REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

THE CITY OF DUMAGUETE,
REPRESENTED BY ITS CITY
MAYOR, MARIANO F. PERDICES;
and THE CITY TREASURER OF
DUMAGUETE,
Petitioners,

August 20/56

- versus -

C.T.A.
CASE NO. 289

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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RESOLUTION

This is in connection with the motion to dismiss filed by respondent's counsel on July 11, 1956, of the petition for review sent by registered mail to this Court from Dumaguete City by the petitioners on June 11, 1956, and received by this Court on June 20, 1956.

The grounds relied upon by respondent's counsel in support of their motion to dismiss are as follows:

1. That the petition for review was not filed within the reglementary period of 30 days fixed under section 11 of Republic Act No. 1125;

2. That petitioners' claim for refund of the amount of ₱4,476.18 subject of this appeal, was filed with the respondent beyond the two-year period prescribed in section 309 of the Na-

tional Internal Revenue Code; and

3. That the present petition for review was filed beyond the two-year period prescribed in section 306 of the National Internal Revenue Code.

It appears that on May 14, 1956, the petitioner, City Treasurer of Dumaguete, received a copy of the ruling of the Deputy Collector of Internal Revenue, by 8th Indorsement dated April 18, 1956, denying petitioners' claim for refund of the total amount of ₱4,476.18 paid at different times by the City of Dumaguete to the National Government as fixed and percentage taxes during the period comprised between July 27, 1951 to January 20, 1953. After receiving the ruling of the respondent on May 14, 1956, denying their claim for refund of the amount in question, the petitioners on June 11, 1956, sent their petition for review to this Court by registered mail from Dumaguete City as evidenced by the envelope, Exhibit A. The pleading was received by this Court on June 20, 1956 and was docketed by the Clerk of Court as C.T.A. Case No. 289.

Resolving the first ground of dismissal, the issue is whether in the computation of the thirty-day period prescribed in section 11 of Republic Act No. 1125, the date of mailing of the petition for review should be the one considered as the date of filing, or the date when the said pleading was actually received by this Court.

Under section 1, Rule 27 of the Rules of Court, "the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this Court." Applying the last quoted rule, it is obvious that from the time the petitioners received the decision of the Deputy Collector of Internal Revenue on May 14, 1956, denying their claim for refund of the amount of ₱4,476.18, to June 11, 1956, when they sent to this Court by registered mail, Exhibit A, from Dumaguete City, their petition for review of said decision, only twenty-eight (28) days had elapsed out of the thirty days (30) alloted under section 11 of Republic Act No. 1125. The first ground relied upon by respondent's counsel in their motion to dismiss is, therefore, without merit.

Coming now to the second and third grounds. Under sections 306 and 309 of the National Internal Revenue Code, a taxpayer is given only two (2) years from the date of payment of national internal revenue taxes within which to file his claim for refund of the same with the Collector of Internal Revenue <u>and</u> to file his court action for the recovery thereof. (Bermejo vs. Collector of Internal Revenue, G. R. No. L-3029, promulgated on July 25, 1950; Wee Poco vs. Posadas 64 Phil. 640; Venus vs. Posadas 54 Phil.

832; Kiener vs. Collector of Internal Revenue, G.R. No. L-5163, promulgated on April 22, 1953; Paracale-Gumaus Consolidated Mining Co. vs. Collector of Internal Revenue, C.T.A. Case No. 211).

The total amount of fixed and percentage taxes sought to be refunded in the present case is ₱4,476.18, the first payment of ₱803.92 having been made on July 27, 1951 and the last payment of ₱623.52 having been made on January 20, 1953. (Exhibits 3, 3-A, 3-B, 3-C, 3-D, 3-E and 3-F). In paragraph 8, sub-paragraph 4, of their petition for review, the petitioners admit that they filed their claim for refund with the Collector of Internal Revenue on July 21, 1955, or a period of more than two (2) years from the date of payment of all the amounts sought to be refunded totalling ₱4,476.18. Petitioners filed their petition for review before this Court on June 11, 1956 or a period far beyond the two-year period of prescription prescribed in section 306 of the National Internal Revenue Code. Obviously, from the very pleadings of the petitioners, it could be seen that they have failed to meet the requirements of sections 306 and 309 of the National Internal Revenue Code, which requirements the Supreme Court has repeatedly held to be substantive and jurisdictional in nature. The second and third grounds relied upon by respondent's counsel in their motion to dismiss are, therefore, well-founded in law and in fact.

Petitioners' counsel in his verbal manifestation to this Court when respondent's motion to dismiss was heard, admitted the hopelessness of petitioners' cause if we were to interpret and apply strictly the provisions of sections 306 and 309 of the National Internal Revenue Code as was done by the Supreme Court in a long line of decisions involving said provisions. Notwithstanding the express provision of law and well-established jurisprudence on the matter, petitioners' counsel would want us nevertheless to assume jurisdiction over this case and decide it on the merits on grounds of equity. We believe that no matter how meritorious on the merits petitioners' appeal might be, we cannot take it upon ourselves to stretch a period of prescription beyond that fixed by law particularly in tax cases whose prompt adjudication is of great concern to the Government. To do so would be tantamount to judicial legislation which is beyond the prerogative of this Court.

WHEREFORE, let this case be, as it is hereby dismissed, for lack of jurisdiction, with costs against petitioners.

SO ORDERED.

Manila, August 30, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CON.

CUR:

MARIANO NABLE
Presiding Judge

I concur in the result.

ROMAN M. UMALI
Associate Judge