REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ABUNDIA C. POLISTICO,
Petitioner,

- versus -

C.T.A. CASE NO. 4243

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

3/29/89

D E C I S I O N

Respondent Commissioner of Internal Revenue, in a motion filed on April 29, 1988, seeks the dismissal of the petition for review on the ground of lack of jurisdiction. He contends that the appeal is not cognizable by this Court since the assessment has not been protested nor contested pursuant to Section 319-A (now Section 270) of the National Internal Revenue Code; hence, there could not be any decision that may be appealable to this Court as contemplated in Section 7(1) of Republic Act No. 1125.

We agree with respondent.

The pertinent facts as alleged in the petition for review disclose that petitioner Abundia C.

Polistico is of legal age, married, and a resident of Mahaplag, Leyte and engaged in the eatery and common carrier business at her place of residence.

On February 2, 1988, petitioner received the letter of Pedro C. Aguillon, Assistant Commissioner for Collection of respondent, dated January 12, 1988, requiring her to pay the total amount of P81,722.25 representing alleged deficiency income and percentage taxes for the year 1983, including increments thereon. Said letter also indicates the acceptable extrajudicial settlement or compromise penalties in the total amount of P450.00 for violation of certain Bookkeeping Regulations.

While petitioner avers that said tax deficiency assessment is illegal and unwarranted because she had availed of the tax amnesty under Executive Order No. 41, no request for reconsideration or reinvestigation of the aforementioned assessment was however made with respondent before she appealed to this Court on March 18, 1988.

Obviously, the assessment not having been protested or contested, there could not be a decision on a disputed assessment that may be appealed to this Court. (***Candyman Incorporated vs. The Commissioner of Internal Revenue***, *CTA Case No. 1872, January 20, 1970*; ***The Philippine American Life Insurance Company, Inc. vs. The Hon. Commissioner of Internal Revenue***, *CTA Case No. 2981, June 6, 1986*; ***Commercial Bank of Manila vs. The Commissioner of Internal Revenue***, *CTA Case No. 4088, July 16, 1987*.) Under Section 7(1) of Republic Act No. 1125, what is reviewable by this Court on appeal is the decision of the Commissioner of Internal Revenue on a disputed assessment. Thus, it has been held:

> The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act 1125, the pertinent part of which states:
>
> > "SEC. 7. Jurisdiction - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
> >
> > "(1) Decisions of the Collector (now 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";

> The word "Decisions" in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the <u>decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments.</u> x x x" (Emphasis ours); ***(Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Tax Appeals**, L-23988, January 2, 1968, 22 SCRA 3.)*

Under Section 319-A (now Section 270) of the National Internal Revenue Code, an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment; otherwise, it becomes final and unappealable. And if the protest is denied in whole or in part, the taxpayer 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.

It is thus clear beyond doubt that the decision on the request for reconsideration or reinvestigation is the decision on the disputed assessment 'hich is appealable to this Court. Consequently, if the assessment is not formally contested or protested administratively, as what happened in the case at bar, the taxpayer has no right to appeal.

IN VIEW OF THE FOREGOING, the petition for review filed in this case is hereby dismissed for lack of jurisdiction at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, March 29, 1989.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX L. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals