Lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. SORIANO CORPORATION, a/k/a
ANSCOR,
Petitioner,

- versus - C.T.A. CASE NO. 3666

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

4/27/84

DECISION

In its petition for review filed with this Court on August 5, 1983, petitioner A. Soriano Corporation, a/k/a Anscor, alleges:

> 1. THAT petitioner, also known as ANSCOR for short, is a domestic corporation primarily engaged in the business of being general manager of various corporations.... among other things, it is also authorized through its Insurance Division, to engage in the sale of insurance policies as agent of insurance companies; and through its Soriamont Steamship Division and Cargo Specialists Division, in soliciting cargo for loading in and in the servicing and manning of foreign vessels; and to make investments and own and hold property, personal and real;
>
> 2. THAT it has its offices in the Anscor Bldg., 8776 Paseo de Roxas, Makati, Metro Manila where it may be served with notices, writs, processes and other legal papers;
>
> 3. THAT respondent is the head of the Bureau of Internal Revenue and has his offices at the BIR Bldg., Diliman, Quezon City, Metro Manila where he may be served with summons, notices, writs, processes and other legal papers;

4. THAT on January 17, 1983, petitioner received deficiency business tax assessment and demand No. 01-25-908-77-82 for taxable year 1977 totalling ₱5,139,281.30, computed as follows:

"Gross taxable sales/receipts per return			₱
Adjustments:			
Soriamont Steamship		₱6,487,966.00	
Management Fees	₱41,604,908.00		
Commission Insurance	17,639,799.00		
Haulage & handling	582,635.00		
Administrative fees	105.00		
Building Operation	176,657.00		
Special Service	889,845.00		
Management Service	1,447,320.00		
Aviation	967,514.00		
	₱63,308,783.00	₱6,487,966.00	
	x 3%	x 6%	
	₱ 1,899,263.40	₱ 389,277.96	
3% and 6% Tax due thereon			₱2,288,541.30
Less: Tax already paid			423,420.39
Deficiency tax due			₱1,865,121.00
50% Surcharge due thereon			932,560.50
Interest			2,341,099.80
Compromise Penalty for late payment			500.00
Total Amount Due & Collectible			₱5,139,281.30"

5. THAT respondent expressly allowed petitioner to protest the demanded assessment within 30 days after receipt otherwise he would consider it final and unappealable;

6. THAT petitioner by counsel in a letter dated February 8, 1983 protested the aforestated assessment demanded by respondent who received it on Feb. 9, 1983;

7. THAT on July 22, 1983, petitioner received the final decision of respondent denying completely the protest of petitioner;

8. THAT the deficiency assessment demanded and the decision denying it are illegal and erroneous and not supported by law and facts, x x x:

xxx xxx xxx

xxx xxx xxx

In moving for the dismissal of the petition on the ground of lack of jurisdiction, respondent Commissioner of Internal Revenue contends:

> "Respondent has not yet rendered a decision on the protest of petitioner. Hence, petitioner's appeal to this Court, without awaiting the decision of respondent on its protest, is premature; consequently, this Honorable Court acquires no jurisdiction over this case. As the Supreme Court said in the Villa case, "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 vs. Villa, infra.)

Before us for resolution is respondent's "Motion to Dismiss" filed by him on March 13, 1984 alleging, among others, that petitioner without awaiting the decision of respondent on its protest dated February 8, 1983 interposed its appeal to this Court. Hence, petitioner's appeal is premature and the Court acquires no jurisdiction on the petition for review.

Petitioner however interposed its opposition to the said motion on March 16, 1984, contending that a final decision of respondent denying its protest has been received by it on July 22, 1983. Hence, the appeal is not prematurely filed, and the Court has jurisdiction over the case.

The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act

No. 1125, the pertinent part of which states:

> "Sec. 7. <u>Jurisdiction</u>.- 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 the law administered by the Bureau of Internal Revenue;
>
> (2) xxx xxx xxx
>
> (3) xxx xxx xxx

The Court of Tax Appeals is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. The jurisdiction of a court to take cognizance of a case should be conferred clearly and should not be deemed to exist on mere implication, or affirmation of a party to the action, specially so with this Court which is a specialized court of limited jurisdiction. (Victorias Milling Co., Inc. vs. The Philippine Ports Authority, CTA Case No. 3466, October 26, 1983, certiorari denied in G.R. No. 66381, Feb. 29, 1984; see also Amilbangsa v. Angangco, CTA Case No. 255, May 7, 1956.) It is worth noting that the word "decision" as appearing in Section 7(1) of Republic Act No. 1125 has been interpreted by the Supreme Court in the case of Commissioner of Internal

Revenue vs. Leonardo S. Villa, et al., January 2, 1968, 22 SCRA 3, to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment. The Supreme Court further stated:

> "The same interpretation finds support in Section 11 of Republic Act 1125, which states:
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> > 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 (Commissioner) 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 "assessments", 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." (Underlining supplied.)

Petitioner's allegation that a decision has been rendered by respondent on its protest and the same has been received by it on July 22, 1983 is not substantiated by the evidence. Records of the Bureau of Internal Revenue pertinent to this case do not show that a decision has been rendered by respondent in connection with petitioner's protest. Neither is there a copy of the alleged decision attached to the petition for review as required by Section 2, Rule 5, of the Rules of Court of Tax Appeals. Even more, when the said motion to dismiss of respondent was heard by the Court on April 26, 1984, petitioner failed to present the alleged decision which it claimed to have received on July 22, 1983. Respondent Commissioner of Internal Revenue having averred in his motion to dismiss that he has not yet rendered a decision on the protest of petitioner, the bare allegation of petitioner that on July 22, 1983 it received the final decision of respondent denying completely its protest, unaccompanied by adequate evidence, has therefore no weight with the Court. Under these circumstances, we believe that no decision was rendered by respondent in this case which is appealalble to this Court. The appeal therefore is premature and the Court has no jurisdiction to entertain the instant case.

WHEREFORE, the petition for review is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, April 27, 1984.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge