REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANUEL A. CANTOS
DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6150

REPUBLIC OF THE PHILIPPINES,
Represented by CRISPINO B.
VALLEJO, JR., as Regional
Director of Bureau of Internal
Revenue, Revenue Region No. 13,
Cebu City,
Respondent.

Promulgated:

JAN 08 2001

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RESOLUTION

Submitted for resolution is Respondent's Motion to Dismiss filed on October 2, 2000, on the ground of lack of jurisdiction. Petitioner filed its comment thereto on November 21, 2000.

The instant Petition for Review was filed on August 7, 2000 mainly to seek assistance from this Court in enjoining the auction sale of Petitioner's property scheduled on August 11, 2000. On said date, subject properties were foreclosed. Petitioner subsequently amended its Petition for Review.

Petitioner alleges that the collection of taxes against it is prejudicial to its interest because the government is already barred in collecting the taxes due for the year 1993 for failure of Respondent to assess Petitioner within the three-year period prescribed by law.

Section 203 of the Tax Code, as amended, clearly provides for a period of limitation upon assessment and collection of internal revenue taxes, to wit:

> SEC. 203. *Period of limitation upon assessment and collection.* - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

There being no income tax return for the year 1993 on record, We assume that the same was filed on the last day prescribed by law for the filing thereof. Inasmuch as the period involved in this case was 1993, Petitioner is presumed to have filed its income tax return on April 15, 1994, at the latest. Thus, it is from this period that the three-year period to assess herein Petitioner commences to run. In other words, Respondent has until April 15, 1997 to assess Petitioner, not until 1996 as Petitioner insists.

As disclosed by the records in this case, the questioned assessment notices 81-IT-13-93-97-3 and 81-DST-

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13-93-97-3 (both dated March 18, 1997) were posted on March 24, 1997 and were in fact received by the Petitioner on March 27, 1997 (pp. 61, 63, 64, CTA rec.). Hence, it is indubitable that the assessments were issued well within the reglementary period allowed by law.

Considering that the assessments made by the Respondent were valid, failure on the part of the Petitioner to protest the same within thirty days from receipt thereof rendered the assessments final and unappealable. Section 229 of the Tax Code, as amended, categorically mandates that:

> SEC. 229. *Protesting of assessment.* - xxx
>
> 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.
>
> 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.

The assessments being final and unappealable, the government could then proceed to collect the taxes due from Petitioner under any of the remedies allowed by law, *viz*: 1) distraint and levy and 2) collecting thru means of civil or criminal action. Therefore, it is not correct for the Petitioner to state that other than the warrant of distraint issued, no action for collection of the tax due had been filed by the Respondent since distraint is one method for collection of taxes due it.

In sum, We agree with the Respondent that this Court acquires no jurisdiction over the case. Section 7 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), provides, among others:

> 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 <u>disputed assessment</u>, refunds of internal revenue taxes, fees o other charges, penalties imposed in relation thereto, <u>or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue</u>. (Underscoring supplied.)

On the other hand, Petitioner argues that this Court has jurisdiction based on "other matters" underscored above. Yet, the very ground of this petition is the timeliness of the assessment and collection. *Ergo*, Petitioner admits that what triggered the distraint and levy and the subsequent sale were the assessments issued against it. Furthermore, this Court has no jurisdiction to rule on the propriety of the warrant of distraint and levy as well as the subsequent sale of the property distraint because distraint and levy being one remedy for enforcement of taxes due the government, is a summary, extra-judicial and administrative remedy. Moreover, as We have earlier pointed out, the assessments were unprotested or undisputed, the same became final and unappealable. The government then had the right to enforce collection thereof.

We note also that Petitioner relied upon the case of Advertising Associates which has no bearing in this case. In said case, Petitioner cited that the Commissioner of Internal Revenue must categorically state that his action on a disputed assessment is final. However, the case at bar involves no disputed assessment. Nor the case of Commissioner vs. Villa finds any application in the instant case. There is no decision of the Commissioner to speak of in the first place (since there was no protest) nor was there an request for reconsideration of the assessment.

WHEREFORE, in the light of all the foregoing, Respondent's Motion to Dismiss is hereby **GRANTED**. The instant Petition for Review is accordingly dismissed for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

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