REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STA. IRENE RUBBER CORPORATION thru its President and General Manager, JOAQUIN C. AQUINO, SR.,
Petitioner,

- versus -

C.T.A. CASE NO. 4846

HON. COMMISSIONER OF INTERNAL REVENUE, thru HON. HERMINIA D. DE GUZMAN, Acctng. Head Revenue Executive Assistant,
Respondent.

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RESOLUTION

Respondent Commissioner of Internal Revenue, in a verbal motion made in open court and subsequently through a memorandum filed on November 10, 1993, seeks the dismissal of the instant petition for review on the ground of lack of jurisdiction. She contends that the appeal is not cognizable by this Court since the assessment has not been protested or contested within thirty (30) days from receipt thereof, pursuant to Section 229 of the Tax Code; hence, there could not be any decision appealable to this Court as contemplated in Sec 7(1) of Republic Act 1125.

We agree with respondent.

The pertinent facts as alleged in the petition for review and records of the case disclose that petitioner, a corporation duly organized under the laws of the Philippines with office at Prosperidad, Agusan del Sur, is represented by its President and General Manager, Joaquin C. Aquino, Sr.

As an offshoot of the investigation conducted by some three(3) Revenue Officers/Examiners, pursuant to Letter Authority No. 0154828, petitioner was sent a pre-assessment notice dated March 7, 1990 covering its income and business tax liabilities for 1987 in the total amount of P159,851.91, including increments thereon.

In reply thereto, in a letter dated April 24, 1990, petitioner contested the said notice alleging among others, that the assessment of undeclared income of the canteen is not proper because the same is owned by a certain Lucille Letero-Bahalia, who was merely accommodated by petitioner in collecting the accounts due her from the employees through payroll deduction.

Thereafter, petitioner received notices of demand together with the assessment letter dated January 14, 1991, requiring it to pay the total amount of P12,883.82, representing fixed and percentage taxes for the year 1987, including increments thereon. Said letter also indicates the acceptable extra-judicial settlement should payment of the amount be made within thirty (30) days from receipt thereof (Annexes G-G-3, pp. 15-18, CTA records).

Petitioner protested the said assessment in a letter dated June 20, 1991 which was filed with the BIR Regional Office of Butuan City on July 1, 1991 (Annex H, p. 19, CTA records).

Subsequently, on June 22, 1992, respondent issued a Warrant of Distraint and/or Levy which was served to petitioner on August 6, 1992 (Annex K, p. 22, CTA records).

On September 9, 1992, petitioner filed the instant petition for review with this Court.

While the petitioner avers that the assessment is arbitrary, unfair and unjust because it was not given a chance to substantiate the protest with documents, We nevertheless find, as indicated earlier, that the notice of demand and assessment letter dated January 14, 1991 required petitioner to pay the amount assessed within thirty(30) days from receipt thereof. However, petitioner filed its protest only on July 1, 1991, barely more than five(5) months had elapsed.

Under Section 270 (now Section 229) of the Tax Code, an assessment may be protested administratively by filing a request for reinvestigation or reconsideration within thirty(30) days from receipt of the assessment; otherwise it becomes final and unappealable. And if the protest is denied in whole 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.

Obviously, the assessment in the case at bar not having been administratively protested or contested within the thirty(30) day period, said assessment has already become final and unappealable (Please see Candyman Inc. vs The Commissioner of Internal Revenue, CTA Case No. 1872, January 20, 1970; The Philippine American Life Insurance Co., Inc. vs. The Hon. Commissioner of Internal Revenue, CTA Case No. 2981, June 6, 1986). It necessarily follows there could not be a decision on a disputed assessment that maybe appealable to this Court. Pursuant to 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. Thus, it has been held:

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. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive jurisdiction to review by appeal as herein provided - (1) Decision of the Collector (now 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";

The word "Decisions" in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. x x x" (Emphasis Ours) (Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Tax Appeals, 22 SCRA 3)

It is thus clear beyond doubt that the decision on the request for reinvestigation or reconsideration is the decision on the disputed assessment which is appealable to this Court. Consequently, if the assessment was not contested or protested administratively within thirty (30) days from receipt of the assessment which is mandated by the law, as what happened in the case at bar, the taxpayer has no right to appeal.

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

SO ORDERED.

Quezon City, Metro Manila, March 21, 1994.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge