REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEALDA ELECTRIC CO., INC.,
Petitioner,

- versus - C.T.A. CASE No. 2032

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - - - -x

R E S O L U T I O N

A petition for review was filed by petitioner on August 1, 1969, seeking a "review of income tax assessments for 1963 to 1968 and refund of income tax paid for the year 1968 of first 50% and also (of) for deficiency franchise taxes." Respondent has filed a motion to dismiss the herein appeal on the ground that this court has no jurisdiction to take cognizance of the case.

Petitioner is the grantee of a franchise to operate and maintain an electric light, heat and power system in the City of Legaspi and in the town of Locsin, Albay. On the theory that under Republic Act No. 3730, approved on June 22, 1963, petitioner's tax liability is limited to 2% of its gross receipts in lieu of all other taxes on all its properties, except real property, used by petitioner under its franchise, petitioner did not file any income tax return for the years 1963 (second half) up to 1967. Respondent, however, assessed against petitioner income tax for the years 1963 to 1966 in the aggregate sum of ₱78,453.14. In addition, an assessment was issued against petitioner for deficiency franchise tax for the years 1963 to 1966, inclusive, in the sum of ₱140,746.64.

On May 20, 1968, petitioner requested reconsideration of the above-mentioned assessments. No formal resolution was rendered by respondent on the said request for reconsideration. However, on February 24, 1969, the Regional Director of the Bureau of Internal Revenue in Naga City issued a warrant of distraint and levy to enforce collection of the deficiency income tax for 1963 in the amount of ₱6,875.86, a copy of which was served on petitioner on February 26, 1969.

In connection with the claim for refund of ₱4,590.93, representing 50% of the income tax for the year 1963, which was paid under Republic Act No. 5431, but which, in a subsequent ruling, respondent held was not applicable to grantees of franchises, petitioner claims to have filed a claim for refund which has also remained unresolved by respondent. A copy of the claim for refund was attached to the "Opposition to Respondent's Motion for Dismissal" as Annex B. (See pp. 33-37, C.T.A. record.)

Respondent's motion to dismiss is anchored on the ground that he has not to date rendered a decision on petitioner's request for reconsideration of the assessments herein involved and that he has not received the alleged written claim for refund of the tax paid in 1969.

Petitioner insists that notwithstanding the absence of a decision on its request for reconsideration the warrant of distraint and levy issued is equivalent to a denial of the request for reconsideration. On its claim for refund, petitioner maintains that it has filed with the Commissioner of Internal Revenue a written claim for refund as evidenced by its letter dated July 15, 1969, marked as "Annex B-Opposition," wherein petitioner demanded the refund of the income tax paid on April 11, 1969.

The warrant of distraint and levy issued by the B.I.R. Regional Director at Naga City cannot be considered as a decision denying petitioner's request for reconsideration because it did not cover all the deficiency taxes being contested by petitioner. Also, it is admitted that enforcement of the said warrant of distraint and levy was held in abeyance upon request of petitioner.

The delay in the resolution of petitioner's request for reconsideration is due, according to respondent, "to the complicated issues of the case and the difficult questions of law raised by the taxpayer." Respondent has, however, given assurance that the request of petitioner for reconsideration will be given due course. We quote from the memorandum of counsel for respondent:

> While the respondent's Regional Office in Naga City might have issued a Warrant of Distraint of Personal Property against petitioner Lealda Electric Co., Inc., covering the amount of ₱6,875.86 as deficiency income tax for 1963, (p. 126, BIR Rec.) the same, however, do not stand as a formal denial or as the decision of the respondent Commissioner of Internal Revenue on the petitioner's pending request for reconsideration of the assessments for deficiency income and deficiency franchise taxes for the period from 1963 to 1966. Indeed, such requests of the taxpayer for reconsideration and cancellation of the assessments in question have never been ignored by the Commissioner of Internal Revenue to justify the conclusion reached by herein petitioner.
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> It should be noted from the facts of this case that from the time respondent issued the assessments against petitioner on August 25, 1967 up to the time the appeal was taken to this Honorable Court on August 1, 1969, there exists no fact from which it might be deduced that respondent Commissioner has ceased consideration of the assessments adverted to by the petitioner. It is true that there was some delay in the issuance of a final decision, but this is due to the complicated issues of the case and the difficult questions of law raised by the taxpayer. Though a Warrant of Distraint of Personal Properties of the petitioner might have been inadvertently issued by the respondent's Regional Office in Naga City on February 24, 1969, nonetheless such issuance is not tantamount to an

> outright denial of petitioner's request for reconsideration. It is worthwhile to note that the said warrant was only partially issued and covered only the deficiency income tax for the year 1963. Had respondent Commissioner of Internal Revenue intended to ignore petitioner's request for the cancellation of the assessments in question, his Office would have issued a Warrant of Distraint against petitioner which would have covered not only the amount of ₱6,875.86 but the total amount of ₱219,199.78 to fully satisfy the deficiency income tax and the deficiency franchise tax assessed against the petitioner for 1963 to 1966.

No decision having as yet been rendered on petitioner's request for reconsideration of respondent's assessments against it and there being no evidence as to the filing of a claim for refund of the sum of ₱4,590.93, the herein appeal is hereby dismissed, without prejudice.

SO ORDERED.

Quezon City, July 10, 1970

R M Umali
ROMAN M. UMALI
Presiding Judge

We Concur:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge