REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A.C. MARCHADESCH,
Petitioner,

- versus - C.T.A. CASE No. 1934

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

RESOLUTION

An affirmative defense was raised by respondent in his answer challenging the jurisdiction of this Court to entertain the present appeal on the ground that it was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

As borne out by the records and the evidence presented during the preliminary hearing, the relevant facts of this case may be stated as follows:

On March 20, 1957, respondent Commissioner of Internal Revenue assessed and demanded from petitioner the total amount of ₱24,589.90, representing fixed and percentage taxes, surcharges and compromise penalty for the years 1951 to 1955.

In a letter dated May 12, 1958, petitioner, through his counsel, disputed the assessment and requested that respondent desist from assessing and collecting the aforesaid taxes on the ground that the right of the Government to assess had already prescribed.

104

In his reply dated October 11, 1967, respondent denied petitioner's request in this wise:

> Accordingly, your request that this Office desist from collecting the tax due from your client is hereby denied. It is requested that you advise your client to pay the taxes herein referred to within ten (10) days from receipt hereof and to inform this Office of the payment also within the said period.
>
> Notice is hereby given to you that if the taxes in question are not paid within ten (10) days from your receipt hereof, this Office will be constrained to institute immediate judicial action against your client to effect collection of the said sum of ₱24,589.90 without further notice. (Exh. 3, pp. 46-47, BIR rec., underlining supplied.)

This letter of respondent was received by counsel for petitioner on October 28, 1967 (Exh. 4-A, p. 55, BIR rec.) and by petitioner himself on November 1, 1967 (Exh. 4-B, p. 55, BIR rec.).

On December 7, 1967, petitioner, through counsel, objected to the letter of respondent dated October 11, 1967 and requested reinvestigation of the case. (Exh. 4, pp. 54-55, BIR rec.) This request was left unanswered by respondent. Instead, on January 30, 1968, respondent filed a complaint against petitioner for collection of the taxes in question in the Court of First Instance of Manila.

The instant petition for review was filed on June 8, 1968.

Respondent contends that this Court has no jurisdiction over the present appeal because it was filed on June 8, 1968, which is beyond the statutory 30-day period from receipt of respondent's appealable decision on October 28, 1967. On the other hand, petitioner avers that the filing in court, on January 30, 1968, of a complaint for collection of the taxes amounts to a denial of his request for reconsideration and should be considered the decision appealable to this Court. Hence, computing the period from May 11, 1968, when he received the alias summons and copy of the complaint, up to June 8, 1968, when he filed the petition for review, the appeal was filed on time.

The only issue to be resolved in this incident is whether or not the instant appeal was filed within the 30-day statutory period prescribed in Section 11 of Republic Act No. 1125.

We find respondent's stand well taken.

(The assessment of respondent Commissioner of March 20, 1957 became a "disputed" assessment when petitioner requested respondent to desist from assessing and collecting the taxes as contained in his letter of May 12, 1958. (St. Stephen's Asso. v. Coll. of Int. Rev., 104 Phil. 314.) When respondent denied petitioner's request in his letter of October 11, 1967, such a denial constitutes the

106

decision on the "disputed" assessment, which is appealable to this Court. (Villamin v. C.T.A., L-11596, Oct. 31, 1960; Pangasinan Transp. Co., Inc. v. Blaquera, 107 Phil. 975; Filipinas Inv. & Finance Corp. v. Comm., L-23501, May 16, 1967.) Inasmuch as petitioner, through counsel, received this letter of denial on October 28, 1967 and the instant appeal was filed only on June 8, 1968, it is obvious that the appeal was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

The request of petitioner for reinvestigation of his case as contained in his letter of December 7, 1967 does not have the effect of suspending the running of the statutory period for appeal because it was filed beyond 30 days from receipt of respondent's decision. In other words, when petitioner requested reinvestigation of his case on December 7, 1967, respondent's decision on the disputed assessment had already become final and incontestable and no further motion for reconsideration or reinvestigation could revive the same. (Muller & Phipps v. Coll., 103 Phil. 145; Pangasinan Transp. Co., v. Blaquera, supra; La Paz Y Buen Viaje v. Coll., CTA Case 323, Dec. 27, 1957.) This could be the reason why respondent did not answer petitioner's request for reinvestigation of his decision but instead instituted a complaint in the Court of First Instance of Manila for the collection of the taxes in question.

WHEREFORE, the petition for review is hereby dismissed.

SO ORDERED.

Quezon City, February 4, 1970.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCENA
Associate Judge