REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BONIFACIO V. MAGNO,
Petitioner,

- versus - C.T.A. CASE NO. 2116

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

This refers to petitioner's motion for a resolution on respondent's motion to dismiss this case on jurisdictional grounds.

On May 31, 1962 petitioner received a letter of respondent dated April 27, 1962 assessing him in the sum of ₱49,311.83 as commercial broker's fix and percentage taxes, plus surcharge and the sum of ₱5,000 as compromise penalty for the years 1956 to 1959. In a letter dated June 6, 1962, petitioner protested the assessment. In a letter to petitioner's counsel dated August 3, 1962 respondent denied the protest and requested said counsel "that you urge your client to settle" said amount "in order that this case may be closed." In a letter dated August 23, 1962 petitioner requested a reinvestigation but this was likewise denied by respondent in a letter dated September 21, 1962 receipt of which was acknowledged by petitioner in a letter dated October 5, 1962. In the letter of acknowledgment petitioner requested a reconsideration of the denial of September 21, 1962.

Respondent's pretention is that the letter of denial dated September 21, 1962 was final in nature and petitioner should have appealed from it within thirty days from October 5, 1965 when petitioner received same and this petition which was filed on May 12, 1970 is out of time.

It appears that this case is one of a number of cases involving the same issues handled by the same counsel. In the communications between them, respondent and petitioner's counsel sometimes dealt with said cases jointly and not separately. Respondent's letter to petitioner's counsel dated September 26, 1962 runs as follows:

> 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 International 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.

In a letter dated January 8, 1963 respondent notified petitioner that its request for reconsideration will be given due course provided it executed a waiver and in a letter of the same date, respondent advised the Regional Director of San Fernando, Pampanga that petitioner's protest was pending decision. Subsequently, petitioner sent to respondent the required waiver dated January 19, 1963. In a letter dated August 2, 1968 respondent asked petitioner to extend the period of the waiver of the Statute of Limitation to December 31, 1972 and petitioner complied with the demand extending it to June 30, 1975.

Respondent's position that the denial of September 21, 1962 was final in tenor is not in conformity 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 amount assessed "in order that the case may be closed" which scarcely connote finality. On the other hand, respondent clearly manifested that resolution of petitioner's motion for reconsideration was being held in abeyance. The least that can be said in this respect is that respondent, granting <u>arguendo</u> that he intended the denial of September 21, 1962 to be final, reconsidered the finality of

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said denial (Torres vs. Comm. of Int. Rev., C.T.A. CASE No. 2118, Resolution of January 30, 1973). Thus, we are of the persuasion that the thirty-day period for appeal to the Court of Tax Appeals can not be counted from notice of the denial of September 21, 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. 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, March 15, 1974.

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge

ESTANISLAO R. ALVAREZ
Associate Judge