REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TEKTITE INSURANCE BROKERS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5554

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 08 2000

x - x

DECISION

Appealed before Us is the letter decision of the Acting Chief of the Assessment Division of Revenue Region No. 7, Bureau of Internal Revenue ("BIR" for brevity), Quezon City, Metro Manila, for and in behalf of the Respondent, dated August 4, 1997, which Petitioner deemed as a denial of its protest on the assessment issue against it for deficiency value added tax and income tax, under Assessment Notice No. 000422, dated August 30, 1996, in the amounts of P2,027.96 and P144,573.04, inclusive of surcharge, interest and compromise penalty, respectively, covering the year 1993.

Petitioner is a corporation duly organized under and by virtue of the laws of the Republic of the Philippines, with principal office located at the 5th Floor, Philippine Stock Exchange Centre, Ortigas, Pasig City, Metro Manila.

The bone of contention in the present controversy is the propriety of the deductible expense on salaries and wages amounting to P519,933.35 which Petitioner stated in its income tax return for the year 1993 (Exhibit "B-2"). Respondent disallowed the amount of P71,938.16 on such expense account on the simple ground that they were not duly supported. Petitioner filed a protest dated October 29, 1996, where it asserted that the deductions were completely and adequately supported (Exhibit "D"). In the Petition for Review, Petitioner claims that the disallowed amount represent bonuses paid to its employees for the year covered, despite the fact that they were given to employees only sometime in 1994. It reasons that said bonuses were already treated as accrued expenses for year 1993, as shown by entries recorded in its General Ledger Book (Exhibits "H" and "H-1") and other documents proving due receipt and withholding of taxes on the bonuses (Exhibits "J", "K" and "M", inclusive).

As regards the assessment for value added tax in the amount of P2,027.96, Petitioner asserts that the same had already been paid and should no longer be collected. To prove the point, it offered as evidence the Authority To Accept Payment dated November 4, 1996 of Respondent's Bureau showing the machine validation of such amount, as proof of payment (Exhibit "N").

Prescinding from the above, it is worthy to note that in his Answer, Respondent has alleged that the instant case is premature on account of the fact that the assailed decision on the protest was merely issued by the Chief of the Assessment Division and not by Respondent as required under Section 7 in relation to Section 11 of Republic Act No. 1125.

Based on the foregoing facts, disquisition of the parties and the law in point, the following are the issues confronting Us, to wit:

1. Whether or not the filing of the instant petition is premature; and if in the negative,

2. Whether or not the disallowance made by the Respondent on the salaries and wages is proper; and,

3. Whether or not Petitioner has fully paid its value added tax liability for the year 1993.

We rule peremptorily in favor of the Respondent.

This is not a case of first impression. On all fours with the first issue of herein case is the Resolution of this Court in the Case of **Anscor Land Management and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5463, July 30, 1997 (|With Entry of Judgment dated August 21, 1997)**, to wit:

> Pertinent to the issue at bar is Section 7 of Republic Act No. 1125 and Section 10 of Revenue Regulations No. 12-85, which states:
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> "**SEC. 7. Jurisdiction.** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, 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; (underscoring supplied) (R.A. No. 1125
>
> xxx xxx xxx"
>
> **Section 10. Appeals of Decisions of Commissioner or Regional Director to the Court of Tax Appeals.** Final decision issued by the Commissioner or Regional Director may be appealed to the Court of Tax Appeals within thirty (30) days from receipt thereof, otherwise the same shall become final and executory. (Revenue Regulations No. 12-85)
>
> It is unmistakably clear and explicit from the aforementioned provisions of law and regulations that what is reviewable by this Court on

> appeal, among others, are the decisions of the Commissioner of Internal Revenue and Regional Directors. It is the intention of the law to give the taxpayer an opportunity to exhaust all administrative remedies before coming to this Court and on the other hand, give the Commissioner or the Regional Director, as the case may be, an opportunity to correct the mistakes committed, if any, by his subordinates. Thus, a party dissatisfied with the decision of the Chief of Assessment Division may appeal to the Commissioner or Regional Director, whose decisions are appealable to this Court in the manner and within the period prescribed by law and regulations. Since petitioner did not exhaust his administrative remedies, his recourse to this Court is premature.

In fine, the law and regulations are crystal clear that only the decisions of the Respondent himself or his Regional Directors over protested assessments are what are appealable to this Court. The decision of the Acting Chief of Assessment Division of Revenue Region No. 7 simply does not meet the requirement provided by law.

It is important to point out that the foregoing decision has for its legal basis the 1996 Tax Code because this was the law prevailing at the time the assessment was issued and the protest was filed. Under the present law as embodied in the Tax Reform Act of 1997, taxpayers which were issued assessments by the Bureau of Internal Revenue need not wait for the decision of the Commissioner of Internal Revenue or the Regional Directors on their protests before coming to this Court. Under Section 228 of the Tax Reform Act of 1997, taxpayers aggrieved by the issuance of an assessment may seek recourse to this Court even without a decision being rendered by the aforementioned officials on their protests provided that the taxpayers do so within the period prescribed and conditions specified therein.

However, since the factual milieu of this case dictates the application of the 1996 Tax Code, We find that said case has been filed prematurely, there being no proper decision yet appealable to this Court.

With this conclusion, this Court finds it unnecessary to delve into the other issues involved in this case.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DISMISSED**, without prejudice, for **LACK OF JURISDICTION**.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge