PACIFIC VEGETABLE OIL CORPORATION,
Petitioner,

- versus -   C.T.A. CASE NO. 297

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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Oct. 28, 1956

RESOLUTION

Petitioner appealed from the decision of respondent requiring it to pay compensating tax in the amount of ₱64,234.79, plus a "compromise penalty" in the sum of ₱2,000.00.

Respondent filed a "Motion to Dismiss" the "Petition for Review" filed by petitioner on July 11, 1956 on the ground that it was filed beyond the 30-day period within which to appeal prescribed in Section 11 of Republic Act No. 1125. On this question of jurisdiction, the parties submitted a "Stipulation of Facts".

It appears that on September 23, 1954, petitioner received from respondent a letter dated September 13, 1954 requiring it to pay the amount of ₱88,941.20 as compensating tax, common carrier's fixed and percentage taxes and surcharge, and commercial broker's percentage tax and surcharge, computed as follows:

7% tax (compensating) on ₱917,639.83	₱64,234.79
Fixed tax, 1951 (C-3-a)	10.00
2% tax on ₱880,000.00	17,600.00
25% surcharge thereon	4,400.00
4% tax on ₱2,247.10	89.89
6% tax on ₱34,454.06	2,067.24
25% surcharge thereon	539.28
Total	₱88,941.20

Respondent also suggested to petitioner that the sum of ₱2,000.00 be paid as "compromise penalty". On October 30, 1954, Accountant Andres de la Cruz, representing the petitioner, filed a letter dated October 27, 1954 requesting reconsideration of the said assessment relative to the compensating tax, and admitting as actually due and payable the common carrier's fixed and percentage taxes and the commercial broker's percentage tax and surcharge, at the same time requesting that the case be referred to the Conference Staff of the Bureau of Internal Revenue. During the pendency of the case, petitioner paid on February 5, 1955, the sum of ₱24,706.41, apparently intended by petitioner as payment for the uncontested items involving the common carrier's fixed and percentage taxes and surcharge and commercial broker's percentage tax and surcharge, thus leaving only the compensating tax of ₱64,234.79 for future settlement. However, the sum of ₱24,706.41 was obviously applied by respondent as partial payment of the whole assessment in the amount of ₱88,941.20 as evidenced by his letter of January 11, 1956. (Annex C of Stipulation of Facts.)

The request for reconsideration was denied in respondent's letter of January 11, 1956 and received by petitioner on March 19, 1956. The said letter reads as follows:

> "This is in connection with your pending internal revenue case involving the sum of ₱88,941.20 as compensating tax, common carrier's fixed and percentage taxes and surcharge and commercial broker's percentage tax and surcharge. This case was heard before the Conference Staff of this Office.
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> "In the hearing before the Conference Staff, the only question raised by you is whether or not the imported bags used by you as containers of copra exported or consigned abroad are subject to the compensating tax imposed in section 190 of the National Internal Revenue Code. You admitted the legality of the assessments for the common carrier's fixed and percentage taxes and surcharge, interposing the defense of payment of the tax against the latter. As regards the compensating tax, you contend that the imported jute bags are exempt from the tax inasmuch as they were used as containers of copra exported abroad. This Office, however, is of the opinion that only imported articles to be used by the importer himself in the manufacture or preparation of articles for consignment abroad and are to form part of the manufactured article, may be exempted from the compensating tax. It is admitted that you do not manufacture the copra exported by you but merely purchase them from local manufacturers.
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> "It is further contended that Republic Act No. 253 amending section 190 of the Tax Code was passed in order to encourage exports and to hasten the restoration of the balance of trade in our favor. While it is true that Congress had such intention in effecting this amendment, yet it cannot be denied that it has stated definitely that only imported articles to be used by the importer himself in the manufacture or preparation of articles for consignment abroad and are to form part of the finished article may be exempted from the tax.

"In view of the foregoing, this Office sti still believes and so holds that you are liable to the compensating tax on the imported jute bags which were used as containers of copra exported abroad. It appearing that you have paid the sum of ₱24,706.41 under Official Receipt No. 1119578 dated February 5, 1955, there is still due from you the sum of ₱64,234.79 as compensating tax, common carrier's fixed and percentage taxes and surcharge and commercial broker's percentage tax and surcharge.

"You are, therefore, requested for the last time to pay the aforesaid sum of ₱64,234.79 plus the sum of ₱2,000.00 as compromise in extrajudicial settlement of your penal liabilities under sections 208 and 209 of the National Internal Revenue Code or a total sum of ₱66,234.79 within ten (10) days from receipt hereof, otherwise this Office will enforce its collection thru the summary remedies provided by law."

In said letter, respondent reiterated his original decision in regard to the total tax liability of petitioner in the sum of ₱88,941.20, but petitioner was requested to pay only the sum of ₱64,234.79, the unpaid balance after deducting from ₱88,941.20 the sum of ₱24,706.41 which was paid on February 5, 1955.

On April 13, 1956 and June 9, 1956, petitioner again requested reconsideration of respondent's decision in regard to the compensating tax, which was likewise denied in the letter of respondent dated June 21, 1956 and received by petitioner on June 23, 1956. On June 27, 1956, petitioner made a final bid for reinvestigation of the case, which was denied in the letter of respondent dated July 9, 1956, received by petitioner on July 12, 1956. The petition for review was filed with this Court on July 11, 1956.

The question to be resolved in this case is which of the two letters of respondent, the one dated September 13, 1954 or the one dated January 11, 1956, is the decision from the date of receipt of which the 30-day period for appeal should be counted, pursuant to Section 11 of Republic Act No. 1125. Section 11, in part, provides:

> "Sec. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, x x x may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

We have consistently held that the term "decision" in cases involving internal revenue taxes refers to —

> "x x x determinations made or arrived at by the Collector which would become final and executory unless modified or reversed by said official, or appealed to a superior authority in accordance with law." (Angel Sarmos v. Bureau of Internal Revenue, C.T.A. Case No. 229, March 5, 1956. See also Merced Drug House v. Collector of Internal Revenue, C.T.A. Case No. 180, May 21, 1956; Dirk Van Dongen v. Collector of Internal Revenue, C.T.A. Case No. 268, July 31, 1956; Tomas B. Villamin v. The Collector of Internal Revenue, C.T.A. Case No. 258, July 31, 1956; St. Stephens Association et al. v. Collector of Internal Revenue, C.T.A. Case No. 173, August 15, 1956; Auyong Hian v. The Collector of Internal Revenue, C.T.A. Case No. 242, August 30, 1956.)

In the instant case, it is obvious that the decision of respondent Collector of Internal Revenue which is appealable to this Court is his letter of September 13, 1954 and not his letter of January 11, 1956. We can not agree with petitioner that it is respondent's letter of January 11, 1956 which is the decision of the Collector within the meaning of Section 11 of Republic Act No. 1125. The said letter was only a denial of petitioner's request for reconsideration dated October 27, 1954. The said letter of January 11, 1956 did not amend or revise the decision of September 13, 1954 so that the latter was never superseded by the former. More than thirty days having expired from the date of receipt of said decision on September 23, 1954 to the date when the request for reconsideration was filed on October 30, 1954, the said request for reconsideration could not have the effect of suspending the statutory period for appeal which had already expired. The period prescribed by law within which an appeal may be filed may be suspended only upon the filing of a timely request for reconsideration or reinvestigation.

It is argued that respondent's letter of September 13, 1954 is not the decision or ruling as contemplated in Section 11 of Republic Act No. 1125, because in that letter petitioner was given 30 days within which to pay the sum of ₱88,941.20, and that it was also given the right to "take up this case with the Conference Staff of this Office by filing within the same period a written notice." If the said letter is the decision or ruling of respondent which is appealable to this Court, then, according to petitioner, "the payment of the said sum, or the time within which an appeal may be made to the Conference Staff would deprive petitioner of the period provided by law for filing a petition for review with this Honorable Court," and since "the time for payment or for bringing the matter to the Conference Staff was co-extensive with the period for filing the petition for review, the latter remedy would be rendered nugatory by the aforesaid letter (Annex A)."

We do not believe that the period of 30 days given by respondent to petitioner within which to pay the taxes assessed or within which to take up the case with the Conference Staff would render nugatory the right to appeal to this Court within the same period. If it was not agreeable to the decision of respondent, it could have appealed directly to this Court within 30 days after receipt thereof; or if it wanted the case to be heard by the Conference Staff, it should have so requested within the same period, in which case, the running of the period within which to appeal to this Court would have been suspended. (La Tondeña, Inc. v. Collector of Internal Revenue, C.T.A. Case No. 99, March 15, 1956; Tomas S. Quirino v. Collector of Int. Rev., C.T.A. Case No. 86, June 26, 1956; American Rubber Co. v. Collector of Int. Rev., C.T.A. No. 164, August 25, 1956; Antonio G. Guerrero v. Collector of Int. Rev., C.T.A. No. 285, October 5, 1956.) Petitioner did not take any action on the case to preserve its right to appeal until after the period for appeal had expired. It must, therefore, suffer the consequences of its own inaction.

Another argument raised by petitioner in support of the view that the letter of respondent of September 13, 1954 is not a decision is that the Conference Staff has no power to review or revise decisions of higher officials (the Collector of Deputy Collector of Internal Revenue). Says petitioner:

> "Furthermore, Annex A was written by the Deputy Collector of Internal Revenue, who, under the law, is the second highest official of the Bureau of Internal Revenue. Upon the other hand, the members of the Conference Staff are minor officials of the same Bureau. The effect of an appeal to the Conference Staff would be to review and even revise the correctness of the contents of Annex A. If said letter was really a decision or ruling within the meaning of Section 11 of Republic Act No. 1125, a gross incongruity would result, because a supposed decision of a higher official can be reversed by minor officials of the same Bureau. This, certainly, is unheard of both in our judicial as well as administrative systems, since the decisions of the higher court or the higher official are never subjected to review by courts or officials that are inferior to them."

There has been a misconception of the nature and scope of the powers and functions of the Conference Staff of the Bureau of Internal Revenue. The said Staff is merely authorized, upon request of a taxpayer and upon approval by the Collector, to conduct hearings to receive whatever evidence the taxpayer may offer or submit in support of his request for reinvestigation or reconsideration of an assessment. Thereafter, it submits its findings and recommendations to the Collector who makes the decision himself whether or not to revise, amend or sustain his previous decision or assessment. Accordingly, the argument that the letter of respondent dated September 13, 1954 (Annex A) can not be considered a decision or ruling within the meaning of Section 11 of Republic Act No. 1125 because it was subject to review by the Conference Staff is untenable.

In support of the theory that the letter of respondent dated September 13, 1954 is not a decision or ruling, petitioner also claims that respondent merely "suggested" the payment and not "imposed" the "penal liability" of ₱2,000.00. We quote from the memorandum of counsel for petitioner:

> "A reading of Annex A will show that it is more in the nature of ordinary demand letters sent by lawyers in behalf of their clients. It does not have the tone of finality which Annex C contains when the letter last mentioned states that upon failure to pay the amount demanded within the time therein mentioned, 'this Office will enforce its collection thru the summary remedies provided for by law'. That Annex A is nothing more than an ordinary demand letter may be seen from the last paragraph thereof wherein it was 'suggested' that the sum of ₱2,000.00 be added to the amount of the demand 'in extra-judicial settlement of your penal liability'. If said letter (Annex A) was really meant to be a decision or ruling, the Deputy Collector of Internal Revenue would not merely 'suggest' the payment of penal liability, but would impose the same."

Respondent was right in merely suggesting payment by petitioner of an amount by way of compromise or extra-judicial settlement of the alleged penal liability of petitioner. The Collector of Internal Revenue has no power to impose penalties upon taxpayers in the guise of compromise in extra-judicial settlement of criminal violations of the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

> "In addition to the deficiency tax and surcharge, the sum of ₱20.00 is sought to be collected from petitioner by way of 'compromise' in extrajudicial settlement of her

penal liability under Section 209 of the National Internal Revenue Code. Criminal violations of the Revenue Code may be compromised by the Collector of Internal Revenue by virtue of the authority conferred upon him by Section 309 of the same Code. A compromise by its very nature implies mutual agreement by the parties in regard to the thing or subject matter which is to be compromised. An offer of compromise does not, therefore, assume the category of a compromise until it is voluntarily accepted by the other party, and no obligation arises or is credted by a simple offer or suggestion coming from one of the parties without acceptance by the other.

"In this case, the respondent has suggested to petitioner the payment of ₱20.00 as compromise in order to extinguish her supposed criminal liability under Section 209 of the Revenue Code. Neither the respondent nor this Court can compel the petitioner to pay the said amount against her will. Upon her refusal, the respondent is of course at liberty to take appropriate action dictated by the Revenue Code." (Soledad R. Briñas v. Collector of Int. Rev., C.T.A. No. 16, Sept. 14, 1955.)

"We therefore reiterate the view expressed in Soledad R. Briñas v. Collector of Internal Revenue, supra, that a taxpayer is at liberty to reject a proposal of the Collector of Internal Revenue to compromise a supposed violation of any penal provision of the National Internal Revenue Code or any law administered by the Bureau of Internal Revenue, and that neither respondent nor this Court has power to compel a taxpayer to pay an amount arbitrarily fixed by respondent, without the consent of the taxpayer, under the guise of compromise or penalty. Accordingly, respondent in this case is not authorized to impose the alleged penalty of ₱100.00, and petitioner may not be compelled against its will to pay the said amount. x x x." (University of Santo Tomas v. Collector of Int. Revenue, C.T.A. No. 10, Sept. 10, 1956.)

It may be argued that the letter of respondent dated January 11, 1956 is the decision which is appealable to this Court for the reason that the amount demanded in said letter was ₱64,234.79, which superseded the amount demanded in the letter dated September 13, 1954. We have held that where a decision or assessment of the Collector of Internal Revenue is revised or amended, the amended decision is the decision appealable to this Court and the 30-day period for appeal is to be counted from the date of receipt of the final amended decision. (Auyong Mian v. Collector of Internal Revenue, C.T.A. No. 242, August 30, 1956.) But, as already stated above, the letter of January 11, 1956 did not amend or revise the original decision or assessment in this case so as to create a new starting point from which to count the 30-day period for appeal. While it is true that the demand made in the letter of January 11, 1956 was for the payment of only ₱64,234.79, instead of ₱88,941.20, as originally demanded in the letter of September 13, 1954, the reduction in the amount was brought about by payment of part of the original assessment and not by any change due to error or mistake of a portion of the said assessment.

> "It is argued that the assessment of ₱1,345.00 was reduced to ₱577.00 in respondent's letter of January 14, 1955; hence, said letter is the final decision of respondent. In their joint memorandum, the parties stated:
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> > 'Respondent's demand for payment of ₱1,345.00 was further reduced to ₱577.00 in respondent's letter of January 14, 1955 in view of the fact that petitioner had already paid the amount of ₱768.00. In this letter of January 14, 1955, respondent categorically told petitioner that he would not accede to further requests for reduction.'

"The reduction of ₱1,345.00 to ₱577.00 was not due to any error or illegality of a part of the assessment. As admitted by the parties, the reduction was brought about by the payment of ₱768.00. Acknowledgment by the Collector of Internal Revenue of a partial payment made by a taxpayer and the notification to the taxpayer to pay the balance within a certain period can not be considered a revision of the assessment so as to create another starting point from which the thirty-day period is to be counted. If we were to follow the theory of petitioner, we would be permitting the parties to trifle with the provision of law fixing a definite period for appeals. A taxpayer could unduly prolong the period within which to appeal merely by making partial payments on account of the assessment. For instance, a taxpayer received an assessment for a deficiency income tax on January 15, 1955. He failed to appeal within 30 days from said date. After six months, he paid a part of the deficiency tax, and requested reconsideration of the assessment relative to the unpaid balance. According to petitioner, the thirty-day period within which to appeal should be counted from the date of receipt of the letter of the Collector denying the request for reconsideration and requiring the taxpayer to pay the unpaid balance after deducting the payment made, on the ground that the assessment has been reduced. Such an interpretation is certainly not in keeping with the letter and spirit of the law." (Janda v. Collector of Int. Rev., C.T.A. No. 87, Feb. 23, 1956.)

FOR THE FOREGOING CONSIDERATIONS, and finding the motion to dismiss filed by respondent to be well-founded, the herein petition for review is hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, October 28, 1956.

ROMAN M. UMALI
Associate Judge

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RESOLUTION -
C.I.A. CASE NO. 297

CUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge
(On Leave)