REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAUSTO R. TURCUATO,
Petitioner,

- versus - C.T.A. CASE NO. 2111

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

This refers to the motion for the dismissal of this case on jurisdictional grounds filed by respondent.

It appears that on March 27, 1962, respondent assessed and demanded payment from petitioner the amount of ₱6,282.90 as commercial broker's fixed and percentage taxes, inclusive of surcharge, for the period from 1959 to 1960 plus the amount of ₱980.00 as compromise penalty. On May 10, 1962, petitioner wrote the Commissioner of Internal Revenue requesting the withdrawal and cancellation of said assessment which was denied by respondent on August 3, 1962. On August 17, 1962, counsel for petitioner requested for a reinvestigation and review of the case by the Appellate Division but said request was likewise denied by respondent on September 18, 1962. The denial was acknowledged by counsel for petitioner in his reply letter to respondent dated October 4, 1962 reiterating his request that the case be set for hearing before the Appellate Division.

Upon these facts respondent urges in its motion to dismiss that the 30-day period within which to appeal to this Court has already prescribed, since the denial of the request for reinvestigation dated September 18, 1962, was a final decision, and that petitioner should have filed his appeal within thirty days (30) from October 4, 1962, the date of the receipt of the denial for reinvestigation. Respondent further alleged that counsel's letter dated October 4, 1962 reiterating his request for a hearing before the Appellate Division was merely pro-forma and did not toll the running of the thirty day (30) period provided under Sec. 11 of Rep. Act No. 1125.

It appears that this case is one of the numerous cases of similar nature handled by counsel of petitioner involving different taxpayers. In the communication between them, respondent and counsel for taxpayers sometimes dealt with said cases jointly and not separately. Subsequent to the letter of September 18, 1962, which is being claimed to be the final decision, respondent wrote petitioner's counsel on September 26, 1962 that:

> With reference to your various letters for and in behalf of your various clients, appealing from the assessments of this Office against them for broker's fixed and percentage taxes in relation to their business dealings with the Inter-

> national Harvester Macleod, Inc., I have the honor to inform you that your administrative appeal for and in behalf of said clients will be held in abeyance pending resolution of the issues on a similar case which was appealed by you to the Court of Tax Appeals.
>
> In order to resolve once and for all the factual and legal issues arising from the judicial appeal of one of your clients, this Office has decided to deny your request for an administrative hearing of each of the cases of your various clients which are similar to the case elevated by you on appeal to the Court of Tax Appeals.

On October 12, 1962, petitioner executed a waiver of the statute of limitation. On July 27, 1967, respondent wrote petitioner that final resolution of the protest is "being held in abeyance until the Supreme Court render its decision on a similar case involving the same factual and legal issues brought to it on appeal" and at the same time requesting counsel for petitioners to "urge your clients to waive anew the statute of limitations" pursuant to which petitioner executed the required waiver on August 30, 1967, extending the period to December 31, 1970.

Respondent's contention that the denial dated September 18, 1962 was his final decision is not in keeping with the evidence adduced by the parties and the records of this case. In said letter respondent merely requested petitioner's counsel to "urge your client to pay the said sum of

₱7,262.90 in order that the case may be closed." This tenor of the letter hardly connotes finality. Respondent, on the other hand, clearly manifested that resolution of petitioner's motion for reconsideration was being held in abeyance. Granting, *arguendo*, that respondent intended the denial of September 18, 1962 to be final (Algue, Inc vs. Comm. of Int. Rev., CTA Case No. 1620, Jan. 16, 1968), it can be safely said that he reconsidered the finality of said denial by his subsequent communications to petitioner. Thus, we are of the opinion that the 30-day period for appeal to this Court cannot be counted from October 4, 1962.

We further note, however, that paragraph XII of the petition for review alleges that -

> Notwithstanding the fact that no final decision has been rendered by the respondent on petitioner's protest and/or request for reconsideration, this petition is being filed by petitioner in view of information received from the Bureau of Internal Revenue that a Warrant of Distraint and Levy may be served upon petitioner, x x x.

Aside from this admission, it may also be said that there is nothing in the record of this case to show that any such final decision has been rendered by respondent. While a warrant of distraint and levy is equivalent to a denial of a pending motion for reconsideration or reinvestigation (Frederick L. Hahn vs. Comm. of Int. Rev., CTA Case No. 1937, Resolution of April 30, 1969), it is so only when the Commissioner has not actually taken any action on the motion or request for reconsideration. (Gepte vs. Comm. of Int. Rev., CTA Case No. 1511, Resolution of March 31, 1971.)

In the instant case, there is even no showing that a warrant of distraint and levy had actually been issued. It is true that there is a copy of a warrant in the B.I.R. record but there is nothing therein that shows that it has been served. The warrant of distraint and levy takes effect only when it is served (Gepte vs. Comm. of Int. Rev., supra). Under the circumstances, this petition for review is premature.

WHEREFORE, the petition for review is hereby dismissed for being premature. Without pronouncement as to costs.

SO ORDERED.

Quezon City, April 2, 1974.

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge

ESTANISLAO R. ALVAREZ
Associate Judge
(Did not take part)