

DY PAC & COMPANY, INC., PETITIONER, VS. COURT OF TAX APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. L-31369. October 18, 1977

Ponente: CASTRO, C.J.

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CASTRO, C.J.:

This is an appeal, by way of a petition for review, from (1) the resolution dated July 31, 1969 of the respondent Court of Tax Appeals dismissing the petition for review filed therein by the petitioner Dy Pac & Company, Inc. for lack of jurisdiction, the same having been filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125 (AN ACT CREATING THE COURT OF TAX APPEALS) and (2) the resolution dated November 24, 1969 denying the petitioner's motion for reconsideration.

The various steps, with their respective dates, taken by the petitioner, through its chief accountant, and by the Commissioner of Internal Revenue, before the petition for review was presented to the Court of Tax Appeals on July 5, 1968, are summarized in the main resolution appealed from, as follows:

"On March 9, 1967, respondent assessed against petitioner the amounts of P85,233.02 and P54,408.23 as forest charges and surcharges and sales tax and surcharge, respectively, or a total sum of P139,641.25 for the period from April, 1961 to May, 1963.

"On April 19, 1967, petitioner protested the assessment and requested that it be cancelled or withdrawn.

"In a letter dated April 16, 1967, respondent denied the protest of petitioner which letter was received by the petitioner on May 16, 1967.

"On July 3, 1967, petitioner reiterated its objections to the assessment, making reference to its previous letter of April 19, 1967, and again requested that the same be cancelled or withdrawn. Respondent, in a letter dated October 18, 1967, received by petitioner on November 7, 1967, denied the request for cancellation of the assessment and held that -?

'In view of the foregoing, you are hereby requested for the last time to pay the aforesaid sum of P139,641.25 within thirty (30) days from receipt hereof; otherwise, collection thereof will be enforced thru the remedies prescribed by law without further notice....

'Failure on your part to settle the said tax account will also constrain this Office to recommend the criminal prosecution of your President and/or other responsible officers for the enforcement of the penal sanctions of the Revenue Code. (p. 20, CTA rec; underlining supplied.).'

"On December 2, 1967, petitioner wrote a letter to the Secretary of Finance requesting him to withdraw respondent's assessment. The Secretary of Finance endorsed said request to respondent who, on May 23, 1968, wrote a letter reiterating his previous demand for the payment of P139,641.25.

"On July 5, 1968, petitioner filed the instant petition for review."

The pertinent provisions of Sections 7 and 11 of Rep. Act 1125 are hereunder quoted:

"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;

"x x x

"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 Commissioner 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." (Under-scoring supplied)

There is no debate that the petitioner's case is covered by Section 7 of Republic Act 1125 and, therefore, comes within the jurisdiction of the respondent court. But was said jurisdiction invoked by the petitioner within the period prescribed by Section 11? The central question is: which was the appealable decision of the Commissioner, the letter dated October 18, 1967 which was received by the petitioner on November 7, 1967, as the respondents contend, or the letter of May 23, 1968 which was received by the petitioner on June 5, 1968, as the petitioner insists? If the latter, then the petition for review filed with the respondent court on July 5, 1968 was timely; if not, the assessment had become final and executory.

We hold that the point from which the period to appeal should be counted is the receipt by the petitioner on November 7, 1967 of the letter dated October 18, 1967 of the respondent Commissioner.

Paragraph 1, Section 11 of Republic Act No. 1125, in express terms, allows appeal from the "decision or ruling of the Commissioner of Internal Revenue." The word "decision" has been interpreted to mean decisions of the Commissioner of Internal Revenue on protests of taxpayers against assessments.[1] And, in computing the 30-day period for appeal to the Tax Court, counting should begin from the date of receipt of the decision of the Commissioner on the disputed assessment.[2] However, where several re-requests for reconsideration have been filed with the Commissioner, it would appear that the communication from the latter overruling taxpayer's request for reconsideration and affirming the disputed assessment in terms clearly indicating finality of the action taken, constitutes the appealable decision or ruling.[3]

Considering the substance of the letter of the respondent Commissioner of October 18, 1967, it is evident that the said letter constitutes his "decision;" it has the unmistakable tenor of finality that would make it the appealable decision or ruling under Sections 7 and 11 of Republic Act No. 1125. The letter of October 18, 1967, in clear and un-equivocal terms, states:"

"...I have the honor to inform you that after a careful consideration of the facts of the instant case, as well as the law and jurisprudence applicable thereto, this Office has decided to deny your request for the withdrawal and cancellation of the aforementioned assessment.

"x x x x

"In view of the foregoing, you are hereby requested for the last time to pay the aforesaid sum of P139,641.25 within thirty (30) days from receipt hereof. Otherwise collection thereof will be enforced thru the remedies prescribed by law, without further notice.

"Failure on your part to settle the tax account within the abovestated period will also constrain this Office to recommend the criminal prosecution of your President and/or other responsible officers for the enforcement of the penal sanctions of the Revenue Code." (Underscoring supplied)

The respondent Commissioner himself considered the said letter as his "decision" that is final, hence his request for payment for the "last time." Prior to his letter-decision of October 18, 1967, the Commissioner must have considered his prior actions as tentative in character, pending his final resolution of the merits of the arguments of fact and law submitted by petitioners in support of their requests for cancellation and withdrawal of the assessment. This is the reason why, in the said letter-decision of October 18, 1967, the respondent Commissioner included an express statement that his office had decided^[4] to deny the petitioner's request and the latter was requested for the last time to pay the assessment, otherwise, the corresponding penal actions would be taken; and it must also have been for this reason that, in a reply-letter, dated February 1968, (Annex "L") to the indorsement of the Secretary of Finance requesting comment on the petitioner's prayer for reconsideration, and throughout the preliminary proceedings in the respondent court and in this Court, the respondent Commissioner unrelentingly clung to his assertion that it was his letter of October 18, 1967 that constituted his final decision on the matter. A pertinent portion of the reply-letter to the Secretary of Finance reads thus:"

"...I have the honor to inform you that in a previous letter of this Office dated October 18, 1967, copy enclosed for your ready reference, the taxpayer was requested to pay within thirty (30) days from receipt thereof of the amount of P139,641.25, as forest charges, sales tax and surcharge. Our letter is a decision on the taxpayer's administrative protest."

It is also quite certain that the petitioner himself must have believed that the letter of October 18, 1967 was the final decision of respondent Commissioner for otherwise he would not have turned to the Secretary of Finance immediately thereafter for possible relief.

It should further be said that the letter of May 23, 1968 was not a "decision" but rather a mere reiteration of the respondent Commissioner's previous decision contained in his letter of October 18, 1967.

The argument then that in computing the 30-day period prescribed by Section 11 of Republic Act No. 1125, the letter of the respondent Commissioner of May 23, 1968 denying the third request for reconsideration addressed to the Secretary of Finance should be considered as the final decision contemplated in Section 7, becomes untenable.

It is worth mentioning in this connection that all the petitions for reconsideration were premised on the same grounds. By his successive motions, the petitioner was able to delay the payment of the taxes due from it for two years, which, of course, is inimical to the interests of the State. The third request for reconsideration directed to the Secretary of Finance did not adduce new grounds. It may, therefore, be considered a mere pro-forma motion intended for the convenience of the petitioner. This being so, the letter in response thereto of the respondent Commissioner dated May 23, 1968 could hardly change the nature of the letter-decision of October 18, 1967.

"We cannot countenance the theory that would make the commencement of the statutory 30-day period solely dependent on the will of the taxpayer and place the latter in a position to put off indefinitely and at his convenience the finality of a tax assessment. Such an absurd procedure would be detrimental to the interest of the Government, for 'taxes are the lifeblood of the government, and their prompt and certain availability an imperious need.' (Bull vs. U.S., 795, U.S. 247)."^[5]

"While it is true that this Court had on several occasions recognized the right of and encouraged taxpayers to exhaust all possible administrative remedies before coming to it for the purpose of expediency and to avoid unnecessary court expense on the part of the litigants, this right is not without limit. Once the Commissioner of Internal Revenue has made clear to the taxpayer that his decision subject of a series of requests for reconsideration is final, as his letter of January 30, 1957 in the instant case, subsequent requests for

reconsideration thereof made pro-forma and for dilatory purposes should be ignored for the purpose of computing the running of the thirty-day period prescribed under Section 11 of Republic Act No. 1125. We cannot have the running of the period of appeal entirely at the discretion of the taxpayer." [6]

We thus hold that the letter of October 18, 1967 was the final decision of the respondent Commissioner appealable to the Tax Court; that the period to appeal such decision expired on December 7, 1967, so that when the petition for review was presented to the Court of Tax Appeals on July 5, 1968, the assessment in question had become final and executory; and that the subsequent request for reconsideration directed to the Secretary of Finance (who is not authorized by law to review decisions of the Commissioner of Internal Revenue) did not suspend the running of the reglementary period within which to appeal. [7]

Even if we consider, for the sake of argument, that it did suspend, still, the petition for review was filed out of time. Following the legal procedure of computing time under the "exclude the first include the last" method, it is clear that from November 7, 1967, the date when the petitioner received the respondent Commissioner's letter-decision of October 18, 1967, to December 2, 1967, the date when the petitioner sent its third request for reconsideration to the Secretary of Finance, 25 days had elapsed. From June 5, 1968, the date when the petitioner received the respondent Commissioner's letter of May 23, 1968, to July 5, 1968, the date the petitioner filed its petition for review with the Tax Court, an additional 30 days had elapsed. The appeal was therefore late by 25 days. The period to appeal being jurisdictional and non-extendible, the failure to file seasonably the petition for review was fatal. [8]

ACCORDINGLY, the dismissal of the petitioner's appeal by the Court of Tax Appeal's hereby affirmed, at petitioner's cost.

Teehankee, Makasiar, Muñoz Palma, Martin, Fernandez, and Guerrero, JJ., concur.

[1] CIR vs. Leonardo S. Villa and the CTA, G.R. No. L-23988, January 2, 1968; Republic vs. Juana del Rosario, et al., G.R. No. L-10460, March 11, 1959.

[2] Republic vs. Lim Tian Teng Sons & Co., Inc., G.R. No. L-21731, March 31, 1966.

[3] St. Stephen's Association vs. Collector, 55 O.G. 2243; Baguio Country Club vs. Coll., L-11419, April 22, 1959; Roman Catholic Archbishop of Cebu vs. Coll., L-16683, January 3, 1962; Morales vs. Collector of Internal Revenue, G.R. No. L-16759, March 31, 1966.

[4] No such term was used in previous communications of the respondent Commissioner to the petitioner.

[5] North Camarines Lumber Co. vs. Coll., L-12353, September 30, 1960, cited also in Roman Catholic Archbishop of Cebu vs. Collector, 4 SCRA, 283.

[6] Jose Ma. del Rosario vs. CTA, et al., G.R. No. L-17991, October 31, 1972, 6 SCRA 541.

[7] Roman Catholic Archbishop of Cebu vs. Collector, supra.

[8] Pangasinan Transportation Co., Inc. vs. Blaquera, G.R. No. L-13101, April 29, 1960; Chan Kian vs. CTA, G.R. No. L-12184, May 29, 1959.

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