REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LUZON CEMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 2033

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RESOLUTION

This is a "Motion to Dismiss" petitioner's appeal from an alleged decision of respondent dated July 9, 1969, denying petitioner's protest against a ruling of respondent holding sales of cement by manufacturers thereof subject to the sales tax under Section 186 of the National Internal Revenue Code.

Briefly, the facts are:

Petitioner is a corporation duly organized and existing under the laws of the Philippines engaged in the manufacture and sale of cement. On July 29, 1968, petitioner and other cement manufacturers, in a conference held in the office of respondent, were informed of their liability to the 7% sales tax prescribed in Section 186 of the Revenue Code, as amended, on their sales of cement. In this conference it was agreed that petitioner, together with the other members of the Cement Association of the Philippines, would file their memoranda in support of their contention that they are not liable to the

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sales tax. Accordingly, petitioner and the other cement manufacturers, in pursuance of this agreement, filed with respondent their memorandum dated September 5, 1968 (Annex "D"), supplemental memorandum dated September 11, 1968 (Annex "E"), and their second supplemental memorandum dated February 27, 1969 (Annex "H"). In a letter dated July 9, 1969 (Annex "J"), received by petitioner on July 16, 1969, respondent rejected the petition of cement manufacturers that they be held not subject to the sales tax on their sales of cement. From this decision, petitioner, on August 13, 1969, filed with this Court the present petition for review.

Respondent has filed a motion to dismiss the herein appeal on the following grounds: (a) that this Court has no jurisdiction over the subject matter of the action; (b) that the petition for review is premature; and (c) that it does not state a sufficient cause of action. The motion is predicated on the fact that since respondent has not made an actual assessment against petitioner and that respondent has merely indicated an intention to make an assessment against petitioner for the sales tax on its sales of cement, the present appeal does not state a cause of action.

Petitioner, however, insists that notwithstanding the absence of an actual assessment, respondent's letter dated July 9, 1969, denying petitioner's protest against the alleged contemplated assessment to be made by respondent, is an appealable decision because it is embraced in the phrase "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue." (Section 7, paragraph (1), Rep. Act No. 1125.)

It is argued that the law does not require that actual assessment be made for this Court to acquire jurisdiction; it is enough that there be a "decision" involving any matter arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue. It is further contended that respondent can be restrained by prohibition from proceeding with the proposed assessment because the contemplated action is illegal and contrary to law. Accordingly, it is prayed that said proposed assessment be also declared illegal.

Petitioner's contention is untenable. The pertinent portion of Section 7 of Republic Act No. 1125 provides:

> Sec. 7. Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> (1) Decisions of the Commissioner 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 law administered by the Bureau of Internal Revenue.

The phrase "decisions of the Commissioner of Internal Revenue in cases involving disputed assessments" refers to actual assessments or actual determinations of tax liability, and does not include proposed or contemplated assessments. The court cannot waste its time adjudicating fancied or hypothetical cases.

As was aptly held in previous cases (Ventanilla v. Board of Tax Appeals, 98 Phil. 988, Unrep. ; Collector of Internal Revenue v. Benipayo, G. R. No. L-13656, January 31, 1962; see also Bull v. U.S. 295 U.S. 247), the word "assessment" as used in the law, is one which determines and fixes the tax liability of a taxpayer, and gives rise to an obligation to pay the amount assessed and demanded. It must be actual and final (Dionisio R. Lantin v. Commissioner of Internal Revenue, CTA Case No. 1951, April 10, 1969), and the decision to be appealable must be a decision on a disputed assessment. (Commissioner of Internal Revenue v. Villa, G. R. No. L-23988, January 2, 1968.)

In this case, petitioner seeks a declaration by this Court that the opinion of respondent as to its sales tax liability is not in accordance with law and that respondent be enjoined from making an assessment against petitioner. The herein appeal seeking to declare respondent's opinion as contrary to law is in effect an action for declaratory relief which is not authorized by law. (See National Dental Supply Co. v. Meer, 90 Phil. 265; Rodriguez v. Blaquera, G. R. No. L-13941, Sept. 30, 1960; La Perla Cigar & Cigarette Factory v. Sec. of Finance, C.T.A. No. 1892, May 29, 1968.) As an action for prohibition or injunction, this Court has no jurisdiction to entertain the same. The authority of this Court to issue writs of prohibition or injunction is merely ancillary to and in furtherance of its appellate jurisdiction. (Collector of Internal Revenue v. J. C. Yuseco, et al., G. R. No. L-12518, October 28, 1961.) In the case just cited, the Supreme Court held:

> Nowhere does the law expressly vest in the Court of Tax Appeals original jurisdiction to issue writs of prohibi-

> tion and injunction independently of, and apart from, an appealed case. The writ of prohibition or injunction that it may issue under the provisions of section 11, Republic Act No. 1125, to suspend the collection of taxes, is merely ancillary to and in furtherance of its appellate jurisdiction in the cases mentioned in section 7 of the Act. The power to issue the writ exists only in cases appealed to it. This is reflected in the explanatory note of the bill (House No. 175), creating the Court of Tax Appeals.

WHEREFORE, the present petition for review is hereby dismissed, without pronouncement as to costs.

SO ORDERED.

Quezon City, November 24, 1969.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge