REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LITA ENTERPRISES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3181

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

8/31/81

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

D E C I S I O N

At bar is respondent's "Motion To Dismiss" filed on February 10, 1981 on the ground of lack of jurisdiction of this Court to take cognizance of petitioner's appeal.

It appears that on December 24, 1980, petitioner filed a petition for review in this Court, alleging that in a letter dated November 19, 1980, respondent assessed against and demanded from petitioner payment of fixed and percentage taxes for 1974 in the amount of ₱23,463.41, which letter was received by the latter on December 4, 1980. In a letter dated December 9, 1980, petitioner protested the assessment, stating that it is not aware of any non-payment of such taxes for the year 1974 and that the action to collect the same had already prescribed. Not having received yet any answer or reply to its letter dated December 9, 1980, petitioner appealed to this Court.

The sole issue to be resolved is whether or not this Court has jurisdiction to take cognizance of petitioner's appeal.

The law involved is found in Sections 7 and 11 of Republic Act 1125, the pertinent provisions of which read:

> 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* 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.)
>
> (2) x x x
>
> (3) x x x
>
> SEC. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Collector* 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. (Underscoring supplied.)

From the above-quoted provisions, we note that the law uses the word "decisions", not

*Now Commissioner

"assessments", indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment and not the assessment itself.

The word "decisions" has been interpreted in the case of Commissioner of Internal Revenue vs. Leonardo S. Villa, et al., G.R. No. L-23988, Jan. 2, 1968, 22 SCRA 3, to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment.

In the case at bar, as admitted in the petition for review of petitioner, respondent has not yet rendered a decision on the protest of petitioner against the assessment in question. Hence, being prematurely filed, this Court cannot take cognizance of petitioner's appeal.

We said thus in the case of Cinema Audio, Inc. vs. The Acting Commissioner of Customs, CTA Case No. 2806, January 16, 1978, (Certiorari denied in G.R. No. L-48726, September 13, 1978):

> "xxx Where a taxpayer questions an assessment or demand-letter and asks the Commissioner to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment or demand-letter becomes a disputed or contested assessment that the Commissioner must decide, and the taxpayer can

appeal to the Court of Tax Appeals only upon receipt of the decision of the Commissioner on the disputed or contested assessment. The decision on the request for reconsideration is the decision which is appealable to this Court. (St. Stephen's Association and St. Stephen's Chinese Girls' School vs. Collector of Internal Revenue, 104 Phil. 314; Baguio Country Club Corporation vs. Collector of Internal Revenue, et al., L-11419, April 22, 1959, 105 Phil. 1269, unpub.; Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue, L-16683, January 31, 1962, 4 SCRA 279; Commissioner of Internal Revenue vs. Lilia Yusay Gonzales, L-19495, November 24, 1966, 18 SCRA 757; Commissioner of Internal Revenue vs. Villa, L-23988, January 2, 1968, 22 SCRA 4.)"

xxx xxx xxx.

"xxx Since in the case at bar petitioner appealed from the assessment or demand-letter of respondent without waiting for his decision on its request for reconsideration or reinvestigation, the appeal was premature and this Court has no jurisdiction to entertain said appeal."

WHEREFORE, petitioner's appeal is hereby DISMISSED for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, August 31, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge