file:

A. SORIANO Y CIA., administrator
and on behalf of BLANCA ORDOÑEZ,
Petitioner,

- versus - C.T.A. CASE NO. 2443

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

8/31/76

D E C I S I O N

Petitioner, A. Soriano Y Cia., in its capacity as administrator and representative of Blanca Ordoñez, has appealed from the decision of respondent Commissioner of Internal Revenue, holding her liable for 1959 deficiency income tax and interest amounting to ₱3,180.10.

Blanca Ordoñez, a non-resident alien, derived income from Philippine sources in 1959. On April 6, 1960, her administrator and representative filed her income tax return for 1959, claiming therein a deduction of ₱5,501.93 from gross income as alleged business expenses. On August 16, 1963, on the theory that Blanca Ordoñez was not engaged in trade or business in the Philippines, respondent Commissioner, through the BIR Regional Director of North Manila, disallowed the said deduction from gross income and assessed Blanca Ordoñez the sum of ₱3,180.10 as deficiency income tax and interest. On September 3, 1963, petitioner filed a written protest with the Assessment Branch of the North Manila Regional Office, claiming that Blanca Ordoñez was engaged in buying and selling shares of stocks in the Philippines.

Petitioner's protest, however, was not forwarded to the Legal Branch of the BIR Regional Office for action. The Regional Director of North Manila, without any knowledge thereof, filed a complaint for collection with the City Court of Manila on August 14, 1968 under Civil Case No. 173206. On December 16, 1969, at the instance of petitioner's counsel, said complaint was dismissed by the said Court for lack of jurisdiction, as it was established during the hearing that the case involved a disputed assessment which cannot be resolved by an ordinary civil action for the collection of the deficiency income tax.

On December 3, 1970, the Regional Director of North Manila formally denied petitioner's protest of September 3, 1963, stating, inter alia, that "In case you are not in accord with this decision, you may appeal the same to the Court of Tax Appeals within the same period of thirty (30) days from your receipt hereof."

On December 22, 1970, however, petitioner's counsel answered the letter of the Regional Director alleging and invoking the defense of prescription of collection. On September 28, 1972, a second action for collection was instituted by the Bureau of Internal Revenue with the Municipal Court of Makati, Rizal, under Civil Case No. 10382. After receipt of notice of said complaint on October 26, 1972, petitioner's counsel interposed the present appeal on November 8, 1972 on behalf of Blanca Ordoñez.

The two issues posed for resolution are the following:

> (1) Whether or not this Court has jurisdiction to entertain the present appeal; and
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> (2) Whether or not the right of the respondent Commissioner of Internal Revenue to collect the deficiency income tax has already prescribed.

FIRST ISSUE:

It is contended by respondent that petitioner's appeal was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125 and, therefore, the same cannot be taken cognizance by this Court for lack of jurisdiction. Respondent claims that the final decision appealable to this Court was his letter dated December 3, 1970. Respondent further claims that petitioner's letter of December 22, 1970, being merely pro-forma, did not stop the running of the 30-day period from receipt of said decision within which petitioner could appeal to this Court.

We agree with respondent that the letter of December 3, 1970 constitutes his final and appealable decision for purposes of this appeal. (See Tropical Distributors, Inc. vs. The Comm. of Int. Rev., CTA No. 2345, Oct. 10, 1975; Pedro R. Rances vs. The Hon. Comm. of Int. Rev., CTA No. 2605, Dec. 18, 1974). However we sustain the view that the letter of petitioner dated December 22, 1970, requesting reconsideration of respondent's assessment, is not pro-forma and therefore, it stopped the 30-day period for appeal. In the first place, the prescription of collection alleged in the said letter of December 22, 1970 is a new defense, the same not having been availed of and raised by petitioner previously. (See Collector vs. Court of Tax Appeals, 109 Phil. 1027; cited in Wong Ban Kee, et al. vs. Comm. of Int. Revenue, CTA No. 2321, June 6, 1975).

Secondly, the said letter of petitioner is but the first request for reconsideration of a decision on a disputed assessment rendered by the respondent. (See Noblejas vs. Comm. of Int. Rev., CTA No. 1923 [resolution] Oct. 4, 1968.)

On December 22, 1970, the date petitioner presumptively learned of the final decision of respondent, the 30-day period for appeal did not commence to run. It started running only on October 26, 1972 when petitioner received notice of the complaint for collection filed by respondent in the Municipal Court of Makati, Rizal, because said complaint is an implied denial of petitioner's request for reconsideration. From October 26 to November 8, 1972, when the complaint was received and the present appeal was filed, only a period of thirteen (13) days had elapsed. Consequently, this Court has jurisdiction to take cognizance of this appeal.

SECOND ISSUE:

Petitioner contends that the right of respondent to collect the tax in question has already prescribed. By deducting one year, four months and two days, that is from August 14, 1968 to December 16, 1969, when the original complaint for collection in the City Court of Manila was pending, from the total period of nine years, one month and twelve days consumed by the respondent, that is from August 16, 1963 (date of assessment) to September 28, 1972 (date of filing the second complaint in the Municipal Court of Makati), leaves a period of seven years, nine months, and ten days, or beyond the five-year period for collection prescribed by Section 332(c) of the Tax Code.

Petitioner contends further that the filing of its protest on September 3, 1963 did not suspend the prescriptive period of collection because said letter was disregarded and it was not given due course by the respondent. On the other hand, respondent contends that the prescriptive period for collection has not yet prescribed because the same was suspended by petitioner's protest of September 3, 1963.

We agree with the petitioner because Section 332(c) of the National Internal Revenue Law provides as follows:

> "(c) Where the assessment of any internal revenue tax has been made within the period of limitation above-described, such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in wirting by the Commissioner of Internal Revenue and the taxpayer before the expiration of such five-year period."

In this case, the assessment was timely made by respondent on August 16, 1963 and, therefore, the period to collect the tax commenced to run from said date. The running of this period was interrupted by the filing of the complaint for collection against petitioner in the City Court of Manila on August 14, 1968. After the dismissal of the complaint by the said Court on December 16, 1969, the period of prescription resumed to run again. By December 18, 1969, the five-year period prescribed by Section 332(c) of the Revenue Code, _supra_, had already expired. Obviously, the subsequent filing of the second action for collection in the Municipal Court of Makati on September 28, 1972 was too late.

In recapitulation, the total period for collection consumed by the respondent is more than 7 years, to wit:

Aug. 16/63, issuance of assessment, to Sept. 28/72 filing of the complaint in the Municipal Court of Makati, Rizal	9 yrs, 1 mo., 12 days
Less: Aug. 14, 1968 to Dec. 16, 1969 period when the case was pending in the City Court of Manila	1 yr., 4 mos., 2 days
Number of years consumed by the respondent to collect the tax	7 yrs., 9 mos. 10 days

Contrary to respondent's pretense, the 5 year prescriptive period for collection could not be suspended by petitioner's request for reconsideration of September 3, 1963 because the said request was neither granted nor given due course by the respondent since no investigation was made on account of petitioner's request. Thus, our Supreme Court held:

> . . . a mere protest and petiton for reconsideration of the assessment, without a resulting reinvestigation and introduction of new evidence on the part of the taxpayer, does not stop the running of the prescriptive period. (Republic vs. Alano, L-18865, Sept. 28, 1964; 12 SCRA 24; citing Collector vs. Solano, L-11465, July 31, 1958; Republic vs. Ablaza, 108 Phil. 1105).
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> . . . The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted in order to effect suspension (Republic vs. Gancayco, L-18307, June 30, 1964; 11 SCRA 380; citing Collector vs. Sayoc Consolidated Mining Co.,

Inc., L-11527, Nov. 25, 1958; Republic vs. Ablaza, supra).

WHEREFORE, the decision of the respondent Commissioner of Internal Revenue appealed from is reversed and his 1959 deficiency income tax assessment issued against petitioner is hereby cancelled and declared to be without force and effect. No costs.

SO ORDERED.

Quezon City, August 31, 1976.

ESTANISLAO R. ALVAREZ
Presiding Judge

WE CONCUR:

AMANTE FILLER
Associate Judge

CONSTANTE C. ROAQUIN
Associate Judge