REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ALLISON J. GIBBS and
ESTHER K. GIBBS,
Petitioners,

- versus - C.T.A. CASE NO. 418

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

Dec. 2/57

RESOLUTION

The respondent has filed a motion to dismiss the herein appeal on the ground that the same was filed beyond the thirty-day period provided in Section 11 of Republic Act No. 1125.

The records show that on March 14, 1956, the petitioners protested the deficiency income tax assessment issued against them by the Collector of Internal Revenue for the sum of ₱12,284.00, exclusive of surcharge and interest, for the year 1950 (Annex E, Petition for Review, p. 13, C.T.A. record), on the ground that said deficiency assessment was based on a disallowance of a bad debt claimed in their income tax return for 1950. On August 28, 1956, respondent rejected petitioners' protest and reiterated his demand (Annex F, Petition for Review, p. 14, C.T.A. record). Petitioners, on October 3, 1956 (Annex G, Petition for Review, p. 16, C.T.A. record), sent a check drawn on the Bank of America (Check No. C-643963) for the ammunt of ₱12,284.00 payable to respondent. In the same letter petitioners demanded the immediate refund of the amount paid. On October 26, 1956, the Collector denied the request for refund (Exhibit 1, pp. 27-28, C.T.A. record; Annex M, Petition fér Review, pp. 17-18, C.T.A. record) and further required petitioners to pay the amounts of ₱1,469.04 and ₱1,997.26 as surcharge, interest and compromise penalty. This was received by petitioners on November 14, 1956 (Exhibit 2, p. 26, C.T.A. record). The instant petition for review was filed on September 27, 1957.

The only issue to be resolved is whether or not the appeal of petitioners was filed within the statutory period. Petitioners maintain that by virtue of Section 11 of Republic Act No. 1125, in relation to Section 306 of the National Internal Revenue Code, the instant action was filed on time, consequently, the Court has jurisdiction to hear and determine the same.

Petitioners paid the tax in question on October 3, 1956, at the same time asking for the refund of the same. He received the letter of respondent denying said request for refund on November 14, 1956. Pursuant to Section 11 of Republic Act No. 1125, petitioners had only 30 days from November 14, 1956, or up to December 15, 1956, within which to file their appeal to this Court. However, petitioners appealed from the aforesaid decision of respondent only on September 27, 1957, more than ten (10) months from November 14, 1956. Obviously, the appeal has been filed beyond the 30-day period set by law.

459

Petitioners contend that Section 306 of the Revenue Code provides that judicial proceedings may be instituted for recovery of an internal revenue tax within two years from the date of payment. This was so before the enactment of Republic Act No. 1125. On this point we wish to quote from a recent decision of the Supreme Court:

> A careful analysis of the provisions of both enactments would negative the assertion of petitioner. The specific provision of Republic Act No. 1125 regarding appeal (Section 11) was intended to cope with a situation where the taxpayer, upon receipt of a decision or ruling of the Collector of Internal Revenue, elects to appeal to the Court of Tax Appeals instead of paying the tax. For this reason, the latter part of said Section 11 provides that no such appeal would suspend the payment of the tax demanded by the Government, unless for special reasons, the Court of Tax Appeals would deem it fit to restrain said collection. Section 306 of the Tax Code, on the other hand, contemplates of a case wherein the taxpayer paid the tax, whether under protest or not, and later on decides to go to court for its recovery. We can, therefore, conclude that where payment has already been made and the taxpayer is merely asking for its refund, he must first file with the Collector of Internal Revenue a claim for refund before taking the matter to the Court, as required by Section 306 of the National Internal Revenue Code and that appeals from decisions or rulings of the Collector of Internal Revenue to the Court of Tax Appeals must always be perfected within 30 days after the receipt of the decision or ruling that is being appealed, as required by Section 11 of Republic Act No. 1125. We see no conflict between the aforementioned sections of said laws. (Johnston Lumber Co., Inc. vs. Court of Tax Appeals, and Collector of Internal Revenue, G. R. No. L-9292, April 23, 1957).

Following the opinion of the Supreme Court in the case cited above, petitioners should have appealed to this Court within 30 days from November 14, 1956, that is, not later than December 15, 1956, pursuant to Section 11 of Republic Act No. 1125. As the appeal was filed on September 27, 1957, we have no jurisdiction to entertain the same.

Let the above-entitled case be, as it is hereby, dismissed, for lack of jurisdiction, with costs against petitioner.

SO ORDERED.

Manila, December 2, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge