REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OSCAR F. SANTOS, In his
Capacity as Duly Elected
Assignee of Hotel Filipinas,
Inc. (SP. PROC. No. 126046,
CFI of Manila),
Petitioner,

- versus - C.T.A. CASE NO. 3070

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

8/14/81

D E C I S I O N

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero motu. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.* Hence, because of

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*Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Tax Appeals, L-23988, January 2, 1928, 22 SCRA 4; citing 21 Corpus Juris Secundum, 127-128; Molina vs. De la Riva, 6 Phil. 12; Fuentebella vs. Negros Coal Co., 50 Phil. 69; Vega vs. San Carlos Milling Co., 51 Phil. 908; U.S. vs. De la Santa, 9 Phil. 22; Vda. e Hijos de Pedro Rojas vs. Rafferty, 37 Phil. 957.

the special and affirmative defense of lack of jurisdiction raised by respondent Commissioner of Internal Revenue in his answer to the petition for review filed by Oscar F. Santos, in his capacity as duly elected Assignee of the Hotel Filipinas, Inc. (Special Proceedings No. 126046, CFI of Manila), we shall proceed to inquire whether or not this Court has jurisdiction to entertain the present appeal.

The material antecedents of the case as gathered from the pleadings, evidence adduced during the preliminary hearing, and memoranda of the parties may be narrated chronologically as follows:

In a letter-assessment dated June 8, 1979, respondent Commissioner of Internal Revenue assessed and demanded from the Hotel Filipinas, Inc. payment of the total amount of ₱1,538,676.12 as deficiency percentage, documentary and science stamp taxes for the year 1976. Enclosed therewith was a prepared Business and Occupation Tax Receipt which should be presented by petitioner to the collecting officer when tendering payment. (Annex "A", petition for review; Exhibit "1", p. 4, CTA records.)

In a reply dated July 26, 1979, wherein it was acknowledged that respondent's assessment was received on July 24, 1979, the Hotel Filipinas, Inc., through its counsel, contested the assessment and requested that it be given a period of thirty (30) days within which to show that the assessment "is unfounded, unjustified and erroneous". (Annex "B", petition for review; Exhibit "2", p. 6, CTA records.)

On August 23, 1979, in a follow-up letter to respondent, the Hotel Filipinas, Inc. requested another period of thirty (30) days within which to submit its letter-memorandum. (Annex "C", petition for review; Exhibit "3", p. 7, CTA records.)

On the same day (August 23, 1979), Hotel Filipinas' president and director, Jose O. Cobarrubias, filed a petition for voluntary insolvency of said corporation with the Court of First Instance of Manila in Special Proceedings No. 116046.

On August 28, 1979, counsel of the Hotel Filipinas, Inc. sent respondent a letter-petition specifying the grounds why respondent's assessment should be reconsidered and set aside. (Annex "D", petition for review; Exhibit "4", pp. 8-10, CTA records.)

On October 2, 1979, respondent received notice of said insolvency proceedings; hence, on December 26, 1979 (Exh. "5-A", p. 25, CTA records), he filed with the Court of First Instance of Manila a "Motion For Allowance Of Claim and For An Order To Pay Taxes" (Exh. "5", pp. 25-26, CTA records), together with a "Proof of Claim", incorporating the tax assessment against the Hotel Filipinas, Inc. and alleging that the latter's tax liability has not yet been paid and satisfied in whole or in part. It appears that a copy of respondent's motion for allowance of claim and for an order to pay taxes, with the proof of claim, was sent to the counsel of the Hotel Filipinas, Inc. by registered mail and the same was received by him on January 7, 1980. (Exh. "6", p. 33, CTA records.)

On March 20, 1980, petitioner Oscar F. Santos, 'In his Capacity as Duly Elected Assignee of Hotel Filipinas, Inc. (SP. PROC. No. 126046, C.F.I. of Manila)', filed the instant petition for review contesting the legality of respondent's assessment of percentage, documentary and science stamp taxes in the sum of ₱1,538,676.12. (p. 1, CTA records.)

In his answer to the petition for review, respondent raised the special and affirmative defense of lack of jurisdiction of this Court, contending that the assessment involved herein has already become final, executory and demandable. According to respondent, and citing Republic of the Philippines vs. Lim Tian Teng Sons & Co., Inc., L-21731, March 31, 1966, 16 SCRA 584, as authority, the filing of his motion for allowance of claim and for an order to pay taxes, together with the proof of claim, with the Court of First Instance of Manila in Special Proceedings No. 126746 for the collection of the taxes assessed against the insolvent corporation is tantamount to a denial of petitioner's request for reinvestigation of the assessment. Consequently, from receipt of a copy of said motion by petitioner's counsel on January 7, 1980, the appeal from the denial of the request for reinvestigation of the assessment should have been filed with this Court within the thirty-day period prescribed in Section 11 of Republic Act No. 1125. Since the appeal to this Court was filed only on March 20, 1980, which is obviously beyond the thirty-day statutory period, the assessment had already become final, executory and demandable and this Court has no longer jurisdiction to entertain the present case.

Conversely, petitioner maintains that the thirty-day period for appeal commences to run only from the receipt of the decision of respondent on the disputed assessment. Since respondent has not yet rendered a decision on petitioner's request for reinvestigation, there is no decision appealable to this Court. The "Motion For Allowance of Claim and For an Order to Pay Taxes", together with the "Proof of Claim", filed by respondent in the insolvency proceedings cannot be considered as a decision on the disputed assessment. Moreover, the grant of respondent's defense would be a denial of due process and would deprive petitioner of his right to prove that the assessment is unfounded, unjustified and erroneous.

Was the motion for allowance of claim and for an order to pay taxes, together with the proof of claim, filed by respondent with the Court of First Instance of Manila in Special Proceedings No. 126046 equivalent to a denial of petitioner's request for reinvestigation, so that petitioner should have appealed therefrom to this Court within thirty days from the date he was notified of such action?

Settled is the rule that if a taxpayer files a request for reconsideration or reinvestigation of an assessment made by the Commissioner of Internal Revenue, but the latter without categorically deciding the request for reconsideration or reinvestigation instead seeks to enforce collection of the tax assessed by him against the taxpayer by means of distraint and levy, such action of the Commissioner is equivalent to a denial of the taxpayer's request for reconsideration or reinvestigation which the taxpayer must appeal therefrom to this Court within the thirty-day period provided for in Section 11 of Republic Act No. 1125. (Philippine Planters Investment Co. vs. Commissioner of Internal Revenue, CTA Case No. 1266, November 11, 1962; Hilado vs. Commissioner of Internal Revenue, CTA Case No. 1256, October 20, 1962; Algue Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1620, January 16, 1968; Frederick L. Hahn vs. Commissioner of Internal Revenue, CTA Case No. 1937, April 30, 1969; Gepte vs. Commissioner of Internal Revenue, CTA Case

No. 1151, October 29, 1970, Certiorari denied in G.R. No. L-33674, June 29, 1971; Advertising Associates, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3017, June 17, 1981.) Similarly, where the Commissioner of Internal Revenue, without replying to the request for reconsideration or reinvestigation of the taxpayer, institutes an action in the Court of First Instance for collection of the tax assessed against the taxpayer, such court action amounts to a denial of the taxpayer's request for reconsider-ati[illegible]investigation, and his remedy is to [illegible] Court within the statutory period. "For what is more indicative of the Commissioner's decision against reinvestigation than his insist-ence to collect the tax?" (Republic vs. Lim Tian Teng Sons & Co., Inc., L-21731, March 31, 1966, 16 SCRA 584; Cirilo D. Constantino vs. Commissioner of Internal Revenue, CTA Case No. 2084, April 29, 1971.

The Commissioner of Internal Revenue is under no obligation to reply to or rule on the taxpayer's [illegible] for reconsideration or rein-vestigation of the assessment before collecting the tax assessed. (Republic vs. Lim Tiang Teng, Republic vs. Marsman, L-18956, April 27, .4 SCRA 148.) If, without categorically deciding the request of the taxpayer for reconsideration or reinvestigation, the Commissioner collects the tax assessed by him through any of the means provided for in Section 302 (formerly Section 316) of the National Internal Revenue Code, such action for collection is equivalent to the denial of the taxpayer's request and the latter's remedy is to appeal to the Court of Tax Appeals within thirty (30) days from the date he is notified of such action. The "judicial action" for the collection of delinquent taxes mentioned in Section 302 refers not only to actions instituted by the Government to collect internal revenue taxes in the ordinary courts (Republic vs. Del Rosario, 105 Phil. 227; Republic vs. Medrano, L-15477, October 22, 1960, 109 Phil. 762; Republic vs. Dy Chay, L-15705, April 15, 1961, 1 SCRA 975; Republic vs. Gamboa, L-16504, October 27, 1961, 3 SCRA 292; Republic vs. Albert, L-12961, December 28, 1961, 3 SCRA 717; Republic vs. Lopez, L-18007, March 30, 1963, 7 SC [illegible] but also includes filing by the Gover[illegible] probate courts of claims against dec[illegible]payers

(Collector of Internal Revenue vs. Administratrix of the Estate of Lorenzo Echarri, 67 Phil. 502; Directo vs. Araneta, 102 Phil. 1178). As a matter of fact, the filing by the Commissioner of Internal Revenue with the probate court of a claim against the estate in the testate or intestate proceedings for unpaid taxes due from the deceased is considered an assessment, if no assessment has been made during the lifetime of the deceased, and the denial by the heirs of said tax obligation makes the claim of the Government a disputed assessment which is appealable to the Court of Tax Appeals. (Estate of Maria Lim Vda. de Uy vs. Pacita Uy, L-15386, April 29, 1961, 1 SCRA 1262.) And under the present law, criminal action is now considered a judicial action for collection of internal revenue taxes. (Sec. 302, Ibid.)

Since the filing by the Commissioner of Internal Revenue of a motion for allowance of claim and for an order to pay taxes, together with proof of claim, with the Court of First Instance in an insolvency proceedings instituted by an insolvent corporation has for its purpose the collection of internal revenue taxes assessed against such corporation, it is axiomatic that such action of the Commissioner partakes of the nature of a "judicial action" within the purview of Section 302 of the [illegible] Code.

Here, in the case at bar, respondent Commissioner of Internal Revenue did not categorically decide the request of petitioner for the reinvestigation of the assessment of ₱1,538,676.12 for percentage, documentary and science stamp taxes. Instead, upon being notified of the insolvency proceedings instituted by the Hotel Filipinas, Inc. with the Court of First Instance of Manila in Special Proceedings No. 126016, respondent filed a motion for allowance of claim and for an order to pay taxes, together with proof of claim, to enforce collection of the taxes assessed by him against the insolvent corporation. Since the purpose of the Commissioner of Internal Revenue is to seek collection of the ₱1,538,676.12 percentage, documentary and stamp taxes assessed by him, such action of respondent affords no other more convincing evidence than an implied denial of petitioner's request for [illegible]sideration or reinvestigation of the assessment and petitioner's remedy is to appeal to this Court within thirty days from the date he is notice of such action.

Consequently, as correctly argued by respondent, from receipt of notice of the motion for allowance of claim and for an order to pay taxes, together with proof of claim, on January 7, 1980, petitioner's petition for review should have been filed in this Court within the thirty-day period provided for in Section 11 of Republic Act No. 1125, or on or before February 6, 1980, and not on March 20, 1980. Failure of petitioner to interpose his appeal on time makes the assessment in question final, executory and demandable (Republic vs. Lim Tian Teng Sons & Co., Inc. supra) and deprives this Court of jurisdiction to entertain said appeal. (See Commissioner of Internal Revenue vs. Western Pacific Corporation, L-18804, May 27, 1965, 14 SCRA 105; Filipinas Investment and Finance Corporation vs. Commissioner of Internal Revenue, L-23501, May 16, 1967, 20 SCRA 50; Surigao Electric Co., Inc. vs. Court of Tax Appeals, L-25289, June 28, 1974, 57 SCRA 253.)

Nonetheless, granting arguendo that the motion for allowance of claim and for an order to pay taxes, as well as the proof of claim, filed in the insolvency proceedings could not be considered as a denial of petitioner's request for reinvestigation or reconsideration, or a decision on a disputed assessment, still the jurisdictional infirmity in petitioner's appeal exists. For without a decision of the Commissioner of Internal Revenue on a disputed assessment as provided for in Section 7(1) of Republic Act No. 1125, the appeal of petitioner to this Court is premature and cannot therefore be entertained by the Court. (See Commissioner of Internal Revenue vs. Leonardo S. Villa, et al., L-23988, January 2, 1968, 22 SCRA 4; Commissioner of Internal Revenue vs. Lilia Yusay Gonzales, et al., L-19495, November 24, 1966, 18 SCRA 757.)

WHEREFORE, the instant petition for review filed by Oscar F. Santos, in his capacity as duly elected Assignee of the Hotel Filipinas, Inc. (Special Proceedings No. 126046, Court of First Instance of Manila), is hereby dismissed for lack of jurisdiction. With costs.

SO ORDERED.

Quezon City, Metro Manila, August 14, 1981.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge