REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALLISON J. GIBBS and
ESTHER K. GIBBS,
Petitioners

versus — CTA CASE NO. 547

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

ALLISON J. GIBBS and
ESTHER K. GIBBS,
Petitioners

versus- — CTA CASE NO. 564

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

ALLISON J. GIBBS and
ESTHER K. GIBBS,
Petitioners

versus- — CTA CASE NO. 572

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

March 16, 1966

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

R E S O L U T I O N

This pertains to petitioners' three motions filed on October 23, 1965, to wit:

1. Motion to Dismiss in CTA Case No. 547;
2. Motion to Dismiss and Strike in CTA Case No. 564; and
3. Motion to Dismiss and Strike in CTA Case No. 572

which were heard jointly. Respondent has interposed a "Joint Opposition" on December 13, 1965.

The records show that on June 28, 1958, July 29, 1958 and August 14, 1958, petitioners filed their petitions for review (C.T.A. Cases Nos. 547, 564 and 572) seeking the refund of ₱1,862.00, ₱2,056.00 and ₱10,078.34, representing alleged erroneously paid deficiency income taxes for 1954, 1953 and 1955, respectively. In the same petitions, petitioners also assailed the legality and validity of the additional deficiency income tax assessments of ₱10,574.00, ₱2,178.00 and ₱5,990.00 for the years 1954, 1953 and 1955, respectively, which were issued by respondent on June 3, 1958.

On July 23, 1958, respondent filed his answer in C.T.A. Case No. 547, and on August 29, 1958, his answers in C.T.A. Cases Nos. 564 and 572, respectively, sustaining the legality of the deficiency income tax assessments for the years in question.

In C.T.A. Case No. 547, however, respondent interposed a counterclaim of ₱11,218.00, ₱2,178.00, ₱5,990.00 and ₱23,418.00, representing deficiency income taxes for 1952, 1953, 1955 and 1956, respectively. On July 30, 1958, petitioners filed a "Motion to Dismiss" said counterclaims on the ground of lack of jurisdiction. In support thereof, petitioners submitted a "Stipulation of Facts" dated August 28, 1958, showing among others, that respondent had not yet rendered a decision on petitioners' protests against the additional deficiency income tax assessments abovementioned.

This Court in its resolution of March 14, 1960, in CTA Case No. 547, dismissed respondent's counterclaim for the reasons that, with respect to the deficiency income tax assessments for 1952 and 1956, respondent has not yet rendered a decision on the protests of petitioners against said deficiency assessments and, with respect to the deficiency income tax assessments for 1953 and 1955, they are still the subject matter of appeals pending before this Court in C.T.A. Cases Nos. 564 and 572.

On October 23, 1965, petitioners filed the instant motions, in CTA Case No. 547, asking the dismissal of the counterclaim of ₱10,574.00 on ground of jurisdiction and prescription; in CTA Case No. 564, asking the dismissal of the counterclaim of ₱2,178.00 and the striking out of respondent's answer (paragraph 6) sustaining the validity and legality of said deficiency assessment; and in CTA Case No. 572, asking the dismissal of the counterclaim of ₱5,990.00 and the striking out of respondent's answer (paragraph 6) upholding the legality and validity of said counterclaim, and, by way of compromise, offering to dismiss their claims for refund in said cases.

The issues for our consideration are:

(1) Whether or not this Court has jurisdiction to take cognizance of respondent's additional deficiency

income tax assessments against petitioners for 1953, 1954 and 1955 in petitioners' present appeals, and, in the affirmative.

(2) Whether or not respondent's right to collect the said deficiency income taxes has prescribed.

On the first issue, petitioners contend that, under the stipulation of facts of August 28, 1958 (pp. 55-61, C.T.A. rec.) and the resolution of this Court of March 14, 1960 in CTA Case No. 547 (pp. 116-122, C.T.A. rec.), respondent Commissioner has not yet rendered a decision or ruling on the said deficiency income tax assessments and, therefore, under Republic Act 1125, this Court has no power to take cognizance of respondent's income tax assessments in petitioners' present appeals involving denials of their claims for refund.

On the other hand, in his joint opposition, respondent maintains that the additional tax assessments in question are actually disputed in C.T.A. Cases Nos. 547, 564 and 572, respectively, and are not merely set forth as counterclaims. He argues that petitioners themselves had contested the validity of the said income tax assessments <u>in Court</u> when they filed their petitions for review in the respective cases and, consequently, they cannot now, after having submitted the legality of the said assessments to the jurisdiction of this Court and after the lapse of more than seven years from the filing of their appeals, be permitted to dismiss these cases and to strike out the allegations in respondent's answers, much less set up the defense of prescription. Under the circumstances of these cases, respondent further avers, that the ansers filed by him sustaining the validity of his deficiency income tax assessments should be considered as a denial (decision) on petitioners' protests against said assessments.

Respondent's contention is not well taken. It is now a settled rule in t is jurisdiction that this Court is one of special and limited jurisdiction and can only take cognizance of cases appealed to it in accordance with law (Sections 7 and 11 of Republic Act No. 1125 which provide as follows:

> SEC. &. Jurisdiction. __The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided--
>
> (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, x x x. (Underlining supplied)
>
> 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. (Underlining supplied)

By virtue of the foregoing provisions, it is obvious that the appeals filed by the petitioners in CTA Cases Nos. 547, 564 and 572, contesting the denials by respondent of their claims for refund, cannot be taken advantage by respondent in prosecuting his deficiency income tax assessments because respondent has not as yet rendered a decision on petitioners' protests against said assessments. Therefore, the action of respondent being premature, this Court did not acquire jurisdiction or authority to try the same in these appeals.

We cannot, no matter how much liberality we accord to the circumstances of these cases, consider respondent's answers sustaining the validity of his income tax assessments as a decision which will have the effect of conferring jurisdiction upon this Court, because, <u>in the first place</u>, the provisions of Sections 7 and 11 of Republic Act 1125 clearly contemplate of a decision rendered by respondent <u>before</u> and not <u>after</u> an appeal therefrom is instituted to this Court by the taxpayer; and, <u>in the second place</u>, because to do so, would not only contravene the principle of exhaustion of administrative remedies consistently followed in our jurisdiction, but also the rule enunciated by the Supreme Court to the effect that:

> Jurisdiction over the subject matter is conferred by law. <u>None of the parties to the litigation can enlarge or diminish it or dictate when it shall attach or when it shall be removed. That is a matter of legislative enactment which none but the legislature may change</u>. (Manila Railroad Co. vs. Atty. General, 20 Phil. 523; underlining supplied.)

Finally, as to the argument of respondent that, after having submitted the legality of these assessments to the jurisdiction of this Court and after the lapse of more than seven years from the filing of their petitions for review in these cases, petitioners cannot now, in respect to the deficiency income tax assessments in question, be permitted to dismiss these appeals, suffice it to say that the question of jurisdiction cannot be waived, and the same may be raised at any time, even for the first time on appeal. (See Sec. 2, Rule 9, New Rules of Court and Viuda C. Hijos de Pedro Roxas vs. Rafferty, 37 Phil. 957; Juanillo vs. De la Rama, II O. G. 304 /19437; Ker & Co., Ltd. vs. The Court of Tax Appeals, et al. L-12396, Jan. 31, 1962.)

Having arrived at the foregoing conclusion, we deem it unnecessary to pass upon the other issue.

IN THE LIGHT OF THESE CONSIDERATIONS, C.T.A. Cases Nos. 547, 564 and 572, in respect to the additional deficiency income tax assessments for 1954, 1953 and 1955, involving the sums of ₱10,574.00, ₱2,178.00 and ₱5,990.00, respectively, as well as petitioners' claims for refund therein of the respective sums of ₱1,862.00, ₱2,056.00 and ₱10,078.34, a re hereby dismissed without pronouncement as to costs.

SO ORDERED.

Quezon City, March 16, 1966.

(SGD.) ESTANISLAO R. ALVAREZ (SGD.) ROMAN M. UMALI
Associate Judge Acting Presiding Judge