REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERNATIONAL PHARMACEUTICALS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5549

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 10 1998

x - x

RESOLUTION

The issue presented by petitioner and respondent for our consideration is whether or not this Court has jurisdiction over the instant petition, considering that the Commissioner of Internal Revenue has not yet rendered her decision on the petitioner's pending request for consideration on a decision handed down by the Bureau's Assistant Commissioner. In other words, is the decision of the Assistant Commissioner on the protest filed by herein petitioner appealable to this Court?

The facts are not in controversy, the parties having submitted an agreed statement of facts dated November 12, 1997, as follows:

STIPULATION OF FACTS

> **PETITIONER AND RESPONDENT** through counsel and to the Honorable Court, respectfully submit the following stipulation of facts:
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> I
>
> The petitioner is manufacturer of CASINO Rubbing Alcohol as medicinal preparation for external use; that in the preparation of the said product, especially denatured alcohol (ethyl alcohol mixed with Methyl Salicylate and Menthol as denaturants) was used as raw

material in the manufacture of petitioner's finished product.

II

That the respondent through Assistant Commissioner Helen Annie W. Quimpo assessed the petitioner the amount of ₱91,852,844.00 as deficiency excise tax and VAT for years 1994-95 inclusive of 25%, 50% surcharges and 20% annual interest.

III

That the respondent through Assistant Commissioner Helen Annie W. Quimpo sent the assessment notice dated December 6, 1996 to petitioner by registered mail on February 10, 1997 and petitioner received the same on February 15, 1997.

IV

That Assistant Commissioner Helen Annie W. Quimpo denies exemption of the specially denatured alcohol of the finished product of the petitioner from payment of specific tax.

V

That petitioner filed on March 10, 1997 a written protest against said assessment notice on the ground that the especially denatured alcohol used as raw material in the manufacture of CASINO rubbing alcohol is exempt from said excise tax as provided under Sec. 131 of the National Internal Revenue Code as amended by Presidential Decree No. 69.

VI

That there was a letter of denial by Assistant Commissioner Helen Annie W. Quimpo dated May 22, 1997 which was sent to petitioner by mail on July 24, 1997 and received by petitioner on July 30, 1997.

VII

> That petitioner sent, by registered mail on August 08, 1997 a request for reconsideration to Commissioner of Internal Revenue, Honorable Liwayway Vinzons-Chato, received on August 21, 1997 through the Bureau's Legal Service.
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> VIII
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> That on August 22, 1997, petitioner filed this petition before the Court of Tax Appeal (sic) in order to avoid technical dismissal due to period of prescription of appeal and in order to exhaust all remedies available to petitioner.
>
> WHEREFORE, it is respectfully prayed that the above stipulation of facts be approved by the Honorable Court and the issue of jurisdiction be settled first before the other issues arising therein be heard.

Respondent in her Answer raised the issue of lack of jurisdiction because petitioner has a pending request for reconsideration with the respondent of the denial of its protest by the Assistant Commissioner, Helen Quimpo. The question of jurisdiction being a pre-judicial issue, this Court decides to resolve this issue first.

It is an established rule that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu* (Commissioner of Internal Revenue vs. Villa, 22 SCRA 3). To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.

The Court of Tax Appeals is a court of special jurisdiction (*Commissioner vs. Ayala Securities Corp., 70 SCRA 204*). As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (*Commissioner of Internal Revenue vs. Leonardo Villa, Supra.*) The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of RA No. 1125, which provides:

> 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;
>
> (2) xxx xxx xxx
>
> (3) xxx xxx xxx

It can be gleaned readily from the aforequoted section that the Tax Court cannot take cognizance of petitions for review without a questioned decision of the Commissioner of Internal Revenue. Section 10 of Revenue

Memorandum Order No. 12-85 included the Regional Director as one of the officials of the Bureau of Internal Revenue whose decisions on the protests filed may be appealed to the Court of Tax Appeals, thus:

> Section 10 . Appeals of decision of Commissioner or Regional Director to the Court of Tax Appeals- Final decisions issued by the Commissioner or Regional Director may be appealed to the Court of Tax Appeals within thirty (30) days from receipt thereof, otherwise the same shall become final and executory.

However, there have been instances where certain officials of the Bureau of Internal Revenue render decisions on the protests filed by taxpayers with a tone of finality prompting the latter to appeal said decisions to the Court of Tax Appeals. In the instant case, it was the Assistant Commissioner of the Intelligence and Investigation Service of the Bureau of Internal Revenue who made the decision on the protest filed by petitioner. Granting <u>arguendo</u> that the decision of the Assistant Commissioner is appealable to this Court, the Court cannot acquire jurisdiction over the instant case as the records clearly show that petitioner appealed the decision of the Assistant Commissioner to the Commissioner herself, who has not yet rendered any decision over the matter. Thus, the Court will be acting in excess of its jurisdiction if it will take cognizance of the instant case in the absence of a final decision to be rendered by the respondent Commissioner over petitioner's request for reconsideration.

Settled is the rule that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no room for resorting to interpretation, and the Court has no right to look for or impose another meaning. A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity (*50 Am. Jur. 207*). As such, a party dissatisfied with the decision of an Asst. Commissioner may appeal to the Commissioner, whose decisions are appealable to this Court in the manner and within the period prescribed under Section 229 of the Tax Code, which states:

> 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.
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> 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 assessment; otherwise, the assessment shall become final and unappealable.
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> 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.

Analyzing carefully the underscored portion of the preceding provision of law, prescription sets in or starts to run after the Commissioner has rendered a decision on a taxpayer's protest. Thus, the Court concludes that the reasons invoked by the petitioner in the instant petition (par. VIII, Stipulation of Facts) are out of order.

The records show that no decision has been rendered by respondent Commissioner in connection with petitioner's request for reconsideration (see par. VII, Stipulation of Facts). Stated otherwise, the decision of the Commissioner of Internal Revenue upon which the petition for review ought to have been based appears neither here nor there, so to speak. Petitioner has offered no compelling reason and indeed made no justification whatsoever to indicate why the instant petition should be accorded valid cognizance. Plainly stated, there has been failure by petitioner to comply with Sec. 7, RA 1125, ***supra***. The appeal therefore is premature and the Court has no jurisdiction to entertain the instant petition.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is hereby **DISMISSED** for lack of jurisdiction, without prejudice of refiling in the event that the respondent Commissioner of Internal Revenue shall have finally rendered an adverse decision on petitioner's protested assessment or without deciding the motion for reconsideration, issues a Warrant of Distraint of personal property and levy of real property or any other administrative or judicial remedies to enforce collection of the assessment.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge