REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE AMERICAN LIFE
INSURANCE COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2981

THE HON. COMMISSIONER OF THE
BUREAU OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This refers to respondent's "Motion To Dismiss" filed on January 12, 1979 as well as petitioner's "Motion To Declare Respondent In Default" filed on February 28, 1979.

Respondent in his motion seeks the dismissal of the petition for review on the ground of lack of jurisdiction. He contends that the appeal in this case is premature since the assessment has not been disputed or protested, hence, there could not be any decision that may be appealed to this Court as contemplated in Section 7(1) of Republic Act No. 1125. Thus:

> While petitioner alleged that it received from respondent a letter dated August 10, 1978 assessing said petitioner the total amount of ₱2,353,288.12 representing deficiency withholding tax for 1973 and 1974, nowhere in the records does it appear nor is it alleged in the petition itself that said assessment-demand letter was contested. The assessment not having been protested nor contested, there could not be any decision that may be appealed

> to this Honorable Court, as contemplated in the above-cited provision of law. The letter dated August 10, 1978 of respondent to petitioner is not a decision since it is a mere assessment-demand letter for the collections of the amount stated therein. In order that this Court may acquire jurisdiction, it is indispensable that the assessment be protested by petitioner and a decision rendered thereon by respondent (Candyman Incorporated v. Commissioner of Internal Revenue, CTA Case No. 1872, January 20, 1970).
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> Since no decision on the contested assessment has been rendered by respondent, therefore, there is no appealable decision as yet (Commissioner of Internal Revenue v. Villa, G.R. No. L-23988, January 2, 1968, 22 SCRA 3; Dionisio Lantin v. Commissioner of Internal Revenue, CTA Case No. 1951, April 10, 1969).

Petitioner, on the other hand, in its motion to declare respondent in default contends that since a motion to dismiss was filed instead of an answer within the period of extension granted by this Court, the same could not be a bar to the declaration of respondent in default.

We agree with respondent.

The pertinent facts as alleged in the petition for review disclose that on October 11, 1978 petitioner received from respondent a letter dated August 10, 1978 assessing and demanding from it payment of the total amount of ₱2,353,288.12 representing alleged deficiency withholding tax at source for the years 1973 and 1974, inclusive of 25% surcharge and 14% annual delinquency interest as well as compromise penalty.

While petitioner avers that prior to the assessment, it had written respondent two letters in connection with respondent's examiners threat to assess it for alleged withholding tax for 1973 and 1974, no protest or request for reconsideration of the aforementioned assessment was however made with respondent before petitioner appealed to this Court on November 8, 1978.

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. 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 and not the assessment itself. 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 appellate 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. Definitely, said word does not signify the assessment itself. We quote what this Court said aptly in a previous case:

> "In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, x x x" (Emphasis supplied)

The same interpretation finds support in Section 11 of Republic Act 1125, which states:

> "Sec. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector (now Commissioner) of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling." (Emphasis supplied)

Note that the law uses the word "decisions", not "assessments", thus further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment but not the assessment itself.

> Since in the instant case the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 3; Perfecto V. Fernandez vs. Commissioner of Internal Revenue, C.T.A. Case No. 3432, February 25, 1983.)

Under Section 319-A of the National Internal Revenue Code, as inserted by Presidential Decree No. 1773, January 16, 1981, 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. It follows that if an assessment is not formally contested or protested administratively, as what happened in the case at bar, the taxpayer has no right to appeal.

On petitioner's argument in its motion to declare respondent in default, suffice it to state that 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. (Commissioner vs. Villa, Id.)

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, June 6, 1986.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

(On official leave)
CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge