

KER & COMPANY, LTD., PETITIONER, VS. THE COURT OF TAX APPEALS AND THE COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. L-12396. January 31, 1962

Ponente: PAREDES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/dc4e6ec5d150/>

PAREDES, J.:

An appeal from a resolution of the Court of Tax Appeals sustaining a Motion to Dismiss of the Collector of Internal Revenue, on the ground that said Court is without jurisdiction to take cognizance of the case.

On the basis of its income tax returns filed for the years 1947, 1948, 1949 and 1950, the petitioner was assessed by the Collector in the respective sums of P42,342.30, P18,651.87, P139.67 and P12,813.00 (Exhibits 1-9). Upon failure of petitioner to pay the said assessments, the Collector sent a demand letter dated February 16, 1953, (Exh. 10). In a letter dated May 24, 1953 (Exh. 13), counsel for petitioner sought the reconsideration of the demand letter. A revision of the previous assessments was made by the Collector in his letter of January 5, 1954 (Exh. 13), reducing the tax liabilities of petitioner for 1947 from P42,342.30 to P27,026.28 and for the 1950 from P12,813.00 to P8,542.00; the assessments for 1948 to 1949 in the sum of P18,6810.87 and P139.67 remained the same.

The letter of January 5, 1954 (Exh. 13), has remained unaltered and unrevised up to this date, in spite of the repeated requests for reconsideration by petitioner, as evidenced by its letter dated February 12, 1964 (Exh. 14) and May 22, 1954 (Exh. 17). In fact, the Collector reiterated in his letter of January 5, 1954, as shown by his letters dated July 28, 1954 and December 9, 1954 (Exhs. 18 and 19, respectively). The petitioner denied having received the said letter (Exh. 18), although it was mailed to petitioner in the ordinary course of business. The record shows that it had received all the letters of the Collector except, allegedly, said Exh. 18. Although petitioner did not know when it received the communication dated December 9, 1954 (Exh. 19), it is a fact that said petitioner replied to this letter (Exh. 19), in its letter dated August 1, 1955, which was wholly denied in the Collector's letter dated January 23, 1956 (Exh. 20). Exhibit 20 was the last letter of the Collector reiterating the assessment of January 5, 1954. On February 9, 1956, the Collector issued a warrant of distraint and levy against the petitioner.

The petitioner filed a petition for review with preliminary injunction on March 1, 1956. After issues were joined, the Tax Court heard the incident of preliminary injunction. Before the incident was resolved, however, the Tax Court *motu proprio* issued an order setting the case again for hearing for the purpose of determining whether or not, the court had jurisdiction to entertain the petition filed by petitioner on March 1, 1956.

On October 3, 1956, the Collector filed his motion to dismiss on the ground of lack of jurisdiction, and over the opposition of the petitioner, on January 5, 1957, the Tax Court dismissed the petition. Petitioner's motion for reconsideration was denied on May 9, 1957.

In the instant appeal, petitioner-appellant submits the following issues:-

- Whether the ruling of the Collector which is appealable was his letter of January 5, 1954 (Exh. 13) or his letter of January 23, 1956 (Exh. 20)
- Whether or not the 20-day period provided by section 11 of R.A. 1125 should commence to run only on February 1, 1956, the date on which the petitioner received the respondent's letter of January 23, 1956 (Exh. 20).
- Whether or not the 30-day period is a jurisdictional requirement.
- Whether respondent Collector was barred from filing a motion to dismiss based on said section 11, after he had filed his answer to the petition below, which did not contain such a defense; and
- Whether the Tax Court erred in not holding that the Collector's order to collect by warrant of distraint and levy had been timely appealed by the petitioner.

While the right to appeal a decision of the Collector to the Tax Court is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty days after receipt of the Collector's decision, or ruling is jurisdictional. "If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss" (*Callahan vs. Chesapeake & Ohio*, 407 Supp. 323, mentioned on p. 175, *Moran's Rules of Court*, Vol. 1, 1952 Ed.). The right to appeal from a decision of the Secretary of Agriculture and Natural Resources is a statutory right, but it can be invoked only in accordance with the manner in which the legislature has provided for the purpose (*The Secretary of Agriculture, etc. vs. Judge CFI*, G.R. No. L-7753, May 27, 1955). The right to appeal from the decision of the Collector being a statutory right, the same can be invoked only in accordance with the requisites provided by law (*Wee Poco v. Posadas*, 64 Phil. 648). And this should be so, because in cases involving a tax, there is an imperious need for its prompt collection. Appealed cases decided by the Tax Court shall have preference over all civil proceeding except habeas corpus, workmen's compensation and election cases (sec. 18, par. 4, Rep. Act 1125), and the appeal therefrom is directly taken to the Supreme Court (*Ibid*, par. 3). It is the interest of the Government to know promptly those assessments which are acquiesced in and those disputed the Government's estimate of expected revenues and expenditures.

Petitioner-appellant questions the right of the lower court to raise the question of jurisdiction *motu proprio*. It should be recalled, however, that the Tax Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. To obviate the possibility that its decision may be rendered void, it can, by its own initiative, raise the question of jurisdiction, although not raised by the parties.

Section 11 of Republic Act No. 1125 partly provides:-

"SEC 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector 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. x x x."

It is argued that the decision or ruling of the Collector which should be appealed to the Tax Court is the former's letter dated January 23, 1956 (Exh. 20) and not the letter dated January 5, 1954 (Exh. 13), and that the 30-period provided in section 11, commenced to run only on February 1, 1956, the date on which the petitioner-appellant received the Collector's letter dated January 23, 1956. This contention is without merit. The Collector's letter dated January 23, 1956, partly reads as follow:

With reference to your letter dated August 1, 1955, concerning the deficiency income tax liabilities of Ker & Co., Ltd., Manila for 1947, 1948, 1949 and 1950, I regret to have to inform you that, notwithstanding your allegations therein, this Office still finds no justification to alter, reverse or modify the assessments issued

against your client for said years.

As elucidated in our letter to you of January 5, 1954, the alleged home-leave liabilities which your client claimed as deduction were disallowed as such because the same were not actually incurred but were mere reserve accounts for contingent purposes. No evidence were presented by you showing that the said expenses were actually incurred in the years of their deductions or in the subsequent years x x x."

It is thus noted that the allegation in the above quoted letter is simply a reiteration of the previous demand as contained in the Collector's letter of January 5, 1954 (Exh. 13). Again the Collector sent to the petitioner-appellant the demand letter dated July 28, 1954 (Exh. 18), which merely reiterated the demand dated January 5, 1954. Although petitioner denied having received said letter, yet it is significant to mention that when it was presented to the lower court as Exhibit 18 for the Collector, the petitioners had not objected to it. This is the first time they attack its receipt. It is finally to be observed that the ruling of the Collector contained in his letter of January 5, 1954, remained unaltered and unmodified. As the Court *a quo* has correctly commented.

"Under the facts stated above, we find that the decision of respondent which is appealable to this Court under Sections 7 and 11 of Republic Act No. 1125 is the one contained in his letter of January 5, 1954, the same having remained unaltered and unmodified up to the date the appeal was filed. (See *Angel Saraos v. CIR*, CTA Case No. 229, March 5, 1956; *Merced Drug Store v. CIR*, CTA Case No. 160, May 21, 1956. x x x.)"

Moreover, since a letter of demand or assessment was sent by the Collector of Internal Revenue to a taxpayer containing a determination of the tax liability of the latter, such letter or assessment must be considered as the 'decision' appealable to this Court. The Supreme Court appears to recognize the same view when it held that the assessment made by the Collector of Internal Revenue is the substantive and dispositive part of his decision (*Ventanilla v. BTA*, G.R. No. 7384, prom. Dec. 19, 1955). Under circumstance comparable with our law, the United States Supreme Court in the case of *Bull v. U.S.* (1935, 295 U.S. 247; 79 L. ed. 1421) sustained the same theory that the assessment is the action of an administrative agency equivalent to a decision and is therefore given the force of a judgment".

This being the case, it logically follows that the decision which was appealed was that of January 5, 1954 and that the 30 day period should have started from the receipt of the said letter on January 25, 1954 (Exh. 14). No appeal having been taken from this decision, the same became final, conclusive and executory (*Roxas v. Sayoc*, G.R. No. L-8502, Nov. 29, 1956).

Petitioner contends that the Collector waived the defense based on said section 11, when he failed to file a motion to dismiss within the reglementary period and did not set it up as a defense in the answer filed by him. Suffice it to state, however, that a motion to dismiss may be allowed after the answer is filed or even after the hearing had been commenced (*Bugayong v. Ginez*, G.R. No. L-10033, Dec. 28, 1956; 53 G. No. 4 p. 1050). Moreover, the present case involves jurisdiction over subject-matter, which can not be waived, and which can be raised at any stage of the proceeding, even if no such defense is made in the answer (*Juanillo v. De la Rama*, II Off. Gaz. 304 [1943]; I *Francisco Trial Technique and Practice* Court pp. 128-129).

Petitioner-appellant also claims that inasmuch as the disputed assessment was made prior to the creation and actual organization of the Tax Court (The Court of Tax Appeals was established upon the enactment of R.A. No. 1125, although the act took effect only on July 21, 1954 with the appointment of two judges and the Court Personnel and with the adoption by it in the interim of the Rules and Regulations of the defunct Board of Tax Appeal [See *Sta. Clara Lumber Co. vs. Coll. of Int. Rev.* CTA Case No. 91, Res. dated Sept. 20, 1955]), there was, legally speaking, no 90-day period to compute or determine in relation to the appeals from the decisions of the Collector. However, in admitting that the disputed assessment was issued prior to the organization of the Tax Court, the petitioner-appellant, if it really wanted to protect itself, should have paid the taxes due and then filed a

suit for their refund under section 306 of the Tax Code with the proper Court of First Instance. The petitioner-appellant failed to take this step. With the actual organization of the Tax Court of July 21, 1954, the petitioner-appellant could have filed a petition for review with the said court within 30 days after July 21, 1954 (Sta. Clara Lumber Co. vs. Court of Int. Rev., supra; Ipekdkian Merchandising Co. Inc. vs. C.I. Revenue, CTA Case No. 107).

In these two CTA cases, the petitioner-taxpayer appealed the decisions of the Collector to the defunct Board of Tax Appeal which found for the respondent-appellee. Later, they appealed to this Court which dismissed their cases without prejudice. When they brought these cases to the Tax Court, the latter dismissed them for having been filed outside the 30-day period after July 21, 1954. In the case at bar, after received of the Collector's demand letter dated January 5, 1954, petitioner not only did not pay the taxes due and sue for their refund but also failed to file its petition for review within 30 days after July 21, 1954. A taxpayer should display more alertness in the protection of his rights (Koppel [Phil.] Inc. vs. Coll. Int. Rev. G. R. No. L-10550, Sept. 19, 1961).

Petitioner-appellant argues that the Tax Court acted erroneously in not holding that insofar as the Collector's order to collect (by warrant of distraint and levy) is concerned, it has the power to hear and determine the legality thereof, because the appeal from said order had been timely made to said court by petitioner-appellant. This argument is unmeritorious, once it is considered, as we do, that what has been appealed in this case is the decision of the Tax Court dated January 5, 1957, in which decision, the incident regarding the legality or illegality of the Collector's issuance of the warrant of distraint and levy had not at all been brought out or ventilated.

IN VIEW HEREOF, the resolution appealed from being in accordance with law, hereby is affirmed en toto, with costs against the petitioner-appellant.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, Dizon and De Leon, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.