REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARVIN L. HERRERA,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO.5153

Promulgated:
SEP 06 1995

x - x

RESOLUTION

Before us is a Motion to Dismiss filed by respondent on July 5, 1995 on the ground of lack of cause of action and for premature filing of the petition thus vesting no jurisdiction upon this Court to take cognizance of the same.

Respondent initially raised the issue of lack of jurisdiction as an affirmative defense in her Answer filed on December 12, 1994 alleging among others that the petition for review filed on September 26, 1994 "does not show that a final decision appealable to this Honorable Court has already been issued by the respondent on the protested tax assessment" thus this Court is without jurisdiction to hear and decide the present petition. Subsequently, respondent filed a Motion to Dismiss raising the same issue of lack of jurisdiction.

This Court is unable to tackle the issue of lack of jurisdiction alleged by the respondent in her Answer and Motion to Dismiss because of the repeated failure of the petitioner to enlighten us on the question of whether or not he received a final decision of respondent with respect to the protest filed by him. The petition by itself merely mentions that petitioner received a letter from the BIR which stated that petitioner failed to present additional evidence to support its protest, hence, the original assessment was reiterated and considered due and collectible. This letter allegedly issued by the BIR was not annexed to the petition, thus the Court has no way of analyzing whether this supposed letter is to be considered a final decision which is appealable to this Court.

The apparent disinterest of petitioner to pursue his case is shown by his failure to submit a reply to the answer of respondent as directed by the Court during the hearing held on February 28, 1995 (see page 33 of CTA records, Resolution dated April 24, 1995) and again his non-appearance during the hearing set to tackle the issue of lack of jurisdiction on May 24, 1995. The last straw that led this Court to conclude petitioner's apathy towards his case was his absence during the hearing held on July 21, 1995 which was scheduled to afford both parties the opportunity to present their respective arguments and evidence with respect to the allegations contained in respondent's motion to dismiss.

From the foregoing, this Court finds it proper to dismiss the case on the ground of failure to prosecute on the part of the petitioner pursuant to sec.3 of Rule 17 of the Rules of Court, thus:

> Sec.3 ***Failure to prosecute*** - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time or to comply with these rules or any order of the Court, the action may be dismissed upon motion of the defendant or upon the Court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by Court. (underscoring supplied.)

WHEREFORE, the petition for review is hereby dismissed for lack of interest and failure to prosecute on the part of the petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge