June 28, 1974, 57 SCRA 524.

[5] CA *Rollo*, pp. 40-41.

[6] *Id*; Note: Section 224 is now Section 223.

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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

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[7] *Rollo*, p. 9.

[8] *Id.* at 10.

[9] *Id.* at 22.

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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.
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> 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

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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.

The above conclusion finds support in *Commissioner of Internal Revenue v. Ayala Securities Corporation*,[12] where we held:

> The letter of February 18, 1963 (Exh. G), in the view of the Court, is tantamount to a denial of the reconsideration or [respondent corporation's]...protest o[f] the assessment made by the petitioner, considering that the said letter [was] in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment of the sum of ₱758,687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961. This certainly is a clear indication of the firm stand of petitioner against the reconsideration of the disputed assessment...This being so, the said letter amount[ed] to a decision on a disputed or protested assessment, and, there, the court *a quo* did not err in taking cognizance of this case.

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[10] *Surigao Electric Co., Inc. v. Court of Tax Appeals*, L-25289, June 28, 1974, 57 SCRA 523.

[11] Annex "C" of Petition, *Rollo*, p. 48.

[12] No. L-24985, March 31, 1976, 70 SCRA 204, 209.

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Similarly, in *Surigao Electric Co., Inc v. Court of Tax Appeals,*[13] and in *CIR v. Union Shipping Corporation,*[14] we held:

". . . In this letter, the commissioner not only in effect demanded that the petitioner pay the amount of ₱11,533.53 but also gave warning that in the event it failed to pay, the said commissioner would be constrained to enforce the collection thereof by means of the remedies provided by law. The tenor of the letter, specifically the statement regarding the resort to legal remedies, unmistakably indicate[d] the final nature of the determination made by the commissioner of the petitioner's deficiency franchise tax liability."

The demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, "while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as [his] final decision."[15]

This now brings us to the crux of the matter as to whether said demand letter indeed attained finality despite the fact that it was issued and signed by the Chief of the Accounts Receivable and Billing Division instead of the BIR Commissioner.

The general rule is that the Commissioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers granted to him under the National Internal Revenue Code (NIRC) enumerated in Section 7.

As amended by Republic Act No. 8424, Section 7 of the Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:

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[13] L-25289, June 28, 1974, 57 SCRA 523, 526.

[14] G.R. No. 66160, May 21, 1990, 188 SCRA 547.

[15] CA *Rollo*, p. 40.

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(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate under Section 204(A) and (B) of this Code, any tax deficiency: *Provided, however,* that assessments issued by the Regional Offices involving basic deficiency taxes of five hundred thousand pesos (₱500,000) or less, and minor criminal violations as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

It is clear from the above provision that the act of issuance of the demand letter by the Chief of the Accounts Receivable and Billing Division does not fall under any of the exceptions that have been mentioned as non-delegable.

Section 6 of the Code further provides:

"SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –

(A) Examination of Returns and Determination of Tax Due.— After a return has been filed as required under the provisions of this Code, the *Commissioner or his duly authorized representative* may authorize the examination of any taxpayer and the assessment of the correct amount of tax; *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

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The tax or any deficiency tax so assessed shall be paid upon notice and demand from the *Commissioner or from his duly authorized representative. . . .*" (Italics supplied)

Thus, the authority to make tax assessments may be delegated to subordinate officers. Said assessment has the same force and effect as that issued by the Commissioner himself, if not reviewed or revised by the latter such as in this case.[16]

A request for reconsideration must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise, the decision becomes final, unappealable and therefore, demandable. A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested, thus:

"SEC. 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...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 (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."

Here, petitioner failed to avail of its right to bring the matter before the Court of Tax Appeals within the reglementary period upon the receipt of the demand letter reiterating the assessed delinquent taxes and denying its request for reconsideration

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[16] *Arches v. Bellosillo*, 126 Phil. 426 (1967).

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which constituted the final determination by the Bureau of Internal Revenue on petitioner's protest. Being a final disposition by said agency, the same would have been a proper subject for appeal to the Court of Tax Appeals.

The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.[17]

We agree with the factual findings of the Court of Tax Appeals that the demand letter may be presumed to have been duly directed, mailed and was received by petitioner in the regular course of the mail in the absence of evidence to the contrary. This is in accordance with Section 2(v), Rule 131 of the Rules of Court, and in this case, since the period to appeal has commenced to run from the time the letter of demand was presumably received by petitioner within a reasonable time after January 24, 1991, the period of thirty (30) days to appeal the adverse decision on the request for reconsideration had already lapsed when the petition was filed with the Court of Tax Appeals only on November 8, 1991. Hence, the Court of Tax Appeals properly dismissed the petition as the tax delinquency assessment had long become final and executory.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated October 31, 2000 and its Resolution dated May 3, 2001 in CA-G.R. SP No. 35581 are hereby *AFFIRMED*. The petition is accordingly *DENIED* for lack of merit.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Ynares-Santiago and *Carpio, JJ.*, concur.

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[17] Section 11, Republic Act No. 1125.