REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

AUYONG HIAN,
Petitioner,

versus

C. T. A. CASE NO. 1449

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

March 31, 1964

R E S O L U T I O N

This treats of respondent's motion to dismiss based on two grounds, namely: (a) that this Court has no jurisdiction to take cognizance of this case as the 30-day period within which to appeal has already lapsed; and (b) that there is another action pending between the same parties for the same cause.

Petitioner's objection to the motion is predicated on two grounds, i. e., that there is as yet no decision of the respondent from which to appeal; and (2) that the present case is not in *pari materia* with Civil Case No. 37371 of the Court of First Instance of Manila, because there is no identity of rights and reliefs sought. In other words, petitioner contends that the pendency of said Civil Case No. 37371 in the Court of First Instance of Manila between the same parties (Exhibit "A") now on appeal to the Supreme Court, is not a bar to the present action.

On the first ground of the motion to dismiss, the crux of the issue rests on the proper determination whether or not the letter-assessment of the respondent dated January 23, 1957 (Annex "A" - Petition) is a final decision from which an appeal should have been taken to this Court within the reglementary period of thirty (30) days.

Due to the different criteria applied by the Supreme Court in previous cases (Republic v. Magalona, G. R. No. L-15802, Sept. 30, 1960; Republic v. Gamboa, G. R. No. L-16504, Oct. 27, 1961; Republic v. Albert, G. R. No. L-12996, Dec. 28, 1961; Ker & Co., v. Collector, G. R. No. L-12396, Jan. 31, 1962; Pangasinan Trans. Co., v. Blaquera, G. R. No. L-13101, April 29, 1960; Villamin v. Collector, G. R. No. L-11536, Oct. 31, 1960; North Camarines Lumber v. Collector, G. R. No. L-12353, Sept. 30, 1960; St. Stephen's Association v. Collector, G. R. No. L-11238, Aug. 21, 1958; and Roman Catholic Archbishop of Cebu v. Collector, G. R. No. L-16683, Jan. 31, 1962), for determining what is an appealable decision within the purview of the provisions of Section 7(1) of Republic Act No. 1125, this Court, in its resolution dated November 11, 1962, in the case of Philippine Planters Investment Company, Inc., v. Acting Commissioner of Internal Revenue, C. T. A. Case No. 1266, said:

> "A careful review of the foregoing cases will show that the element determinative of the appealability of a decision of the Commissioner of Internal Revenue is its finality. If an assessment is not contested administratively, it is considered as the final decision which is appealable to the Court of Tax Appeals within 30 days from receipt thereof. (Republic v. Magalona, supra; Republic v. Gamboa, supra; Republic v. Albert, supra.) If the assessment is contested or the taxpayer files a request for reconsideration thereof, and the assessment is modified or revised, the last unrevised or unmodified decision is appealable. (Pangasinan Transp. Co. v. Blaquera, supra; Tomas B. Villamin v. Coll., supra; Ker & Co., supra.) If the request for reconsideration is denied, or the original assessment is maintained, the appealable decision is either the assessment itself (North Camarines Lumber v. Coll., supra; Ker & Co. v. Coll., supra), or the decision on the request for reconsideration (St. Stephen's Association v. Coll., supra; Roman Catholic Archbishop of Cebu v. Coll., supra), depending upon which is the Commissioner's final decision. (underlining supplied)

We believe that the present case is more in accord with the cases of the North Camarines Lumber v. Collector, supra; and Ker & Co. v. Collector, supra, in the sense that the letter-assessment (Annex "A", Petition) became disputed when the petitioner asked for its reconsideration, cancellation, or withdrawal upon the filing of his letter dated February 18, 1957 (Annex "B", Petition), but automatically became the appealable decision, when the petitioner in his letter dated April 15, 1958, and received by the respondent on the same date (Annex "F", Petition), flatly refused to comply with the conditions set forth by the latter in his letter dated March 25, 1958 (Annex "B", Petition).

Petitioner cannot be allowed to tie the hands of the respondent by refusing to comply with the conditions set forth by the latter before granting the request for reinvestigation, and then let the letter-assessment be kept hanging ad-infinitum at the whim of the taxpayer. This is tantamount to allowing the taxpayer to dictate on the respondent, and thwart the collection of taxes.

That the letter-assessment, Annex "A", Petition, was considered by the respondent as the appealable decision, is made more manifest when the latter, on September 1, 1958, filed in the Court of First Instance of Manila, Civil Case No. 37371 for the collection of the same amount of tax liability demanded in the said letter-assessment. This action of the respondent erased all doubts as to his manifest intention.

The 30-day period within which to appeal pursuant to the provisions of Section 7(1), of Republic Act No. 1125, commenced to run on April 15, 1958. Petitioner having filed the present petition only on September 9, 1963, he is therefore late by five (5) years, four (4) months, and twenty-four (24) days. Obviously, the right to appeal from the letter-decision (Annex "A", Petition) has long been lost.

Although our ruling, heretofore expressed, renders unnecessary our passing upon the second ground of the motion to dismiss, nevertheless, it may be stated th_t the plea of abatement based on the pendency of Civil Case No. 37371 of the Court of First Instance of Manila between the same parties for the same cause is well taken. Certainly, between the present case and said Civil Case No. 37371 of the Court of First Instance of Manila, now on appeal to the Supreme Court, there is identity of parties, identity of subject matter, and identity of cause of action, such that final judgment by the Supreme Court in said case would be prejudicial (*res judicata*) to the present case (San Diego v. Cardona, 70 Phil., 281, 283).

PREMISES CONSIDERED, the petition is hereby dismissed with costs against the petitioner.

SO ORDERED.

Manila, March 3, 1964.

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

AUGUSTO M. LUCIANO
Associate Judge