REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ADVERTISING ASSOCIATES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3017

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

6/17/81

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

D E C I S I O N

Petitioner was assessed by respondent for ₱297,927.06 as deficiency percentage tax inclusive of surcharge for the taxable years 1967-1971 under Letter of Demand Nos. BT-73-00122 to BT-73-00126 dated May 18, 1973 and ₱84,773.10 as deficiency percentage tax, surcharge, interest and compromise penalty for the year 1972 under Letter of Demand No. BT-24-020 dated February 13, 1974. These assessments were brought about by the rental income which were considered fees or compensation subject to the 3% contractor's tax derived by petitioner from the lease of bill boards and neon signs to its customers.

Petitioner is a domestic corporation organized and existing under the laws of the Philippines, primarily engaged "to conduct a general advertising business, both as principal and agent, including the preparation and arrangements of advertising devices and novelties; to erect, construct, purchase, lease or otherwise acquire fences, billboards, signboards, buildings and other structures suitable for advertising purposes; to carry on the business of printers, publishers, binders, and decorators in connection with advertising business and to make and carry out contracts of every kind and character that may be necessary or conducive to the accomplishment of any of the purposes of the company; to engage in and carry on a general advertising business by the circulation and distribution and the display of cards, signs, posters, dodgers, handbills, programs, banners and flags to be placed in and on railroad cars, streets cars, steam boats, cabs, hacks, omnibuses, stages and any and all kinds of conveyances used for passengers or for any other purposes; to display moveable or changeable signs, cards, pictures, designs, mottoes, etc., operated by clockwork, electricity or any other power; to use, place and display the same in depots, hotels, halls, and other public places, to advertise in the air by airplanes, steamers, skywriting and other similar or disimilar operation." (Exhibit 14-A, pp. 48-49, BIR Records, Vol. I).

On June 25, 1973 and March 7, 1974 petitioner protested the May 18, 1973 and February 13, 1974 assessments, respectively, and requested withdrawal and/or cancellation thereof. Respondent under letters dated September 16, 1974 and July 12, 1974 denied the protests and reiterated demand for payment of the amounts due. On November 21, 1974 and September 13, 1974 petitioner filed reconsiderations reiterating its original defense without any substantial variation. On September 15, 1975 respondent invited the attention of petitioner to the compromise benefits accorded under Presidential Letter of Instructions No. 308 issued on August 22, 1975 with the advice that "failure to respond as suggested above will be construed as indifference to L.O.I. No. 308 and this Office will thereafter avail of all collection enforcement remedies without further notice to you." (Page 155, B.I.R. Records, Vol. 1). Apparently, petitioner obdurately refused to veer from the course it has set, thus, respondent caused to be served on April 18, 1978 and May 25, 1978, warrants of distraint and levy on petitioner's properties to enforce collection of the deficiency assessments for respective taxable years of 1967-1971 and 1972 which petitioner hastened to defer and suspend immediately following the issuances. Respondent's final letter reiterating the demand for payment of an aggregate amount of ₱382,700.16 representing deficiency contractor's tax assessment dated May 23, 1979 was received by petitioner on June 18, 1979, and appealed to this Court on July 7, 1979.

The case finds a threefold concern - whether or not 1) petition for review is barred for having been filed out of time, 2) petitioner's income derived from the rentals of neon signs and billboards leased to customers is subject to a 3% contractor's tax, and 3) respondent's right to collect has prescribed.

The first has reference to jurisdiction and the disputed assessments under consideration obviously come within the competence of this Court under Section 7 of Republic Act No. 1125, thus, "Decisions of the 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." But was said jurisdiction invoked by the petitioner within the period prescribed by Section 11 of the same Act, which provides -

> "Sec. 11. Who may appeal; Effect of appeal. - Any person, association or corporation adversely affected by a

> decision or ruling of the Commissioner of Internal Revenue, the Commissioner of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

The precise question raised is nothing more than which was the appealable decision of the respondent Commissioner of Internal Revenue - the orders to collect by warrants of distraint and levy issued on April 18, 1978 and May 25, 1978 as the respondent contends, or the May 23, 1979 letter (received on June 18, 1979) as petitioner insists? If the latter, then the petition for review filed with this Court on July 7, 1979 was timely; if not, the assessments in question had become final and executory.

We hold that the point from which the period to appeal should be counted is the receipt by petitioner on April 18, 1978 and May 25, 1978 of the warrants of distraint and levy on its properties.

By the pattern and sequence of events it appears that as a consequence of the reconsideration which simply reiterated an earlier protest filed by petitioner, respondent in a letter dated September 15, 1976 invited the attention of petitioner to avail of the benefits of a compromise payment of the tax liability under Letter of Instructions

No. 308 as "this Office will thereafter avail all collection enforcement remedies without further notice to you." Evidently it was a monition whereby petitioner is apprised of the operative patina of finality of the demand for payment to be enforced thru warrants of distraint and levy which were subsequently issued on April 18, 1978 and May 25, 1978. The unmistakable tenor explicitly premised on a caveat of resorting to such legal remedies without further notice clearly indicates the firm posture of the respondent against the reconsideration of the disputed assessment and tantamount to a denial thereof. This being so, the warrants became determinative of the final action and embodied the decision/ruling of the respondent appealable to this Court. There can no longer be any occasion for petitioner to anticipate or speculate upon what respondent might yet do. This brings us to the rules of repeated decisions, that "Where the warrant of distraint and levy was issued, this Court held that such issuance is proof of the finality of the assessment (Philippine Planters Investment Co., Inc. vs. Actg. Commissioner of Internal Revenue, CTA Case No. 1266, November 11, 1962), because a warrant of distraint and levy, which is the most drastic action of all media of enforcing the collection of tax, renders hopeless a request for reconsideration, or is tantamount to an outright denial thereof, and makes the said request deemed rejected. (Hilado vs. Commissioner of Internal Revenue, CTA Case No. 1256, October 20, 1956, Algue Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1620, January 16, 1968).

To sustain the petitioner's contention that respondent's letter of May 23, 1979 denying its request for further reconsideration and reiterating demand for payment of an aggregate amount of ₱382,700.16 constitutes the final ruling reviewable by the Court and that the thirty-day period should, therefore, be counted from its receipt on June 18, 1979, would, in effect, "leave solely to the petitioner's will the determination of the commencement of the statutory thirty-day period, and place the petitioner - and for that matter any taxpayer - in a position to delay at will on convenience the finality of the tax assessment. This absurd interpretation espoused by the petitioner would result in grave detriment to the interest of the Government, considering that taxes constitute its life-blood and their prompt and certain availability is an imperative need." (Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue, L-16683, January 31, 1962, 4 SCRA 279; Bull vs. U.S. 795 US 247; Ker & Co., Inc. vs.

Court of Tax Appeals & Collector of Internal Revenue, L-12396, January 31, 1962, 4 SCRA 163; North Camarines Lumber Co. vs. Collector of Internal Revenue, L-12353, September 30, 1960; Surigao Electric Co., Inc. vs. Court of Tax Appeals & Commissioner of Internal Revenue, L-25289, June 28, 1974, 57 SCRA 525).

Moreover, no reason is apparent and none is vouchsafed why the collection of the deficiency tax assessments cannot be foreclosed on the basis of the warrants of distraint and levy which petitioner did not only pay but also failed to contest by filing a petition for review within the prescribed 30-day period from receipt thereof. The warrants cannot be naively viewed for a mere uneasy anticipation but rather of definiteness and finality upon which petitioner's right of judicial review must be exercised or lost. Subsequent requests for reconsideration thereof made pro-forma and for dilatory purposes should be ignored for the purpose of computing the running of the thirty-day period prescribed under Section 11 of Republic Act No. 1125. We cannot have the running of the period of appeal left entirely at the discretion of the taxpayer. (Jose Ma. del Rosario vs. Court of Tax Appeals, et al., L-17991, October 31, 1972, 6 SCRA 541; cited in Dy Pac & Co., Inc. vs. Court of Tax Appeals & Commissioner of Internal Revenue, G.R. L-31369, October 18, 1977, 79 SCRA 448). Neither, can we countenance the dilution of the enforcement of the warrants to the point where collection would be rendered ineffective or may be suffered to petrify at petitioner's pleasure. Thus, we find a great deal of force in such holding that a taxpayer should display more alertness in the protection of his rights (Koppel (Phil) Inc. vs. Collector of Internal Revenue, L-10550, September 19, 1961; Ker & Co., Ltd. vs. Court of Tax Appeals & Collector of Internal Revenue, L-12396, January 31, 1962, 4 SCRA 160), considering that the thirty-day period prescribed by Section 11 of R.A. Act No. 1125, as amended, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the tax court, is a jurisdictional requirement (Actg. Commissioner of Internal Revenue vs. Joseph, et al. L-146034, August 30, 1962, 55 SCRA 896), and the failure of a taxpayer to lodge his appeal within the prescribed period bars his appeal and renders the questioned decision final, and executory. (Republic of the Philippines vs. Lim Tian Teng Sons Co., Inc. L-21731, March 31, 1966, 16 SCRA 584). We cannot validly infuse cognizance to an appeal tolled from a letter of ineffectuality.

The case having been reduced to the question of whether this Court has been made competent to exercise jurisdiction and considering that the circumstances constituting the essential points on which this case depends find sufficient to arrest this Court's jurisdiction, we deem it unnecessary to resolve the other issues presented. We therefore hold that the orders to enforce collection by warrants of distraint and levy on April 18, 1978 and May 25, 1978 for the respective assessments of the taxable periods of 1967-1971 and 1972 were the appealable decisions or rulings of the respondent Commissioner of Internal Revenue, so that when the petition for review was filed with this Court on July 7, 1979, the 30-day statutory period had long lapsed, and the assessments had become final, executory and demandable.

WHEREFORE, the petition for review is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, June 17, 1981.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge