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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEILANI C. DIAZ,
Petitioner

- versus - C.T.A. CASE NO. 4276

BUREAU OF INTERNAL REVENUE,
REVENUE REGION NO. 11-B;
and/or CRISPIN G. APOLINAR,
Respondent.

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

1/27/89

D E C I S I O N

Respondent Commissioner of Internal Revenue, in a motion filed on August 22, 1988, seeks the dismissal of the petition for review on the ground of lack of jurisdiction. He contends that the appeal in this case is untenable since the assessment has not been disputed or protested pursuant to Section 319-A of the National Internal Revenue Code as amended by Presidential Decree No. 1773, January 14, 1981; hence, there could not be any decision that may be appealable to this Court as contemplated in Section 7(1) of Republic Act No. 1125.

We agree with respondent.

The pertinent facts as alleged in the petition for review disclose that petitioner is the surviving wife, and together with her minor son, are the heirs of Danilo C. Diaz who died intestate in Davao City on February 7, 1984, leaving among other properties, a parcel of land comprising 7.7037 hectares in Talandang, Davao City, per TCT No. T-82063.

On February 4, 1988, the BIR Regional Office 11-B, through Crispin Apolinar as levying officer, seized the aforementioned parcel of land to enforce 'estate tax' purportedly assessed against the estate of the deceased in the sum of P15,085.15, with notice to sell the same at public auction.

While petitioner avers that on February 5, 1988 she had pleaded with the BIR Regional Office 11-B through Crispin Apolinar for a reconsideration or recall of the seizure of the property, no request for reconsideration of the aforementioned assessment was however made with respondent before petitioner appealed to this Court on May 30, 1988.

Obviously, the assessment not having been protested or contested, there could not be a decision on a disputed assessment that may be appealed to this Court. (Please see **Candyman Incorporated vs. The Commissioner of Internal Revenue**, CTA Case No. 1872, January 20, 1970; **The Philippine American Life Insurance Company, Inc. vs. The Hon. Commissioner of Internal Revenue**, CTA Case No. 2981, June 6, 1986.) Under 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 1125, the pertinent part of which states:
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> > "SEC. 7. *Jurisdiction*.- The Court of Tax Appeals shall exercise exclusive jurisdiction to review by appeal as herein provided -
> >
> > "(1) *Decisions 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";
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> The word "decisions" in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the

> decisions 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, L-23988,** January 2, 1968, 22 SCRA 3.)

Under Section 319-A (now Section 270) of the National Internal Revenue Code, an assessment may be protested administratively by filing a request for reconsideration or reinvestigation 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.

It is thus clear beyond doubt that the decision on the request for reconsideration or reinvestigation is the decision on the disputed assessment which is appealable to this Court. Consequently, if the assessment is not formally contested or protested administratively, 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, Jaqnuary 27, 1989.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals