REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ZAMBOANGA CITY RURAL
BANK, INC.,
Petitioner,

- versus -

C.T.A. CASE No. 2348

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

R E S O L U T I O N

Submitted for resolution is respondent's motion, dated December 29, 1971, seeking the dismissal of the instant appeal on the ground that this Court has no jurisdiction to entertain the same.

On September 22, 1971, respondent, through the B.I.R. Regional Director of Zamboanga City, assessed against petitioner the amount of ₱10,987.92, as deficiency income tax, inclusive of delinquency penalties, for the period from January 1, 1969 to June 30, 1969.

In a letter dated October 27, 1971, petitioner protested the aforesaid assessment and requested that the same be reconsidered. The Regional Director, on October 28, 1971, wrote petitioner a letter denying its protest and at the same time informed it that he was forwarding the case to the Commissioner of Internal Revenue for final resolution.

On November 20, 1971, petitioner instituted the present appeal without waiting for the final decision of respondent on his request for reconsideration.

We find respondent's motion meritorious.

The letter of the B.I.R. Regional Director of Zamboanga City, dated October 28, 1971, denying petitioner's request for reconsideration of the assessment is not the appealable decision within the meaning of Sections 7(1) and 11 of Republic Act No. 1125, the relevant portions of which provide -

> 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;
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> x x x x x x
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> SEC. 11. Who may appeal; effect of appeal.-Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, x x x may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
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> x x x x x x
> (Underscoring supplied)

It has been held that the word "decision" or "ruling" mentioned in the above provisions of law which can be the basis of an appeal to this Court is the final decision or ruling of the Commissioner of Internal Revenue. In other words, the element determinative of the appealability of a decision is its finality[1] and the determination thereof rests,

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[1]See St. Stephens Ass. vs. Coll. of Int. Rev., 104 Phil. 314; Philippine Planters Investment Co., Inc.,vs. Comm. of Int. Rev., C.T.A. Case [Res.] No. 1266. Nov.11, 1962; Algue, Inc. vs. Comm. of Int. Rev.,CTA Case No. 1620, Jan. 16, 1968; Dy Pac & Co., Inc. vs.Comm. of Int. Rev., CTA Case [Res.] No. 1945, July 31, 1969; Constantino vs. Comm. of Int. Rev., CTA Case [Res.] No. 2084,April 29, 1971.

not with the taxpayer, but with the Commissioner of Internal Revenue[2].

The ruling of the B.I.R. Regional Director of Zamboanga City, dated October 28, 1971, which is being appealed to this Court, is not the final decision or ruling on the questioned assessment because the Regional Director chose to refer petitioner's case to respondent for final decision. This can be gleaned from his letter, the pertinent portion of which states:

> In the light of the foregoing, it is the opinion of this Office that the Zamboanga City Rural Bank, Inc. is subject to corporate income tax during the period from July 1, 1968 to June 11, 1969. <u>However, this case, on even date, is forwarded to the Commissioner of Internal Revenue for his final resolution</u>. A copy of our transmittal letter is herewith enclosed for your reference. (P. 10, CTA rec., underscoring supplied.)

Also, in his transmittal letter to respondent, the Regional Director requested that a final ruling be made on the issue involved so that his office could be guided accordingly. The relevant portion of said letter reads:

> In view of the foregoing, <u>it is respectfully requested that a final ruling be made on the issues involved in order that this Office could be guided accordingly</u>.

The above actuations of the Regional Director reveal unmistakably his intention not to consider his letter, dated October 28, 1971, denying petitioner's protest, as a final and appealable decision; otherwise, he would not have referred the matter to his superior, respondent herein, for final ruling. Consequently,

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[2]Algue, Inc. vs. Comm. of Int. Rev., <u>supra</u>; Philippine Planters Investment Co., Inc. vs. Comm. of Int. Rev., <u>supra</u>.

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the filing of the present petition for review is premature and, therefore, this Court has no jurisdiction over the same.

WHEREFORE, the instant petition for review is hereby dismissed for lack of jurisdiction. Without pronouncement as to costs.

SO ORDERED.

Quezon City, February 11, 1972.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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