Legal Tech

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

TOMAS B. VILLAMIN,
Petitioner,

C.T.A.
CASE NO. 258

- versus -

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

July 31/56

R E S O L U T I O N

A "Motion to Dismiss" has been filed by respondent on the ground that the petition for review was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

The records show that respondent assessed and demanded from petitioner the amounts of ₱3,730.82 for the period from 1948 to 1950 and ₱9,552.82 for the period from 1951 to 1954, both as 5% sales tax on alleged gross sales of logs. The first assessment of ₱3,730.82 has been reduced to ₱2,625.00, petitioner having paid the sum of ₱1,105.82.

It does not appear when the original assessment was actually made or issued. It has been shown, however, that respondent wrote several letters of demand to petitioner, but only those of June 7, 1955, December 12, 1955 and February 13, 1956 have been presented for consideration. Prior to these letters of demand, or more specifically, on February 10, 1955, petitioner requested reconsideration of the assessment which the provincial revenue agent of Oriental Mindoro, previously attempted to collect from him personally. Respondent, through the Acting Chief of the Assessment Department, denied said request in a letter dated June 7, 1955 and reiterated therein his demand for the payment of the said tax obligations within ten (10) days from receipt of said letter (Annex A). This letter was received by petitioner on August 18, 1955. Subsequently, on September 2, 1955, petitioner wrote another letter to respondent offering to settle his case amicably, which request was also denied by the latter in his letter of December 12, 1955 and received by petitioner on January 9, 1956. On the same date counsel for petitioner again requested reconsideration of the decision which was likewise denied on February 13, 1956. This last letter of respondent was received by petitioner on February 29, 1956, and on April 2, 1956, he filed the present petition for review.

The sole issue here is whether or not the petition for review was filed within 30 days after receipt by petitioner of respondent's decision, pursuant to Section 11, Republic Act No. 1125.

Petitioner claims that the thirty-day period in this case should be counted from February 29, 1956, the date when he received the last letter of the Collector of Internal Revenue of February 13, 1956, denying his petition for reconsideration. Respondent, on the other hand, contends that the period should be counted from August 18, 1955, the date when petitioner received respondent's letter dated June 7, 1955.

The law permits a taxpayer to appeal from a decision of the Collector of Internal Revenue within 30 days after receipt by him of the decision. (Secs. 7 and 11, Rep. Act No. 1125.) The decisions of the Collector which are appealable to this Court refer to "determinations made or arrived at by the Collector which would become final and executory unless modified or reversed by said official, or appealed to a superior authority in accordance with law." (Angel Saraos v. Bureau of Internal Revenue, C.T.A. No. 229, March 5, 1956.) The opinion of this Court in the case of Angel Saraos as to the meaning of the term "decisions" has been reiterated in the case of Merced Drug House v. Collector of Internal Revenue, C.T.A. Case No. 180, May 21, 1956, wherein we stated:

> "We adhere to this definition as one which reflects the intention of Congress when it enacted Republic Act No. 1125. A simple letter of demand or notice sent by the Collector of Internal Revenue to a taxpayer requiring the latter to pay an internal revenue tax imposed by the National Internal Revenue Code is a determination by the Collecter of the taxpayer's tax liability, which becomes final and executory if not protested or appealed as provided by law. In this sense, such a letter of demand or notice is a decision within the meaning of Sections 7 and 11 of Republic Act No. 1125, and if not protested and modified or annulled by the Collector or appealed to this Court within the period required by law, the same becomes final and executory.
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> "We are, therefore, of the opinion that the letter of respondent dated April 2, 1955 containing an assessment of an internal revenue tax is a decision in a

case involving a disputed assessment within the meaning of Section 7 (1) of Republic Act No. 1125, which, if not appealed to this Court within 30 days after receipt thereof, pursuant to Section 11 of said Act, becomes final and executory. 'The assessment made by the Collector of Internal Revenue is the substantial and dispositive part of his decision x x x.' (Ventanilla v. Board of Tax Appeals, G.R. No. L-7384, Dec. 19, 1955.)"

Our opinion that a letter of demand or an assessment issued by the Collector of Internal Revenue has the force and effect of a judgment or decision finds support in the case of Bull v. U. S., 295 U.S. 247. In that case, the Supreme Court of the United States made the following observations:

"A tax is an exaction by the sovereign, and necessarily the sovereign has an enforcible claim against every one within the taxable class for the amount lawfully due from him. The statute prescribes the rule of taxation. Some machinery must be provided for applying the rule to the facts in each taxpayer's case, in order to ascertain the amount due. The chosen instrumentality for the purpose is an administrative agency whose action is called an assessment. The assessment may be a valuation of property subject to taxation which valuation is to be multiplied by the statutory rate to ascertain the amount of tax. Or it may include the calculation and fix the amount of tax payable, and assessments of federal estate and income taxes are of this type. Once the tax is assessed the taxpayer will owe the sovereign the amount when the date fixed by law for payment arrives. Default in meeting the obligation calls for some procedure whereby payment can be enforced. The statute might remit the government to an action at law wherein the taxpayer could offer such defense as he had. A judgment against him might be collected by the levy of an execution. But taxes are the lifeblood of government, and their prompt and certain availability an imperious need. Time out of mind, therefore, the sovereign has resorted to more drastic means of col-

> lection. The assessment is given the force of a judgment, and if the amount assessed is not paid when due, administrative officials may seize the debtor's property to satisfy the debt."

In the instant case, no evidence has been submitted by both parties as to when the original assessment was made or issued by respondent. It appears, however, that petitioner, as early as February 10, 1955, in a letter addressed to respondent requested reconsideration of the disputed assessment. Obviously, the assessment must have been received by petitioner on or before that date. Considering the assessment as having been received on February 10, 1955, and since a request for reconsideration was filed on the same date, the 30-day period within which to appeal was immediately suspended. The request for reconsideration was denied in the letter of the Acting Chief of the Assessment Department dated June 7, 1955, which was received by petitioner on August 18, 1955. On September 2, 1955, petitioner wrote another letter to respondent offering to settle the case amicably, but which may be considered as a request for reconsideration or revision of the assessment because, in support of his claim for revision, he offered "to submit documentary evidences to support said claim." (Annex D, Motion to Dismiss.) This request was also denied in a letter dated December 12, 1955, which was received by petitioner on January 9, 1956. On the same date (January 9, 1956), petitioner again requested reconsideration, which was again denied in a letter dated February 13, 1956, and allegedly received by petitioner on February 29, 1956.

Under the facts stated above, we are of the opinion that the 30-day period within which to appeal to this Court commenced to run from August 18, 1956 and was suspended on September 2, 1956 and commenced to run again from February 29, 1956, when the letter of respondent dated February 13, 1956 was received by petitioner, to the date the present petition for review was filed (April 2, 1956). From August 18, 1956 to September 2, 1956, there was an interval of 15 days; and from February 29, 1956 to April 2, 1956 there was another interval of 33 days. Petitioner had, therefore, consumed a total of 48 days before filing his appeal with this Court. Consequently, the present appeal was filed out of time.

Petitioner contends that the letter dated June 7, 1955 can not be deemed a "decision" within the meaning of Section 7 of Republic Act No. 1125, as the same was signed only by the Acting Chief of the Assessment Department of the Bureau of Internal Revenue. It was not made in behalf of the respondent. We find this view without merit. The request of petitioner for reconsideration dated February 10, 1955 was addressed to "The Honorable, The Collector of Internal Revenue" and the same was answered by the Acting Chief of the Assessment Department of the same Bureau. The presumption is that the Acting Chief of the Assessment Department was authorized to act for and in behalf of the Collector, as in fact the latter considered the same as his decision. (See respondent's letter dated February 13, 1956, Annex E, Motion to Dismiss.) Furthermore, as we have already adverted to above, the decision of respondent which is appealable to this Court is the assessment which petitioner sought to be reconsidered in his letter of February 10, 1955.

IN VIEW OF THE FOREGOING, finding the "Motion to Dismiss" meritorious, the petition for review should be, as it is hereby, dismissed, with costs against petitioner.

SO ORDERED.

Manila, July 31, 1956.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge