REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMMERCIAL BANK OF MANILA
Petitioner,

- versus - C.T.A. CASE NO. 4088

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

7/16/87

D E C I S I O N

Respondent Commissioner of Internal Revenue, in a motion filed on January 27, 1987 seeks the dismissal of petitioner's appeal on the ground of lack of jurisdiction. He contends that the appeal in this case is premature since the assessment has not been disputed or protested, hence, there could not be any decision that may be appealed to this Court as contemplated in Section 7(1) of Republic Act No. 1125.

We agree with the proposition of respondent.

The pertinent facts as alleged in the petition for review disclose that on or about July 21, 1986 petitioner received an Assessment Notice dated July 9, 1986 requiring it to pay deficiency income tax, interest and deficiency documentary stamp tax plus compromise penalty, as follows:

a. Deficiency Income Tax 1983

Net Income per return		(₱ 86,800.82)
Add: Adjustments:		
Understated realized income	₱ 1,282,745.02	
Bad debts written off	19,065,988.00	20,348,733.02
Net income per investigation		₱ 20,261,932.20
Income tax due thereon		₱ 7,081,676.27
Less: Income tax already assessed		-
Deficiency		₱ 7,081,676.27
Add: 20% int. from 4/16/84 to 2/28/85		1,234,336.17
T o t a l		₱ 8,316,012.44
Less: Payment (CR #980677 dated 2/28/85)		508,966.83
Balance		₱ 7,807,045.61
Add: 20% int. from 3/1/85 to 7/9/86		2,120,379.24
Total amount due and collectible		₱ 9,927,424.85

b. Deficiency Documentary Stamp Tax

Promissory Notes issued during the year	₱3,447,732,729.60
Documentary stamp due thereon -	
$\frac{₱3,447,732,729.60}{₱200.00} \times ₱.65 =$	₱ 11,205,131.37
Add: Compromise penalty	300.00
Total amount due and collectible	₱ 11,205,431.37

While petitioner avers that prior to the assessment, it had filed a detailed protest in connection with the pre-assessment notice of respondent dated February 11, 1986 demanding payment of deficiency income tax and documentary stamp taxes for 1983, its protest or request for reconsideration of the aforementioned assessment notice of July 9, 1986 has not as yet been acted upon by respondent, thus making the filing of the instant petition for review premature. (p. 60, CTA record.)

Same as PHIL AM LIFE v. CIR CTA 3981 6/6/86

Obviously, since no decision has as yet been rendered by respondent on petitioner's protest, there could not be a decision on a disputed assessment that may be appealed to this Court. Under Section 7(1) of Republic Act No. 1125, what is reviewable by this Court on appeal is the decision of the Commissioner of Internal Revenue on a disputed assessment and not the assessment itself. Thus it had been held:

> The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act 1125, the pertinent part of which states:
>
> > "Sec. 7. <u>Jurisdiction</u>. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
> >
> > "(1) <u>Decisions of the Collector</u> (now Commissioner) of Internal Revenue in cases involving disputed assessments, refunds

> or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;"

The word "decisions" in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself. We quote what this Court said aptly in a previous case:

> "In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, x x x" (Emphasis supplied)

The same interpretation finds support in Section 11 of Republic Act 1125, which states:

> "Sec. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector (now Commissioner) of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling." (Emphasis supplied)

Note that the law uses the word "decisions", not "assessments", thus further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment but not the assessment itself.

Since in the instant case the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 3; Perfecto V. Fernandez vs. Commissioner of Internal Revenue, C.T.A. Case No. 3432, February 25, 1983.)

Under Section 319-A of the National Internal Revenue Code, as inserted by Presidential Decree No. 1773, January 16, 1981, now Section 270, an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment; otherwise, it becomes final and unappealable. And if the protest is denied in whole or in part, the taxpayer 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.

It is thus clear beyond doubt that the decision on the request for reconsideration or reinvestigation is the decision on the disputed assessment which is appealable to this Court. It follows that if an assessment is not formally contested or protested administratively, or even if formally contested or protested administratively, no decision has as yet been rendered by the Commissioner of Internal Revenue, the taxpayer has no right to appeal.

As stated above, it appears in this case that petitioner Commercial Bank of Manila has protested respondent's assessment-demand letter of July 9, 1986, but respondent Commissioner of Internal Revenue has not yet acted or rendered a decision on the same. Clearly, therefore, the filing of the instant petition for review is premature.

IN VIEW OF THE FOREGOING, the petition for review filed in this case on August 5, 1986 is hereby dismissed for lack of jurisdiction at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, July 16, 1987.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge