REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOLID CEMENT CORPORATION
Petitioner,

- versus - C.T.A. CASE NO. 4850

JOSE ONG, in his capacity as the Commissioner of Internal Revenue
Respondent.
x- - - - - - - - - - - - - - - - - x

9/10/93

R E S O L U T I O N

On July 2, 1993, counsel for the respondent moved in open court for the dismissal of the instant petition on the ground that it was prematurely filed. In moving for the dismissal of this instant petition, respondent only reiterated his prayer in his Answer on the ground that:

> 4. Respondent's letter dated August 4, 1992 (Annex "C") requesting petitioner to pay within ten (10) days from receipt thereof of the deficiency value-added-tax in the total amount of P3,097,149.48 for the year 1988 does not constitute respondent's final decision on the petitioner's letter-protest dated February 10, 1992 appealable to this Honorable Court, hence, the petition is premature and confers no jurisdiction to this Honorable Court; (Special and Affirmative Defenses par. 4, CTA Records p. 18)

In his Opposition To Dismissal of Petition Due To Its Alleged Prematurity filed on July 26, 1993, petitioner maintained that respondent's letter dated August 4, 1992 (Annex C) constituted already a final decision on petitioner's letter-protest of February 10, 1992, because according to the petitioner, its protest had been denied in whole when the collection letter specifically stated:

> To avoid the accumulation of interest and surcharges, it is requested that you pay within ten (10) days from receipt hereof the aforesaid tax liability/ies xxx. However, if payment had been made, please bring to us the xerox copies of the receipts of payment xxx failing in that, we shall be constrained to refer your case to the Collection Enforcement Division for the issuance of a warrant of distraint and levy to enforce its collection, without further notice. (Emphasis supplied by petitioner; CTA Records p. 33)

We do not agree.

We do not see anything in the above quoted letter which would clearly and unmistakably indicate the denial with finality by the respondent on disputed assessments which is appealable to this Court as contemplated by Section 7 of Republic Act 1125. Even the phrase "failing in that, (meaning failure to pay within ten (10) days), we shall be constrained to refer your case to the Collection Enforcement Division for the issuance of the warrant of distraint and levy to enforce collection without further notice" cannot by any stretch of imagination be considered as "final" decision of the respondent.

In fact, even the actual issuance of warrant of distraint and levy is, under certain circumstances, still cannot be considered as final decision of the respondent Commissioner of Internal Revenue on disputed assessments (Commissioner of Internal Revenue vs. Union Shipping Corp. 185 SCRA 547)

The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only on such matters as are clearly within its jurisdiction. (Commissioner of Internal Revenue vs. Leonardo S. Villa, et al., L-23988, January 2, 1968).

ACCORDINGLY, the motion to dismiss made in open court by the respondent is hereby GRANTED. The Court cannot take cognizance of this case for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, September 10, 1993

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge

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