REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARCIANO UY,
Petitioner,

- versus -

C.T.A. CASE NO. 2112

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x - - - - - - - - x

R E S O L U T I O N

This refers to a motion to dismiss this petition on jurisdictional grounds.

On September 26, 1958 respondent assessed petitioner in the sum of ₱4,481.38 as commercial broker's fixed and percentage tax for the years 1953 to 1956 inclusive of surcharge and penalty. On October 9, 1958 petitioner filed a request for clarification. On January 20, 1959 respondent raised the assessment to ₱4,660.30. On February 12, 1959 petitioner requested respondent for a reduction of the assessment and time to settle same. On April 7, 1959, petitioner asked respondent to reopen the investigation of his assessment but this was denied by respondent in a letter of April 27, 1961. In the same letter of denial respondent raised the assessment to ₱9,141.68. This denial was contested by petitioner on May 5, May 31 and June 2, 1961 but all were rejected by respondent on August 15, 1961.

On May 4, 1962 respondent assessed petitioner in the sum of ₱36,052.78 as commercial broker's fixed and percentage tax for the years 1956 to 1960 inclusive of surcharge and penalty. Petitioner contested this assessment on June 6, 1962 and June 14, 1962 but both were denied by respondent on August 3, 1962. On August 22, petitioner requested for a reinvestigation which was again denied by respondent on September 12, 1962 whereupon petitioner requested for a review by the appellate division of the Bureau of Internal Revenue in a letter dated September 22, 1962 including in this request the assessment for ₱9,141.68 for the years 1953 to 1956. On July 20, 1966 respondent sustained all his assessments and demanded payment within 15 days. On August 12, 1966, petitioner acknowledged the demand and in the same breath asked for a reconsideration of the denial, requesting that action be held in abeyance until the case of Cirilo D. Constantino v. Commissioner of Internal Revenue, C.T.A. Case No. 1016, appealed to the Supreme Court in G.R. No. L-25925 involving similar issues has been decided.

On October 28, 1966, respondent issued a warrant of distraint and levy against petitioner, and upon knowing the same, petitioner wrote respondent a letter dated December 12, 1966.reiterating his protest and citing the decision of the Court of Tax Appeals in Constantino v. Commissioner of Customs, C.T.A. Case No. 1016 which was adverse to the position taken by respondent in this case and which was on appeal in the Supreme Court. In the same letter petitioner offered to execute a waiver of the statute of limitation.

Subsequently, petitioner submitted said waiver which was accepted by respondent. On January 11, 1967, respondent sent a telegram to the Regional Director of Tuguegarao, Cagayan advising the latter to "suspend the execution warrant of distraint and levy" and on January 19, 1967, respondent sent a follow-up letter with the following tenor:

> With reference to our telegram to you dated January 11, 1967, requesting suspension of the execution of the warrant of distraint and levy issued against Mr. Marciano Uy, please be informed that Mr. Uy, thru his counsel, has already filed with this Office a new waiver of the running of the period of prescription for assessment and collection, the expiry date of which is December 31, 1971.
>
> The case of Mr. Uy involving commercial broker's fixed and percentage taxes from 1950 to 1960 and other cases of similar issues are being held in abeyance pending final decision by the Supreme Court in the case of Cirilo D. Constantino, G.R. No. L-25926.

Anent the aforesaid warrant of distraint and levy, the letter dated October 9, 1969 of Assistant Regional Director of Tuguegarao, Cagayan to the respondent states:

> This is with reference to the Warrant of Distraint and Levy issued against the properties of Mr. Marciano Uy of Cauayan, Isabela in the sums of ₱8,321.68 and ₱36,052.78 as commercial broker's fixed and percentage taxes for the years 1950 to 1956 and 1956 to 1960, respectively.

> In this connection, the service and execution of the said warrant was held in abeyance per order from the Commissioner of Internal Revenue in his telegram dated January 11, 1967 followed by a letter dated January 19, 1967 from the then Acting Deputy Commissioner of Internal Revenue.
>
> In view of the fact that a considerable length of time has already elapsed from the date the warrant was held in abeyance up to this writing, this Office would like to be informed of the present status of the said case so that we will be guided accordingly in the collection of the above-mentioned tax liabilities of Mr. Uy.

As far as the record shows, no warrant of distraint and levy has ever been served upon the petitioner.

Respondent urges that his letter of July 26, 1966 was final in character and that petitioner's subsequent requests for reconsideration thereof were *pro forma* as they raised no new issues. The filing of this petition on May 9, 1970 was therefore out of time.

Petitioner for his part contends that the letter of denial of July 26, 1966 was not final in nature and that assuming *arguendo* that it was, his motion for reconsideration of August 12, 1966 was not *pro forma*.

Respondent's letter of July 26, 1966 seems to have the tenor of finality for it gave petitioner 15 days from receipt of copy thereof within which to pay the tax in question and threatens that upon failure to pay, action for collection of the tax will follow.

In effect, on October 26, 1966 a warrant of distraint and levy was prepared and then sent for service to the proper Regional Director.

It appears however that on August 12, 1966 petitioner wrote a letter to respondent reiterating his protest and asking for the suspension of action on the matter until the Supreme Court had decided the appeal of the Constantino case and for this purpose petitioner offered to execute a waiver of the statute of limitation which was subsequently accepted by respondent. With this, respondent apparently granted the suspension of action on petitioner's protest. This finding is bolstered by respondent's telegram of January 11, 1967, his follow-up letter of January 19, 1967 and the letter of the Regional Director of Tuguegarao, Cagayan. Indeed it was the most rational action to take in the light of the decision in the Constantino case. The least that can be said is that respondent reconsidered the finality of the denial of July 23, 1966 (Torres v. Comm. of Int. Rev., C.T.A. Case No. 2118, Resolution of Jan. 30, 1973; E. A. Francisco & Sons v. Comm. of Int. Rev., C.T.A. Case No. 2108, Resolution of Dec. 20, 1973).

We note that no action has so far been taken by respondent on the motion of petitioner of August 12, 1966 and there is still no decision of the respondent that may be appealed to this Court.

WHEREFORE this petition is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Quezon City, October 8, 1974.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge