REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Oct. 29/70

AGUEDO Y. CEPTE, SR.
Petitioner,

versus

CTA CASE NO. 1571

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of respondent assessing and demanding from petitioner the total amount of ₱25,651.84 as deficiency income tax for the years 1954 to 1960, inclusive of surcharge and interest.

As an offshoot of the investigation conducted by the Presidential Anti-Graft Committee (PAGCOM) against petitioner, a former government official, for unexplained wealth under Republic Act No. 1379, a tentative report on the tax aspect of the investigation was made by Sr. Revenue Examiner Alfonso B. Camillo to the respondent Commissioner of Internal Revenue. Thereafter, the case was referred to Examiner Conrado A. Quesada for reinvestigation who rendered his report dated June 29, 1962. Under date of August 20, 1962, respondent assessed and demanded from petitioner the aggregate amount of ₱25,651.84 as deficiency income tax for the years 1954 to 1960, inclusive of surcharge and interest, computed as follows:

1954

Compromise for non-filing of return	₱ 20.00

AR-8143-62/55

Net income per return	₱13,400.00
Less: Personal & additional exemptions. .	4,800.00
Amount subject to tax	₱ 8,600.00
Tax due thereon	₱ 940.00
Less: Amount already assessed	820.00
B a l a n c e	₱ 120.00
Add: 50% surcharge	60.00
½% monthly interest from 6-20-59 to 6-20-62	21.60
TOTAL AMOUNT DUE	₱ 201.60

AR-19537-62/56

Net income per return	₱ 7,463.00
Add: Additional income	
(1) Undeclared salaries from Domingo S. Jose	500.00
(2) Undeclared salaries from Sariñas Brokerage Co.	1,200.00
(3) Undeclared salaries from fishpond .	257.00
Net income per reinvestigation	₱ 9,420.00
Less: Personal & additional exemptions	4,200.00
Amount subject to tax	₱ 5,220.00
Tax due thereon	₱ 290.00
Less: Amount already assessed	100.00
B a l a n c e	₱ 190.00
Add: 50% surcharge	95.00
½% monthly interest from 6-20-59 to 6-20-62	34.20
TOTAL AMOUNT DUE	₱ 319.20

3-18-1-898920-62/57

Net income by reconstruction based on tax paid	₱ 6,500.00
Add: Undeclared income detailed as follows:	

Net income by reconstruction	₱ 6,500.00	
Add: (1) Net income not reflected in the orig. ret. filed	8,616.00	
(2) Income still not ref. in 1957 amended ret. filed in 1960	1,675.00	
Total net income per invest.	₱16,791.00	
Less: Net income per ret. by reconstruction	6,500.00	
Undeclared income		₱10,291.00
Net income as per reinvestigation		₱16,791.00
Less: Personal & additional exemptions		4,200.00
Amount subject to tax		₱12,591.00
Tax due thereon		₱ 1,320.00
Less: Amount already assessed		51.00
B a l a n c e		₱ 1,269.00
Add: 50% surcharge		634.50
½% monthly interest from 6-20-59 to 6-20-62		228.42
TOTAL AMOUNT DUE		₱ 2,131.92

90-1-10719-62/58

Net income by reconstruction based on tax paid		₱11,638.46
Add: Undeclared income detailed as follows:		
Net income per ret. by recons.	₱11,638.46	
Add: Income not reflected in the orig. ret. filed	7,361.95	
Income still not reflec. in 1958 amended ret.	1,550.00	
Total net income per invest.	₱20,550.41	
Less: Net income per ret. by reconstruction	11,638.46	
Undeclared income		₱ 8,911.95
Net income per reinvestigation		₱20,550.41
Less: Personal & additional exemptions. .		4,200.00
Amount subject to tax		₱16,350.41
Tax due thereon		₱ 1,960.00
Less: Amount already assessed		469.00
B a l a n c e		₱ 1,491.00
Add: 50% surcharge		745.00
½% monthly interest from 6-20-59 to 6-20-62.		268.38
TOTAL AMOUNT DUE		₱ 2,504.88

90-AR-14007-62/59

Net income per return	₱ 7,560.00

Net income per return	₱ 7,560.00
Add: Undeclared income used to acquire property	31,646.71
Undeclared WAPCO differential . .	119.82
Net income per reinvestigation.	₱39,326.53
Less: Personal & additional exemptions	5,000.00
Amount subject to tax	₱34,326.53
Tax due thereon	₱ 8,037.00
Less: Amount already assessed.	17.00
B a l a n c e	₱ 8,020.00
Add: 50% surcharge	4,010.00
½% monthly interest from 4-19-60 to 8-19-62	1,122.80
TOTAL AMOUNT DUE	₱13,152.80

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Undeclared income used to acquire property	₱28,841.05
Less: Personal & additional exemptions	5,000.00
Amount subject to tax	₱23,841.05
Tax due thereon	₱ 4,632.00
Add: 50% surcharge	2,316.00
½% monthly interest from 4-18-61 to 8-19-62	370.56
TOTAL AMOUNT DUE	₱ 7,318.56

(Exhs. B and 25, pp. 199-202, BIR rec.)

In a letter dated September 17, 1962, petitioner through counsel disputed the legality of the aforesaid assessment and requested the reinvestigation thereof. In reply to the request, respondent asked petitioner to accomplish a blank form for waiver of prescription in order that the request for reinvestigation may be given due course. On October 17, 1962, petitioner executed a waiver, except for the years 1954, 1955 and 1956, the prescriptive periods of which were not waived on the ground that the right of the Government to assess the tax for said years had long prescribed. In a letter dated November 5, 1962, respondent informed petitioner that no reinvestigation could be granted unless the waiver also covered the years 1954, 1955 and 1956. Petitioner acceded to the condition imposed, thereby eliminating the exception for the said years.

On May 31, 1963, counsel for petitioner submitted their memorandum on the request for reconsideration, stating, among other things, that the sums of ₱10,000.00 and ₱4,000.00 represent loans extended to petitioner and that certain amounts were erroneously considered by respondent as coming from the funds of petitioner. Petitioner also assailed the imposition of 50% fraud penalty (pp. 231-237, BIR rec.). On May 13, 1964, respondent informed the counsel to request petitioner to pay the deficiency tax, otherwise he would be constrained to enforce the collection through the remedies provided for by law. In reply to this communication, petitioner requested that the letter of May 31, 1963 be considered re-submitted and be the basis of the decision of the Appellate Division. On September 23, 1964, respondent issued a warrant of distraint and levy against the properties of petitioner to enforce the collection of the income taxes involved in this case. Subsequently, in a letter dated November 17, 1964, petitioner requested that the warrant of distraint and levy be lifted.

Finally, respondent informed petitioner, in a letter dated January 4, 1965, that the issuance of the warrant of distraint and levy all the more proved the finality of the assessments and therefore, the collection through the warrant of the sum of ₱25,651.84, plus increments incident to delinquency would proceed.

Hence, the filing of the instant petition for review on February 12, 1965, to which respondent filed his answer on April 12, 1965 (p. 33, CTA rec.).

The issues raised for our consideration are:

1. Whether or not this Court has jurisdiction over the case;

2. Whether or not the right of the Government to assess petitioner for deficiency income tax for 1954, 1955 and 1956 has already prescribed;

3. Whether or not the "Sources and Application of Fund" method used by respondent in determining the deficiency income tax herein is acceptable in this jurisdiction and a valid method of reconstructing income; and

4. Whether or not petitioner is liable for the payment of ₱25,651.84 as deficiency income tax, inclusive of deficiency interest and 50% fraud

penalty for the years 1954, 1955, 1956, 1957, 1958, 1959 and 1960.

The issue of jurisdiction is an affirmative defense raised in respondent's answer where it is contended that the appealable decision in this case is the letter-decision dated August 20, 1962. This issue is also raised in respondent's memorandum. Petitioner, on the other hand, considers the letter dated January 4, 1965, as the final and appealable decision but his memorandum does not press the point.

To our mind, the appealable decision is the letter of respondent dated May 13, 1964, addressed to counsel for petitioner which reads in part:

> In view thereof, you are hereby requested to advise your client to pay the deficiency income tax mentioned in our letter dated August 20, 1962, plus the statutory penalties for late payment; otherwise, this Office will be constrained to enforce collection thereof thru the remedies provided for by law. (p. 259, BIR rec.)

(The foregoing demand appears to have a tenor of finality for it threatens collection of the deficiency tax upon failure to pay the same on a stated date. (St. Stephen's Assn. v. Coll., 104 Phil. 314.) It is significant on the other hand that although counsel for petitioner asked resubmission of their letter to respondent dated May 30, 1963, respondent appears to have brushed this aside with his silence and instead issued a warrant of distraint for the collection of the deficiency tax as stated in his letter of May 13. As said in Republic v. Lim Tian Tong (G.R. No. L-21731, March 31, 1966), what can be more indicative of finality than respondent's insistence to collect the tax?) In the case of Frederick L. Hahn v. Comm. of Internal Revenue (C.T.A. Case No. 1987), this Court said:

> No formal resolution was made by respondent on petitioner's motion for reconsideration. Instead, a warrant of distraint and levy dated April 1, 1968 was served on petitioner on May 28, 1968. While a warrant of distraint and levy may not, strictly speaking, stand for a formal denial of the petition for reconsideration of the decision on the disputed assessment, however, if the same is issued by respondent subsequent to a motion for reconsideration of the assessment, it is proof of the finality of the assessment (Philippine Planters Investment Co., Inc. v. Actg. Comm. of Int. Rev., CTA Case No. 1266, Nov. 11, 1962) because it is the most drastic action of all media of enforcing the collection of tax, and is "tantamount to an outright denial" thereof, and makes the said request "deemed rejected." (Vicente Hilado v. Comm. of Int. Rev., CTA Case No. 1256, Oct. 20, 1962; see also Algue Inc. v. The Comm. of Int. Rev., CTA Case No. 1620, Jan. 16, 1968.) Hence, when the present appeal was filed by petitioner on June 18, 1968, he con-

> sumed a total of 44 days from the date of receipt of the appealable decision, after discounting the period from March 13 to May 28, 1968. (Resolution, April 30, 1969.)

The request dated November 17, 1964 for a resubmission of petitioner's memorandum of May 31, 1963 which had already been considered by respondent is a *pro forma* motion for reconsideration for it adduces no new grounds nor raises new issues and hence it did not interrupt the period for appeal to the Court of Tax Appeals (Tuason & Legarda, Ltd. v. Commissioner of Internal Revenue, G.R. No. L-18552, September 30, 1965; Filipinas Investment & Finance Corp. v. Commissioner of Internal Revenue, G.R. No. L-23501, May 16, 1967).

Even if we count the period for appeal from notice by petitioner of the warrant of distraint which, aside from other things, is also equivalent to an outright denial and rejection with patent finality of petitioner's request for re-submission of his memorandum of May 31, 1963, the present appeal is still out of time. Notice of the warrant must have been received by petitioner not later than November 17, 1964, the date of his letter requesting the lifting of the warrant. The petition for review herein was filed only on February 12, 1965 - eighty-seven days (87) after

November 17, 1964. The 30-day period for appeal provided in Section 11, Republic Act No. 1125 is jurisdictional (Johnston Lumber Co. v. Court of Tax Appeals, 101 Phil. 151; Filipinas Investment & Finance Corp. v. Commissioner of Internal Revenue, G.R. No. 23501, May 16, 1967).

Having reached the conclusion that we have no jurisdiction to hear the present petition, we deem it unnecessary to pass upon the other issues raised by the parties.

WHEREFORE, we hereby dismiss the present petition for review for lack of jurisdiction.

SO ORDERED.

Quezon City, October 29, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge