REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL STEEL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5574

COMMISSIONER OF INTERNAL REVENUE, LIWAYWAY VINZONS-CHATO AND REGIONAL DIRECTOR ANTONIO I. ORTEGA, REVENUE REGION NO. 8, BUREAU OF INTERNAL REVENUE,
Respondents.

Promulgated:
JUN 03 1998

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RESOLUTION

Before us for resolution is respondent Commissioner's "Motion to Dismiss" filed on March 5, 1998, alleging, *inter alia*, that the letter of Chief Virgilio R. Robles of the Legal Division of the Bureau of Internal Revenue, Revenue Region No. 8, for and in behalf of respondent Regional Director, dated December 10, 1997 (p. 32, Records of the case), is not her final decision on petitioner's protest, dated July 14, 1997 (p. 64, *ibid.*), due to the fact that it was merely signed by the Chief of the Legal Division who is not authorized to decide with finality any taxpayer's protest. Hence, she insists that petitioner's appeal is premature and the Court acquires no jurisdiction to entertain the instant case, pursuant to the provisions of Section 10 of Revenue Regulations No. 12-85.

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In its opposition to the said motion[1], petitioner contends, among others, that the letter of December 10, 1997, effectively denied its protest on the subject assessments for it simply reiterated respondent Commissioner's Letter of Demand and Assessment Notices, dated June 27, 1997; and that, said letter of December 10, 1997 is a decision of the Regional Director which is appealable to this Court in accordance with Revenue Regulations No. 12-85 because it was signed by the Chief of the Legal Division for and in behalf of the Regional Director.

For easy reference and better understanding, the entire copy of the letter, dated December 10, 1997, is hereby reproduced, to wit:

December 10, 1997

Sir/Madam:

Our records show that there is still due from you the amount of P642,532,502.65, relative to your 1993 deficiency tax/es to which a final assessment notice has been previously issued on June 27, 1997.

Once again, we are giving you the opportunity until December 31, 1997, to pay the said amount by availing of the compromise settlement wherein you will be allowed to pay a minimum percentage from a range of 10%, 50% or 100% of the basic tax (excluding penalties) depending on the nature of the assessment as provided by Revenue memorandum Order No. 61-97,

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1 filed on March 26, 1998

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dated November 14, 1997. Should you avail of this compromise scheme, rest assured that your name will be cancelled from the roster of delinquent taxpayers who maybe prosecuted in court for non-payment of taxes.

Please course your payment thru the Chief, Legal Division, Revenue Region No. 8, Rm. 506, Atrium Bldg., Makati Avenue, Makati City.

Your prompt attention on this matter is highly appreciated.

Very truly yours,

ANTONIO I. ORTEGA
Regional Director

By:

(Sgd.) VIRGILIO R. ROBLES
Chief, Legal Division

It is an established rule that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ***ex mero motu***. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.

The Court of Tax Appeals is a court of special jurisdiction (***Commissioner vs. Ayala Securities Corp., 70 SCRA 204***). As such, it can take cognizance only of such

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matters as are clearly within its jurisdiction. (***Commissioner of Internal Revenue vs. Leonardo Villa**, 22 **SCRA** 3.*) The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act No. 1125, which provides:

> **SEC. 7.** ***Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, 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;
>
> (2) xxx xxx xxx
>
> (3) xxx xxx xxx

As correctly pointed by the respondent Commissioner, this Court in the case of **Anscor Land Management and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5463, July 30, 1997,** resolved that what is reviewable by this Court on appeal, among others, are the final decisions of the Commissioner of Internal Revenue and Regional Directors, giving emphasis to the official rendering the decision and the tenor of the decision, thus:

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> "It is unmistakably clear and vivid from the aforementioned provisions of law and regulations that what is reviewable by this Court on appeal, among others, are the decisions of the Commissioner of Internal Revenue and Regional Directors. It is the intention of the law to give the taxpayer an opportunity to exhaust all administrative remedies before coming to this Court and on the other hand, give the Commissioner or the Regional Director, as the case may be, an opportunity to correct the mistakes committed, if any, by his subordinates. Thus, a party dissatisfied with the decision of the Chief of Assessment Division may appeal to the Commissioner or Regional Director, whose decisions are appealable to this Court in the manner and within the period prescribed by law and regulations. Since petitioner did not exhaust his administrative remedies, his recourse to this Court is premature."
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> xxx xxx xxx
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> "x x x. Apparently, the respondent Commissioner of Internal Revenue, by virtue of her pronouncements in her Motion to Dismiss and subsequent Reply, pointed out that it is not only the tenor of finality embodied in a decision which is the key element constitutive of its appealability to the Court of Tax Appeals but it is also important to consider the government official who renders such decision. In this case, it should be the final decision of the Commissioner of Internal Revenue or Regional Director, pursuant to Section 10 of Revenue Regulations No. 12-85 (supra). This particular interpretation is in conformity with Section 7 of Republic Act No. 1125 (supra)."

The above ruling takes into consideration Section 229 of the Tax Code and Section 10 of Revenue Regulations No. 12-85, November 27, 1995 (which implemented the last

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paragraph of Section 229), both of which provides the following:

> "**Sec. 229.** ***Protesting of assessment.*** - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings, within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
>
> <u>If the protest is denied in whole or in part, the individual, association or corporation 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".</u> (Underscoring supplied)

> "**Sec. 10.** ***Appeals of decision of Commissioner or Regional Director to the Court of Tax Appeals.*** - *Final decision* issued by the Commissioner or Regional Director may be appealed to the Court of Tax Appeals within (30) days from receipt thereof, otherwise the same shall become final and executory." (Emphasis supplied)

While this Court agrees with the petitioner's contention that the above quoted letter of December 10, 1997 was signed by the Chief of the Legal Division for

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and in behalf of the Regional Director, thus, a decision itself by the Regional Director; and that, respondent Commissioner should categorically state in her decision that the same constitutes her final decision on petitioner's protest in the interest of speedy and orderly administration of justice, this Court, however, does not see anything in the said letter which would vividly and explicitly indicate any denial with finality by the respondent on the disputed assessments which is appealable to this Court as contemplated by Section 7 of R.A. No. 1125 and Revenue Regulations No. 12-85. Stated otherwise, the final decision of the Commissioner or Regional Director upon which the petition for review ought to have been based appears neither here nor there, so to speak. We concur with the respondent counsel that the said letter of December 10, 1997 is a pro-forma letter encouraging taxpayer to avail of the BIR's compromise settlement policy under Revenue Memorandum Order No. 61-97. It was never intended to be the final decision on the matter. Records show that respondent after said date never tried to enforce its final assessments by any of the administrative remedies provided under the law.

In conclusion, there has been failure by petitioner to comply with Section 7, RA 1125 and Section 10 of

Revenue Regulations No. 12-85, taken in relation with Section 229 of the Tax Code, *supra*. Herein appeal, therefore, is premature and this Court has no jurisdiction to entertain the petition at bar.

ACCORDINGLY, this Court resolves to dismiss the instant petition for review for lack of jurisdiction, without prejudice of re-filing the same in case any of the respondents will render a final decision adverse to petitioner's interest or shall perform some overt acts which may be interpreted as a denial of the protest filed such as by issuing warrant of garnishment/warrant of personal property or levy of real property or any other administrative or judicial remedies to enforce collection of the alleged deficiency taxes.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

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