Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

ANTONIO MODESTO AQUINO,
Petitioner,

- versus - C.T.A. CASE NO. 4706

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

6/15/93

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

D E C I S I O N

In 1982, Autosphere Inc., acquired from Delta Motors Corporation several motor vehicles financed by Filinvest Credit Corporation.

Petitioner Antonio Aquino and Conrado Aquino executed trust receipts and surety agreement in favor of Filinvest to secure the performance of Autosphere's obligation to the latter. Moreover, both constituted in favor of Filinvest a real estate mortgage on a parcel of land located in Quezon City and covered by TCT No. 227668. Said parcel of land is owned by petitioner.

Filinvest foreclosed the aforesaid real estate mortgage because of Autosphere's failure to pay its obligation. Being the highest bidder in the amount of P995,000.00, the property was awarded in favor of Filinvest.

Petitioner and Conrado Aquino failed to redeem the property and title was consolidated in favor of Filinvest.

On March 8, 1988, the BIR sent petitioner a Notice of Assessment at the latter's former residential address and a subsequent notice to his new residential address.

On November 5, 1990, he protested the assessment in writing. The BIR denied the protest of which denial petitioner was notified on March 13, 1991. The BIR's denial was based on the allegation that petitioner's protest was filed out of time and the assessment had become final and executory.

A warrant of distraint/levy was sent to petitioner but which petitioner sought to have set aside or reconsider.

On September 1991, the BIR directed petitioner to pay the deficiency capital gains tax in the amount of P277,760.00 within fifteen (15) days from his receipt thereof. Hence, this appeal.

The sole issue posed in this case is whether or not appeal before this Court had been filed beyond the reglamentary period.

In the case at bar, it appears that respondent's final decision (Annex "A",CTA Records) dated September 9, 1991 was received by petitioner on December 19, 1991,the corresponding petition for review was filed out of time on January 20, 1992. Considering that more than thirty (30) days had already lapsed, the Court submits that it is already time barred. Here, exactly thirty-two (32) days had passed before appeal before this Court was perfected, hence, the Assessment in question has already become final, executory and incontestable pursuant to Section 7 and 11 of Republic Act 1125. The pertinent provision is hereby reproduced for comparison:

> **Section 11.** *Who may appeal; effect of appeal.* Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city or 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.

It is a fundamental rule that inorder for the Court to take cognizance of a case, it is necessary however that claims of this nature must be brought with this Court within thirty days from receipt of the final decision of the Commissioner of Internal Revenue denying such claim, wanting in such requirement would prove to be jurisdictional. Failure of the petitioners to appeal to the Court of Tax Appeals in due time made the assessment in question, final and executory and demandable. *(Dayrit vs. Cruz, 165 SCRA 571.)* Failure of taxpayer to appeal to the Court of Tax Appeals in due time makes the assessment final, executory and demandable and the taxpayer is barred from disputing the correctness of the assessment. ***(Republic vs. Court of Appeals, 149 SCRA 351).***

Moreover, failing to avail of such requirement the assessment of the Commissioner of Internal Revenue appealed from had already become final, executory and demandable for failure of the taxpayer to perfect his appeal to the Court of Tax Appeals within the reglamentary period of thirty days. Moreso, the commencement of the statutory thirty-day period cannot be dependent on the will of the taxpayer who is placed in a position to put off indefinitely and at his convenience the finality of a tax assessment.

IN VIEW OF THE FOREGOING, judgement is hereby rendered dismissing the petition for lack of merit. Petitioner is hereby ordered to pay to the respondent the amount of P277,760.00 as deficiency capital gains tax.

SO ORDERED.

Quezon City, Metro Manila, June 15, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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, Aricle VIII of the **Constitution.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals