lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

J. ROMERO & ASSOCIATES, INC.,
Petitioner,

- versus - CTA CASE NO. 2670

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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2/27/79

D E C I S I O N

This is an appeal from the warrants of levy on real property and distraint of personal property of respondent served on February 5, 1975, which sought to enforce the summary collection of the amount of ₱23,126.15 as deficiency income tax allegedly due from petitioner for 1966, inclusive of interest and compromise penalty.

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the advertising business and selling services for a commission.

The records bear out that petitioner filed its income tax returns for 1966 claiming therein, among others, the following deductions:

a) Representation	₱22,335.15
b) Transportation	25,899.00
c) Others	26,560.00
Total	₱74,794.15

These items of deductions were disallowed on the ground that these were not duly supported by documents and receipts and that these deductions were not ordinary and necessary expenses incurred in the business of the petitioner.

On June 3, 1968, respondent's Revenue District Officer J. P. Puertollano issued a notice to petitioner and informing the latter of a proposed assessment in the amount of ₱21,362.55 on account of the aforesaid unallowable deductions, and advised petitioner to present its objections in an informal conference. (p. 17, BIR rec.)

On June 4, 1968, Revenue Examiner Ricardo T. Caunan prepared a memorandum to the Revenue District No. 29, Makati, Rizal, recommending the disallowance of the aforesaid claimed deductions on the ground that these were not supported by proper documents and receipts and that these deductions are not ordinary but are extraordinary, unusual and extravagant and recommending the approval of the proposed notice. (pp. 21-22, BIR rec.)

Petitioner, through counsel, presented its objections to the proposed assessment in its letter dated June 25, 1968, particularly on the proposed unallowable deductions, claiming that the expenses "are not xxx extraordinary, unusual and extravagant" and that these expenses are "ordinary and necessary" and asking that the proposed disallowances in the amount of ₱74,794.15 be set aside and cancelled.(pp. 27-28, BIR rec.)

On February 15, 1969, respondent, through Regional Director Leonardo L. Cabañero, issued Assessment No. 29-ACR-600745-68-66 against petitioner and asking it to pay on or before March 15, 1969 the sum of ₱23,126.15 as deficiency income tax for 1966,inclusive of ₱2,961.15 as interest and ₱200.00 as compromise penalty.(p. 23, BIR rec.)

On May 28, 1969 (p.24, BIR rec.) Regional Director Jose E. Consunji of Region 6, Bureau of Internal Revenue, Quezon City, wrote a letter to petitioner as follows:

> Please be informed that the examiner who conducted the investigation of your 1966 income tax return recommended to this Office that there is due from you the amount of ₱23,126.15, as deficiency income tax for the said year.
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> In view thereof and pursuant to Revenue Administrative Order No. 1-67, this Office would like to invite you to an informal conference in order to hear your side of the aforementioned tax deficiency on June 27, 1969 at 9:00 o'clock in the morning, Assessment Branch, Bureau of Internal Revenue, 3rd Floor, Prudential Bank Building, Cubao, Quezon City.
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> Your failure to appear and disprove the findings of our examiner on the date set for the conference shall mean that you have waived your right to the same and have accepted our findings. This Office would then proceed with the issuance of a formal notice of assessment subject, however, to the administrative remedies provided for under the law. (p. 24, BIR rec.)

On October 5, 1972, Assistant Regional Director Marcelo M. Lingao of Region No. 6, in a memorandum to the Revenue District Officer of Revenue District No. 29, directed the reinvestigation of the case and instructed him to request the taxpayer to execute a waiver of limitation or prescription before conducting the reinvestigation. (p. 29, BIR rec.)

On November 17, 1972, Revenue Examiner Ricardo T. Caunan of Revenue District No. 29, to whom the case was again assigned, reported that he reiterates the same stand taken previously by him and urged his superior - Asst. Director Lingao, that the request for reinvestigation be denied and the assessment against the taxpayer be immediately collected on the following grounds:

1. The taxpayer, despite the opportunity granted him to disprove the examiner's findings, first, in the notice to taxpayer dated June 3, 1968 and second, letter of the Regional Director, Quezon City, dated May 28, 1969 has failed and still fails to substantiate his claim for his deductions. The letter adverted to in the Asst. Regional Director's Memorandum of October 5, 1972, was possibly a reply to our notice to taxpayer mentioned above, as the date indicates. But after the report of examination together with all its enclusures were submitted and approved by the proper officers, the Regional Director on May 28, 1969 sent him another letter inviting their attention to the assessment and to present their Objections. But despite this, taxpayer has remained to keep silent and has never protested the findings and subsequent assessment.

2. That the letter of the taxpayer's accountant of June 25, 1968 do not contain sufficient grounds to off-set or rebut the findings of fact made by the undersigned examiner. The taxpayer miserably failed to comprehend the main and important point in the findings of facts - that is, deductions were not duly supported by proper documents or receipts. The taxpayer attempted to cite and quote a ruling of our office(BIR Ruling 66-66 dated December 1, 1966) which, sad to say, is not squarely and explicitly in point.

3. That the taxpayer has waived his right to reinvestigation. The Regional Director, Quezon City, per his letter of May 28, 1969 has given taxpayer sufficient time to present his objections to the findings of the examiner and the assessment but from that date to the present, taxpayer has not officially made or even tried to answere the letter of the Regional Director where it was expressly stated therein that failure to appear and disprove the findings of the examiner on the date and place set forth shall mean that the taxpayer has waived his right and have accepted the examiner's findings.

On February 5, 1975, respondent, through Regional Director Felino C. Castro, Jr. served warrant of levy on real property and warrant of distraint of personal property against petitioner and received by its lawyer. (pp. 36-38, BIR rec.)

On February 11, 1975, petitioner, through counsel, wrote the Revenue District Officer of Revenue District No. 6, Quezon City, and had drawn the latter's attention to its letter of protest dated June 25, 1968 addressed to the Revenue District No. 29, at Makati, Rizal and attaching thereto a copy of said letter and marked as Annex "A" and stating that it had not received from the Bureau of Internal Revenue any reply to said protest and therefore, reiterating said protest. (p. 42, BIR rec.; see pp. 27-28, BIR rec.)

On February 18, 1975, petitioner, through counsel, again followed up its previous letter of February 11, 1975 (p. 44, BIR rec.), and, this time, asserted that the authority to collect by respondent under Section 331 of the National Internal Revenue Code had already prescribed noting as follows:

> We note that the assessment in question was dated June 4, 1968. When the warrant was served on February 5, 1975, more than five (5) years had already lapsed from the date of its assessment. The filing of the letter protesting said assessment alone, did not suspend the running of the prescriptive period. From the records of the case, it would appear that there was no reinvestigation made, nor was there a waiver of the statute of limitations, executed by J. Romero & Associates.
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> In view of the foregoing, we request that subject warrant be lifted and cancelled.

The stand of petitioner, through counsel, is that the right of the government to collect the amount of deficiency income tax for 1966 in the said assessment had already prescribed and this was again reiterated in a letter of counsel dated December 18, 1975. (p. 51, BIR rec.)

Without a reply coming from the Government on the two (2) most recent letters filed by it, namely, February 11, 1975 and February 18, 1975, petitioner filed the instant petition for review with urgent motion for preliminary injunction with this Court on March 6, 1975.

This case was submitted by the parties for decision based upon the pleadings and the records of the Bureau of Internal Revenue.

The issues presented for resolution are as follows:

> 1. Whether or not this Court has jurisdiction over the case;
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> 2. Whether or not the Commissioner of Internal Revenue's right to collect had already prescribed; and
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> 3. Whether or not the respondent is justified in disallowing the claimed expenses.

We will now consider the first question of jurisdiction.

It is the contention of petitioner that it considered the warrants of levy on real property and distraint of personal property issued against it on February 5, 1975 as the decisions of the Commissioner of Internal Revenue, denying petitioner's request for the cancellation and withdrawal of the assessment, which it believed to be the proposed assessment of June 25, 1968. And the petition for review having been filed on March 6, 1975, said petition was filed within the 30-day period provided under Section 7 of the Republic Act No. 1125 - the charter of this Court.

On the other hand, respondent contends that

Assessment No. 29-ACR-600745-68-66 dated February 15, 1969, not having been appealed to the court within the aforesaid period, had become final, demandable and executory, citing as his authority the cases of Republic of the Philippines vs. Juana B. Vda. del Rosario, etc., 105 Phils. 277; Uy Ham vs. Republic of the Phils., GR No. L-13809, October 20, 1959, 106 Phil. 1162-1163; Republic of the Philippines vs. Albert, 3 SCRA 717, 113 Phil. 691; Republic of the Philippines vs. Enrique Magalona, Jr., 109 Phil. 723; and Pangasinan Transportation Co. vs. Blaquera, 107 Phil. 975. He asserted that the "assessment" having been issued on February 15, 1969, and the instant petition for review having been filed on March 6, 1975, the latter was filed beyond the thirty (30) day period to appeal under said Section 7 of Republic Act No. 1125.

We find the position of both petitioner and respondent erroneous. On the question of jurisdiction of this Court, it had been the ruling of our Supreme Court in later controlling decisions, or in decisions other than those cited by respondent, that this Court is a court of special jurisdiction. What jurisdiction is, is defined in Section 7 of Republic Act No. 1125 which provides that it can exercise only exclusive appellate jurisdiction to review by appeal only decisions of the Commissioner of Internal Revenue, in cases involving disputed assessments and refunds of internal revenue taxes, etc. The word "decision" in paragraph 1, Section 7 of Republic Act No. 1125 has been finally interpreted to mean the decision of the Commissioner of Internal Revenue upon the protest of the taxpayer against the assessments. The Supreme Court also said that definitely, said word does not signify the assessment itself. (Commissioner of Internal Revenue vs. Leonardo S. Villa, etc., 22 SCRA 3, 5-6, citing St. Stephen's Association, etc., vs. Collector of Internal Revenue, 104 Phil. 314, 137.) The law has used the word "assessments" - and this indicates the legislative intention to subject to judicial review only the decision of the Commissioner of Internal Revenue on the protest made against the assessment and not the assessment itself. (Commissioner of Internal Revenue vs. Leonardo S. Villa, etc., ibid., p. 7, citing Villamin vs. CTA, 109 Phil. 897.)

In this case, there was a proposed assessment on June 3, 1968 which was made by respondent and made known through a notice to petitioner. This proposed assessment however, is not the assessment contemplated in Section 7 of Republic Act No. 1125 as it did not yet definitely fixed the tax, or required petitioner to pay definitely said amount of ₱23,126.15 but instead advised petitioner to present his objections to the proposed assessment in an informal conference. (Dionisio R. Lantin vs. Commissioner of Internal Revenue, CTA Case No. 1951, April 10, 1969 and Brixton Investment Corp. vs. Tabios, CTA Case No. 1681, April 18, 1967 cited in Amado A. Colon, Court of Tax Appeals Digest of Internal Revenue Tax Cases, 1971 Ed., pp. 505-506). When petitioner, therefore, protested, it was not a protest which will bring about a disputed assessment as contemplated in Section 7 of said law.

It was only on February 15, 1969, when an assessment was truly and properly issued by Regional Director Leonardo Cabañero, by his issuance of Assessment No. 29-ACR-600745-68-66 against petitioner and asking the latter to pay the deficiency income tax for 1966 in the amount of ₱23,126.15, inclusive of ₱2,961.15 as interest and ₱200.00 as compromise penalty, on or before March 15, 1969. No formal protest or request for reconsideration was considered to have been filed against this assessment until after February 5, 1975, the date respondent issued warrants of distraint and levy against the properties of petitioner. (pp.36-38, BIR rec.)

It was only after the warrants of distraint and levy or when petitioner had filed a letter dated February 11, 1975 drawing attention of respondent's Revenue District Office to its letter of protest dated June 25, 1968, that a protest is deemed made.

There being no protest or dispute filed after the assessment of February 15, 1969 was issued, except the letters of June 11, and 18, 1975 of petitioner, and the latter not having been decided or acted upon properly by respondent or his subordinates, there cannot be any decision on a disputed assessment which can be appealed to this Court. The warrants of distraint and levy served on February 5,1975 cannot be considered as the decision on a disputed assessment as no formal protest was filed previously against said assessment by petitioner.

This Court, in its decision in the case of Hahns vs. Commissioner of Internal Revenue, CTA Case No. 1987, April 30, 1969, said that where there is a protest or request for reconsideration of an assessment, and a warrant of distraint and levy is issued subsequently, which is the most drastic action of all media of enforcing collection of a tax, it is "tantamount" to an outright denial thereof and will make the protest or request for reconsideration "deemed rejected". But this is not so in the case at bar. It was only after the service of the warrants of distraint and levy that petitioner filed a letter dated February 11, 1975, reiterating, in effect, its protest against the assessment of February 15, 1969, and followed up by its letter dated February 18, 1975, which up to the present, no action or decision was taken thereon by respondent Commissioner of Internal Revenue. Based upon the facts of this case, and there being no decision as yet on the disputed assessment, or no particular action having been taken by respondent or his duly authorized representative on petitioner's letters of protest dated February 11, and 18, 1975, and considering this Court as a court of special jurisdiction and as such can take cognizance only on matters clearly within its jurisdiction,the appeal in this case was prematurely filed and this court has no jurisdiction to entertain the same. (Commissioner of Internal Revenue vs. Villa, etc., op. cit., p. 7.)

Having come to the conclusion that this Court has no jurisdiction over this case, the disposition of the two other issues is moot and academic.

WHEREFORE, for being prematurely filed and for lack of jurisdiction, this appeal is hereby dismissed. With costs against petitioner.

SO ORDERED.

Quezon City, February 27, 1979.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge