REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DY PAC & COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE No. 1945

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

RESOLUTION

This is in connection with the motion filed by respondent on October 31, 1968, seeking the dismissal of petitioner's appeal on the ground that it was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

On March 9, 1967, respondent assessed against petitioner the amounts of ₱85,233.02 and ₱54,408.23 as forest charges and surcharges and sales tax and surcharge, respectively, or a total sum of ₱139,641.-25 for the period from April, 1961 to May, 1963.

On April 19, 1967, petitioner protested the assessment and requested that it be cancelled or withdrawn.

In a letter dated April 26, 1967, respondent denied the protest of petitioner which letter was received by petitioner on May 16, 1967.

On July 3, 1967, petitioner reiterated its objections to the assessment, making reference to its previous letter of April 19, 1967, and again requested that the same be cancelled or withdrawn. Respondent, in a letter dated October 18, 1967, received by petitioner on November 7, 1967, denied the request for cancellation of the assessment and held that -

"In view of the foregoing, you are hereby requested for the last time to pay the aforesaid sum of ₱139,641.25 within thirty (30) days from receipt hereof; otherwise, collection thereof will be enforced thru the remedies prescribed by law, without further notice. . .

"Failure on your part to settle the said tax account within the abovestated period will also constrain this Office to recommend the criminal prosecution of your President and/or other responsible officers for the enforcement of the penal sanctions of the Revenue Code." (p. 20, CTA rec.; Underlining supplied.)

On December 2, 1967, petitioner wrote a letter to the Secretary of Finance requesting him to withdraw respondent's assessment. The Secretary of Finance endorsed said request to respondent who, on May 23, 1968, wrote petitioner a letter reiterating his previous demand for the payment of ₱139,641.25.

On July 5, 1968, petitioner filed the instant petition for review.

Respondent contends that this Court has no jurisdiction to entertain this appeal on the ground that it was filed beyond 30 days from receipt of respondent's appealable decision dated October 18, 1967. On the other hand, petitioner claims that the appealable decision is the letter of respondent dated May 23, 1968 which it received on June 5, 1968.

The law in point provides -

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 . . . may filed an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. (Rep. Act No. 1125.)

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The decision of the Commissioner of Internal Revenue from which appeal can be taken to this Court within 30 days from receipt thereof is that which has the element of finality. (See St. Stephens Association vs. Coll. of Int. Rev., 104 Phil. 314; Phil. Planters Investment Co. vs. Actg. Comm. of Int. Rev., CTA Case 1266, Nov. 11, 1962; Algue, Inc. vs. Comm. of Int. Rev., CTA Case 1620, Jan. 16, 1968.) In the instant case, we consider respondent's letter dated October 18, 1967 as the appealable decision because he considered it as his last and final decision; hence, his warning to petitioner - "for the last time to pay the aforesaid sum of ₱139,641.25 within thirty (30) days from receipt thereof; otherwise, collection thereof will be enforced thru the remedies prescribed by law, without further notice." Also, the finality of his decision becomes more manifest when he stated in the last paragraph of said letter that -

> Failure on your part to settle the said tax account within the abovestated period will also constrain this Office to recommend the criminal prosecution of your President and/or other responsible officers for the enforcement of the penal sanctions of the Revenue Code. (p. 20, CTA rec.; Underlining supplied.)

Respondent's ruling prior to his decision of October 16, 1967 was merely tentative in character pending his review of the facts and applicable law presented by petitioner in support of its requests for cancellation and withdrawal of the assessment.

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Hence, petitioner had 30 days from November 7, 1967, the date of receipt by petitioner of respondent's decision, within which to appeal to this Court, or up to December 7, 1967. Since the present appeal was filed only on July 5, 1968, the same was obviously filed out of time.

Although petitioner appealed respondent's decision of October 18, 1967 to the Secretary of Finance, the same did not suspend the running of the 30-day period for appeal since the Secretary of Finance is not the proper official designated by law against whom a request for reconsideration of a decision should be filed. (See La Paz Y Bien Viaje vs. Coll. of Int. Rev., CTA Case 323, Dec. 27, 1957; Tang Ho vs. Coll. CTA Case 279, May 18, 1957.) Besides, petitioner's letter to the Secretary of Finance did not adduce new grounds not previously alleged and, therefore, the same is merely pro-forma. (See Roman Catholic Archbishop of Cebu vs. Coll., L-16683, Jan. 31, 1962; Bacnotan Cement Industries, Inc. vs. Comm. of Int. Rev., CTA No. 1582, June 10, 1968.)

IN VIEW OF THE FOREGOING, the herein appeal is hereby dismissed for lack of jurisdiction, without pronouncement as to costs.

SO ORDERED.

Quezon City, Philippines, July 31, 1969.

ROMAN M. UMALI
Presiding Judge

I concur:

RAMON L. AVANCEÑA
Associate Judge