REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

NORTH CAMARINES LUMBER CO., INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 248

COLLECTOR OF INTERNAL REVENUE,
Respondent.

1/30/57

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

RESOLUTION

This is in connection with the "Motion To Dismiss" filed by respondent on September 24, 1956, on the ground that the instant petition for review was filed beyond the thirty-day period provided for by section 11 of Republic Act No. 1125.

The following facts have been preliminarily established in connection with this incident. Petitioner, North Camarines Lumber Co., Inc., is a domestic corporation engaged in the lumber business. On June 19, 1951 and July 31, 1951, respectively, it sold a total of 2,164,863 board feet of logs to the General Lumber Co., Inc., with the agreement that the latter shall assume responsibility for the payment of the sales tax thereon in the total amount of ₱7,768.51. After being consulted on the matter of the payment of said taxes as provided in said agreement, respondent in his letters to petitioner dated June 18, 1951 and August 6, 1951 (Exhibits "A" & "B", pp. 105 & 97, respectively, BIR record), advised the latter that

59

he was interposing no objection to the arrangement, provided, that the General Lumber Co., Inc. files the corresponding surety bonds to cover the said sales tax liabilities. Accordingly, General Lumber Co., Inc. complied with said condition by filing "CISCO" Bond Nos. IR-2544 and IR-2840 (Annexes "B" & "C", Petition for Review). In view however of the failure of the General Lumber Co., Inc. and its surety to pay the said tax liabilities, respondent in his letter to petitioner dated August 30, 1955 (Exhibit "1", p. 74, BIR record), required the latter to pay the total amount of ₱9,596.72 as sales tax and incidental penalties on the sale of logs to the General Lumber Co., Inc. Although the date of receipt by petitioner of this letter does not appear on the record, it may be presumed to have been received on September 9, 1955. On this date, petitioner addressed a letter (Exhibit "2", p. 80, BIR record) to respondent which was received on September 12, 1955 (Exhibit "2-A") in which the former acknowledged receipt of the letter of demand and at the same time request for the reconsideration of the assessment. Petitioner's request for reconsideration was denied by respondent in his letter of December 8, 1955 (Exhibit "3", p. 93, BIR record) and received by the former on January 5, 1956. Again, petitioner requested for reconsideration of the assessment in its letter dated January 5, 1956 (Exhibit "4", p. 110, BIR record) which respondent received on January 9, 1956 (Exhibit "4-A"). Respondent having denied the second request for reconsideration in his letter dated January 30, 1956 (Exhibit "5", p. 116, BIR record) which petitioner received on February 16, 1956, (p. 6, Petition for Review) the latter on March 13, 1956, filed the present petition for review before this Court.

The sole issue in this incident is whether or not the instant case was filed within the thirty-day period prescribed by section 11 of Republic Act No. 1125.

We find the respondent's stand well taken. The decision of respondent from which an appeal may be taken to this Court, is his letter dated August 30, 1955 (Exhibit "1", p. 74, BIR record). The assessment in the said decision was never modified nor reversed by the respondent up to the time of the institution of the present petition for review, notwithstanding the petitioner's requests for reconsideration thereof. This Court has repeatedly held in several cases that -

> "The term 'decision' mentioned in section 7 (in cases involving disputed assessments) refers to determinations made or arrived at by the Collector which would become final and executory unless modified or reversed by said official, or appealed to a superior authority in accordance with law." (Angel Sarmos v. Collector, C.T.A. Case No. 229, March 5, 1956; see also Merced Drug House v. Collector, C.T.A. Case No. 180, May 21, 1956; Tomas B. Villamin v. Collector, C.T.A. Case No. 258, July 31, 1956; Dirk Van Dongen v. Collector, C.T.A. Case No. 268, July 31, 1956; Robert L. Janda v. Araneta, C.T.A. Case No. 87, February 23, 1956; Auyong Hian v. Collector, C.T.A. Case No. 242, August 30, 1956).

57

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).

But petitioner further contends that, in accordance with the principle laid down in the case of Secretary of Agriculture v. Mora (G.R. No. L-7752, May 27, 1955) in connection with provisions of law granting the right to appeal couched in general terms, the time for perfecting such appeal under section 11 of Republic Act No. 1125 should be computed from the date of receipt by the petitioner of the denial of the request for reconsideration.

This contention of the petitioner is without merit. The provisions of said section 11 regarding the appeal to this Court is given in definite and not general terms. In the said case of Secretary of Agriculture v. Hora, supra, the Supreme Court held that under the provisions of section 4 of Republic Act No. 739 "when a decision is to be taken to a court, it means that it will be taken by way of an appeal or for review." Applying the procedure for appeal provided by the Rules of Court, ~~the~~ Supreme Court further held that the request for reconsideration has only the effect of suspending the running of the period of appeal and brushed aside the argument that the period of appeal from the decision of the Secretary of Agriculture and Natural Resources must be counted from the date of receipt of the denial of the request for reconsideration. However, respondent contends the Hora case is not applicable to this case, on the theory that section 11 of Republic Act No. 1125 does not contain a clause that the "appeal may be taken x x as in ordinary civil cases" which is found in section 4 of Republic Act No. 1125. As we have stated in our Resolution in the case of Antonio Guerrero vs. Collector (C.T.A. Case No. 285, December 29, 1956), that phrase was cited to bolster the reasons advanced by the Supreme Court in arriving at its conclusion. Moreover, that phrase was necessary in section 4, Republic Act No. 739, as the courts granted the right to consider the case on appeal from the Secretary of Agriculture were the ordinary courts, whereas in this instance, it would be unnecessary for the very reason that Republic

55

Act No. 1125 created a special court for the principal purpose of determining tax cases. Moreover, as we have likewise previously held, Congress intended that the Rules of Court should be applied to the appeals from the decisions of the Collector of Internal Revenue to this Court (Antonio Guerrero vs. Collector, supra; Congressional Records, Third Congress, Vol. I, No. 65-HR p. 2208).

For brevity therefore, we summarize hereunder the period consumed by petitioner in perfecting its appeal after deducting the time during which the period was tolled by a pending request for reconsideration.

From September 9, 1955 presumed date of receipt of decision to September 12, 1955, the filing of a request for reconsideration -------------	3 days
From January 5, 1956 presumed date of receipt of denial of reconsideration to January 9, 1956 the filing of second request for reconsideration --------------	4 days
From February 16, 1956, receipt of denial of reconsideration to March 13, 1956, filing of petition for review -----------------------	26 days
Total ------------	33 days

All in all, petitioner consumed a total of thirty-three (33) days before filing its appeal with this Court, and we are constrained to hold that we cannot entertain the instant petition for review.

However, petitioner contends that assuming arguendo that the present petition for review was not seasonably filed, yet this Court could take cognizance of this case inasmuch as the respondent failed to raise this issue as a special defense in his answer to the petition for review which he filed before this Court on March 27, 1956. The petitioner argues that the thirty-day period within which to appeal to this Court provided for in section 11 of Republic Act No. 1125, is merely a prescriptive period and not jurisdictional and is deemed waived by respondent upon his failure to raise the same in his answer.

We find this contention without merit. We have repeatedly held that the thirty-day period provided by section 11, Republic Act No. 1125, within which to appeal to this Court from the decision of the Collector of Internal Revenue is determinative of the jurisdiction of this Court to hear and decide the same, and may be raised at any stage of the proceedings. (Robert L. Janda v. Araneta, C.T.A. Case No. 87, February 23, 1956; Merced Drug House v. Collector, C.T.A. Case No. 180, May 21, 1956.)

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

SO ORDERED.

Manila, January 30, 1957.

MARIANO NABLE
Presiding Judge

WE CON-

CUR:

[illegible]
Associate Judge

ROMAN M. UMALI
Associate Judge