REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MARIANO MARQUEZ LIM
JOSE MARQUEZ LIM
CONCORDIA VDA. DE MARQUEZ LIM
LIM YAO JIAP
LIM YAO TING
LIM YAO GO,

Petitioners,

- versus -

C.T.A. CASE NO. 241

THE COLLECTOR OF INTERNAL REVENUE,

Respondent.

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

Dec. 24/56

R E S O L U T I O N

Respondent Collector of Internal Revenue raised by way of affirmative defense, the jurisdiction of this Court to hear and determine the petition for review. Upon motion by the respondent, a preliminary hearing was held on the question.

From the pleadings of the parties and the evidence so far presented it appears that on February 24, 1954, the respondent Collector of Internal Revenue issued deficiency income tax assessments against the petitioners herein for the years 1947 to 1951 inclusive, in the total sum of ₱5,810.59. On March 24, 1954 i.e. prior to the creation of this Court, the petitioners sent a letter to the respondent protesting against the issuance of the said deficiency assessments and requesting for its cancellation. This protest was referred to the Provincial Revenue Agent stationed at Iloilo City for comment, verification and recommendation but no action as yet was

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taken at the time the petitioners, on February 9, 1955, reiterated their request for the cancellation of the aforementioned deficiency assessments. In reply to this last request, respondent in a letter of September 7, 1955 informed the petitioners that there was no legal justification to alter, amend or modify the assessments issued against them and therefore demanded from them the payment of the amounts assessed to the City Treasurer of Iloilo. There is no evidence as to when petitioners received this letter but we can fairly presume that at the latest, it was received on September 21, 1955, for on this day petitioners addressed their protest against the aforementioned deficiency assessments. Respondent, on September 26, 1955 received said petitioners' letter dated September 21, 1956 which also contained a request for the deferment of any action to collect the tax in order to give the latter more time to produce the necessary documents to show why the deficiency assessments should be withdrawn and cancelled. This request of the petitioners was also denied by the respondent on September 30, 1955. On the following day, October 1, 1955, the respondent issued a warrant of distraint and levy against the properties of the petitioners. The warrant was addressed to the City Treasurer of Iloilo with the instruction to execute the same on or before October 30, 1955 if the petitioners fail to pay the deficiency assessments.

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However, as of this moment, it does not appear from the evidence presented at the preliminary hearing, whether or not the warrant of distraint and levy was served in fact upon the petitioners, much less executed.

Again there is no evidence as to when petitioners received respondent's letter of September 30, 1956 but we can reasonably assume that it was not later than November 4, 1955. On this last mentioned date the petitioners sent their last request for reconsideration to the respondent, this time explaining and discussing in detail why the decision assessing the deficiency income taxes should be reconsidered and withdrawn. However, the respondent in his letter of December 28, 1955, maintained the assessment and he demanded again from the petitioners the payment of the same, with the warning that in the event of failure to pay the same he would be "constrained to order the immediate execution of the warrant of distraint and levy against their properties." (Exh. "8", Motion). Petitioners received the final letter of the respondent denying the former's request for reconsideration on January 24, 1956, after which the present appeal was filed with this Court on February 23, 1956.

The only question for resolution in this incident is whether or not the instant petition for rev-

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iew was filed with this Court within thirty days after the receipt of the decision as required by Section 11 of Republic Act No. 1125.

The petitioners herein, by their appeal to this Court, seek the review of the deficiency income tax assessments made by the Collector of Internal Revenue. The determinative pronouncement in this regard made after the effectivity of Republic Act No. 1125 was respondent's letter of September 7, 1955. Hence the 30-day period within which to appeal the same to this Court should be counted from the receipt thereof which is from September 21, 1955.

After deducting the period between September 21, 1955 and January 24, 1956 during which petitioners' request for reconsideration was pending, we find that at the time the instant petition for review was filed on February 23, 1956, a total of thirty five (35) days had already elapsed and the appeal was therefore filed out of time.

It is contended, however, by the petitioners that the appeal was seasonably filed in that the 30-day period should be counted from January 24, 1956, when petitioners received the letter of the respondent dated December 28, 1955.

We find the contention of the petitioners without merit. In the case at bar, it is very clear that the disputed assessments of the Collector which are presently the subject of judicial review are those made and issued on February 24, 1954 and which became appealable to this Court when they were reiterated by respondent in his letter of September 7, 1955. The said assessments are the substantial and dispositive part of the Collector's decision which is now on appeal. (Ventanilla vs. Board of Tax Appeals, et al., G.R. No. L-7384, December 19, 1955). The petitioners ask: "Why not start counting from the date of original notice of assessment which was on February 24, 1954?" The reason is obvious. Republic Act No. 1125 which took effect on June 16, 1954 and which created this Court could not be applied retroactively. As of July 21, 1954 when this Court approved its rules, the assessments in question were under review by respondent due to petitioners' request for reconsideration. Hence it was only from the receipt of respondents' letter dated September 7, 1955, that petitioners could have availed of the remedy of an appeal to this Court under Republic Act No. 1125.

IN VIEW OF THE FOREGOING, for lack of jurisdiction of this Court, the petition for review filed by the petitioners on February 23, 1956 should be, as it is hereby dismissed, with costs against petitioners.

SO ORDERED.

Manila, Philippines, December 24, 1956.

MARIANO NABLE
Presiding Judge

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CUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge