RAMON GARCIA,
Petitioner,

- versus - C.T.A. CASE NO. 863

THE HONORABLE MELECIO R. DOMINGO, in his Official Capacity as COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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R E S O L U T I O N

This is a "Motion to Dismiss" filed by respondent on the groundsthat -

> this Court has no jurisdiction to take cognizance of this case which is an appeal from a ruling not involving a disputed assessment of the Commissioner of Internal Revenue; and
>
> the petition for review states no cause of action.

It appears that petitioner Ramon Garcia is a lessee of mineral land (Lode Lease Contract No. V-310 approved May 25, 1960) situated in Pansol, Calamba, Laguna (Par. 2, Petition for Review, CTA rec. p. 1). He is also the owner of the land covered by the mineral lease (Par. 4, Petition for Review, CTA rec. p. 1). Being both the lessee and owner of the mineral land, he deducted 5% from all royalties on the gross output of his mines due the government and credited the amount so deducted to himself pursuant to the provisions of Section 247 of the Tax Code (Par. 5, Petition for Review, CTA rec. p. 2).

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Sometime in May, 1960 petitioner received a letter from the Director of Regional District No. 5 of the Bureau of Internal Revenue (Par. 7, Petition for Review, CTA rec. p. 2) advising him that the provisions of Section 247 of the Tax Code are not applicable to him (Annex A, CTA rec. p. 6). Petitioner, in a letter dated May 21, 1960 to respondent (signed by Jose R. Garcia), took exception to the view entertained by the Regional Director. In reply, the Commissioner of Internal Revenue informed petitioner that he is not entitled to the privilege granted under Section 247 of the Tax Code (Annex B, Petition for Review, CTA rec. p. 7). We quote the letter of respondent:

> "In reply to your letter dated May 21, 1960, requesting information as to whether or not as a leasee of mineral land you may deduct 5% of the royalties due on the value of the output of the mine covered by the lease corresponding to the share of the landowner, I regret to have to inform you that inasmuch as you are the owner of the land, the privilege can not be granted to you. Section 247 of the National Internal Revenue Code contemplates a situation where a person is the leasee of a mineral land belonging to another."
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> (Annex B, CTA rec. p. 7)

whereupon petitioner filed on July 19, 1960 the petition for review in this case.

Before filing his answer, respondent filed on August 16, 1960 the instant motion to dismiss (CTA rec. p. 12).

The issues to be resolved are:

(1) Whether or not the ruling of the Commissioner of Internal Revenue dated June 7, 1960 is appealable to

this Court; and

(2) Whether or not the petition for review in the above-entitled case states a cause of action.

The law in point is paragraph (1) of Section 7, Republic Act No. 1125:

> "SEC. 7. The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> "(1) Decisions of the Collector 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 administered by the Bureau of Internal Revenue;"

For this Court to acquire jurisdiction over a case, the provisions above quoted and Section 11 of the same law require that there be (1) a decision or ruling of the Commissioner of Internal Revenue; (2) that the decision be rendered in any of the cases enumerated therein; (3) that such decision or ruling be appealed by the person, association or corporation adversely affected thereby; and (4) that the appeal be filed within thirty days after receipt of such decision or ruling (Philippine Trust Company vs. Bucas Grande Lumber Corporation, Manila Civil Case No. 9463, Res. December 7, 1957).

Bearing in mind the above requisites, we now proceed to weigh the merits of the arguments advanced by both parties.

With respect to the first issue, respondent argues that there being no assessment issued by respondent, this Court has no jurisdiction to take cognizance of this appeal. On the other hand, petitioner contends that a ruling of respondent adverse to the stand of a taxpayer "can be interpreted as included in the class of a disputed assessment". The controversy boils down to whether or not there is a "disputed assessment" in the instant case.

What is an assessment?

> "An 'assessment' fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls." (Dallas Joint Stock Land Bank of Dallas vs. State, Tex. Civ. App., 118 S.W. 2d 941, 942; 4 Words & Phrases 428.)

> "The word 'assessment', as used in tax statutes, does not mean merely the valuation of the property for taxation, but includes the whole statutory mode of imposing the tax, embracing all of the proceedings for raising money by the exercise of the power of taxation from their inception to their conclusion." (Jackson Lumber Co. vs. McCrimmon, 164 F. 759, 763, 764; 4 Words & Phrases 443.)

We observe that the letter of respondent dated June 7, 1960 neither fixed the liability of, nor imposed a tax upon, the petitioner. It only informed him that he is not entitled to the privilege granted by Section 247 of the Tax Code. The record fails to show any letter or document fixing the liability of, and/or imposing on, and demanding of, the petitioner the payment of an internal revenue tax. We, therefore, cannot share petitioner's view that the case at bar involves a disputed assessment.

Petitioner in his "Opposition to Respondent's Motion to Dismiss" alleged, however, that he received an assessment after the filing of the petition for review in this case. But such receipt, much less the existence of the alleged assessment, is not established by the evidence.

It is further asserted that the instant case falls within the scope of the clause "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue" which is found in the first paragraph of Section 7, Republic Act No. 1125, afore-quoted. We cannot subscribe to petitioner's theory. In order that a matter may come under said clause, it is necessary that it belongs to the same kind or class specifically enumerated (Felipe B. Ollada vs. The Court of Tax Appeals, et al., G. R. No. L-8878, July 24, 1956). Said our Supreme Court:

> "Note that the law gives to the Court of Tax Appeals exclusive appellate jurisdiction to review the decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the provincial or city Boards of Assessment Appeals. Note also that in defining the cases that may be reviewed the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under the National Internal Revenue Code, the Customs Law and the Assessment Law. This shows that the 'other matters' that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as ejusdem generis. In other words, in order that a matter may come under the general clause, it is necessary that it belongs to

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> the same kind or class therein specifically enumerated. Otherwise, it should be deemed foreign or extraneous and is not included." (Ollada vs. The Court of Tax Appeals, et al., supra.)

The ruling in question does not involve a disputed assessment, refund of internal revenue taxes, fees or other charges, or penalty in relation thereto. Consequently, the ruling in question does not come within the purview of "other matters".

Moreover, the action at bar is in effect one for declaratory relief of which this Court has no jurisdiction to take cognizance.

> "x x x It would not be in keeping with the intention of the Legislature and would, on the other hand, be creating handicaps to the speedy termination of the cases appealed to this Court within its exclusive appellate jurisdiction, if we were to entertain, as well, actions for declaratory relief not involving live and actual controversies. x x x" (Libby, McNeill & Libby (Phil.), Inc. vs. The Commissioner of Customs, C.T.A. Case No. 291, Aug. 27, 1956.)

We, therefore, are inclined to believe and so hold that respondent's ruling dated June 7, 1960 informing petitioner that he is not entitled to the privilege granted by Section 247 of the Tax Code is not a decision of the Commissioner of Internal Revenue appealable to this Court under the provisions of Section 7 of Republic Act No. 1125. Hence, this Court has no jurisdiction to take cognizance of the instant appeal (see Leonor de la Rama, etc. vs. The Collector of Internal Revenue, C.T.A. Case No. 421, Nov. 11, 1957).

In view of our disposition of the first issue, we find it unnecessary to pass upon the second issue.

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WHEREFORE, finding respondent's Motion to Dismiss meritorious, the same is hereby granted. Let the petition for review in this case be, as it is hereby, dismissed without pronouncement as to costs.

SO ORDERED.

Manila, October 17, 1960.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

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