REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANTAM CONSOLIDATED, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4580

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

8/24/93

R E S O L U T I O N

The instant petition for review seeks to set aside the decisions of the respondent Commissioner of Internal Revenue (1) assessing petitioner for the taxable year 1981 the amounts of P4,224,537.60 as deficiency income tax, P67,309,28 as deficiency documentary stamp tax, P6,708.00 as deficiency fixed tax, P400.00 as compromise penalties and (2) issuing warrant of distraint and/or levy against the petitioner.

From the pleadings and evidence presented by the parties, the following facts have been made clear:

On April 18, 1986, petitioner, a corporation duly organized and existing under and by virtue of the laws of the Philippines, received an assessment letter from the respondent dated April 15, 1985. Respondent assessed and demanded from the petitioner the amounts of P4,224,537.60, P400.00 and P67,309.28 representing deficiency income tax, compromise penalties and deficiency documentary stamp tax, respectively, inclusive of interests thereon, as computed below:

Deficiency Income Tax

Net loss per return	(P 110,363.78)
Add: Disallowance-undeclared rental income	6,000,000.00
Net income per review	P5,889,636.22
Tax due thereon	P2,640,336.00
Add: 20% interest from 4-16-82 to 4-15-85 (60% max.)	1,584,201.60
Total amount due and collectible	P4,224,537.60

Compromise Penalties

No comparative financial statement	P300.00
No schedule of taxes paid	100.00
Total	P400.00

Deficiency Documentary Stamp Tax

Paid-up capital stock	P12,183,507.00
Documentary stamp tax due thereon	P 67,009.28
Compromise penalty	300.00
Total	P 67,309.28

Petitioner timely protested the above assessments in a letter dated May 15, 1986 which respondent received on May 16, 1986.

On October 30, 1986, petitioner availed of tax amnesty under Executive Order No. 41 as amended, filing the necessary tax amnesty return and comparative statement of assets, liabilities and net worth as of December 31, 1980 and December 31, 1985, and paying the minimum amount of P10,000.00.

Respondent, however, served petitioner a warrant of distraint and/or levy on January 15, 1991 for a total amount of P4,298,954.88, an amount exceeding by P6,708.00 the assessment notice originally issued by the respondent.

Petitioner immediately filed this petition without awaiting the final decision of the respondent on the merits of the protest.

This Court is again faced with the issue of Its jurisdiction.

Section 7 of Republic Act No. 1125 as amended, provides:

> "Sec. 7. *Jurisdiction* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue

> Code or other law or part of law administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx."

The Supreme Court, in the case of **Commissioner of Internal Revenue v. Villa**, 22 SCRA 3, held:

> "Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*.
>
> To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings. xxx.
>
> The word "decisions" in paragraph 1, Section 7 of Republic Act 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. xxx."

Does the issuance of the warrant of distraint and/or levy constitute the final decision of the respondent appealable before this Court?

This Court does not think so.

The protest filed by the petitioner on May 16, 1986 over the assessment has not been finally resolved by the respondent. This Court cannot consider the warrant issued on January 15, 1991 as the final decision of the respondent to be the basis in bringing the case before this Court.

The Supreme Court ruled:

> "(T)he reviewable decision of the Bureau of Internal Revenue is that contained in the letter of its Commissioner, that such constitutes the final decision on the matter which may be appealed to the Court of Tax Appeals and *not the warrants of distraint.*" **(Commissioner of Internal Revenue v. Union Shipping Corporation, 185 SCRA 547)**

Petitioner, in order to protect itself, may question the warrant in the administrative level pending resolution of its protest.

Furthermore, based on the Memorandum dated December 13, 1990 (B.I.R. Records, p. 78) of the Chief, Appellate Division and the First Endorsement dated February 18, 1991 (*Ibid.* p. 99) of the Chief, Collection Enforcement Division, the warrant of distraint and/or levy was issued merely to forestall the running of the prescriptive period on matters of enforcing collection. In fact after issuance of this warrant the petitioner's docket was forwarded back to the Appellate Division for resolution of the protest.

It clearly shows that there was yet no final decision on the protest. The warrant cannot be considered to be the final decision because of lack of intention on the part of the respondent to enforce collection.

WHEREFORE, in view of the foregoing, this Court hereby RESOLVES to DISMISS this case for lack of jurisdiction without prejudice to the filing of another petition on the part of the petitioner upon receipt of respondent's final decision on the protest.

SO ORDERED.

Quezon City, Metro Manila, August 24, 1993.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge