REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AIRPORT BUILDERS AND MANAGEMENT CORPORATION (ABMC) AND THE SPOUSES ROGELIO A. AND VIRGINIA S. DIO,
Petitioners,

- versus -

C.T.A. CASE NO. 5275

THE HONORABLE LIWAYWAY VINZONS-CHATO IN HER CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 19 1998

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RESOLUTION

Acting on the instant motion to dismiss filed by respondent on September 21, 1995, this Court, after a thorough study of the background facts and premises alleged in the petition and the opposition and reply to said motion as well as petitioners' memorandum on the same, **RESOLVES** to **GRANT** said motion in view of the fact that, contrary to petitioners allegation, a computation of tax liabilities in a criminal complaint cannot be considered as a formal assessment, as held in **Commissioner of Internal Revenue vs. Court of Tax Appeals and Spouses Antonio L. Sanchez and Editha Vito-Sanchez, CA-G.R. SP No. 36564, promulgated on July 03, 1996,** to quote:

> "We agree with the Solicitor General in his position on the matter, and we quote with approval, thus:
>
> > 'x x x Here, the civil aspect, i.e., deficiency income taxes assessment is not deemed included in the criminal complaint filed against respondent spouses. This is so because the amounts of the proposed tax assessment were merely mentioned in the criminal complaint to show the discrepancy between the amounts indicated in the Income Tax Returns and the findings shown in the investigation/audit report submitted by petitioner's revenue examiners. This is in consonance with the rulings of the Supreme Court in the Ungab case (supra).' (Ungab vs. Cusi, Jr., 9 SCRA 877)."

Even assuming for the sake of argument that there is an assessment as alleged by the petitioners, We still chose to grant the instant motion due to the clear *absence of a decision on a disputed assessment* in the case at bar as can be gleaned readily from the petition, to quote:

> "It is respectfully submitted that the filing of a criminal action for tax evasion involving an assessment of P26,041,509.00 by herein respondent Commissioner against herein petitioners consists in a formal assessment *which may be appealed to the Honorable Court of Appeals*(sic) within 30 days or until August 6, 1995 (a Sunday) and, as such, petitioners have until the next working day or until August 7, 1995 within which to perfect an appeal." (Petition, p. 11; italics supplied)

The Court of Tax Appeals is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. This jurisdiction of the Court of Tax Appeals is defined in Section 7 of Republic Act 1125 which pertinently provides for its exercise of "exclusive appellate jurisdiction to review by appeal xxx decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refund of internal revenue taxes, etc." The word "decisions" in paragraph 1, Section 7 of Republic Act 1125 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 (**Commissioner of Internal Revenue vs. Villa, 22 SCRA 3**). It is for this reason that the argument of petitioner that a mere assessment is appealable to this Court is patently erroneous.

WHEREFORE, in view of the foregoing, the Motion to Dismiss filed by the respondent is **GRANTED**. Accordingly, the petition for review filed on August 5, 1995 is hereby **DISMISSED** on the ground of lack of jurisdiction.

SO ORDERED.

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

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DISSENTING OPINION

The issue for resolution in the respondent's Motion to Dismiss is whether or not this Court has jurisdiction to take cognizance of the petition pursuant to Section 7(1) of Republic Act No. 1125.

With due respect to the majority opinion, I am not inclined to grant respondent's Motion to Dismiss for the following reasons:

1) In our resolution entitled **Pascor Realty and Development Corporation and The Spouses Rogelio A. and Virginia S. Dio vs. The Honorable Liwayway Vinzons-Chato, CTA Case No. 5271, dated January 25, 1996,** this Court categorically ruled that the criminal complaint for tax

evasion is already an assessment. Quoted hereunder are portions of said resolution, thus:

> "It is the Court's honest belief, that the criminal complaint for tax evasion is already an assessment. The complaint, more particularly, the Joint Affidavit of Revenue Examiners Lagmay and Savellano attached thereto, contains the details of the assessment like the kind and amount of tax due, and the period covered.
>
> Petitioners are right, in claiming that the provisions of Republic Act No. 1125, relating to exclusive appellate jurisdiction of this Court, do not make any mention of "formal assessment". The law merely states, that this Court has exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on <u>disputed assessments</u>, and <u>other matters</u> arising under the National Internal Revenue Code, other law or part of law administered by the Bureau of Internal Revenue Code (sic).
>
> As far as this Court is concerned, the amount and kind of tax due, and the period covered, are sufficient details needed for an "assessment". These details are more than complete, compared to the following definitions of the term as quoted hereunder. Thus:
>
> > "<u>Assessment</u> is laying a tax. Johnson City v. Clinchfield N. Co., 43 S.W. (2d) 386, 387, 163 Tenn. 332, (<u>Words and Phrases</u>, Permanent Edition, Vol. 4, p. 446)"
> >
> > "The word <u>assessment</u> when used in connection with taxation, may have more than one meaning. <u>The ultimate purpose of an assessment in such a connection is to ascertain the amount that each taxpayer is to pay.</u> More commonly, the word "assessment" means the official valuation of a taxpayer's property for purpose of

> taxation. State v. New York, N.H. and H.R. Co. 22 A. 765, 768, 60 Conn. 326, 335. (ibid. p. 445).
>
> From the above, it can be gleaned that an assessment simply states how much tax is due from a taxpayer. Thus, based on these definitions, the details of the tax as given in the Joint Affidavit of respondent's examiners, which was attached to the tax evasion complaint, more than suffice to qualify as an assessment. Therefore, this assessment having been disputed by petitioners, and there being a denial of their letter disputing such assessment, this Court unquestionably acquired jurisdiction over the instant petition for review."

This aforequoted resolution was later affirmed by the Court of Appeals in the decision entitled **Commissioner of Internal Revenue vs. Hon. Court of Tax Appeals, Pascor Realty and Development Corporation and Spouses Rogelio A. Dio and Virginia S. Dio, CA G.R. SP No. 40853, dated October 30, 1996.**

Given that the facts and circumstances in the aforecited Pascor case are identical with the instant petition for review, I do not see any valid reason why we should deviate from the wisdom of this ruling;

2) In a similar resolution entitled **Adamson Management Corporation, Lucas Adamson, Theresa Adamson and Sara delos Reyes vs. Commissioner of Internal Revenue, CTA Case No. 5075, dated September 19, 1994,** this Court denied respondent's Motion to Dismiss and rejected the argument of respondent that this Court has

no jurisdiction to take cognizance of the instant petition because no formal assessment was issued. The Court of Appeals, in affirming this Court's resolution ruled, thus:

> "This Court agrees with the ruling of the respondent court that it has jurisdiction over the case a quo for the reason that there was deemed a formal assessment of the private respondents' deficiency of tax liability. Said court correctly considered the tax liability indicated in the criminal complaint of the petitioner with the Department of Justice as an implied formal assessment and the subsequent filing of the criminal information with the Regional Trial Court as a denial of the protest. Be it stressed that the petitioner will not file a complaint before the Department of Justice if she was not sure of the correctness of the said findings. Where the private respondents asked for a reinvestigation and submitted their counter affidavits, these are in the nature of protest against the tax liability mentioned in the complaint. And the filing of the criminal case for tax fraud in the Regional Trial Court constitutes a final decision by the Internal Revenue Commissioner of the private respondents' protest, whish is appealable to the respondent court." (**Commissioner of Internal Revenue vs. Court of Tax Appeals, Adamson Management Corp., Lucas G. Adamson, Theresa June B. Adamson and Sara delos Reyes, CA G.R. SP No. 35520, March 29, 1996**)

IN VIEW THEREOF, I register my dissent and recommend the denial of respondent's Motion to Dismiss.

ERNESTO D. ACOSTA
Presiding Judge