REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ST. STEPHEN'S ASSOCIATION and
ST. STEPHEN'S CHINESE GIRLS
SCHOOL,
Petitioners,

August 15/56

- versus -

C.T.A.
CASE NO. 173

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

RESOLUTION

It appearing that the record of this case fails to show whether or not the petition for review was filed within the reglementary period of thirty days, the Court, desiring to give petitioners every opportunity to have their day in court, issued an order motu proprio on June 29, 1956, requiring petitioners to show cause to this effect.

In compliance with said order, counsel for petitioners, on July 3, 1956, submitted a memorandum to show the jurisdiction of the Court.

It appears that on October 15, 1954, respondent assessed and demanded from petitioners the payment of donor's and donee's gift taxes, including surcharges, amounting to ₱98.70 and ₱699.07, respectively. The records of the case however fails to indicate the date of receipt of the afore-mentioned assessment, although we may liberally assume that petitioners received the same on or before November 12, 1954, considering that on that day, a request was filed with respondent for the cancellation and withdrawal of said assessment. On April 21, 1955, petitioners received respondent's letter dated April 6, 1955 (Exh. "6") denying the aforesaid request. On May 9, 1955, petitioners filed with respondent another request for cancellation and withdrawal of the assessment in question. Respondent denied this last request for cancellation and withdrawal of the assessment in a letter dated July 11, 1955 (Exh. "H", see also Exh. "7") which petitioners received on July 25, 1955. Thereafter, petitioners appealed to this Court the decision of the Collector of Internal Revenue by filing on August 13, 1955, their "Petition for Review".

Under sections 7 and 11 of Republic Act No. 1125, a taxpayer may appeal from a decision of the Collector of Internal Revenue within 30 days from receipt of such decision. We held that the "decisions" of the Collector of Internal Revenue contemplated by the aforesaid provisions of law and appealable to this Court refer to "determinations made or arrived at by the Collector of Internal Revenue which would become final and executory unless modified or reversed by said official or appealed to a superior authority in accordance with law" (Angel Sarmos v. Collector, C.T.A. Case No. 229, prom. March 5, 1956; Merced Drug House v. Collector, C.T.A. No. 180, prom. May 21, 1956; Dirk Van Dongen v. Collector, C.T.A. No. 286, prom. July 31, 1956; Villemin v. Collector, C.T.A. No. 258, prom. July 31, 1956). Since a letter of demand or assessment sent by the Collector of Internal Revenue to a taxpayer contains a determination of the tax liability of the latter, such letter or assessment must be considered as the "decision" appealable to this Court. The Supreme Court appears to recognize the same view when it held that the "assessment made by the Collector of Internal Revenue is the substantive and dispositive part of his decision" (Ventanilla v. Board of Tax Appeals, G.R. No. L-7384, prom. December 19, 1955). Under circumstances comparable with our law, the United States Supreme Court in the case of Bull v. U.S. (1935, 295 U.S. 247; 79 L. Ed. 1421) sustained the same theory that the assessment is the action of an administrative agency equivalent to a decision and it is therefore given the force of a judgment. To quote:

> "A tax is an exaction by the sovereign, and necessarily the sovereign has an enforcible claim against everyone within the taxable class for the amount lawfully due from him. The statute prescribes the rule of taxation. Some machinery must be provided for applying the rule to the facts in each taxpayer's case, in order to ascertain the amount due. The chosen instrumentality for the purpose is an administrative agency whose action is called an assessment. The assessment may be a valuation of property subject to taxation which valuation is to be multiplied by the statutory rate to ascertain the amount of tax. Or it may include the calculation and fix the amount of tax payable, and assessments of federal estate and income taxes are of this type. Once the tax is assessed the taxpayer will owe the sovereign the amount when the date fixed by law for payment arrives. Default in meeting the obligation calls for some procedure whereby payment can be enforced . . . . The assessment is given the force of a judgment and if the amount assessed is not paid

> <u>when due, administrative officials may seize the debtor's property to satisfy the debt</u>." (Bull v. U.S., <u>supra</u> at 259-260, 1427. Underlining added)

With the foregoing considerations in mind, the decision of the Collector of Internal Revenue appealable to this Court refers to his letter dated October 15, 1954, wherein the tax liability of petitioners was determined. We have liberally conceded to petitioners' doubts as to the date of their receipt of said decision, and consider that the filing of their letter of reconsideration on November 12, 1954, suspended the running of the period within which to appeal to this Court, without having consumed any day as yet. Thus, the period to appeal commenced to run only from April 21, 1955, when petitioners received respondent's letter denying the request for withdrawal of the assessment herein involved. From this date up to May 9, 1955, when another request for reconsideration was made by petitioners, the latter had already consumed eighteen (18) days of the thirty-day period within which to appeal. The period then resumed to run on July 25, 1955, when petitioners received respondent's denial of their second request for reconsideration. From July 25, 1955 up to the filing of the herein petition for review on August 13, 1955, another period of nineteen (19) days had been used up. All in all therefore, an aggregate of thirty-seven (37) days had elapsed before petitioners filed the present petition for review and perfected their appeal under section 11 of Republic Act No. 1125. Obviously, the petition for review has been filed beyond the reglementary period prescribed by law. We are therefore constrained to hold that this Court has no longer any jurisdiction to hear and determine this case.

Petitioners however insist that the petition for review was filed within the time limit set by respondent in the last paragraph of the latter's letter of July 25, 1955, which reads:

> "This decision becomes final thirty days after your receipt hereof, unless an appeal is taken to the Court of Tax Appeals within the same period in accordance with the provisions of section 11 of Republic Act No. 1125 (Exh. "H-1", petitioner)."

Suffice it to say however, that jurisdiction, especially over suits against the state, can not be the subject of waiver, compromise or agreement. Much less, therefore, can a statement or opinion of any administrative officer enlarge or restrict the clear and explicit provisions of law contained in section 11 of Republic Act No. 1125.

IN VIEW OF THE FOREGOING, the above-entitled case should be, as it is hereby, dismissed, with no pronouncement as to costs.

SO ORDERED.

Manila, August 15, 1956.

MARIANO NABLE
Presiding Judge

WE CON-

CUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge