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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JOSE MA. DEL ROSARIO,
Petitioner,

- versus -

C.T.A.
CASE NO. 864

THE COMMISSIONER OF INTERNAL REVENUE AND THE REGIONAL DIRECTOR, REGIONAL OFFICE NO. 3, MANILA,
Respondents.

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

Sept. 26, 1960

R E S O L U T I O N

This is in connection with a motion to dismiss the instant petition for review filed by respondent Commissioner of Internal Revenue on August 9, 1960 on the ground that this Court has no jurisdiction over the subject matter of the action.

The facts of the case are as follows: On June 28, 1955, respondent Commissioner of Internal Revenue issued deficiency income tax assessments against the petitioner for the years 1949 - 1953, inclusive, which assessments were received by petitioner on July 13, 1955 (see Annexes 1 to 1-D, Motion to Dismiss, pp. 24-28, CTA rec.). Counsel for petitioner wrote respondent Commissioner several letters dated July 14, 1955, July 27, 1955 and August 4, 1955, respectively, requesting for data to show the basis of the deficiency assessments, and likewise asking for a reinvestigation of the income tax liability of his client (see pp. 29-30, CTA rec.). Respondent answered the above letters on August 27, 1955, giving the basis of the deficiency assessments and further informing counsel for petitioner that a reinvestigation will be granted only upon compliance by the petitioner with the requirements of General Circular No. V-182 of the Department of Finance, dated January 17, 1955. (See Annex 4, Motion to Dismiss, pp. 31-34, CTA rec.) Petitioner took exception to the findings of the respondent and interposed the defense of prescription as provided in Section 51 (d) of the Tax Code, in so far as the years 1949-1951 were concerned. (See Annex 5, Motion to Dismiss, pp. 35-36, CTA rec.)

In a letter dated November 15, 1955, respondent conceded that with respect to the deficiency income taxes for the years 1949-1953, the imposition of the 50% fraud penalty is not warranted and that the collection of the deficiency income tax for 1949 is already barred by prescription; however, the deficiency income taxes for the years 1950-1953, inclusive, are still collectible since they are not barred by the Statute of Limitations pursuant to Section 331 of the Tax Code. He likewise reiterated the demand for payment of the assessments as recomputed in said letter. (See Annex 6, Motion to Dismiss, pp. 37-39, CTA rec.) Petitioner received this letter demanding payment on November 26, 1955, and in a letter dated November 29, 1955 he contested the recomputed assessments, claiming that Section 331 of the Tax Code is not applicable, and that, therefore, the assessments against him should be cancelled. (See Annex 7, Motion to Dismiss, pp. 40-41, CTA rec.)

On December 29, 1955, respondent requested petitioner to accomplish the forms for waiver of the statute of limitation in order that his case would be reinvestigated, and when petitioner failed to comply with said request, respondent wrote to former's counsel on January 30, 1957 to the effect that "this Office has finally decided to consider your request for reinvestigation of the said case as abandoned". He further urged payment thereof or else collection would be enforced by means of the remedies provided for by law. (See Annex 8, Motion to Dismiss, p. 42, CTA rec.)

Subsequently, petitioner wrote two letters to respondent wherein he inquired as to the final decision of the Commissioner on the matter. The Commissioner of Internal Revenue informed petitioner on November 7, 1957 that the Bureau's stand remained the same and once more reiterated the demand for payment. (See Annex 9, Motion to Dismiss, p. 43, CTA rec.)

Nearly two years later, or on September 25, 1959 to be precise, respondent issued a warrant of distraint and levy against the properties of the petitioner. This was followed by a letter dated November 3, 1959 wherein he once more demanded payment within five (5) days from receipt or else court action would be instituted without further notice. (See Annex 10, Motion to Dismiss, p. 44, CTA rec.) Once again, petitioner wrote respondent on November 17, 1959 repeating the same arguments he interposed in his former letters to the Commissioner. Next day, on November 18, 1959, respondent notified the Register of Deeds of Tarlac of a lien on the properties of petitioner situated thereat, and on November 24, 1959, he categorically denied petitioner's request for reinvestigation and urged payment of the latter's tax obligation. (See Annex 11, Motion to Dismiss, p. 45, CTA rec.)

Subsequently, another warrant of distraint and levy was issued by respondent on December 4, 1959, which petitioner refused to receive and sign. Inspite of this refusal, a letter was sent to the Register of Deeds of Pasig, Rizal, on January 22, 1960, giving notice of a lien on the properties of the taxpayer situated thereat.

On December 21, 1959, petitioner wrote the Regional Director of Regional District No. 4 in Quezon City impugning the validity of the warrant of distraint and levy and at the same time requesting for a reconsideration of the decision of the Commissioner. Respondent Commissioner of Internal Revenue, on March 9, 1960, wrote the petitioner to the effect that his letter of December 21, 1959 has been referred to him for final action and that since he finds nothing new in petitioner's arguments, he, therefore, denies the request for reconsideration. (See Annex 12, p. 46, CTA rec.) A copy of the above letter of respondent was furnished petitioner's counsel on July 13, 1960 upon the initiative of the latter (see par. 7, Petition for Review), and on July 20, 1960 the instant petition for review was filed with this Court. On August 9, 1960, respondent Commissioner of Internal Revenue filed the instant motion to dismiss the petition for review on the ground that this Court has no jurisdiction over the subject matter of the present action.

The question to be resolved in this case is whether or not the instant petition for review was filed within the statutory period of thirty (30) days pursuant to Section 11 of Republic Act No. 1125. An ancillary issue arising out of the main question from which the 30-day period for appeal should be counted. Respondent claims that the statutory period should be counted from February 6, 1957, when petitioner received his letter dated January 30, 1957. On the other hand, petitioner contends that said period should be computed from July 13, 1960 when petitioner was furnished a copy of respondent's letter dated March 9, 1960.

We find merit in the contention of the respondent. In a similar case wherein the question decided was which letter-decision of the Commissioner of Internal Revenue was appealable to this Court, the Supreme Court, in holding that a letter dated July 11, 1955 was the appealable decision, made the following pronouncement:

> "x x x Prior to his letter-decision of July 11, 1955, then, the Collector must have held the matter under advisement and considered his preceding rulings as merely tentative in character, pending his final determination and resolution of the merits of the arguments of fact and law submitted by petitioners in support of their requests for the cancellation and withdrawal of the assessment. x x x" (St. Stephen's Assn. v. Collector of Internal Revenue, G.R. No. L-11238, Aug. 21, 1958.)

Applying the above quoted standard laid down by the Supreme Court to the case at bar, we believe and so hold that the decision appealable to this Court is that contained in the letter of the Commissioner of Internal Revenue dated January 30, 1957 and received by the petitioner on February 6, 1957. (Annex 8, Motion to Dismiss, p. 42, CTA rec.) In said letter of January 30, 1957, the Commissioner of Internal Revenue stated that "this Office has finally decided to consider your request for reinvestigation of the said case as abandoned". And he concluded: "In view thereof, it is requested that you urge your client to pay" the disputed assessments, "otherwise, the collection thereof will have to be enforced by means of the remedies provided for by law". From those words of the Commissioner of Internal Revenue, it is evident that his letter of January 30, 1957 was intended to be and for all purposes his final decision which should have been appealed to this Court. Inasmuch as the appeal was filed with this Court only on July 20, 1960, or, after deducting the time consumed in considering petitioner's requests for reconsideration, more than eight (8) months from receipt of said decision on the disputed assessment on February 6, 1957, we find that the instant petition for review was filed out of time.

While it is true that this Court had on several occasions recognized the right of and encouraged taxpayers to exhaust all possible administrative remedies before coming to it for the purpose of expediency and to avoid unnecessary court expense on the part of the litigants, this right is not without limit. Once the Commissioner of Internal Revenue has made clear to the taxpayer that his decision subject of a series of requests for reconsideration is final, as his letter of January 30, 1957 in the instant case, subsequent requests for reconsideration thereof made pro forma and for dilatory purposes should be ignored for the purpose of computing the running of the thirty-day period prescribed under Section 11 of Republic Act No. 1125. We cannot leave the running of the period of appeal entirely at the discretion of the taxpayer.

WHEREFORE, finding the "Motion to Dismiss" filed by the respondent on August 9, 1960, to be meritorious, the "Petition for Review" filed on July 30, 1960 is hereby dismissed with costs against the petitioner.

SO ORDERED.

Manila, September 26, 1960.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge