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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE MANILA YACHT CLUB, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3641

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

2/15/84

D E C I S I O N

In its petition for review filed with this Court on May 25, 1983, petitioner The Manila Yacht Club, Inc., alleges that:

> 1. Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Roxas Boulevard, Manila. Petitioner is a non-profit and non-stock corporation primarily organized to promote yachting in the Philippines;
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> 2. Respondent is the Commissioner of the Bureau of Internal Revenue with office at the BIR National Building, Diliman, Quezon City where he may be served with summons and other court processes;
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> 3. On June 2, 1981, petitioner received from respondent a notice of assessment dated May 13, 1981 assessing the former for deficiency caterers and percentage tax for the years 1977 and 1978 in the amount of ₱374.26 and ₱763,158.05 respectively. A copy of said notice is hereto attached and made an integral part of this petition as Annex "A";
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> 4. On July 6, 1981, petitioner through its external auditor filed a protest letter dated June 22, 1981 contesting the assessment made by

respondent on the ground that Section 191-A upon which the assessment was made is non-existent as declared in the case of Manila Golf and Country Club vs. Commissioner of the BIR (C.T.A. Case No. 2630, March 30, 1977) and therefore without legal foundation. A copy of said letter, is hereto attached and made an integral part of this petition as Annexes "B" to "B-2";

5. On April 25, 1983, petitioner received a letter from respondent denying the former's protest letter and upholding the existence and validity of Section 191-A of the NIRC. Respondent likewise demanded from petitioner the payment of the deficiency caterer's and percentage taxes including surcharges and interest in the total amount of ₱1,057,898.44. A copy of said letter and the lists of the deficiency assessment are hereto attached and made an integral part of this petition as Annexes "C" to "C-6";

6. The sole issue involved in this case is whether or not the deficiency caterer's and percentage tax assessment is with legal basis;

7. The above-mentioned deficiency caterer's and percentage tax assessment is not only patently erroneous but is without any legal basis as pointed out in the preceeding paragraph 4 of this petition and as found by this Honorable Court of Tax Appeals in the Manila Golf & Country Club case (C.T.A. Case No. 2630) of which this Honorable Court may take judicial notice on the ground that Section 191-A is non-existent as declared in the above-cited case decided by this Honorable Court.

WHEREFORE, premises considered and after due hearing, petitioner respectfully prays of this Honorable Court that judgment be rendered ordering respondent to cancel the above-mentioned deficiency caterer's tax and percentage tax assessment referred to on paragraph 3 hereof.

> Petitioner further prays for such other reliefs and remedies just and equitable in the premises.

Instead of answering the petition for review of petitioner, respondent Commissioner of Internal Revenue filed a Motion to Dismiss dated September 5, 1983, on the ground that this Court has no jurisdiction to take cognizance of the appeal. The reason advanced is: (pp. 28-30, CTA records.)

> The law conferring jurisdiction on the Court of Tax Appeals is found in Section 7 of Republic Act No. 1125, the pertinent part of which states:
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> > "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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> The word "decision" in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the <u>decision</u> of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessment itself (Commissioner of Internal Revenue vs. Villa and Court of Tax Appeals, G.R. No. L-23988, Jan. 2, 1968, 22 SCRA 3).
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> Here, in letter dated April 25, 1983, respondent assessed and demanded from petitioner payment of the amount of ₱1,057,894.44

as deficiency fixed tax as caterer and contractor, caterer's and contractor's percentage tax and graduated fixed tax for the years 1977 and 1978, (Annex "C-2", Petition). On May 25, 1983, or exactly 30 days from the issuance of the assessment demand letter, petitioner filed the present petition for review with this Honorable Court praying, among others, that judgment be rendered ordering respondent to cancel the above assessment.

Petitioner failed to protest or contest the assessment/demand letter dated April 25, 1983, pursuant to the provisions of Section 7 and 11 of Republic Act No. 1125 but instead filed the instant petition for review directly to this Honorable Court.

In order that this Court may acquire jurisdiction, it is indispensable that the assessment be protested by petitioner and a decision rendered by respondent. (Candyman Incorporated vs. Commissioner of Internal Revenue, CTA Case No. 1872, Jan. 20, 1970).

Since the assessment/demand letter issued on April 25, 1983 was not contested nor protested, there is no decision appealable to this Honorable Court (Dionisio Lantin vs. Commissioner of Internal Revenue, CTA Case No. 1951, April 10, 1969).

> "WHERE a taxpayer questions an assessment and asks the Collector (Commissioner) to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefore, the assessment becomes a 'disputed assessment' that the Collector (Commissioner) must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector (Commissioner) on the disputed assessment x x x". (St. Stephen's Association et al., vs. Collector of Internal Revenue, 104 Phil. 314, 317).

Section 11 of Republic Act 1125, states:

> "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, 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)

We agree with this conclusion. Indeed, the issue here is not of first impression. In Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Tax Appeals, L-23988, January 2, 1968, 22 SCRA 3, where the factual setting is similar to that in the case at bar, the Supreme Court unequivocally ruled that if an assessment is not formally protested or contested administratively by filing a request for reconsideration or reinvestigation, the taxpayer has no right to appeal to the Court of Tax Appeals. The decision on the request for reconsideration or reinvestigation is the decision on the disputed assessment which is appealable. (See also St. Stephen's Association vs. Collector of Internal Revenue, 104 Phil. 314; Baguio Country Club vs. Collector of Internal Revenue, 105 Phil. 1269; Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue, L-16683, Jan. 31, 1962, 4 SCRA 279; Commissioner of Internal Revenue vs. Lilia Yusay Gonzales, L-19495, Nov. 24, 1966, 18 SCRA 757.)

Petitioner however argues: (pp. 34-35, CTA records.)

> On June 2, 1981, petitioner received a letter dated May 13, 1981 (attached to the petition as Annex "A") from respondent informing the former that its "internal revenue case for the years 1977 and 1978 has been referred to the Prosecution Division for evaluation of the criminal aspects thereof". The same letter also warned petitioner to refute the findings of the BIR, otherwise, the case will be recommended for criminal prosecution against its responsible officers. A demand letter of this nature necessitates urgent consideration and action. It is strange and unusual, however, for a taxpayer in a proposed assessment which respondent claims to be, to receive such a strongly worded demand letter with a warning against possible criminal prosecution. It is usual practice and standard procedure for the tax authority in a proposed assessment to merely invite the taxpayer to an informal conference to enable the latter to ventilate his position and present evidence, if necessary to controvert the findings of the BIR examiners on the proposed assessment. Thus, when petitioner in the instant case received the said demand letter, it regarded the same not just a proposed assessment but a final one. With expediency, therefore, the same letter was referred to petitioner's external auditor who, in turn, filed a protest letter dated June 22, 1981 on behalf of petitioner contesting and assailing the findings of respondent. In brief, petitioner argued that the assessment of respondent is devoid of legal basis on the ground that Section 191-A of the Tax Code is non-existent. The argument of petitioner is anchored on the fact that when the "Omnibus Tax Bill" was presented to the President of the Philippines for approval, the provision of law in dispute was expressly vetoed. The posture of petitioner was later affirmed when this Honorable Court in the case of Manila Golf Club vs. Commissioner of the BIR (CTA Case No. 2630, March 30, 1977) categorically declared Section 191-A as non-existent.

On April 25, 1983, however, petitioner received respondent's letter dated April 20, 1983 denying petitioner's protest letter on the ground that Section 191-A of the Tax Code is existent and therefore binding on petitioner. It further stated that the case of Manila Golf & Country Club vs. Commissioner of the BIR could not be invoked as the law on the case because it is on appeal to the Supreme Court. Because of the tenor of respondent's letter dated June 2, 1981, we hold and consider that respondent's letter dated April 20, 1983 denying petitioner's protest letter, was a final disputed assessment in fact and in law which therefore entitles petitioner to appeal to the Court of Tax Appeals by way of petition for review. The use of the word "proposed assessment" in respondent's denial letter is rather a misnomer if we consider and weigh the foregoing circumstances.

Section 319-A of the National Internal Revenue Code, as inserted by Presidential Decree No. 1773, January 14, 1981, provides:

> Sec. 319-A. Protesting of Assessment.- When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> <u>Such 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</u>. (Emphasis supplied)
>
> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the

> decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable. (As inserted by PD 1773.)

On the assumption that the letter of respondent dated May 13, 1981 (Annex "A", Petition for Review; Exh. "1", p. 62, BIR records), which was received by petitioner The Manila Yacht Club on June 2, 1981 as alleged by it (par. 3, Petition for Review), is not a proposed assessment but an assessment, which should "be protested administratively by filing a request for reconsideration or reinvestigation x x x within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable", we note that the protest letter dated June 22, 1981 of petitioner contesting and assailing the findings of respondent (Annex "B", Petition for Review; Exh. "2", pp. 66-69 & pp. 70-73, BIR records), or the request for reconsideration or reinvestigation as contemplated in Section 319-A, was filed, as clearly and plainly indicated therein, with the Prosecution Division of respondent on July 6, 1981. Counting from June 2, 1981 to July 6, 1981, thirty-four (34) days have already elapsed. It is thus beyond controversy that the thirty-day period specified in paragraph 2 of Section 319-A, *supra*, within which petitioner may protest administratively the letter of respondent dated May 13, 1981, which petitioner considers an "assessment", had already expired. Consequently, the "assessment" had become final and unappealable under Section 319-A of the Tax Code. It follows that this Court still lacks jurisdiction to entertain the instant appeal.

WHEREFORE, the petition for review is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, February 15, 1984.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge