FREDERICK K. D. ONG,
Petitioner,

versus - CTA CASE NO. 1688

Sept. 30/68

BENJAMIN N. TABIOS,
as Commissioner of
Internal Revenue,
Respondent.

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

D E C I S I O N

It is not clear from the petition for review filed in this case whether same is an appeal from the decision of respondent Commissioner of Internal Revenue holding petitioner liable for deficiency income tax for 1952 in the sum of ₱1,266.00, inclusive of the 50% surcharge, plus delinquency penalties for late payment; or from the denial by respondent of petitioner's request for cancellation of the warrant of distraint and levy issued to enforce the deficiency assessment; or both.

Petitioner Frederick K. D. Ong, a Chinese businessman residing at Cebu City, filed his income tax return for 1952 on March 2, 1953 declaring therein a taxable income of ₱3,285.02 and paid the corresponding tax due thereon in the amount of ₱203.00. After investigation and verification of petitioner's return and business records, respondent, through his Regional Director at Cebu City, issued on December 26, 1956 an assessment notice demanding from the taxpayer the payment of the amount of ₱1,266.00 as deficiency income tax, inclusive of 50% surcharge. Petitioner protested the aforesaid assessment on January 22, 1957, but apparently the said protest was not favorably entertained, for on August 8, 1957, respondent, through the Assistant Regional Director at Cebu City, reminded him of his income tax liability and urged him to pay the deficiency tax, including the penalties for late payment.

In another letter dated November 7, 1958, petitioner asked for a reinvestigation of the deficiency assessment on the ground, among others, that respondent allegedly failed to take into consideration as part of his fire losses the sum of ₱5,500.00 representing the value of 55 cases of "Ultramarine Blue". As a condition to the grant of the reinvestigation, he executed a waiver of the statute of limitations for a period not beyond December 31, 1960. After a reinvestigation of the case, however, respondent, through his Assistant Regional Director at Cebu City, informed petitioner in a letter dated January 31, 1961 that he found no basis to revise the original deficiency assessment and therefore reiterated his demand for payment thereof, including the corresponding penalties. In a reply dated February 15, 1961, petitioner again requested a reconsideration of the assessment but the same was denied by respondent, through the Regional Director at Cebu City, in his letter of August 4, 1961.

Not contented with the aforesaid denial, petitioner again insisted in another letter dated August 23, 1961 that the deficiency assessment be reconsidered, although this time, he requested that his case be elevated to the national office in Manila for final ruling by respondent. Acceding to this request, the records of the case were sent to respondent in Manila. On November 23, 1962, however, respondent denied petitioner's request for reconsideration and demanded payment within ten days of the deficiency assessment, including the statutory penalties that have accrued thereto. In a separate letter also dated November 23, 1962, respondent instructed the Regional Director of Cebu City to effect immediate collection of the deficiency tax in question, together with the penalties, stating that his decision thereon was final and executory..

Inasmuch as the deficiency assessment was not paid, respondent, through his Regional Director at Cebu City, reminded petitioner on February 28, 1964 of his income tax liability and warned him that if the same was not paid within ten days thereof, collection would be effected by means of the summary remedies provided for by law and without further notice. In an answer dated March 11, 1964, petitioner again insisted that the assessment had no basis and should therefore be reconsidered. Respondent, through his Regional Director, informed petitioner however in a reply dated March 12, 1964 that the assessment in question had already become final and executory and could no longer be reconsidered.

Finally, on July 19, 1965 respondent issued a warrant of distraint and levy against petitioner to enforce collection of the deficiency income tax of ₱1,266.00, inclusive of 50% surcharge, plus 5% surcharge and 1% monthly interest from January 28, 1957, until fully paid. On July 27, 1965, the day the warrant of distraint and levy was served upon petitioner, he wrote another letter to the Regional Director requesting the reconsideration of the deficiency assessment and the lifting of the said warrant, but the request was again denied by respondent, through the Regional Director, in a reply dated August 6, 1965.

The instant petition for review was sent by registered mail at Cebu City on August 30, 1965 and received by this Court on September 10, 1965.

As stated above, it is not clear in the petition for review whether same is an appeal from the decision of respondent holding petitioner liable for deficiency income tax for 1952 in the sum of ₱1,266.00, inclusive of the 50% surcharge, plus delinquency penalties for late payment; or from the denial by respondent of petitioner's request for the lifting of the warrant of distraint and levy; or both. Be that as it may, respondent, in answer to the said petition, raises, as one of his special and affirmative defenses, the issue that this Court has no jurisdiction to entertain the appeal on the ground that the deficiency assessment in question has already become final and executory. Consequently, before going into the merits of the case, the pivotal and decisive question raised by respondent as to whether this Court has jurisdiction to take cognizance of this case should first be resolved.

It seems clear that the appealable decision to this Court is that of November 23, 1962, in the light of the ruling of the Supreme Court in the case of St. Stephen's Assn. v. Coll. of Int. Rev. (G. R. No. L-11298, Aug. 21, 1958). That respondent's letter of November 23 was a final decision is obvious from the following: (1) In the said letter, respondent informed petitioner that the case was elevated to Manila in response to his letter dated October 4, 1962; in this respect, it should be noted that the said letter of petitioner was a request for the transmission of the records of the assessments to the respondent "for a final ruling." In the same letter of Nov. 23, 1962, respondent demanded payment "within ten (10) days from receipt thereof; otherwise, the collection thereof will have to be enforced by means of remedies provided by law" (BIR rec. pp. 99-100, Exhibit B). (2) In a letter of same date of Nov. 23, 1962, addressed to the Regional Director of Cebu, respondent instructed the former that "inasmuch as the herein decision is already final, the collection of the sum of ₱1,266.00, plus statutory penalties for late payment, should be effected immediately" (BIR rec. p. 101, Exh. 10). (3) The subsequent letters of the Office of the Internal Revenue addressed to petitioner assumed that the denial by the respondent dated Nov. 23, 1962 was final.

The pleadings, evidence presented and records of the case, do not show the exact date of receipt by the taxpayer of respondent's letter of November 23, 1962. It is however undisputed that said decision was sent to and was received by petitioner. Respondent alleges that the said decision was sent to petitioner on the same day that the letter to the Regional Director of Cebu also dated November 23, 1962, together with the record of petitioner's case, was sent by respondent (p. 95, CTA rec.). The letter addressed to the Regional Director, which appears to have been sent by registered mail, was received by his office at Cebu City on December 14, 1962. In the ordinary course of business, the said decision of respondent dated November 23, 1962 must have been also received by petitioner on December 14, 1962 at Cebu City, or at least a month after the mailing, if the mail service thereof was delayed (Michael Shipping, Inc. v. Comm. of Int. Rev., CTA Case No. 1738, Aug. 30, 1968). Obviously, counting the thirty-day period from December 14, 1962, or even from a month thereafter, the petitioner's period of appeal had long expired when the instant case was filed before this Court on August 30, 1965.

At any rate, one of respondent's special and affirmative defenses is the averment that this Court has no jurisdiction to review the assessment in question because the same has already become final and executory. Consequently, it was necessary for petitioner to present proof of the date of his receipt of the decision of respondent in order to show that this Court has jurisdiction over the case. As there was no evidence on this point in the trial on the merits this case was reset for hearing on July 27, 1968 and August 31, 1968 for the reception of the necessary evidence (see Order of this Court dated July 12, 1968, pp. 107-108, CTA rec.). However, neither petitioner nor his counsel appeared before the Court on any of said dates. Since it was incumbent upon petitioner to present proof as to the date of receipt of the decision of respondent in order to show that his appeal to this Court was filed within the statutory period, his failure to do so is equivalent to an admission of respondent's allegation of this Court's lack of jurisdiction to review the assessment in question.

Petitioner's appeal with this Court is entitled as a "Petition for Review, Prohibition with

Writ of Preliminary Injunction and Annulment of Distraint and Levy"; its prayer is to the effect that respondent and his representatives be enjoined from proceeding with the collection of his 1952 deficiency income tax assessment by distraint and levy, and the annulment of the warrant of distraint and levy of July 19, 1965 as the right of respondent to collect the tax involved is already barred by the statute of limitations.

It appears that on July 27, 1965, the same date the warrant of distraint and levy to enforce collection of the deficiency income tax in question was served upon petitioner, he immediately requested the reconsideration of the assessment and the lifting of the said warrant of distraint and levy (Exh. 16, p. 115, BIR rec.), but the said request was denied by respondent, through the Regional Director, on August 6, 1965 (Exh. 17, p. 116, BIR rec.). The appeal to this Court was filed (sent by registered mail at Cebu City) on August 30, 1965, obviously within the thirty-day period from receipt of the denial. If petitioner, however, is not contesting the correctness of the deficiency income tax assessment in this case but merely seeking to enjoin respondent from enforcing the collection thereof by means of distraint and levy, as can be gleaned from the title and prayer of his petition, still this Court has no jurisdiction to entertain this appeal.

Section 11 of Republic Act No. 1125 does not expressly vest in this Court original jurisdiction to issue a writ of injunction independently of, and apart from, an appealed case. The writ of injunction which this Court may issue to suspend the collection of taxes is merely ancillary to and in furtherance of its appellate jurisdiction. In sum, to quote the words of the Supreme Court, "the intention of Congress was to vest the Court of Tax Appeals with jurisdiction to issue writs of prohibition and injunction only in aid of its appellate jurisdiction in cases appealed to it and not to clothe it with original jurisdiction to issue them" (Coll. of Int. Rev. v. J. C. Yuseco, et al., G.R. No. L-12518, Oct. 28, 1961; see also Francisco Majarucon v. Coll. of Int. Rev., CTA Case No. 1207, June 25, 1962).

Petitioner's failure to appeal to the Court of Tax Appeals in due time made the assessment in question final, executory and demandable. When the warrant of distraint and levy was issued on July 27, 1965 to enforce the deficiency assessment in question, petitioner was already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of his tax liability on the merits. Otherwise, the period of thirty days to appeal to this Court would make little sense. Once the matter has reached the stage of finality in view of the failure to appeal, it logically follows that it could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy (Rep. v. Lim Tian Teng Sons & Co., Inc., G.R. No. L-21731, March 31, 1966; Comm. of Int. Rev. v. Jose Concepcion, G.R. No. L-23912, March 15, 1968).

In fine, whether the petition for review filed in this case is an appeal from the decision of respondent holding petitioner liable for deficiency income tax for 1952 in the sum of ₱1,266.00, inclusive of the 50% surcharge, plus delinquency penalties for late payment; or from the denial by respondent of petitioner's request for cancellation of the warrant of distraint and levy to enforce the deficiency assessment; or both, this Court has no jurisdiction to entertain the same. With this conclusion, it becomes unnecessary to go into the merits of the case.

WHEREFORE, let this case be dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, September 30, 1968.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge