REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAGNO EQUIPMENT & SUPPLY
CO., INC.,
Petitioner,

-versus- C.T.A. CASE NO. 2119

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

RESOLUTION

On May 4, 1962 respondent assessed the petitioner the sum of ₱27,205.85 as commercial broker's fixed and percentage taxes, inclusive of surcharge for 1960, and the additional sum of ₱4,350.00 as compromise penalty. In a letter dated May 29, 1962 which was received by respondent on May 31, 1962 petitioner requested withdrawal and cancellation of the assessment, which request was denied by respondent in a letter dated August 7, 1962. In his denial addressed to petitioner's counsel, respondent requested said counsel "that you urge your client to settle" the amount assessed "in order that this case may be closed." On August 29, 1962 counsel for petitioner requested for reinvestigation of the assessment but this was also denied by respondent in a letter of September 11, 1962 who asked said counsel to "urge your client to pay" the sum assessed "in order that the case may be closed." Receipt of this denial was acknowledged by petitioner in a reply dated September 24, 1962

Respondent now urges that his decision of September

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11, 1962 final and although in the reply of September 24, 1962 petitioner requested a reconsideration of the denial of his request for re-investigation of August 29, 1962, same did not suspend the running of the period for appeal since it was pro forma in nature. His petition for review was therefore filed late on May 12, 1970.

It appears that the present case is one of a number of cases of similar nature handled by the same counsel. In many communications between them, said counsel and respondent sometimes dealt with said cases jointly and not separately. A letter of respondent dated September 26, 1962 has the following tenor:

> With reference to your various letters for and in behalf of your various clients, appealing from the assessments of this Office against them for broker's fixed and percentage taxes in relation to their business dealings with the International Harvester Macleod, Inc., I have the honor to inform you that your administrative appeal for and in behalf of said clients will be held in abeyance pending resolution of the issues on a similar case which was appealed by you to the Court of Tax Appeals.
>
> In order to resolve once and for all the factual and legal issues arising from the judicial appeal of one of your clients, this Office has decided to deny your request for an administrative hearing of each of the cases of your various clients which are similar to the case elevated by you on appeal to the Court of Tax Appeals.

It also appears that in a letter dated April 1, 1963 respondent advised petitioner's counsel that its request for reconsideration would be given due course provided a waiver of the statute of limitations is filed. Petitioner answered with a letter dated May 8, 1963 and a waiver expiring December 31, 1968. In a letter of August 2, 1968 respondent asked petitioner to extend his waiver to December 31, 1972 and petitioner executed a new waiver expiring on June 30, 1975.

Respondent's position that the denial of September 11, 1962 was final in tenor is not in accordance with the evidence adduced by the parties and the record. In said letter respondent merely requested petitioner's counsel "that you urge your client to settle" the amount assessed "in order that this case may be closed." This hardly conveys finality. On the other hand, respondent's letter of September 26, 1962 belie such implication because in it respondent clearly manifested that resolution of the protest in question was being held in abeyance. The least that can be said in this respect is that respondent reconsidered the finality of the denial of September 11, 1962 (Torres vs. Comm. of Int. Rev., CTA Case No. 2118, Resolution of January 30, 1973). Thus, we are of the opinion that the thirty-day period for appeal to this Court should not be counted from September 24, 1962.

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We further note however, that paragraph XII of the petition for review alleges that -

> Notwithstanding the fact that no final decision has been rendered by the respondent on petitioner's protest and/ or request for reconsideration, this petition is being filed by petitioner in view of information received from the Bureau of Internal Revenue that a Warrant of Distraint and Levy may be served upon petitioner, x x x .

Aside from this admission, it may also be said that there is nothing in the record of this case to show that any such final decision has been rendered by respondent. While a warrant of distraint and levy is equivalent to a denial of a pending motion for reconsideration or reinvestigation (Frederick L. Hahn vs. Comm. of Int. Rev., CTA Case No. 1937, Resolution of April 30, 1969), it is so only when the Commissioner has not actually taken any action on the motion or request for reconsideration. (Gepte vs. Comm. of Int. Rev., CTA Case No. 1511, Resolution of March 31, 1971.)

In the instant case, there is even no showing that a warrant of distraint and levy had actually been issued. Under the circumstances, this petition for review is premature.

WHEREFORE, the petition for review is hereby dismissed for being premature. Without pronounce-

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ment as to costs.

SO ORDERED.

Quezon City, April 15, 1974.

RAMON L. AVANCEÑA
Associate Judge

I concur:

ROMAN M. UMALI
Presiding Judge

Associate Judge ESTANISLAO R. ALVAREZ took no part.