REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAXIMO R. JUMAO-AS,
Petitioner,

- versus - C.T.A. CASE NO. 2973

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

7/20/81

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DECISION

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing against and demanding from petitioner Maximo R. Jumao-as the payment of the sum of ₱22,168.94, as deficiency income tax, inclusive of interest, for the year 1976.

The records show that petitioner, a Filipino citizen and an Engineer, left the Philippines on April 3, 1976 for Saudi Arabia and worked as a consulting engineer for Al-Muhandis Nizar Kurdi Consulting Engineers, a foreign construction firm based in Riyadh, Saudi Arabia. On January 2, 1977, he filed a Non-Resident Income Tax Return for the taxable year 1976 with the Revenue Attache in the Philippine Embassy in Jedah, Saudi Arabia, declaring the amount of $9,599.32 as his gross income in 1976, a personal exemption of $4,000, arriving at an adjusted gross income of $5,599.32, computed 1% tax thereon in the sum of $55.99, pursuant to Section 21 (a) and (b) of the National Internal Revenue Code, as amended, rounded up the amount of $55.99 tax due, and paid the sum of $60.00 (p.6, BIR records)

After investigation of the said return, however, Assistant Commissioner Lauro D. Abraham sent petitioner a letter dated April 5, 1978, holding that petitioner failed to qualify as non-resident for the taxable year 1976, to be subject to the preferential income tax rates of 1%, 2% and 3%, under Section 21(a) and (b) of the National Internal Revenue Code, as amended, and instead subjected the income of petitioner abroad to the normal tax rates from 3% to 70%, under the same Section 21, and computed a deficiency income tax, inclusive of 14% interest thereon in the amount of ₱22,168.94 (p. 16, BIR rec.), computed as follows:

Gross income per return........ ...	₱71,994.90
Less: 10% Optional standard deduction	5,000.00
Net income per investigation	66,994.90
Less: Personal and additional exemption	4,000.00
Amount subject to tax	62,994.90
Tax due thereon	19,798.00
Less: Amount already paid	(450.00)
B a l a n c e	19,348.00

Add: 14% interest per annum	2,820.94
AMOUNT STILL DUE AND COLLECTIBLE	₱22,168.94

which amount petitioner was required to pay on May 16, 1978.

On May 17, 1978, petitioner requested for reconsideration and withdrawal of the deficiency income tax assessment from respondent asserting that, under Section 21 (a) and (b) of the National Internal Revenue Code, as amended by PD 323, a non-resident is to be understood as one who establishes, to the satisfaction of the Commissioner, his physical presence abroad for an entire taxable year; that under Section 2 of Revenue Regulation No. 9-73, a non-resident citizen is one who establishes to the satisfaction of the Commissioner, the fact of his presence abroad for an uninterrupted period which includes an entire taxable year; that the phrase "uninterrupted period" should not be interpreted literally to negate the continuity of residence abroad; that neither PD 323 nor Revenue Regulation No. 9-73 requires that the "uninterrupted period" of physical presence abroad should start from January to December of a year; that the term "taxable year," under Section 84(O) of the Revenue Code, includes a return made for a fractional part of a year, and therefore, does not necessarily mean a 12 month period; and that the rationale behind PD 323 is to lighten the tax burdens of non-resident Filipinos who have established their residence abroad. (pp. 18-21, BIR rec.)

This aforesaid request for reconsideration and withdrawal of the assessment was denied in a letter dated May 24, 1978 (p. 9, BIR rec.) of Fortunato Aguas, Chief, International Operations Division of the Bureau of Internal Revenue. This letter was admittedly received by petitioner on June 6, 1978.

Not satisfied, petitioner, on June 19, 1978, requested for reconsideration of the denial which was received by respondent on June 22, 1978. (pp. 22-30, BIR rec.) However, in a letter dated July 28,1978, and received by petitioner on August 29, 1978, respondent denied petitioner's request.(p. 31, BIR rec.) Hence, this appeal on September 27, 1978.

The issue on the merits involved in this case is whether or not petitioner may be considered as a non-resident citizen for 1976 and, therefore, his adjusted gross income from abroad is subject to the preferential income tax rates of 1%, 2% and 3% under Section 21 (a) and (b) of the Tax Code, as amended by PD 323. We note, however, that respondent raised the issue of jurisdiction, i.e. whether the appeal in this case was seasonably filed within 30 days from the receipt of the final decision. This question of jurisdiction must first have to be determined, since if the claim of lack of jurisdiction is founded, this Court can not decide the case on the merits.

In connection with the jurisdictional question, respondent contends that the letter of May 24, 1978 constituted the appealable decision, and that when petitioner acknowledged receipt thereof on June 6, 1978, he should have interposed the appeal within thirty-day period in accordance with the provisions of Section 11 of Republic Act No. 1125.

Petitioner, on his part, assailed the stand of respondent and argued that the decision which is appealable to this court is the final decision of respondent on the disputed assessment dated July 28, 1978, which was received by petitioner on August 29, 1978.

It is well established doctrine that the final decision is that decision which from the very terms or words of respondent therein, he has meant it to be his final decision. (St. Stephen's Association vs. Coll. of Int. Rev., 104 Phil. 314; Morales v. Coll. of Int. Rev., 17 SCRA 1018.)

Respondent's letter of May 24, 1978 which stated thus -

> "Please advise your client accordingly to pay the said amount of ₱22,168.94 to any collection agent of the Bureau of Internal Revenue nearest his place in order that the same may be considered closed and terminated."

does not contain the element of finality, and, therefore, it can not be considered as the final decision of respondent appealable to this Court.

We believe that the subsequent letter of respondent dated July 28, 1978 is the final decision on the disputed assessment. This is so because it is the decision of the Commissioner of Internal Revenue on the disputed assessment. Where a taxpayer questions an assessment, and asks the Collector (Commissioner of Internal Revenue) 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 (Commissioner) must decide and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision on the disputed assessment. (St. Stephen's Association vs. Collector, supra.)

Considering, therefore, that the petitioner herein received respondent's decision dated July 28, 1978 only on August 29, 1978, and the instant appeal was filed on September 27, 1978, only twenty- nine (29) days were consumed. The appeal was filed within the reglementary period of 30 days and this Court has jurisdiction to decide the instant case.

We now come to the issue of whether or not petitioner may be considered as a non-resident citizen for 1976 so that his income from abroad in that year will be subject to the preferential income tax rates of 1% on the adjusted gross income of $5,599.32, which is within the statutory adjusted gross income of $6,000 under Section 21 (a) and (b) of the Revenue Code, as amended by PD 323.

This issue is not new. In a similar case (Carmencita P. Patio vs. Comm. of Int. Rev., CTA Case No. 2913, February 26, 1981), as this instant case, this Court held that a taxpayer, who stayed for less than 12 months in his initial year of stay abroad, can not be considered a non-resident citizen during the period in question, and, hence is not entitled to apply the rate of 1% on his adjusted gross income of $5,599.32, but on those rates from 3% to 70% ordinarily imposed on resident citizens. We held in the aforecited case of Carmencita P. Patio:

> We agree with respondent. The law is clear that in order to qualify as a non-resident citizen and avail of the preferential income tax rates under Section 21, one must have actually and physically stayed or resided abroad for an uninterrupted period of one entire taxable year, i.e. for the period starting from January 1 and ending December 31, of a given year. Otherwise, if the period of the taxpayer's stay abroad is less than one year, the income earned abroad during that period of less than one year will subject the same to the progressive income tax rates of 3% to 70%, and to this income abroad shall be included the income earned in the Philippines during that same period of less than one year, just like the incomes of petitioner in question. This must be so because the term "taxable year", in Section 21, as amended by P.D. 323, means the calendar year, which begins on January 1 and ends on December 31, of each year. Petitioner not being considered a non-resident citizen who had established her physical presence abroad for an uninterrupted period of an entire taxable year, her income earned abroad for the period of less than one taxable year, or from May 1, 1975 to December 31, 1975, including that income earned in the Philippines for the period from January 1 to February 27, 1975, should be subjected to the progressive tax rates of from 3% to 70% pursuant to Section 21, as amended by P.D. 323.

We find no cogent reason to modify our aforesaid decision and to depart from the conclusion reached therein. The decision of respondent Commissioner of Internal Revenue assessing against petitioner deficiency income tax, plus interest, must be necessarily have to be upheld.

WHEREFORE, the decision appealed from is hereby affirmed. Petitioner Maximo R. Jumao-as is hereby ordered to pay, within thirty (30) days from receipt of this decision, the amount of ₱19,348.00, as deficiency income tax for 1976, plus 5% surcharge thereon, and 14% interest per annum from May 16, 1978 to the date of full payment, provided the maximum amount that may be collected as interest on the deficiency shall in no case exceed the amount corresponding to a period of three (3) years, pursuant to Section 51 (d) of the Tax Code, as amended. With costs against petitioner.

SO ORDERED.

Quezon City, July 20, 1981.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge