REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LUIS UY,
Petitioner,

- versus - C.T.A. CASE NO. 2132

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

2/15/78

D E C I S I O N

On January 15, 1962 respondent Commissioner of Internal Revenue assessed against and demanded from petitioner Luis Uy the amount of ₱10,679.38 as commercial broker's percentage tax for 1954-1958, inclusive of 25% surcharge and P.T.R. (privilege tax receipt), computed as follows:

Gross Compensation and discounts received	₱132,391.71	
6% tax due thereon		₱7,943.50
25% surcharge		1,985.88
P.T.R. from 1954-1958 at ₱150 a year for 5 years		750.00
TOTAL AMOUNT		₱10,679.38

It appears from the petition for review that petitioner is engaged in business for his own account as merchant, with his own establishment in Batangas, Batangas, and as exclusive dealer or seller of products of International Harvester Co. of Philippines, now International Harvester Macleod, Inc., hereinafter called IHM.

By virtue of an authority to investigate issued on December 5, 1960 by the Assistant Regional Director, Regional District No. 5, San Pablo City, the books of account of petitioner were examined for income tax and other internal revenue taxes for 1958 and prior years. Bureau of Internal Revenue Examiner Felipe Macabuhay found out that from 1954 to 1958, inclusive, petitioner failed to declare for business taxation the commissions and discounts he received from the IHM amounting to ₱132,391.71. (pp. 46-49, BIR rec.) Consequently, on January 15, 1962, petitioner was assessed by respondent the amount of ₱10,679.38 as 6% commercial broker's tax, 25% surcharge for late payment, and ₱750.00 as FTR from 1954 to 1958 at ₱150.00 à year for five (5) years and ₱300.00 as compromise penalty for violation of Sections 178 and 183, in relation to Sections 182 and 195, of the National Internal Revenue Code. On November 16, 1962, the then Deputy Commissioner of Internal Revenue Misael P. Vera sent a letter to petitioner reiterating the assessment and demand for the payment of sums of ₱10,679.39 as fixed and percentage taxes for the period from 1954 to 1958, inclusive, and ₱300.00 as compromise penalty, in order that the case be considered closed. (p. 68, BIR rec.)

A warrant of distraint and levy issued by respondent on January 23, 1963 was served upon petitioner, but after the contents were explained to him, he refused to sign it. Instead, he requested that he be given a few days to think it over. When asked whether he was willing to sign a waiver of the statute of limitations, he promised to sign at a latter date. (pp. 132 & 159, BIR rec.)

On March 28, 1963, petitioner's counsel wrote the Commissioner of Internal Revenue, Manila, requesting that the case be reviewed in a conference hearing before the Appellate Division of respondent, or reinvestigated, in line with the action being taken by respondent in connection with other persons andecorporations against whom similar tax assessments have been issued. Copies of the tax waiver duly executed by Mr. Uy were enclosed, the prescriptive period of which was December 31, 1968. (pp. 147, BIR rec.) On August 2, 1968, the Commissioner of Internal Revenue wrote petitioner's counsel requiring each of counsel's clients, including petitioner, to execute an extended waiver of the statute of limitations, the prescriptive period of which should be December 31, 1972. (p. 189, BIR rec.) And on November 29, 1968, petitioner's counsel wrote respondent enclosing four (4) copies of the revised tax waiver duly executed by Luis Uy. (pp. 191 & 192, BIR rec.)

At the scheduled hearing of this case on March 3, 1977, after the trial was postponed for no less than seven times at the instance of petitioner, the latter requested, and was granted, ten days to review the Bureau of Internal Revenue records on the case and to file a memorandum, if he finds it necessary, after which the case will be considered submitted for decision of the Court. No objection was interposed by respondent.

No trial on the merits was therefore conducted by the Court and the case was submitted for decision based on the pleadings and the records of the Bureau of Internal Revenue.

Under the well-settled rule that one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of the material and relevant allegations of the opposing party (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115), the parties are therefore considered to have rested their motion for judgment on their own allegations taken together as are admitted in the pleadings, or deemed admitted, including the records of the Bureau of Internal Revenue.

Under paragraph XII of the petition for review, petitioner alleges that notwithstanding the fact that no final decision has been rendered by respondent on petitioner's protest and/or request for reconsideration, the petition is being filed by petitioner in view of information received from the Bureau of Internal Revenue that a warrant of distraint and levy may be served upon petitioner, in line with the campaign of said Bureau for the collection of taxes, despite the fact that the corresponding assessment has been duly protested.

Respondent specifically denies this allegation of petitioner under paragraph 6 of his answer, the truth of the matter, according to him, being those stated in his special and affirmative defenses, to wit:

AS SPECIAL AND AFFIRMATIVE DEFENSES,

Respondent alleges:

7. That petitioner, for taxation purposes, is not an independent merchant but an agent of International Harvester Macleod, Inc. or a commercial broker, as defined by the Tax Code, selling or bringing about sales and purchases of IHM's merchandise;

8. That respondent is authorized to collect delinquent internal revenue taxes either by distraint and levy or by judicial action or both simultaneously under the National Internal Revenue Code. The only requisite before he can collect the tax is that he must first assess the same within the time fixed by law. The Commissioner of Internal Revenue is not required to rule first on a taxpayer's request for reinvestigation before he can go to court for the purpose of collecting the tax assessment. (Republic vs. Lim Tian Teng Sons & Co., G.R. No. L-21731, March 31, 1966; O.G. (24) p. 5159);

9. That Republic Act No. 1125 creating the Court of Tax Appeals allows the taxpayer to dispute the correctness or legality of an assessment both in the purely administrative level and in said court, but does not stop or prohibit the Commissioner of Internal Revenue from collecting the tax through any of the means provided for in Section 316 of the Tax Code, except when enjoined by said Court of Tax Appeals. (Republic of the Philippines vs. Lim Tian Teng Sons and Co., supra)

10. That the Honorable Supreme Court had already rendered a decision in the case of "Commissioner of Internal Revenue vs. Cirilo D. Constantino and Court of Tax Appeals," G.R. No. L-25926, on February 27, 1970 adverse to the taxpayer;

11. That the motions for reconsideration filed by Mr. Cirilo D. Constantino in the case mentioned in the preceding paragraph had already been denied by the Supreme Court in resolutions dated May 8 and 28, 1970;

12. That the assessment against petitioner in the amount of ₱10,979.38 is in accordance with law and regulations.

We do not see in the above special and affirmative defenses of respondent, and neither can we infer and imply therefrom, the fact that petitioner's protest and/or request for reconsideration of the assessment under consideration has been denied by respondent, or a warrant of distraint and levy has been issued by him to enforce collection of the tax liability assessed against petitioner. Section 7(1) of Republic Act No. 1125 provides that the Court of Tax Appeals shall have exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue involving disputed assessments of internal revenue taxes, charges or fees imposed by the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue. What is appealable to this Court is the decision of the Commissioner of Internal Revenue on a disputed assessment. An assessment becomes a "disputed assessment" where the taxpayer questions the legality thereof and asks that the same be reconsidered. The decision on the taxpayer's protest and/or request for reconsideration is the decision on the disputed assessment which is appealable to this Court. (St. Stephen's Association and St. Stephen's Chinese Girl's School vs. Collector of Internal Revenue, 104 Phil. 314, 317; Baguio Country Club Corporation vs. Collector of Internal Revenue, et al., L-11419, April 22, 1959, 105 Phil. 1269 unpub.; Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue, L-16683, January 31, 1962, 4 SCRA 279; Commissioner of Internal Revenue vs. Lilia Yusay Gonzales, et al , L-19495, November 24, 1966, 18 SCRA 757; Commissioner of Internal Revenue vs. Leonardo S. Villa and Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 4.) And even if no question is raised as to the right of the taxpayer to appeal, the appeal may be dismissed motu proprio by the courts. (Commissioner of Internal Revenue vs. Leonardo S. Villa and Court of Tax Appeals, supra.)

If the taxpayer files a request for reconsideration or reinvestigation of the assessment made by the Commissioner of Internal Revenue, but, without categorically deciding the request or protest of the taxpayer, the Commissioner seeks to enforce collection of the tax assessed by him against the taxpayer by means of distraint and levy, such action of the Commissioner is an implied denial of the taxpayer's protest and/or request for reconsideration or reinvestigation, and the taxpayer may appeal therefrom to the Court of Tax Appeals. (Philippine Planters Investment Co. vs. Commissioner of Internal Revenue, CTA Case No. 1266, November 11, 1962.) The same rule applies where the Commissioner of Internal Revenue, without bothering to reply to the taxpayer's protest and/or request for reconsideration or reinvestigation, institutes an action in the Court of First Instance for collection of the tax assessed against the taxpayer. The filing of such action at the instance of the Commissioner is equivalent to the denial of the taxpayer's protest and/or request for reconsideration or reinvestigation, and the taxpayer's remedy is to appeal to the Court of Tax Appeals within thirty days from the date that he is notified of such action. (Republic vs. Lim Tian Teng, L-21731, March 31, 1966, 16 SCRA 584.)

Since in the instant case petitioner appealed from the assessment of respondent without waiting for his decision or action on his protest and/or request for reconsideration on the disputed assessment, which is the decision appealable; or neither does it appear that respondent sought to enforce collection of the tax liability assessed by him against petitioner by means of distraint and levy so that such action of respondent would be an implied denial of petitioner's protest and/or request for reconsideration, the appeal is premature and this Court has no jurisdiction to entertain said appeal. For, as stated above, the jurisdiction of this Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed assessments. The Court of Tax Appeals is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Ker & Company, Ltd., vs. Court of Tax Appeals, L-12396, January 31, 1962, 4 SCRA 160; Commissioner of Internal Revenue vs. Leonardo Villa and Court of Tax Appeals, *supra*; Commissioner of Internal Revenue vs. Ayala Securities Corporation, L-29485, March 31, 1976, 70 SCRA 204.)

It is true that in this case, the parties submitted voluntarily to the jurisdiction of this Court. The issue of jurisdiction was not raised by them, and they submitted their cause for decision. However, jurisdiction is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for the lack of it, a court can dismiss a case *ex mero motu*. (Molina vs. De la Riva, 6 Phil. 12; Fuentebella vs. Negros Coal Co., 50 Phil. 69; Vega vs. San Carlos Milling Co., 51 Phil. 908; U.S. vs. de la Santa, 9 Phil. 22; Vda. e Hijos de Pedro Rojas vs. Rafferty, 37 Phil. 957.)

Nevertheless, assuming *arguendo* that the resolution of petitioner's protest and/or request for reconsideration of the assessment was held in abeyance by respondent while awaiting the decision of the Supreme Court in the then pending case of Commissioner of Internal Revenue vs. Constantino, L-25926 (decided later on February 27, 1970, 31 SCRA 779), in accordance with the agreement between the counsel of petitioner and respondent, as stated by the latter in his memorandum, so that the finality of the decision rendered by the Supreme Court in the Constantino case constituted a denial by respondent of the protest and/or request for reconsideration of petitioner, and therefore this Court has jurisdiction to take cognizance of the present appeal;

Petitioner having prayed for judgment on the pleadings without proof as to the truth of his own allegations and without giving respondent an opportunity to introduce evidence must be understood to have admitted the truth of the special and affirmative defenses, among others, of respondent that (a) petitioner, for taxation purposes, is not an independent merchant but an agent of International Harvester Macleod, Inc., or a commercial broker, as defined by the Tax Code, selling or bringing about sales and purchases of IHM's merchandise, and (b) the assessment against petitioner in the amount of ₱10,979.38 is in accordance with law and regulations.

Accordingly, we find no merit in the instant petition for review and the decision of respondent Commissioner of Internal Revenue finding petitioner

Luis Uy liable for the amount of ₱10,679.38 representing 6% commercial broker's tax, 20% surcharge for late payment and fixed annual tax for the years 1954 to 1958 must be sustained. The compromise penalty in the amount of ₱300.00 suggested by respondent in his assessment should not be imposed or collected without the agreement and conformity of petitioner. And it does not appear that petitioner accepted the imposition of the compromise amount. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, L-22805 & L-27858, June 30, 1975, 64 SCRA 555; see also Collector of Internal Revenue vs. University of Santo Tomas, L-11274 & L-11280, November 28, 1958, 104 Phil. 1062, Unpub.; Philippine International Fair, Inc. vs. Collector of Internal Revenue, L-12928 & 12932, March 31, 1962; 4 SCRA 774.) Petitioner is therefore ordered to pay respondent the sum of ₱10,679.38.

WHEREFORE, the petition for review is hereby denied and the decision of respondent Commissioner of Internal Revenue demanding from petitioner Luis Uy payment of the amount of ₱10,679.38 is sustained. With costs against petitioner.

SO ORDERED.

Quezon City, February 15, 1978.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

Roaquin
CONSTANTE C. ROAQUIN
Associate Judge