REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FERNANDO C. DESCALSOTA,
Petitioner,

- versus - C.T.A. Case No. 4997

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE, REGIONAL DIRECTOR OF REGION XI and FRANCISCO N. TENALA, ACCTG. CHIEF, COLLECTION ENFORCEMENT UNIT,

12/16

Respondents.

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

RESOLUTION

Presented before Us for resolution is respondent's Motion to Dismiss the instant petition for review on the grounds that it states no cause of action since the reliefs prayed for are already moot and academic and the Court has no jurisdiction over the case.

The antecedents of the case as gathered from the records are as follows:

> Respondent issued Assessment Notices Nos. FAN-1-80-86-000276 and FAN-4-80-86-000277 both dated January 20, 1986 against Bay Integrated Stevedoring and Arrastre Corporation (BISACOR) pertaining to its 1980 deficiency income tax of P472,233.02 and deficiency percentage tax of P47,871.18, respectively for a total amount of P520,104.20. The said notices have become final and executory hence, respondent issued Warrants of Distraint and/or Levy against the corporation's properties. However, the

warrants could not be served against the corporation for it had ceased operation and no properties of the corporation can be found to answer for its tax obligations. Upon verification of the Articles of Incorporation of BISACOR, respondent discovered that the incorporators have unpaid subscriptions to its capital stock in the amount of P750,000.00. Herein petitioner, Fernando Descalsota is one of the stockholders who have unpaid subscriptions to the capital stock of the corporation in the amount of P62,250.00 (p. 139, BIR records). Considering that the said unpaid capital stock subscriptions are receivables of the corporation and form part of its assets which creditors including the government, can proceed against to satisfy their claims, respondent demanded from petitioner the payment of P62,250.00, to be applied against BISACOR's tax liabilities. Petitioner refused to pay the same alleging that he had already waived his shares of stocks in favor of another and therefore can neither be held liable for the unpaid subscriptions nor for the unpaid taxes of the corporation (p. 185, BIR records). However, no documents can be presented by petitioner in support of its contention. Accordingly, respondent issued Warrant of Distraint and/or Levy against petitioner's properties (p. 171, BIR records). The warrant was duly served and petitioner's property was thereafter sold at public auction (p. 53, CTA records).

Petitioner, through counsel, filed the instant petition for review on June 7, 1993 praying for temporary restraining order, injunction and alternative prayer for annulment of sale (pp. 1-5, CTA records). Respondent countered with the herein Motion to Dismiss (pp. 43-52, CTA records).

Jurisdiction of the court over the subject matter is conferred by the sovereign authority which organizes courts (Pomeroy's Code Remedies, 492). Jurisdiction of a particular action is acquired by the filing of pleadings which shows the case to be within the general class of cases which the court has jurisdiction to hear and determine (21 C.J.S., 122).

Republic Act No. 1125 has conferred jurisdiction to the Court of Tax Appeals over cases involving tax matters, to wit:

> 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

In relation to the above, Section 11 of R.A. No. 1125 provides:

> SEC. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the 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.
>
> No appeal taken to the Court of Tax Appeals from the decision of the Commissioner of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liabilities as provided by existing law: Provided, however, that when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the

> interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

A cursory reading of the foregoing provisions of law would immediately disclose that the instant petition for review does not fall within the ambit of this Court's jurisdiction. What is sought by petitioner in the case at bar, inasmuch as the property distrained/levied upon had already been sold at public auction, is the annulment of said sale on the ground that he cannot allegedly be held answerable for BISACOR's corporate tax liabilities since he has ceased to be a stockholder of the corporation when he waived his shares of stock in favor of another who assumed the payment of the unpaid capital stock subscription. There is no tax assessment that is being disputed in this case. Questions pertaining to the deficiency assessment can nowhere be found. In fact, the assessment has become final, executory and demandable. Action to enforce collection thereof had been actually effected with the auction of petitioner's property by respondent.

WHEREFORE, the Court hereby resolves to dismiss the instant petition for review for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, December 16, 1993.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge