REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MARIA B. CASTRO,
Petitioner,

- versus -

C.T.A.
CASE NO. 348

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

On October 15, 1957, respondent filed a motion to dismiss the instant petition for review on the grounds that: (1) the petition for review states no cause of action; and (2) assuming arguendo the existence of a cause of action, the instant appeal was filed out of time.

Based on the record of the case and on the facts preliminarily established at the hearing of this incident, it appears that on February 29, 1956, BIR Group Supervisor Pedro V. Evaristo sent a "Notice to Taxpayer" to the petitioner herein which contained proposed adjustments affecting petitioner's income tax liability for the year 1954. (See p. 29, BIR rec.) The said "Notice to Taxpayer" called for a deficiency assessment against the petitioner in the amount of ₱31,957.20. On March 17, 1956, petitioner sent a letter to respondent which was received by the latter on March 19, 1956 and in which the former protested against the proposed adjustments affecting her income tax liability and expressed her desire to elevate the matter to the Conference Staff of the Bureau of Internal Revenue (Exhibits "1" and "B", p. 30, BIR rec.).

On June 8, 1956, respondent denied petitioner's request to reconsider the proposed adjustments and at the same time assessed against and demanded from the petitioner the payment of the sum of ₱31,957.20 as deficiency income tax for the year 1954 (see Exhibit "2", pp. 36-38, BIR rec.).

On October 1, 1956, petitioner wrote the Collector of Internal Revenue inquiring whether or not the case had already been elevated to the Conference Staff and at the same time reiterated her request that her case be reviewed and determined by the Conference Staff. (Exhibits "3" and "C", p. 56, BIR rec.) This letter was received by respondent on October 5, 1956, and on January 17, 1957, respondent answered petitioner to the effect that there was no justification in forwarding the case to the Conference Staff, and demanded again for the payment of the deficiency income tax assessment. (Exhibit "4", p. 57, BIR rec.) Petitioner received this letter on January 23, 1957 (Exhibit "5", CTA rec.). Subsequently, petitioner received a "Preliminary 5-Day Letter" from the Collector dated February 18, 1957 giving her five days from the date of the receipt of said letter, within which to file a protest to the report of the examination of her returns attached thereto. (Exhibit "A", CTA rec.) There is no evidence to show when this "Preliminary 5-Day Letter" was received by the petitioner. On February 21, 1957, the present petition for review was filed with this Court.

The first issue raised by respondent is that the petition for review does not state a cause of action. We find no merit in this argument. Whatever defect the original petition for review had, is now purely academic. If there had been any, the defect had been cured by the "Amended Petition for Review" filed by petitioner on October 1, 1957, without objection on the part of respondent.

We shall therefore proceed to determine the second issue as to whether or not the instant appeal has been seasonably filed.

The decision of respondent which is appealable to this Court is the one contained in his letter to petitioner dated June 8, 1956. There is no evidence to show the exact date when this letter was received by petitioner. However, it can be conclusively assumed that she received it at the latest, on October 1, 1956, when she wrote respondent reiterating her request that the case be forwarded to the Conference Staff. Hence, the 30-day period within which to appeal to this Court commenced to run from this date and was suspended on October 5, 1956 when respondent received petitioner's letter dated October 1, 1956. The period resumed to run again on January 23, 1957 when petitioner received respondent's letter denying her request that the case be forwarded to the Conference Staff. On February 21, 1957, petitioner filed the present petition for review. By a simple arithmetical computation of the period from October 1 to October 5, 1956, and from January 23 to February 21, 1957, (Rule 28, Rules of Court) we find that a total of thirty-three (33) days was consumed by petitioner before she instituted the present appeal, and therefore this Court has no jurisdiction to entertain the same.

Petitioner however contends that the reglementary period for appealing has not yet run because of respondent's form letter of February 18, 1957 (Exhibit "A", CTA rec.) which states that the same is "not a statutory notice of deficiency" but that a statutory notice of deficiency will be sent later unless petitioner acts upon such preliminary letter. From the arguments of petitioner, we gather that she considers said "Preliminary 5-Day Letter" to have the effect of staying the finality of the decision of the Collector. We cannot agree to such an interpretation. The form letter, Exhibit "A", is not a motion for reconsideration, and neither is it a grant of reconsideration which has the effect of tolling the period within which to appeal. Neither can it be said that the form letter, Exhibit "A", may be considered as a new "decision" from which to start anew the counting of the period to appeal.

Even granting for the sake of argument, that the Collector of Internal Revenue wishes to extend the period within which to appeal, he cannot do so because the same is statutory. Jurisdiction can never be a matter of stipulation or agreement between the parties. Therefore, upon the receipt by petitioner on January 23, 1957 of the letter of denial dated January 17, 1957, the period within which to appeal resumed to run until the filing of the petition for review on February 21, 1957. When a period of limitation has commenced to run, the same continues unless some other legal cause suspends the same. The "Preliminary 5-Day Letter" referred to above is not one of them.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the "Petition for Review" filed on February 21, 1957 should be, as it is hereby dismissed, for lack of jurisdiction.

SO ORDERED.

Manila, March 15, 1958.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge ROMAN M. UMALI

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

CONCURRING OPINION

I concur. I should like to add that the presentation by petitioner of Exhibit A (Preliminary 5-Day Letter, Dated Feb. 18, 1957) is a subtle attempt to mislead the Court. A cursory reading of said exhibit will readily show that it does not refer to the deficiency income tax assessment here involved. It must have been sent to herein petitioner in connection with another taxable year or years. It is now being utilized in this case, although it has no bearing thereon, to show that the herein petition for review has been filed within the statutory period for appeal.

We quote from Exhibit A:

> "This is not a statutory notice of deficiency. If, however, upon the expiration of the 5-day period you have not submitted the agreement form, or a written protest, or you have not advised that the deficiency has been paid or will be paid upon notice and demand, a statutory notice will then be sent you as provided by law."

Note that Exhibit A specifically states that <u>it is</u> not a statutory notice of deficiency. It merely advises the taxpayer that a statutory notice of deficiency, or an assessment and demand, would be made in case the taxpayer should fail to file a written protest against the findings of the examiner, a copy of whose report was attached to said exhibit, but which report was not presented in evidence together with said Exhibit A. In this case the assessment and demand for payment of the amount assessed were made on June 8, 1956, long before the "Preliminary 5-Day Letter" of February 18, 1957 was sent to petitioner. A final assessment of a tax deficiency can not precede a notice to the taxpayer of a proposal to issue an assessment.

We can not but express disapproval of the use of any method to defeat the ends of justice.

R. M. Umali
ROMAN M. UMALI
Associate Judge