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THIRD DIVISION

[G.R. No. 171251, March 05, 2012]

LASCONA LAND CO., INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated October 25, 2005 and Resolution[2] dated January 20, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 58061 which set aside the Decision[3] dated January 4, 2000 and Resolution[4] dated March 3, 2000 of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5777 and declared Assessment Notice No. 0000047-93-407 dated March 27, 1998 to be final, executory and demandable.

The facts, as culled from the records, are as follows:

On March 27, 1998, the Commissioner of Internal Revenue (CIR) issued Assessment Notice No. 0000047-93-407[5] against Lascona Land Co., Inc. (Lascona) informing the latter of its alleged deficiency income tax for the year 1993 in the amount of P753,266.56.

Consequently, on April 20, 1998, Lascona filed a letter protest, but was denied by Norberto R. Odulio, Officer-in-Charge (OIC), Regional Director, Bureau of Internal Revenue, Revenue Region No. 8, Makati City, in his Letter[6] dated March 3, 1999, which reads, thus:

> x x x x
>
> Subject: LASCONA LAND CO., INC.
> 1993 Deficiency Income Tax
>
> Madam,
>
> Anent the 1993 tax case of subject taxpayer, please be informed that while we agree with the arguments advanced in your letter protest, we regret, however,

> that ***we cannot give due course to your request to cancel or set aside the assessment notice issued to your client for the reason that the case was not elevated to the Court of Tax Appeals as mandated by the provisions of the last paragraph of Section 228 of the Tax Code.*** By virtue thereof, the said assessment notice has become final, executory and demandable.
>
> In view of the foregoing, please advise your client to pay its 1993 deficiency income tax liability in the amount of P753,266.56.
>
> x x x x (Emphasis ours)

On April 12, 1999, Lascona appealed the decision before the CTA and was docketed as C.T.A. Case No. 5777. Lascona alleged that the Regional Director erred in ruling that the failure to appeal to the CTA within thirty (30) days from the lapse of the 180-day period rendered the assessment final and executory.

The CIR, however, maintained that Lascona's failure to timely file an appeal with the CTA after the lapse of the 180-day reglementary period provided under Section 228 of the National Internal Revenue Code (NIRC) resulted to the finality of the assessment.

On January 4, 2000, the CTA, in its Decision,[7] nullified the subject assessment. It held that in cases of inaction by the CIR on the protested assessment, Section 228 of the NIRC provided two options for the taxpayer: (1) appeal to the CTA within thirty (30) days from the lapse of the one hundred eighty (180)-day period, or (2) wait until the Commissioner decides on his protest before he elevates the case.

The CIR moved for reconsideration. It argued that in declaring the subject assessment as final, executory and demandable, it did so pursuant to Section 3 (3.1.5) of Revenue Regulations No. 12-99 dated September 6, 1999 which reads, thus:

> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period; otherwise, the assessment shall become final, executory and demandable.

On March 3, 2000, the CTA denied the CIR's motion for reconsideration for lack of merit.[8] The CTA held that Revenue Regulations No. 12-99 must conform to Section 228 of the NIRC. It pointed out that the former spoke of an assessment becoming final, executory and demandable by reason of the inaction by the Commissioner, while the latter referred to decisions becoming final, executory and demandable should the taxpayer adversely

affected by the decision fail to appeal before the CTA within the prescribed period. Finally, it emphasized that in cases of discrepancy, Section 228 of the NIRC must prevail over the revenue regulations.

Dissatisfied, the CIR filed an appeal before the CA.[9]

In the disputed Decision dated October 25, 2005, the Court of Appeals granted the CIR's petition and set aside the Decision dated January 4, 2000 of the CTA and its Resolution dated March 3, 2000. It further declared that the subject Assessment Notice No. 0000047-93-407 dated March 27, 1998 as final, executory and demandable.

Lascona moved for reconsideration, but was denied for lack of merit.

Thus, the instant petition, raising the following issues:

I

> THE HONORABLE COURT HAS, IN THE REVISED RULES OF COURT OF TAX APPEALS WHICH IT RECENTLY PROMULGATED, RULED THAT AN APPEAL FROM THE INACTION OF RESPONDENT COMMISSIONER IS NOT MANDATORY.

II

> THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT THE ASSESSMENT HAS BECOME FINAL AND DEMANDABLE BECAUSE, ALLEGEDLY, THE WORD "DECISION" IN THE LAST PARAGRAPH OF SECTION 228 CANNOT BE STRICTLY CONSTRUED AS REFERRING ONLY TO THE DECISION PER SE OF THE COMMISSIONER, BUT SHOULD ALSO BE CONSIDERED SYNONYMOUS WITH AN ASSESSMENT WHICH HAS BEEN PROTESTED, BUT THE PROTEST ON WHICH HAS NOT BEEN ACTED UPON BY THE COMMISSIONER.[10]

In a nutshell, the core issue to be resolved is: Whether the subject assessment has become final, executory and demandable due to the failure of petitioner to file an appeal before the CTA within thirty (30) days from the lapse of the One Hundred Eighty (180)-day period pursuant to Section 228 of the NIRC.

Petitioner Lascona, invoking Section 3,[11] Rule 4 of the Revised Rules of the Court of Tax Appeals, maintains that in case of inaction by the CIR on the protested assessment, it has the option to either: (1) appeal to the CTA within 30 days from the lapse of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment

even beyond the 180-day period - in which case, the taxpayer may appeal such final decision within 30 days from the receipt of the said decision. Corollarily, petitioner posits that when the Commissioner failed to act on its protest within the 180-day period, it had the option to await for the final decision of the Commissioner on the protest, which it did.

The petition is meritorious.

Section 228 of the NIRC is instructional as to the remedies of a taxpayer in case of the inaction of the Commissioner on the protested assessment, to wit:

> SEC. 228. *Protesting of Assessment.* - x x x
>
> x x x x
>
> 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 (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.** (Emphasis supplied).

Respondent, however, insists that in case of the inaction by the Commissioner on the protested assessment within the 180-day reglementary period, petitioner should have appealed the inaction to the CTA. Respondent maintains that due to Lascona's failure to file an appeal with the CTA after the lapse of the 180-day period, the assessment became final and executory.

We do not agree.

In *RCBC v. CIR*,[12] the Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.[13]

This is consistent with Section 3 A (2), Rule 4 of the Revised Rules of the Court of Tax Appeals,[14] to wit:

> **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions*. – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> > (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 or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; **Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under** Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration

> of the two-year period under Section 229 of the National Internal Revenue Code;
>
> (Emphasis ours)

In arguing that the assessment became final and executory by the sole reason that petitioner failed to appeal the inaction of the Commissioner within 30 days after the 180-day reglementary period, respondent, in effect, limited the remedy of Lascona, as a taxpayer, under Section 228 of the NIRC to just one, that is - to appeal the inaction of the Commissioner on its protested assessment after the lapse of the 180-day period. This is incorrect.

As early as the case of *CIR v. Villa*,[15] it was already established that the word "decisions" in paragraph 1, Section 7 of Republic Act No. 1125, quoted above, has been interpreted to mean the *decisions* of the Commissioner of Internal Revenue on the *protest* of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself. We quote what this Court said aptly in a previous case:

> In the first place, *we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it,* and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. **Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment,** . . . [16]

Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.

It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate - the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final

decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other.**

Accordingly, considering that Lascona opted to await the final decision of the Commissioner on the protested assessment, it then has the right to appeal such final decision to the Court by filing a petition for review within thirty days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.[17] Thus, Lascona, when it filed an appeal on April 12, 1999 before the CTA, after its receipt of the Letter[18] dated March 3, 1999 on March 12, 1999, the appeal was timely made as it was filed within 30 days after receipt of the copy of the decision.

Finally, the CIR should be reminded that taxpayers cannot be left in quandary by its inaction on the protested assessment. It is imperative that the taxpayers are informed of its action in order that the taxpayer should then at least be able to take recourse to the tax court at the opportune time. As correctly pointed out by the tax court:

> x x x to adopt the interpretation of the respondent will not only sanction inefficiency, but will likewise condone the Bureau's inaction. This is especially true in the instant case when despite the fact that respondent found petitioner's arguments to be in order, the assessment will become final, executory and demandable for petitioner's failure to appeal before us within the thirty (30) day period.[19]

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.[20] Thus, even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[21]

WHEREFORE, the petition is **GRANTED**. The Decision dated October 25, 2005 and the Resolution dated January 20, 2006 of the Court of Appeals in CA-G.R. SP No. 58061 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated January 4, 2000 of the Court of Tax Appeals in C.T.A. Case No. 5777 and its Resolution dated March 3, 2000 are **REINSTATED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Villarama, Jr.,[*] and *Mendoza, JJ.*, concur.

* Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Raffle dated February 29, 2012.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Remedios Salazar-Fernando and Hakim S. Abdulwahid, concurring, *rollo,* pp. 13-20.

[2] Id. at 21.

[3] *Rollo*, pp. 111-118.

[4] Id. at 119-120.

[5] Id. at 102.

[6] Id. at 103.

[7] Id. at 111-118.

[8] Id. at 119-120.

[9] Id. at 121-134.

[10] Id. at 30.

[11] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

x x x

(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 or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the

inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; (December 15, 2005)

[12] G.R. No. 168498, April 24, 2007, 522 SCRA 144.

[13] *Id.* at 153.

[14] A.M. No. 05-11-07-CTA, November 22, 2005.

[15] 130 Phil. 3 (1968).

[16] *Id.* at 6. (Emphasis supplied.)

[17] Rule 8, Sec. 3 (a).

[18] *Rollo*, p. 103.

[19] *Id.* at 117.

[20] *Commissioner v. Algue, Inc.*, 241 Phil. 829, 830 (1988).

[21] Id. at 836.