COMPANIA GENERAL DE TABACOS
DE FILIPINAS (TABACALERA),
Petitioner,

- versus - C.T.A. CASE No. 1814

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

Oct. 14/68

RESOLUTION

Respondent has filed a motion to dismiss the instant appeal on the grounds that this Court has no jurisdiction to take cognizance of this case and that the petition for review states no cause of action.

The records show that on August 8, 1966, respondent issued an assessment requiring petitioner to pay the aggregate sums of ₱744,737.00 and ₱10,-323.76, as specific tax and inspection fees, respectively, inclusive of penalties, for the years covering 1961 to 1966 (see Annex F, pp. 92-93, CTA rec.; pp. 42-43, BIR rec.), which assessment was allegedly received by petitioner on October 20, 1966, In a letter to respondent, dated October 28, 1966, petitioner, through counsel, assailed the legality of the aforesaid assessment and served notice that it would appeal therefrom. (p. 44, BIR rec.)

On November 17, 1966, without waiting for respondent to decide its protest against the assessment, petitioner filed the instant petition for review.

Respondent claims that this Court has no jurisdiction to take cognizance of this case because there is as yet no decision on petitioner's protest which may properly be the subject of appeal to this Court, citing in support thereof the case of Commissioner of Internal Revenue vs. Leonardo S. Villa, et al., G.R. No. L-23988, January 2, 1968.

In its opposition, petitioner contends that the Villa case is not applicable, since the same was promulgated long after the instant appeal was instituted in this Court, and that the case of Ker & Co., Ltd. vs. The Court of Tax Appeals, G. R. No. L-12396, Jan. 31, 1962, is the applicable decision, the same being the controlling law at the time this appeal was filed.

In two cases previously decided by this Court, we expressed the view that an unprotested assessment is appealable but, in view of the Villa decision of the Supreme Court, we had no other alternative than to apply the latter.

> Respondent's reliance on Commissioner v. Villa, _supra_, is well taken. However, it may be pertinent to inquire into the jurisdiction of this Court in matters involving internal revenue taxes.
>
> In cases involving assessments of internal revenue taxes, this Court has exclusive appellate jurisdiction to review on appeal not only decisions of the Commissioner of Internal Revenue in cases involving "disputed assessments" but also in "other matters" arising under the National Internal Revenue Code.

The term "other matters" mentioned in Section 7(1) of Republic Act No. 1125 has been interpreted to include cases of the same nature as disputed assessments and refunds of internal revenue taxes, fees or charges imposed by the National Internal Revenue Code.

> "Note that the law gives to the Court of Tax Appeals exclusive appellate jurisdiction to review the decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the provincial or city Boards of Assessment Appeals. Note also that in defining the cases that may be reviewed the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under the National Internal Revenue Code, the Customs Law and the Assessment Law. This shows that the "other matters" that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as ejusdem generis. In other words, in order that a matter may come under the general clause, it is necessary that it belongs to the same kind or class therein specifically enumerated. Otherwise, it should be deemed foreign or extraneous and is not included." (Ollada v. Court of Tax Appeals, 99 Phil. 604, 609-610.)"

To the same effect is the decision in The Acting Collector of Customs v. Court of Tax Appeals, 102 Phil. 244, wherein it was held:

> "It will be noted that the final sentence of paragraph 2 of this Section 7, "or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs", comes after an enumeration of the class of cases cognizable by the Court of Tax Appeals, namely, those involving liability for customs duties, fees or other money charges, and as contended by respondent inter-

> venor, by the doctrine of ejusdem generis, in order that the "other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs" may come within the jurisdiction of the Court, they should involve also liability for payment of money to the Government (see Ollada vs. Court of Tax Appeals et al., (99 Phil. 604), penned by Mr. Justice Felix Bautista Angelo, squarely interpreting the provisions of the aforequoted Section 7-(2) of Rep. Act No. 1125)."

> Evidently, an assessment of income tax made by the Commissioner of Internal Revenue against a taxpayer is a matter which can hardly be considered foreign or extraneous to those matters specifically enumerated in the law as coming within the jurisdiction of this Court. And since an assessment is a decision (Bull v. U.S., 247 U.S. 259) which becomes final and executory if not appealed (Rep. v. Del Rosario, 105 Phil. 277; Rep. v. Magalona, G.R. No. L-15802, Sept. 30, 1960; Rep. v. Gamboa, G.R. No. L-16504, Oct. 27, 1961; Rep. v. Albert, G.R. No. L-12996, Dec. 28, 1961), it would seem that an assessment against a taxpayer for income tax is an appealable decision within the meaning of Section 7(1) of Republic Act No. 1125. But, while we are of the opinion that an assessment, even if not protested, is appealable to this Court, we are bound by the decision of the Supreme Court in Commissioner v. Villa, supra, to the effect that an assessment in itself is not an appealable decision. To enable a taxpayer to appeal, he must first file a protest against the assessment and the Commissioner must render a decision on such protest. These observations have been made solely to provoke a re-examination of the issue at the proper time. (Litonjua & Co., Inc. and Transmarine Shipping Co., Inc. vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 1903 & 1904, July 31, 1968.)

As to the argument that the Villa decision is not controlling because this appeal was instituted before the promulgation of the former, we find the same untenable. The acts and proceedings of this

Court, or any other court for that matter, are governed or controlled by the applicable laws and pertinent decisions of the Supreme Court prevailing at the time said acts or proceedings are rendered (see In the Matter of the Pet. of Gan Tsitung vs. Republic, L-20819, Feb. 21, 1967; Barreto vs. Republic, 87 Phil. 731; Delgado vs. Republic, L-2546, Jan. 28, 1950), and not by those prevailing at the time the case was filed. Since the decision in the Villa case was promulgated during the pendency of the proceedings herein, the doctrine laid down therein is applicable to the case at bar.) At any rate, we believe that the Ker case finds no application here because in that case, it was the revised assessment or decision on the request for reconsideration of the original assessment which was appealed to this Court, and not the assessment itself, as in the present case.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petition for review should be, as it is hereby, dismissed, without prejudice.

SO ORDERED.

Quezon City, October 14, 1968.

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge

ESTANISLAO R. ALVAREZ
Associate Judge