REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HANABER, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4817

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

3/8/93

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

R E S O L U T I O N

Respondent Commissioner of Internal Revenue, in a verbal motion made in open court on January 27, 1993, seeks the dismissal of petitioner's appeal on the ground of lack of jurisdiction. He contends that the suit in this case is premature since the assessment has not been disputed or protested, hence, there could not be any decision that may be appealed to this Court in accordance with Section 229 of the National Internal Revenue Code, as amended.

We agree with the proposition of respondent.

The pertinent facts as alleged in the petition for review disclose that sometime on April 8, 1992, petitioner received two Assessment Notices, both dated March 30, 1992, requiring it to pay the amount of P58,525.90, as deficiency income tax and the amount of P172,734.54, as deficiency percentage tax.

While petitioner avers that prior to the final assessments, it protested and held conferences with the BIR Regional Officials assigned to the examination of its account in connection with the Pre-Assessment Notices of respondent dated February 18, 1992, demanding payment of deficiency income and percentage taxes for 1988, however this is not the protest contemplated by law but the protest or request for reconsideration on the aforementioned final assessment which was never done before petitioner appealed to this Court on June 4, 1992.

Obviously, the assessments not having been protested or contested, there could not be a decision on the disputed assessments that may be appealed to this Court. Under Section 7(1) of Republic Act No. 1125, what is reviewable by this Court on appeal is the decision of the Commissioner of Internal Revenue on a disputed assessment and not the assessment itself. Thus, it has been held:

> The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7

of Republic Act 1125, the pertinent part of which states:

> Sec. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
>
> (1) Decisions of the Collector (now Commissioner) of Internal Revenue in cases involving disputed assessments, refunds or 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 word "decisions" in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself. We quote what this Court said aptly in a previous case:

> "In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same

> because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, xxx" (Emphasis supplied)

The same interpretation finds support in Section 11 of Republic Act 1125, which states:

> "Sec. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector (now Commissioner) of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling." (Emphasis supplied)

Note that the law uses the word "decisions" not Assessments", thus further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against an assessment but not the assessment itself.

Since in the instant case the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed asssessmsents. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Tax Appeals, 22 SCRA 3, [1968]; Perfecto V. Fernandez vs. Commissioner of Internal Revenue, C.T.A. Case No. 3432, February 25, 1983.)

Under Section 229 of the National Internal Revenue Code, as amended, an assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

It is thus clear beyond doubt that the decision on the request for reconsideration or reinvestigation is the decision on the disputed assessment which is appealable to this Court. It follows that if the assessments are not formally contested or protested administratively, as what happened in the case at bar, the taxpayer has no right to appeal.

Moreover, granting for purposes of arguments that the final assessment is the one appealable, the record shows that the subject petition for review was filed beyond the thirty (30) day period prescribed under Section 11 of R. A. 1125. The final assessment was received by Petitioner in April 8, 1992 and the instant petition was filed only on June 4, 1992.

IN VIEW OF THE FOREGOING, the petition for review filed in this case is hereby DISMISSED for lack of jurisdiction at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, March 8, 1993.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge