REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ASTURIAS SUGAR CENTRAL, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 207

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

2/25/57

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RESOLUTION

A motion to dismiss has been filed by respondent on January 11, 1957, on the ground that this Court has no jurisdiction to hear and determine this case.

In a letter dated November 25, 1953 (Exh. "1", p. 16, BIR records) and received by petitioner on December 23, 1953 (Exh. "2-A-1", p. 17, BIR records), respondent Collector of Internal Revenue demanded from petitioner the payment of ₱3,885.21 as deficiency percentage tax and surcharge, including a "compromise penalty." In reply thereto, Theo. H. Davies & Co., Far East Ltd., managing agent of petitioner Asturias Sugar Central, Inc., wrote respondent a letter dated December 28, 1953 (Exh. "2", p. 18, BIR records) stating:

> "We have just received the attached copy telegram from Asturias Sugar Central Inc., regarding your letter dated November 25, 1953 to them (Ref. No. 105.035) in connection with additional percentage taxes claimed to be due from that company. As you will see from the attached copy of their telegram this matter raises questions which are quite complicated and we would

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> be extremely grateful if you would grant us the privilege of 30 days extension from the due date of said letter in order that the matter may receive further study here."

Attached to the said letter was a copy of a telegram (Exh. "2-A", p. 17, BIR records) of petitioner to Theo. H. Davies & Co. giving the reason for computing the tax at the market price of sugar in Iloilo, minus freight and other necessary expenses. In answer to this request, respondent in his letter dated January 21, 1954 (p. 19, BIR records) said -

> "With reference to your letter dated December 28, 1953 relative to the pending internal revenue case of Asturias Sugar Central, Inc., Iloilo City, involving the sum of ₱3,885.21 as sugar mill operator's percentage tax, surcharge and penalty, I have the honor to inform you that you are given until January 31, 1954 within which to answer our letter of demand dated November 25, 1953."

Petitioner took no further action on the matter until it forwarded a letter to respondent dated July 22, 1955 (p. 25, BIR records) and received by the latter on July 25, 1955 in which the former questioned the legality of the assessment and requested that the same be cancelled. Respondent, in his letter of October 6, 1955 (Exh. "A", p. 28, BIR records), which was received by petitioner on October 18, 1955 (p. 2, Opposition to Motion to Dismiss), denied the latter's request and reiterated the previous assessment contained in the letter of demand dated November 25, 1953. Petitioner filed the instant petition for review with this Court on November 17, 1955.

The sole issue to be resolved in this incident is whether or not the petition for review was filed within the thirty-day period provided in Section 11 of Republic Act No. 1125.

Respondent maintains that his letter dated November 25, 1953 (Exh. "1") is his final decision. On the other hand, petitioner contends that the decision, from which an appeal may be taken to this Court, is that contained in respondent's letter dated October 6, 1955 (Exh. "A") wherein the request for reconsideration of petitioner was denied by respondent, arguing that petitioner was duty bound to first exhaust all administrative remedies before resorting to the courts.

We find the view of respondent well taken. In the case of Sta. Clara Lumber Co., Inc. v. Collector (C.T.A. No. 91, September 21, 1955), this Court held:

> "We believe that Congress in enacting the organic law of this Court (Republic Act No. 1125) intended to provide a finality to the decisions or rulings of the Collector of Internal Revenue on matter of assessment of taxes in each instance. It could not have been the intention of Congress to provide for a finality after the given 30-day period as regards assessment made subsequent to the effectivity of Republic Act No. 1125 and left without finality those assessment made prior to said law. On the other hand, and to be consistent and reasonable, Congress must have contemplated an application of the law in such a manner that all assessment of taxes must be given finality so that the instant case must be treated with this view in mind." (Underscoring supplied.)

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It is to be noted that from the tenor of petitioner's letter dated December 28, 1953 (Exh. "2"), it was not intended to be a request for reconsideration of the assessment. Although the telegram (Exh. "2-A") gave some reasons against the alleged tax liability, yet the telegram, when read and considered as a whole, was but a request by the petitioner to Theo. H. Davies & Co. to make the necessary representation to respondent for the reconsideration and suspension of the demand for payment of the tax. Moreover, Theo. H. Davies & Co., in its letter to respondent, failed to make such request for reconsideration but it merely requested for an extension of thirty (30) days within which to study the matter further. Notwithstanding the fact that the agent was granted until January 31, 1954 within which to answer the letter of demand dated November 25, 1953, it failed to take any action in relation thereto within the given period.

We have consistently held that where a decision of the Collector of Internal Revenue was rendered prior to the organization of this Court, the thirty-day period for appeal is to be counted from July 21,1954, when this Court adopted, prior to the promulgation of its rules, the rules of the former Board of Tax Appeals (Sta. Clara Lumber Co. v. Collector, supra; Ipekdjian Merchandising Co. v. Collector, C.T.A. No. 107, October 1, 1955; Marsman Development Co. v. Collector, C.T.A. Nos. 116 & 117,

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November 14, 1955; La Tondeña, Inc. v. Collector, C.T.A. No. 99, March 15, 1956; St. Paul's Hospital of Iloilo v. Collector, C.T.A. No. 105, November 27, 1956), unless on that date there was a pending request for reconsideration, in which case the period for appeal is to be counted from the date notice of the denial of the request for reconsideration is served upon appellant (Santiago Gancayco v. Collector of Int. Rev., C.T.A. No. 287, Oct. 27, 1956; Ker & Co. v. Collector of Int. Rev., C.T.A. No. 244, Jan. 5, 1957). Petitioner had no pending request for reconsideration in the Bureau of Internal Revenue on July 21, 1954, so that when the instant petition for review was filed on November 17, 1955, one (1) year, three (3) months and twenty-six (26) days counted from July 21,1954 had already elapsed. It is obvious that the petition for review was filed beyond the period prescribed in Section 11 of Republic Act No. 1125.

The request for reconsideration of petitioner dated July 22, 1955 filed after the decision of respondent had become final could not have the effect of reviving a cause of action that had long expired. It is also noteworthy that respondent's letter dated October 6, 1955 (Exh. "A") denying petitioner's request for reconsideration merely reiterated the previous assessment contained in the letter dated November 25, 1953 (Exh. "1") and can in no way be considered as a revised or amended decision from which an appeal could be taken to this Court within thirty (30) days from receipt thereof. (See Robert L. Janda v. Araneta, C.T.A. No. 87, infra.)

The contention of petitioner that the decision which may be appealed to this Court is respondent's letter dated October 6, 1955, denying its request for reconsideration under the doctrine that administrative remedies must first be exhausted has been fully discussed in the case of North Camarines Lumber Co., Inc. v. Collector (C.T.A. No. 284, Jan. 30, 1957), wherein we held:

> "'We cannot subscribe to petitioner's theory that the decision subject to appeal before this Court is the respondent's ruling or decision on the request for reconsideration of the assessment. For were we to follow the petitioner's argument, then an absurd consequence would result wherein the commencement of the thirty-day period within which to appeal to this Court would depend entirely upon the will and whims of the taxpayer, as he may put it off for a considerable length of time by the simple expediency of not questioning the legality of the assessment until such time as may be convenient for him to do so. Such a 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 v. U.S., 295 U.S. 247)"
> (Underscoring supplied.)

A motion or request for reconsideration of the decision of the Collector of Internal Revenue, when timely filed, merely suspends the running of the period for appeal. (Antonio G. Guerrero v. Collector of Int. Rev., C.T.A. No. 285, Dec. 29, 1956, citing Secretary of Agriculture & Natural Resources v. Hora, G. R. No.

L-7752, May 27, 1955.)

The petitioner further contends that, inasmuch as respondent had led the former to believe that it still had thirty (30) days from receipt of the letter dated October 6, 1955 within which to appeal to this Court, respondent is estopped from raising the issue of the failure of the petitioner to comply with the statutory period of thirty (30) days within which to appeal to this Court. In support of its argument, petitioner cites the case of Maximo Bustos v. Collector, C.T.A. No. 139, July 22, 1955. Suffice it to say that the facts in the Bustos case are entirely different from the facts of the instant case. In the Bustos case, even without the advice of respondent as to the period within which to appeal to this Court, the petition for review was timely filed. Moreover, it was also held in that case that the Collector of Internal Revenue has no power to extend the period within which to appeal to this Court. The question whether or not an appeal has been filed with this Court within the statutory period is one that involves its jurisdiction to hear and determine such appeal. (Robert L. Janda v. Collector, C.T.A. No. 87, February 23, 1956; Merced Drug House v. Collector, C.T.A. No. 180, May 21, 1956; North Camarines Lumber Co. v. Collector, C.T.A. No. 248, January 30, 1957.)

IN VIEW OF THE FOREGOING, for lack of jurisdiction, the herein petition for review should be, as it is hereby, dismissed, with costs against petitioner.

SO ORDERED.

Manila, February 25, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge