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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HEAVY EQUIPMENT RENTALS
& CONSTRUCTION CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4140

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

4/27/88

D E C I S I O N

This refers to respondent's "Motion To Dismiss" filed on October 15, 1987, petitioner's opposition thereto as well as the latter's "Motion To Declare Respondent In Default" filed on December 15, 1987.

Respondent in his motion seeks the dismissal of the petition for review on the ground of lack of jurisdiction. He contends that the appeal in this case is premature since the assessment has not been disputed or contested, hence, there could not be any decision that may be appealed to this Court as contemplated in Section 7(1) of Republic Act No. 1125. Thus:

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> While petitioner alleged that it received from respondent a letter dated February 19, 1987 assessing said petitioner the aforesaid taxes for 1981, nowhere in the records does it appear nor it alleged in the petition itself that the said assessment-demand letter was protested and a decision had been rendered by the respondent. The assessment not having been protested nor contested, there could not be any decision that may be appealed to this Honorable Court, as contemplated in the above-cited provision of law. The letter dated July 9, 1986 of respondent to petitioner is not a decision since it is a mere assessment-demand letter for the collection of the amounts stated therein.
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> In order that this Court may acquire jurisdiction, it is indispensable that the assessment be protested by petitioner and a decision rendered thereon by respondent (Candyman Incorporated vs. Comm. of Int. Rev., CTA Case No. 1872, January 20, 1970).
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> Since no decision on the contested assessment has been rendered by respondent, therefore, there is no appealable decision as yet (Comm. of Int. Rev. vs. Villa, G.R. No. L-23988, Jan. 2, 1968, 22 SCRA 3; Dionisio Lantin vs. Comm. of Int. Rev., CTA Case No. 1951, April 10, 1969).

Petitioner, on the other hand, insists that this Court has jurisdiction and in its motion to declare respondent in default contends that since a motion to dismiss was filed instead of an answer within the period granted by this Court, the same could not be a bar to the declaration of respondent in default.

We agree with respondent.

The pertinent facts as alleged in the petition for review disclose that in a letter dated February 19, 1987, respondent assessed and demanded from petitioner payment of the total amount of ₱22,187,037.05 representing alleged deficiency income, percentage and fixed taxes for the year 1981 inclusive of surcharges, interests and compromise penalty.

While petitioner avers that in a letter dated March 10, 1987, it returned the aforesaid letter and notices of assessment in protest of the same, no action thereon has yet been made by respondent, thus making the filing of the petition premature.

Obviously, since no decision has as yet been rendered by respondent on petitioner's protest, there could not be a decision on a disputed assessment that may be appealed to this Court. Under Section 7(1) of Republic Act No. 1125, what is reviewable by this Court on appeal is the decision of the Commissioner of Internal

Revenue on a disputed assessment and not the assessment itself. Thus, it has been held:

> The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act 1125, the pertinent part of which states:
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> > "Sec. 7. Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
> >
> > "(1) Decisions of the Collector (now Commissioner) of Internal Revenue in cases involving disputed assessment, 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;"
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> 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. 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, x x x" (Emphasis supplied)

The same interpretation finds support in Section 11 of Republic Act 1125, which states:

> "Sec. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Collector (now Commissioner) of Internal Revenue, the Collector of Customs or any

> provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling." (Emphasis supplied)

Note that the law uses the word "decisions", not "assessment", thus further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment but not the assessment itself.

Since in the instant case the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 3; Perfecto V. Fernandez vs. Commissioner of Internal Revenue, C.T.A. Case No. 3432, February 25, 1983.)

Under Section 319-A of the National Internal Revenue Code, as inserted by Presidential Decree No. 1773, January 16, 1981, now Section 270, an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment; otherwise, it becomes final and unappealable. And if the protest is denied in wh le or in part, the taxpayer adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.

It is thus clear beyond doubt that the decision on the request for reconsideration or reinvestigation is the decision on the disputed assessment which is appealable to this Court. It follows that if an assessment is not formally contested or protested administratively, or even if formally contested or protested administratively, no decision has as yet been rendered by the Commissioner of Internal Revenue, the taxpayer has no right to appeal.

As stated above, it appears in this case that petitioner has protested respondent's assessment-demand letter of February 19, 1987, but respondent Commissioner of Internal Revenue has not yet acted or rendered a decision on the same. Clearly, therefore, the filing of the instant petition for review is premature.

IN VIEW OF THE FOREGOING, the petition for review filed in this case on April 8, 1987 is hereby dismissed for lack of jurisdiction at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, April 27, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

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C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals