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Reyes, J.B.L., Acting C.J.: Mr. Chief Justice Concepcion voted for the setting aside of the judgment appealed from and the remand of the case for further proceedings in accordance with the decision.

Ruiz Castro, J., is on leave from the Court.

Judgment set aside.

[G.R. No. L-21483. April 28, 1969]

COMMISSIONER OF INTERNAL REVENUE, petitioner, *vs.* THE COURT OF TAX APPEALS, HON. MARIANO NABLE, Presiding Judge, HON. AUGUSTO M. LUCIANO, HON. ROMAN M. UMALI, Associate Judges and VICENTE KHO alias TAN SE CHIONG, respondents.

SYLLABUS

1. TAXATION; INTERNAL REVENUE CODE; BIR COMMISSIONER; DECISION THEREOF.— The decision of the BIR Commissioner contemplated by the statute may be in the form of a letter addressed to the taxpayer informing him of the final action taken on his tax liability.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— The letter of petitioner dated October 20, 1952 to taxpayer Vicente Kho demanding from him payment of the deficiency income tax for the calendar year 1951 in the amount of ₱1,128,444.00 and the amount of ₱3,300.00 as administrative penalty is the appealable decision in instant case.

3. ID.; ID.; ID.; ID.; MOTION FOR RECONSIDERATION THEREOF, DENIAL.— Where on April 29, 1953 the Deputy Commissioner of Internal Revenue wrote Vicente Kho advising him that in the absence of documentary proof the office cannot reconsider its decision holding him liable for payment of his deficiency tax, said letter constituted the order denying a motion for reconsideration filed by the taxpayer's lawyer on March 28, 1953.

4. ID.; ID.; ID.; ID.; APPEAL THEREFROM; PERIOD FOR APPEAL NOT TOLLED IN INSTANT CASE.— After the denial of the motion for reconsideration of the decision of the Commissioner of Internal Revenue regarding the taxpayer's tax liability, the latter's counsel wrote

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a letter to the Commissioner reiterating the same ground alleged in the said motion for reconsideration, under the circumstances, the time for appeal to the Tax Court is not tolled, said letter being *pro-forma*.

5. ID.; COURT OF TAX APPEALS; APPEAL FROM DECISION THEREOF, PERIOD FOR APPEAL; APPEAL IN INSTANT CASE FILED OUT OF TIME.— A decision by the Commissioner of Internal Revenue which was received on January 25, 1954, which was before the formal organization of the Court of Tax Appeals on July 21, 1954, may still be appealed within 30 days from the formal organization of the Court of Tax Appeals. In the instant case, however, Vicente Kho, the taxpayer, did not appeal to the Tax Court on or before August 21, 1954 (30 days after formal organization of the CTA.) It was only on August 25, 1962 that Vicente Kho filed a petition for review with the Court of Tax Appeals. This petition was clearly filed out of time. In view thereof, the respondent court had no jurisdiction to try the case.

APPEARANCES OF COUNSEL

Solicitor General Arturo A. Alafriz, Assistant Solicitor General Antonio G. Ibarra and *Solicitor Bernardo P. Pardo* for petitioner.

A.R. Narvasa and *Jesus Lim* for respondents.

DECISION

CAPISTRANO, *J.*:

This is a petition for certiorari and prohibition with preliminary injunction. It seeks to set aside the orders of the respondent Court of Tax Appeals dated April 15, 1963 and June 20, 1963 in CTA Case No. 1264 entitled "Vicente Kho *vs.* Commissioner of Internal Revenue." The first order denied the Commissioner's motion to dismiss the petition of Vicente Kho whereby he sought review of the decision rendered by the Commissioner imposing upon Vicente Kho a certain amount as deficiency income tax. The second order denied the Commissioner's motion for reconsideration.

On *October 20, 1952,* the then Collector (now, and hereinafter referred to as Commissioner) of Internal Revenue wrote respondent Vicente Kho demanding from the latter payment of his deficiency income tax for the calendar year 1951 amounting

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to *₱1,128,444.00.* It appears, however, that this letter of demand and the accompanying assessment notice dated November 5, 1952 were not effectively served upon respondent Vicente Kho in due course by reason of the fact that he had transferred his residence from Guiuan, Samar, to Cebu City without the knowledge of the BIR Commissioner. Despite the fact that the letter of demand and the assessment notice had not been effectively served upon respondent Vicente Kho, he must have obtained personal knowledge of the assessment levied against him. Vicente Kho must have already been informed of this tax deficiency, when on December 18, 1952 the Commissioner of Internal Revenue wrote the Provincial Fiscal of Samar recommending immediate prosecution of Vicente Kho for willful neglect to file his income tax return for the year 1951 in violation of Sec. 45 of the Internal Revenue Code penalized under Sec. 73 thereof. In view of his knowledge of the assessment levied against him, he retained the services of tax consultant Juan G. Mañiego who in January, 1953 wrote the Bureau of Internal Revenue disputing the assessment and at the same time requesting that he be authorized to consider the possibility of an amicable settlement of the case and that the criminal charge be held in abeyance. Respondent Vicente Kho was given 10 days to take up the case with the BIR. On January 24, 1953, respondent Vicente Kho, thru counsel, requested for an extension of time within which to reply to the assessment letter. Said request was granted by a letter of the Commissioner of Internal Revenue, dated January 27, 1953. On February 10, 1953, respondent Vicente Kho, thru counsel, again requested for an extension of time until March 15, 1953 to discuss the case with the BIR, which request was granted. In view of his illness, Atty. Juan G. Mañiego, counsel for respondent Vicente Kho, addressed a letter to the BIR Commissioner, dated March 18, 1953, requesting for an extension of time until March 31, 1953. This request was denied by the Commissioner. In view of this denial, Counsellor Juan G. Mañiego sent a reply dated March 28, 1953 where he emphatically stated that the books and records seized by the BIR from the establishment in Guiuan, did not belong to

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his client Vicente Kho. *On April 29, 1953,* the Deputy Collector (now, and hereinafter referred to as, Deputy Commissioner) of Internal Revenue wrote counsel for Vicente Kho advising him that in the absence of documentary proofs to substantiate the allegations contained in his letter, the BIR could *not reconsider its decision holding his client liable for the payment of the deficiency tax mentioned therein.* On July 7, 1953, respondent, thru counsel, wrote another letter addressed to the Commissioner of Internal Revenue reiterating that he did not own the books and records seized from the store in Guiuan, Samar. He contended that he should not be made liable for the tax assessed against him based on said documents.

Meanwhile, a deportation case against Vicente Kho was being tried before the Deportation Board. Thereafter, or on June 14, 1959, the record of said deportation case was forwarded to the President of the Philippines. Based on the recommendation of the Deportation Board, the President issued an order directing the deportation of respondent Vicente Kho. However, it appears that the order of deportation was not released due to political influence exerted on behalf of respondent Vicente Kho.

On January 25, 1954, respondent Vicente Kho personally received the letter of demand of October 20, 1952 and the assessment notice dated November 5, 1952.

On September 27, 1954, Vicente Kho's new counsel, Eddy Dean, by letter offered to compromise respondent's income tax case for the sum of ₱15,000.00, which was denied. On March 23, 1956, respondent hired another lawyer, Artemio Lobrin, who wrote a letter to the BIR Commissioner requesting for a decision on the merits of the case, or, in the alternative, a favorable action on his offer to settle the case. This was not acted upon. On August 20, 1962, another lawyer for Vicente Kho, Orlando V. Velasco, wrote a letter to the BIR Commissioner requesting for reinvestigation of the case of his client, which request was not granted. Another lawyer acted for and in behalf of respondent Vicente Kho in the person of Francisco Remotigue who made

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a similar request for reinvestigation of the deficiency assessment tax. This request was likewise denied for the reason that the assessment in question had long become final. Respondent Vicente Kho went to the Court of Tax Appeals and asked for the reversal of the decision of the Commissioner of Internal Revenue imposing upon him deficiency income tax of ₱1,128,444.00. The petitioner here, respondent below, filed a motion to dismiss the case on the ground that the Court of Tax Appeals had no jurisdiction to entertain the same by reason of the fact that the appeal had been filed out of time. The Court of Tax Appeals, in an extended resolution, denied the motion to dismiss stating that the records on file with the Court were not clear whether the petition for review was filed beyond the period of 30 days as contended by the Commissioner. A motion for reconsideration was filed by the Commissioner praying that the resolution be set aside and reiterating the motion to dismiss. But said motion was denied on June 20, 1966. Petitioner Commissioner of Internal Revenue has come to this Court for relief.

The vital issue for resolution in this case is whether or not the respondent Court gravely abused its discretion in not dismissing CTA Case No. 1264, entitled "Vicente Kho *vs.* Commissioner of Internal Revenue."

It is not disputed that the Commissioner of Internal Revenue sent a letter on *October 20, 1952* to respondent Vicente Kho demanding from him payment of the deficiency income tax for the calendar year 1951 in the amount of ₱1,128,444.00 and the amount of ₱3,300.00 as administrative penalty. This letter of demand was sent together with an assessment notice dated November 5, 1952. We consider the letter of petitioner addressed to Vicente Kho dated *October 20, 1952* as the appealable decision. It is to be observed that the decision of the BIR Commissioner contemplated by the statute may be in the form of a letter addressed to the taxpayer informing him of the final action taken on his tax liability. Respondent Vicente Kho should have been more diligent in ascertaining the tenor of the letter-decision he received from the BIR Commissioner. Inasmuch as said letter

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finally determined or resolved his tax liability, the 30-day period within which to appeal commenced to run from the date said letter-decision was received.

In the instant case, respondent Vicente Kho, through his different lawyers at different times, wrote the Commissioner asking for extensions of the period within which to file a motion for reconsideration of the assessment and/or requested the reconsideration of the letter-decision. Did the Commissioner finally act on the motions for reconsideration filed by respondent Vicente Kho's lawyers?

The records show that on *April 29, 1953* the Deputy Commissioner of Internal Revenue wrote counsel for Vicente Kho advising him that in the absence of documentary proofs to substantiate the allegations contained in his letter, "this office *cannot reconsider its decision* holding him (Vicente Kho) liable for the payment of the said sum." This letter of the Deputy Commissioner of Internal Revenue constituted the order denying the motions for reconsideration filed by Vicente Kho's lawyers. This denial-order was undoubtedly received by the respondent Vicente Kho because on *July 7, 1953,* his counsel wrote another letter addressed to the Commissioner of Internal Revenue reiterating that he did not own the books and records seized from the store in Guiuan, Samar, upon which the computations of the deficiency tax were based. This letter in no way tolled the time for appeal to the Tax Court, it being *pro forma.* The same ground had already been alleged in a previous letter by respondent Vicente Kho's lawyer dated March 28, 1953. It appears, therefore, that there was *a decision*[1] rendered by the petitioner Commissioner of Internal Revenue and also an *order*[2] denying the motion for reconsideration of the decision. Respondent Vicente Kho should have availed of the time provided by law to seek relief. Our attention is invited to the fact that Vicente Kho only received on

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[1] Letter of the BIR Commissioner dated October 20, 1952.

[2] Letter of the Deputy Collector of Internal Revenue dated April 29, 1953.

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January 25, 1954 the decision of the Commissioner of Internal Revenue demanding from him payment of the ₱1,128,444.00 as deficiency income tax. Even so this afforded him an opportunity to have the decision of the BIR Commissioner reviewed. Republic Act No. 1125 creating the Court of Tax Appeals took effect on June 16, 1954. The Tax Court was formally organized on *July 21* of the same year. Although it would seem that respondent Vicente Kho had lost his chance to appeal the disputed assessment, with the enactment of Republic Act No. 1125 he was given another chance to seek relief. We held in the similar cases of Sta. Clara Lumber Co., Inc. *vs.* Court of Tax Appeals, G.R. No. L-9833, Dec. 21, 1957, and Lim Tio Dy Hong *vs.* Court of Tax Appeals, G.R. No. L-10681, March 29, 1958, that such appeal could still be perfected within 30 days from the formal organization of the Court of Tax Appeals. In other words, respondent Vicente Kho had until *August 21, 1954* within which to perfect his appeal to the Tax Court and petition for the review of the disputed 1951 deficiency income tax assessment received by him personally on *January 25, 1954.*

Vicente Kho did not, however, appeal to the Tax Court on or before August 21, 1954. It was only on August 25, 1962 that Vicente Kho filed a petition for review with the Court of Tax Appeals. This petition was clearly filed out of time. In view thereof, the respondent court had no jurisdiction to try and decide the case.

The contention of the counsel for respondent Vicente Kho that the petitioner has not as yet acted on their motions for reconsideration has no merit. The petitioner had long acted on their motions requesting for a reconsideration of the petitioner's decision. And the action on their motions for reconsideration was taken in the letter of the Deputy Commissioner of Internal Revenue dated *April 29, 1953* where counsel for Vicente Kho was advised that in the absence of documentary proofs to substantiate the allegations contained in his letter, "this office cannot reconsider its decision holding him liable for the payment of the said sums." It is therefore incorrect to say that Internal Revenue

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Commissioner has not finally acted in case of respondent Vicente Kho.

PREMISES CONSIDERED, the petition is hereby granted. The questioned orders of the respondent Court dated April 15, 1963 and June 20, 1963 are hereby set aside. The Court of Tax Appeals is enjoined from taking cognizance or jurisdiction over CTA Case No. 1264, entitled "Vicente Kho *vs.* Commissioner of Internal Revenue." Costs against private respondent Vicente Kho.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Teehankee and *Barredo, JJ.,* concur.

Concepcion, C.J., and *Ruiz Castro, JJ.,* did not take part.

Petition granted.

[G.R. No. L-22012. April 28, 1969]

OTILLA SEVILLA, FLORENCIO QUIJANO and LEONOR SEVILLA, petitioners, *vs.* THE COURT OF APPEALS, NICOLAS QUIÑANOLA and EUSTAQUIA TABIO, respondents.

SYLLABUS

CIVIL LAW; REAL ESTATE MORTGAGE; REPURCHASE UNDER A COMPROMISE AGREEMENT; APPLICABILITY OF ARTICLE 1234 OF NEW CIVIL CODE; COMPLIANCE BY VENDORS *A RETRO* IN GOOD FAITH; PROPRIETY OF RECONVEYANCE OF LAND IN QUESTION TO DEFENDANTS.—There is no denying the fact that the compromise agreement provides that the repurchase should be effected within "a period of EIGHT (8) MONTHS from date hereof within which to repurchase the two (2) parcels of land involved in this litigation," nor is there any dispute as to the fact that said agreement was executed on February 7, 1956 while the payment of the repurchase price was made on October 9, 1956—exactly eight months from the date when the judgment by compromise was rendered but two days after the date