REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARGO LANE REALTY DEVELOPMENT CORPORATION and the spouses ROGELIO A. and VIRGINIA S. DIO,
Petitioners,

- versus -

C.T.A. CASE NO. 5287

THE HONORABLE LIWAYWAY VINZONS-CHATO, in her capacity as THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 23 1998

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RESOLUTION

Before Us for resolution is respondent's Motion to Dismiss filed on October 12, 1995 challenging this Court's jurisdiction to take cognizance of the instant petition. Respondent asserts that since there was no formal assessment issued against the petitioners, this Court did not acquire jurisdiction over the present appeal.

On July 28, 1995, respondent filed criminal charges for tax evasion against petitioners before the Department of Justice. In reaction to this action taken by the Bureau of Internal Revenue, petitioners filed an appeal before this Court on the theory that the filing of criminal charges for tax evasion amounts to a formal assessment and at the same time a final decision of the respondent appealable to this Court. Petitioners argue that the letter-complaint for tax evasion necessarily includes a report of their alleged income tax liabilities

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which is equivalent to an assessment. Moreover, petitioners maintain that the act of filing a criminal complaint against them constitutes the final decision of the Commissioner on the "protest"" they filed earlier, making the instant appeal fall within the ambit of Section 7(1) of Republic Act 1125.

We find petitioner's arguments bereft of merit.

The Court of Tax Appeals is a court of special and limited jurisdiction, as such it can take cognizance only of such matters as are clearly within its jurisdiction (**Commissioner of Internal Revenue vs. Villa, 22 SCRA 3**). Its organic law, Republic Act No. 1125, deliberately limits its jurisdiction to cases expressly provided in Section 7(1) of said law, to wit:

> "**Sec. 7. *Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, 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;"

As correctly pointed out by respondent, there was no formal assessment issued against the petitioners for their alleged tax liabilities. The respondent chose to file a criminal complaint for tax evasion instead of issuing a fraud assessment against petitioners pursuant to Section 223 of the Tax Code, quoted hereunder, thus:

> **Sec. 223.** ***Exceptions as to period of limitation of assessment and collection of taxes.*** - (a) In the case of a false or fraudulent return with intent to evade tax or failure file a return, the tax may be assessed, or a proceeding in court after the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: **Provided,** That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof; x x x. (Underscoring supplied)

There being no assessment to begin with, it would be quite a stretch of the imagination to construe the filing of a criminal complaint for tax evasion as a decision of the Commissioner which is appealable to this Court. It must be remembered that the "decisions of the Commissioner in cases involving disputed assessments" as provided in the aforequoted Section 7 of RA 1125, refer to the decisions of the Commissioner on the protest filed by a taxpayer against the assessment. Section 229 of the Tax Code explicitly provides for the three stages before this Court can acquire jurisdiction in assessment cases, thus:

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> **Sec. 229.** ***Protesting of assessment.*** - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond the Commissioner shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessments, otherwise, the assessment shall become final and unappealable.
>
> If the protest is denied in whole or in part, the individual, association or corporation 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. (Underscoring supplied)

The elements of assessment, protest and a decision on the protest as provided in Section 229 do not exist in the case at bar.

The line of reasoning propounded by petitioners has already been rejected by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Court of Tax Appeals and Spouses Antonio Sanchez and Editha Vito-Sanchez, CA G.R. SP No. 36564 dated July 3, 1996** where it ruled:

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"In the case at bench, the records show that petitioner CIR never issued any formal assessment. What is clear from the evidence is that after the proposed assessment (Annex "A" of the Petition: pp. 21, Rollo), the private respondents merely replied thereto with prayer for the deferment of the tax investigation (Annex "B" of the Petition: pp. 22-27, Rollo). Realizing afterwards that private respondents should be prosecuted for tax evasion pursuant to Section 253 of the National Internal Revenue Code because of findings of fraud, petitioner recommended the criminal prosecution of private respondents in a letter to the Department of Justice (Annex "C" of the Petition: pp. 28-32, Rollo). In this regard, respondent court cannot treat the tax deficiency liability stated in said criminal complaint as "implied formal assessment" in lieu of the supposed formal assessment required by law to be issued by petitioner in this case because in the first place, an assessment of deficiency is not indispensable to a criminal prosecution for willful attempt to evade payment of the income tax. Any allegation as to the amount in the tax assessment in the tax evasion complaint would require a showing of how private respondents intentionally violated the tax code by filing inaccurate return. The crime of tax evasion is complete as long as the private respondents knowingly and fraudulently filed an inaccurate return with intent to evade tax payment and defeat the law.

If We are to sustain the assailed rulings of the respondent court, We would in effect render nugatory the procedural and substantive safeguards set forth under Section 299 of the National Internal Revenue Code and pertinent provisions on administrative protests under Revenue Regulation No. 12-85. In the matter of a criminal prosecution for violation of the tax code, the Supreme Court in the case of **Ungab vs. Cusi, Jr., 97 SCRA 877,** said:

> "What is involved here is not the collection of taxes where assessment of the Commissioner of Internal Revenue may be received by the Court of Tax Appeals, not a

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criminal prosecution for violation of the National Internal Revenue Code which is within the cognizance of the Court of First Instance. While there can be no civil action to enforce collection before the assessment procedures provided in the code has been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code." (Emphasis supplied, p. 883)

The distinction lies in that where there is a finding of fraud committed by the taxpayer as in the case of respondent spouses, amounting to a willful intent to evade the payment of income taxes, a prosecution will lie even in the absence of formal assessment.

We agree with the petitioner that the tax evasion case filed against private respondents does not constitute a final decision on the reply letter which the private respondents claimed was their administrative protest. It must be noted that the filing of the criminal complaint does not constitute a decision on a disputed assessment."

WHEREFORE, in view of the foregoing, respondent's Motion to Dismiss is hereby **GRANTED**. Accordingly, the petition for review filed on September 9, 1995 is **DISMISSED** on the ground of lack of jurisdiction.

SO ORDERED.

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

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