DR. JUAN R. FERNANDO,
Petitioner

versus CTA CASE NO. 654

COLLECTOR OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

D E C I S I O N

This involves a deficiency real estate dealer's tax and penalty assessed against petitioner for the year 1952.

Petitioner, Chief Inspector of the Bureau of Hospitals, is the owner of a residential house located at 2368-D Pennsylvania, Manila, which he leased to Messrs. Charles Godziki and Vaswani. On December 23, 1957, respondent Collector (now Commissioner) determined against him a deficiency real estate dealer's tax amounting to ₱150.00 and compromise penalty in the sum of ₱30.00 for failure to provide himself with the required privilege tax receipt for the year 1952, to preserve his books and to attach a statement of net worth and operation to his income tax return.

In a letter dated January 1, 1958, petitioner protested the deficiency-assessment, contending that the lease of his residential building was an isolated transaction for which he was not liable for real estate dealer's tax. In support of his stand, he cites the case of Domingo Imperial v. Coll., G. R. No. L-7924, promulgated on September 30, 1955. In a letter

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dated September 24, 1958, petitioner was informed that he could not be relieved from paying the amount assessed against him. On October 7, 1958, petitioner sought the cancellation of the said assessment, which cancellation was refused by respondent on January 16, 1959, on the ground that the Imperial case was inapplicable, as the decision in that case was made on the basis of a prior law. In letters dated January 30, 1959 and February 12, 1959, respectively, petitioner requested for the cancellation of the deficiency assessment. On February 27, 1959, the Regional Director, in reply to the letter dated January 30, 1959, required petitioner to effect payment within ten (10) days from receipt thereof. In a letter dated March 20, 1959, the Commissioner again denied petitioner's request contained in the letter of February 12, 1959, advising petitioner thus:

> "However, if you are not satisfied with the decision of this Office, you may appeal the case to the Court of Tax Appeals within the time prescribed by law."

On May 11, 1959, petitioner filed a petition for review with this Court. Respondent, in his affirmative defense, raises in issue the question of jurisdiction. However, the parties agreed that the same be resolved together with the merits of the case. After the trial, the parties submitted the case without filing their respective memoranda.

The issues to be decided in this case may be narrowed down to:

> (1) Whether or not this Court has jurisdiction to entertain the petition for review; and
>
> (2) Whether or not petitioner is liable to pay real estate dealer's tax and compromise penalty.

With respect to the first issue, it is the position of respondent that this Court has no jurisdiction to try the case, as the final decision of respondent, dated February 27, 1959 and addressed to petitioner's counsel, was released on March 5, 1959, and the original petition for review was filed only on May 11, 1959. This contention has not been refuted by petitioner. However, it appearing that the letter of the Commissioner, dated March 20, 1959, is the final decision of the Commissioner (See St. Stephens Association, et al. vs. Collector, G. R. No. L-11238, August 21, 1958), we are of the opinion that the instant case was filed out of time.

The Imperial case, G. R. No. L-7924, September 30, 1955, is inapplicable to the case at bar because the former was decided under the provisions of Sec. 194(s) of the Revenue Code, as amended by Republic Act No. 42, whereas the latter case is governed by Sec. 194(s) of the same Code, as amended by Republic Act No. 588. One must be engaged in the business of leasing real estate in order to be liable for real estate dealer's tax under the law, as amended by

Republic Act No. 42. Under the subsequent law, Sec. 194(s) of the Revenue Code, as amended by Republic Act No. 588, mere lease of a real estate for an aggregate amount of ₱3,000.00 or more a year makes the owner thereof liable for the tax.

WHEREFORE, the petition for review in the above-entitled case is hereby dismissed, and petitioner is hereby ordered to pay respondent the amount of ₱150.00 as deficiency real estate dealer's fixed tax for the year 1952, with costs.

SO ORDERED.

Manila, July 28, 1964.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

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