lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHINA BANKING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4180

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

7/29/88

D E C I S I O N

Respondent Commissioner of Internal Revenue, in a motion filed on October 21, 1987, seeks the dismissal of petitioner's appeal on the ground of lack of jurisdiction. He contends that the appeal in this case is premature since a decision has not yet been rendered on the contested assessment that may be appealed to this Court as contemplated in Section 7(1) of Republic Act No. 1125.

We agree with respondent.

The pertinent facts as alleged in the petition for review disclose that on June 25, 1987 petitioner received a letter-assessment dated May 29, 1987, together with Income Tax Assessment

Notice, requiring petitioner to pay deficiency documentary stamp tax as follows:

1 9 8 2
Deficiency Documentary Stamp Tax

Promissory Notes Issued . . . P667,483,600.00

Documentary Stamp Tax Due

Thereon -

$\frac{P667,483,600.00}{P200.00}$ x P0.65. P 2,169,321.70

While petitioner avers that prior to the assessment, it had filed a request for reconsideration and reinvestigation of a Pre-assessment Notice of respondent dated October 15, 1985 proposing an amendment, among others, for deficiency documentary stamp tax in the amount of P2,169,321.70 for 1982, its subsequent protest on July 22, 1987 against the aforementioned assessment of May 29, 1987 has not yet been acted upon by respondent before the petition for review was filed with this Court on July 24, 1987.

Obviously, because no decision has as yet been rendered by respondent on the protest of petitioner against the assessment of May 29, 1987, there could be no appealable decision cognizable by this Court.

(Please see Candyman, Incorporated vs. The Commissioner of Internal Revenue, CTA Case No. 1872, January 20, 1970.) Under Section 7(1) of Republic Act No. 1125, what is reviewable by this Court on appeal is the decision of the Commissioner of Internal Revenue on a disputed assessment and not the assessment itself. Thus, it has been held:

> The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act 1125, the pertinent part of which states:
>
> > "Sec. 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided —
> >
> > "(1) Decisions of the Collector (now Commissioner) of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;"
>
> The word "decisions" in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. Definitely, said

word does not signify the assessment itself. We quote what this Court said aptly in a previous case:

> "In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment. x x x" (Emphasis supplied)

The same interpretation finds support in Section 11 of Republic Act 1125, which states:

> "Sec. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector (now Commissioner) of Internal Revenue, the Collector of Customs or any provincial or city 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." (Emphasis supplied)

Note that the law uses the word "decisions", not "assessments", thus further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment but not the assessment itself.

Since in the instant case the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 3; Perfecto V. Fernandez vs. Commissioner of Internal Revenue, C.T.A. Case No. 3432, February 25, 1983.

Under Section 319-A (now Section 270) of the National Internal Revenue Code, an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment; otherwise, it becomes final and unappealable. And if the protest is denied in whole or in part, the taxpayer adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.

Clearly, the decision on the request for reconsideration or reinvestigation is the decision on the disputed assessment which is appealable to this Court within thirty (30) days from receipt thereof by the taxpayer adversely affected. Consequently, since it does not appear in the case at bar that a decision on the disputed assessment has been rendered by respondent Commissioner of Internal Revenue, petitioner China Banking Corporation's appeal to this Court is premature.

WHEREFORE, the petition for review filed in the above-entitled case is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, July 29, 1988.

Amante Filler
AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals