REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUPERCARS INC.,
Petitioner,

- versus -

C.T.A CASE NO. 5040

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

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

RESOLUTION

Respondent herein seeks for the dismissal of the instant petition on the ground of lack of jurisdiction, there allegedly being no final decision on the disputed assessment subject thereof.

On January 30, 1992, the respondent issued an assessment against the petitioner herein assessing it liable for various tax deficiencies for the years 1988 and 1989 in the total amount of P18,214,959.58. Within the period provided for by law, the petitioner filed its protest thereto dated February 18, 1992. Subsequently it filed its final memorandum dated September 15, 1992 discussing in detail the basis for disputing the said assessment.

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On November 23, 1992, the respondent filed with the Department of Justice a complaint for tax evasion with the following pertinent recommendations:

"The Honorable Secretary
Department of Justice
M a n i l a

Attn: The Chairman, Task Force on Revenue Cases created under Department Order No. 305.

S i r :

I hereby recommend the criminal prosecution of the following:

1. **SUPERCARS, INC.**, 136-138 Quezon Avenue, Quezon City, Metro Manila, for violating the provision of NIRC, as amended, to wit:

a. Willful attempt to evade and defeat payment of deficiency income taxes for the years 1983 and 1989 in the respective amounts of P5,798,714.34 and P991,279.02 due under Assessment Notice Nos. FAS-1-83-92-00527 and FAS-1-89-92-00528 all dated January 30, 1992 in violation of Section 45(a), NIRC, penalized under Sections 253 and 255 of the same Code;

b. Willful attempt to evade and defeat payment of VAT for the years 1988 and 1989 in the respective amounts of P5,316,080.46 and P990,910.43 due under Assessment Notices Nos. FAS-4-88-90-000531-A and FAS-4-89-92-000531 both dated January 30, 1992 in violation of Section 45(a) and Section 110 in relation to Section 100, both of the NIRC, penalized under Sections 253 and 255 of the same Code.

xxx xxx xxx"

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From this recommendation, the petitioner filed this instant petition:

The respondent now contends that the aforecited recommendation for criminal prosecution cannot be considered as his final decision on the assessment being questioned by the petitioner.

The contention of the respondent should be sustained.

Well-settled is the rule that only the final decisions of the Commissioner of Internal Revenue on disputed assessments are cognizable by this Court. This requirement is jurisdictional in nature such that failure to comply will result into the dismissal of the action filed by the taxpayer.

The Supreme Court had laid down the basis for determining whether a decision of the Commissioner of Internal Revenue has already attained finality. Thus, in **Surigao Electric Co. Inc. vs. Court of Tax Appeals,** (57 SCRA 523), it was held:

> "x x x we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this statement indubitably showing that the Commissioner's communicated action is

> his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues." (Underscoring supplied)

Clearly therefore, for a decision to be accorded the character of finality and in order to commence the running of the thirty (30) day period for appealing to this Court, the same must be directed to the taxpayer and must embody, in clear and unequivocal terms, that such decision constitutes the respondent's final determination on the disputed assessment.

On this basis, the action of the petitioner must necessarily fail. It appealed from the recommendation of the Commissioner of Internal Revenue to the Department of Justice for the filing of a criminal case for tax evasion. This recommendation was never meant to be a response to the petitioner's protest on the subject assessment. It was not even sent a copy of the same.

The petitioner in support of its contention asserted that had it failed to appeal within 30 days from the filing of the recommendation for criminal prosecution of tax evasion, its right to file the present petition would have prescribed (par. 2 of "Opposition to Motion to Dismiss").

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We do not believe so.

As stated earlier, the recommendation was never addressed to the taxpayer and cannot be construed as the final decision of the respondent that is appealable to this Court. In the same manner, had the petitioner failed to know or was never informed of the existence of such recommendation, We could not have possibly faulted it for not appealing therefrom within 30 days, for to do so will violate not only the tenor of our tax laws, but likewise, the basic precept of due process.

We could neither make the finality of the respondent's decision be made dependent on the taxpayer's discovery, intentionally or accidentally, of the respondent's recommendation to the Department of Justice for criminal prosecution. Such action will consequently leave to the will of the taxpayer the determination of the commencement of the 30 day period for filing an appeal with this Court which may only open the gates to confusion, fraud, and needless delays . This is precisely the situation which the Supreme Court seeks to avoid in prescribing the rule of conduct enunciated in the aforecited case of **Surigao Electric Co. Inc. vs. C.T.A.**, (*ibid.*) where it was further added:

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> x x x This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment-and, consequently, the collection of the amount demanded as taxes-by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action." (Underscoring supplied)

This is why even if a collection suit instituted by the Commissioner of Internal Revenue *directly against the taxpayer* has been considered as a final decision appealable to this Court, the 30 day prescriptive period for filing its action commences only from the time that *it receives the summons* from the regular court (**Commissioner of Internal Revenue vs. Union Shipping Corporation**, 185 SCRA 547) and not from the time that it had actual knowledge of the issuance or the filing of the complaint.

Moreover granting *arguendo* that the filing of the criminal complaint with the Department of Justice on November 23, 1993 is the final decision of the respondent, the instant petition should be still be dismissed inasmuch as the **"AMENDED PETITION FOR REVIEW"**

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was filed only on March 2, 1994, way beyond the thirty(30) day period allowed by law.

WHEREFORE, premises considered the instant petition is hereby dismissed.

SO ORDERED.

Quezon City, Metro Manila, May 6, 1994.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge