REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TROPICAL DISTRIBUTORS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2345

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Respondent assessed against petitioner the sum of ₱11,255.89, representing deficiency income tax and penalties for the year 1968.

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines, with business address at 2305 Pasong Tamo Extension, Makati, Rizal. Petitioner's taxable year of accounting period is the calendar year so that on April 15, 1969, it filed its income tax return for the calendar year 1968. In computing its income tax for 1968, petitioner applied the 22%-30% income tax rates as provided in Section 24 of the Revenue Code, prior to its amendment by Republic Act No. 5431, which took effect on June 27, 1968, and based on the aforesaid rates arrived at the amount of ₱96,013.00 as income tax due for 1968.

After investigation, respondent assessed against petitioner the amount of ₱11,255.89, representing delinquency income tax for 1968, inclusive of interest and compromise penalty. This assessment resulted from the

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application of the new corporate income tax rates of 25% and 35% under Republic Act No. 5431 on petitioner's income for the period from July 1, 1968 to December 31, 1968. The said assessment was protested by petitioner in a letter dated April 29, 1971 and was received by respondent on the same date.

Without resolving the protest of petitioner, a warrant of distraint and levy was issued by respondent on August 10, 1971, which appears to have been served on petitioner on August 19, 1971. Petitioner protested the issuance of the warrant of distraint and levy on August 23, 1971, alleging that the assessment had been previously contested in a letter dated April 29, 1971 but no action was taken by respondent on the aforesaid protest, and, therefore, the warrant of distraint and levy should be withdrawn as it was prematurely issued.

In an indorsement dated September 21, 1971 by the Chief, Collection Branch, the Assistant Regional Director was asked whether or not the execution of the warrant of distraint and levy served on August 19, 1971 should be pushed through notwithstanding the taxpayer's protest. On October 7, 1971, the Acting Regional Director rendered a decision denying petitioner's protest and reiterated the payment of the amount of ₱11,255.89 as assessed, otherwise, respondent would enforce the collection of the same without further notice. The aforesaid letter was received by petitioner on October 29, 1971. Hence, on

November 11, 1971, petitioner filed the herein appeal.

The issues raised are:

(1) Whether or not the appeal of petitioner was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125; and

(2) Whether or not the increased rates of corporate income tax prescribed in Republic Act No. 5431 should apply to income received beginning July 1, 1968 by corporations reporting income on a calendar year basis.

On the issue of jurisdiction, respondent contends that the issuance of the warrant of distraint and levy is considered a decision denying the protest of the petitioner, and pursuant to Section 7, in relation to Section 11 of Republic Act No. 1125, petitioner should have appealed to this Court within 30 days from August 19, 1971, the date the said warrant was served upon it, or not later than September 18, 1971, and since the petition for review was filed on November 11, 1971, the appeal was filed out of time.

The record shows that after the warrant of distraint and levy was served on the petitioner on August 19, 1971, respondent did not enforce the collection thereof as evidenced by the indorsement of the Chief, Collection Branch dated September 21, 1971, seeking the advice of the Assistant Regional Director whether or not the collection of the tax assessed against petitioner should be enforced. Thereafter, that is, on October 7, 1971, a formal decision was rendered denying petitioner's protest.

It is true that the issuance of a warrant of distraint and levy to enforce collection of a tax assessed against a taxpayer is considered a decision of the Commissioner of Internal Revenue which is appealable to this Court. But this is true only where no formal decision has been rendered by the Commissioner. The reason is that where no formal decision is rendered by the Commissioner of Internal Revenue on the protest of a taxpayer, the issuance of a warrant of distraint and levy is considered as a decision impliedly denying the protest because by the issuance of such warrant the Commissioner considers his assessment as final. In this case, a formal decision was actually rendered on petitioner's protest so that the thirty-day period for appeal should be counted from the date of receipt thereof by petitioner and not from the date of service of a copy of the warrant of distraint and levy.

We are, therefore, of the opinion that the appealable decision is the letter of respondent dated October 7, 1971, which was received by petitioner on October 29, 1971. From the date of receipt by petitioner on October 29, 1971 of respondent's decision dated October 7, 1971 to the date of filing of the petition for review on November 11, 1971, only 13 days elapsed. Consequently, the herein appeal was timely filed.

The second issue is not one of first impression. In The Manila Times Publishing Co., Inc. vs. Comm. of

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Int. Rev., C.T.A. Case No. 2262, dated December 17, 1973, certiorari denied in G. R. No. L-38154, May 10, 1974; Phil. Match Co., Ltd. vs. The Commissioner of Internal Revenue, C.T.A. Case No. 2422, Feb. 19, 1975, and cases cited therein, it was held that the increased rates prescribed in Republic Act No. 5431 are applicable to incomes of a calendar year corporation beginning January 1, 1969 and not July 1, 1968, because the beginning of the taxable year of calendar year corporations after June 30, 1968 is January 1, 1969. The income of a calendar year corporation from July 1, 1968 to December 31, 1968 is still subject to the old rates prescribed in Section 24 of the Revenue Code, before its amendment by Republic Act No. 5431.

WHEREFORE, the decision appealed from is hereby reversed. No costs.

SO ORDERED.

Quezon City, October 10, 1975.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge