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MERCEDES PASCUAL VDA. DE SALAO,
ROBERTO P. SALAO,
MARIA SALAO VDA. DE SANTOS,
LUCIANA P. SALAO,
PABLO P. SALAO,
RESTITUTO P. SALAO and
ISABEL SALAO DE SANTOS,
Petitioners,

Oct. 28, 1968

versus — CTA CASE NO. 1111

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Respondent has assessed against petitioners deficiency estate and inheritance taxes in the amounts of ₱43,384.82 and ₱22,824.61, respectively, including penalties.

Juan S. Salao died intestate on February 7, 1958 in Dampalit, Malabon, Rizal, and is survived by his wife, petitioner Mercedes Pascual Vda. de Salao, and six (6) children, the rest of petitioners herein.

On March 3, 1958, intestate proceedings for the settlement and distribution of the estate of the deceased Juan S. Salao was instituted in the Court of First Instance of Rizal in Special Proceedings No. 2880, entitled "Intestate Estate of the late Juan S. Salao, Deceased." Pablo S. Salao, one of herein petitioners, was appointed administrator of the estate. On March 12, 1958, a notice of death was filed with respondent's Regional Office in Quezon City, and on February 6, 1959, the administrator filed an estate and inheritance tax return, attaching thereto an inventory of the estate of the deceased, certified by an independent certified public accountant. Based on said return, the amounts of ₱7,151.58 and ₱3,610.18, as estate and inheritance taxes, were paid.

Spurred by an anonymous letter denouncing the late Juan S. Salao for tax evasion, respondent caused the investigation of the tax liabilities of the estate of the deceased Juan S. Salao. After several investigations, respondent finally determined that the said deceased left real estate with a total appraised value of ₱627,742.87 and personal property worth ₱4,004.50, or a total gross estate of ₱631,747.37. After deducting the amount of ₱129,723.56, representing allowable deductions from the gross estate of ₱631,747.37, the difference of ₱502,023.81 was considered by respondent as the net estate subject to estate and inheritance taxes.

On the basis of this finding, a letter dated May 23, 1961 was sent to Pablo S. Salao, in his capacity as administrator of the estate of the late Juan S. Salao, demanding payment of the amounts of ₱43,384.82 and ₱22,824.61 as deficiency estate and inheritance taxes and penalties, after crediting the sums of ₱7,151.58 and ₱3,610.18 which were previously paid. This letter was received by the administrator on May 28, 1961. Dissatisfied with said assessment, petitioners, without first contesting the same, interposed the instant petition for review on June 26, 1961.

The issues raised by the parties are as follows:

1. Whether or not the valuation adopted by respondent of the real properties left by the deceased Juan S. Salao is correct; and

2. Whether or not interest or penalty may be imposed on the deficiency estate and inheritance taxes.

At no stage of the proceedings was the question of jurisdiction raised by either party. The issues which the parties have submitted to this Court for resolution go into the merits of the case. Mindful, however, of the elementary principle that jurisdiction over the subject matter must find support in the law and cannot be conferred by consent or acquiescence of any or all of the parties, we will first determine whether or not this Court has jurisdiction over the case.

Republic Act No. 1125 prescribes the jurisdiction of the Court of Tax Appeals. Sections 7 and 11 of said Act provide:

> SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
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> (1) Decisions of the Collector 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.
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> SEC. 11. Who may appeal; effect of appeal. Any person, association or corporation adversely affected by a decision or ruling of the Collector 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.
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The law gives this Court exclusive appellate jurisdiction to review by appeal "decisions of the 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." In matters involving assessments of internal revenue taxes, the Supreme Court, in a recent decision (Commissioner of Int. Rev. v. Villa, G.R. No. L-23988, January 2, 1968), held that the assessment itself is not an appealable decision. To entitle a taxpayer against whom an assessment has been made to appeal, he should first file a protest against such assessment, and the decision rendered by the Commissioner of Internal Revenue on the protest is the one which is appealable to this Court.

The Villa decision, supra, has apparently overlooked the fact that the law also permits appeals from decisions of the Commissioner of Internal Revenue on "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue." The term "other matters" has been interpreted by the Supreme Court as including cases involving liability for taxes or other money charges.

> 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 intervenor, by the doctrine of *ejusdem generis*, in order that the 'other matters arising under the Customs 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 v. Court of Tax Appeals, et al. [99 Phil. 604], penned by Mr. Justice Felix Bautista Angelo, squarely interpreting the provisions of the afore-quoted 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 deci-

> sion. 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. v. Commissioner of Int. Rev., CTA No. 1903 and Transmarine Shipping Co. v. Commissioner of Int. Rev., CTA No. 1904, July 31, 1968.)

As stated in the cases of Litonjua & Co. and Transmarine Co., supra, we expressed the view that an assessment is an appealable decision even if not formally protested solely to provoke a re-examination of this ticklish jurisdictional question. We are still bound by the Villa decision and we will continue to uphold the same, unless the same is revoked or revised.

In the case of Villa, the taxpayer appealed from an assessment of an internal revenue tax made by the Commissioner of Internal Revenue. The taxpayer appealed to this Court without first filing a protest against the assessment. This Court considered the case on the merits, the jurisdictional issue not having been raised by the parties. On appeal, the Supreme Court considered motu proprio the jurisdictional question, and dismissed the case on the ground that this Court had no jurisdiction to take cognizance of the appeal in the first instance. In line with this decision, we have no recourse but to dismiss the herein appeal for lack of jurisdiction.

WHEREFORE, the herein appeal is hereby dismissed, without prejudice. No pronouncement as to costs.

SO ORDERED.

Quezon City, October 28, 1968.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge