Lehman

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PERFECTO V. FERNANDEZ,
Petitioner,

- versus - C.T.A. CASE NO. 3432

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

2/25/83

D E C I S I O N

Respondent Commissioner of Internal Revenue, in a motion filed on April 30, 1982, seeks the dismissal of petitioner's appeal on the ground of lack of jurisdiction. He contends that the appeal is premature since it is taken from a mere assessment and not a decision on a disputed assessment as provided in Section 7(1) of Republic Act No. 1125.

We agree with the proposition of respondent.

The facts alleged in the petition for review of petitioner clearly show that on February 17, 1982, he received by mail a closed envelope containing two separate Assessment Notices (both numbered 01-30-05-107980-76-82) requiring him to pay deficiency income tax, interest and compromise penalty, as follows:

(a) Tax Due - ₱7,375.00
(b) Interest - ₱3,097.50
(c) Compromise - ₱ 50.00

without filing a protest or request for reconsideration thereof with respondent Commissioner of Internal Revenue, he appealed to this Court on March 17, 1982.

Obviously, the appeal is taken from a mere assessment, not from a decision of the Commissioner of Internal Revenue on a disputed assessment. Under Section 7(1) of Republic Act No. 1125, what should be reviewed by this Court on appeal is the Commissioner's decision on a disputed assessment and not the assessment itself. Thus:

> "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 disputed assessments, refunds of 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 the law administered by the Bureau of Internal Revenue; (underlining supplied.)

On all fours with the case at bar on this point, by reason of the close similarity of the factual settings, the exact provision of the law involved and the same issue litigated, is Commissioner of Internal Revenue vs. Leonardo

S. Villa and The Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 3, wherein the Supreme Court resolved the same problem now brought before us in this proceeding in the following wise:

> 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. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
> >
> > "(1) Decisions of the Collector (now Commissioner) of Internal Revenue in cases involving disputed assessments, refunds of 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:
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> > "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 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.

It is worth noting that under Section 319-A of the National Internal Revenue Code, as inserted by Presidential Decree No. 1773, January 16, 1981, 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, the taxpayer has no right to appeal.

ACCORDINGLY, petitioner's appeal is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, February 25, 1983.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

Certiorari denied
G.R. No. 65233,
November 29, 1984.