REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FREDERICK L. HAHN,
Petitioner,

- versus - C.T.A. CASE No. 1987

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - x April 30/69

RESOLUTION

This is in connection with the "Motion to Dismiss" filed by respondent on December 3, 1968 on the ground that the herein appeal of petitioner was filed beyond the 30-day period provided in Section 11 of Republic Act No. 1125.

On April 2, 1965, respondent assessed against petitioner the sum of ₱100,092.72 as deficiency income tax, interest and penalties, for the period from 1952 to 1962, inclusive.

On May 25, 1965, petitioner protested the assessment and prayed that it be set aside on the ground that he is not liable for the said amount and that the assessment was issued improvidently.

In a letter dated January 22, 1968, respondent denied the protest of petitioner which letter was received by petitioner on February 20, 1968. At the same time, petitioner was asked to pay the aforesaid amount within 30 days from receipt of said letter, otherwise collection would be enforced by judicial action.

On March 13, 1968, petitioner requested reconsideration of the aforesaid decision. No formal resolution was rendered by respondent on the petition for reconsideration of the decision dated January 22, 1968. However, he issued a warrant of distraint and levy dated April 1, 1968 a copy of which was served on petitioner on May 28, 1968.

On June 19, 1968, petitioner's appeal was filed with this Court.

The only issue is whether or not the petition for review was filed within the 30-day period provided in Section 11 of Republic Act No. 1125 and, consequently, whether this Court has jurisdiction over the case.

The decision of respondent which is appealable to this Court within 30 days from receipt thereof is the letter of respondent dated January 22, 1968 in which he denied petitioner's protest against the assessment. (St. Stephen's Association vs. Coll. of Int. Rev., 104 Phil. 314; Comm. of Int. Rev. vs. Leonardo S. Villa, G. R. L-23988, Jan. 2, 1968.) This decision having been received on February 20, 1968, the 30-day period to appeal started to run from that date and was tolled on March 13, 1968, when petitioner filed his petition for reconsideration of the decision. (North Camarines Lumber Co., Inc. v. Coll. of Int. Rev., G.R. No. L-12353, Sept. 30, 1960; Pangasinan Transportation Co. vs. Blaquera, G.R. No. L-13101, April 29, 1960; Filipinas Investment

Corp. vs. Comm. of Int. Rev., G.R. No. L-23501, May 16, 1967).

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, howver, 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. vs. 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 vs. Comm. of Int. Rev., CTA Case No. 1256, Oct. 20, 1962; see also Algue Inc. vs. The Comm. of Int. Rev., CTA Case No. 1620, Jan. 16, 1968.) Hence, when the present appeal was filed by petitioner on June 19, 1968, he consumed 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.

Section 11 of Republic Act No. 1125 requires that decisions of the Commissioner of Internal Revenue in matters involving disputed assessments must be appealed to this Court within 30 days from the date of receipt thereof. This appeal having been taken beyond the 30-day period prescribed by law, we have no jurisdiction over the same. (Pangasinan Transp. Co. v. Blaquera, supra; Ker & Co. v. Collector, G. R. No. L-12396, Jan. 31, 1962.)

WHEREFORE, finding the "Motion to Dismiss" filed by respondent on December 3, 1968 meritorious, the same is GRANTED, and the petition for review is hereby dismissed.

SO ORDERED.

Quezon City, April 30, 1969.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge