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DON LINO GUTIERREZ and SONS, INC., in its capacity as administrator of the estate of taxpayer LINO GUTIERREZ,
Petitioner,

- versus -

C.T.A. CASE NO. 1952

HON. MISAEL P. VERA, in his capacity as COMMISSIONER of Internal Revenue,
Respondent.

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10/28/78

D E C I S I O N

This has reference to the decision of the Commissioner of Internal Revenue assessing against and demanding from petitioner Lino Gutierrez & Sons, Inc. the total sum of ₱89,665.60 as deficiency income taxes for the years 1957, 1958, 1959 and 1962, computed as follows:

90-AR-17894-69/57

Net income as per return			₱ 50,783.87
Add: Profit on sale of real estate:			
1. Selling price	₱ 20,400.00		
Cost	21,349.38	(₱ 949.38)	
2. Selling price	₱200,000.00		
Cost	116,830.85	82,169.15	41,109.88
Net income per final investigation			₱ 91,893.75
Less personal exemption			3,000.00
Amount subject to tax			88,893.75
Tax due thereon			22,982.00
Less amount already assessed			9,559.00
B a l a n c e			13,423.00
Add: 50% surcharge			6,711.50
½% mo. int. from 6-20-59 to 6-20-62 .			2,416.14
Compromise for violation of Sec. 72 of the Tax Code			500.00
Total amount due & collectible			₱ 23,050.14

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90-AR-25057-69/58

Net income per return		₱ 71,111.96
Add: Additional income:		
Gain on sale of real estate	₱57,069.75	
Less amount declared in the return	28,534.87	₱ 28,534.88
Net income per final investigation		99,646.84
Less: Personal exemption		3,000.00
Amount subject to tax		₱ 96,646.84
Tax due thereon		25,906.00
Less amount already assessed		15,776.00
B a l a n c e		10,130.00
Add: 50% Surcharge		5,065.00
½% mo. int. from 6-20-59 to 6-20-62 .		1,823.40
Compromise for violation of Sec. 72 of the Tax Code		500.00
TOTAL AMOUNT DUE AND COLLECTIBLE		₱ 17,518.40

90-AR-319231-69/59

Net income per return		₱ 18,161.70
Add: Undeclared 50% gain on sale of Mandaluyong - San Felipe Neri property	₱ 3,089.42	
Undeclared profit on sale of Cristobal property . .	67,700.40	70,789.82
Net income per final investigation		₱ 88,951.52
Less: Personal exemption		3,000.00
Amount subject to tax		₱ 85,951.52
Tax due thereon		30,137.00
Less amount already assessed		2,319.00
B a l a n c e		27,818.00
Add: 50% Surcharge		13,909.00
½% mo. int. from 4-19-60 to 4-19-63 .		5,007.24
Compromise for violation of Sec. 72 of the Tax Code		500.00
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 47,234.24

90-AR-334734-69/62

Net income per return			P 18,509.95
Add: Undeclared profit on sale of			
Calamba property		P21,237.82	
(Selling price)			
Original cost	P19,187.37		
Less: Res. for depreciation .	2,319.86	16,869.51	4,368.31
Net income per final investigation			22,878.26
Less: Personal exemption			3,000.00
Amount subject to tax			P 19,878.26
Tax due thereon			3,451.00
Less amount already assessed			2,402.00
Balance			1,049.00
Add: 5% Surcharge			524.50
½% mo. int. from 4-17-63 to 4-17-66 .			188.82
Compromise for violation of Sec. 72 of the Tax Code			100.00
TOTAL AMOUNT DUE & COLLECTIBLE			P 1,862.32

Sometime in the latter part of 1960, respondent Commissioner of Internal Revenue, through one of his revenue examiners, caused to be investigated said Lino Gutierrez's income tax liability for the year 1958 and prior years. Upon investigation of his returns, it was found that for the years 1956 to 1958 inclusive, he declared in his income tax returns only fifty (50) percent of the gains derived from the sale of his real properties instead of 100%, the properties sold by him being ordinary assets. (pp. 12 to 16, BIR rec.) On the basis of petitioner's declaration of only 50% gains or profits derived from the sale of his real properties, respondent Commissioner of Internal Revenue on February 1, 1962, sent a letter to petitioner finding him liable to, and demanding payment of, the total amount of ₱30,303.18 representing deficiency income taxes due for the years 1956, 1957 and 1958. (Exh. 2, pp. 17-19, Vol. I, BIR rec.) Subsequently, on July 17, 1962, a telegram was sent to petitioner which sought to find out whether or not the taxes assessed and demanded against him for the years in question were already paid; and if not, the collection thereof shall be enforced through the summary remedies provided by law. (Exh. 3, p. 20, Vol. I, BIR rec.)

Consequently, on August 27, 1962, petitioner Lino Gutierrez requested for a reconsideration of the assessment for said years 1956, 1957 and 1958 asserting the ground that his sales of his properties are sales of capital assets, and hence his declaration of 50% of the gain realized in the sales thereof is correct. (Exhs. F and 4, pp. 21 to 26, Vol. I, BIR rec.) In reply thereto, respondent in his letter dated October 18, 1962, requested petitioner to execute a waiver of the statute of limitations in order to give the former ample time to act on the latter's request, otherwise, petitioner's failure to do so will be deemed abandonment of his request for reconside-

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ration and will cause the immediate collection of the aforesaid liabilities. (p. 27, Vol. I, BIR rec.)

On November 15, 1962 (pp. 28-29, Vol. I, BIR rec.) and December 27, 1962 (p. 32, Vol. I, BIR rec.), two letters were sent by respondent to petitioner informing him that his request for a reinvestigation and review will be given due course and consideration only upon submission by him of said waiver of which he was given up to January 10, 1963, within which to submit the same. On February 4, 1963, another letter (Exh. 5, p. 33, Vol. I, BIR rec.) was sent to petitioner-taxpayer inviting attention of the latter that until this date of writing, the waiver of the statute of limitations have not been duly accomplished and returned to respondent, which letter, is substantially quoted below:

> "x x x your request for reinvestigation of your deficiency income tax liability for the years 1956 to 1958 in the x x x amount of ₱30,303.42 x x x you have been requested to accomplish the blank forms of the waiver for the defense of prescription under the National Internal Revenue Code which were inclosed in our letter to you of November 15, 1962, x x x x x x x x x x was of this date the same has not been returned to us, duly accomplished.
>
> In view thereof, it is again requested that you return the aforesaid waiver, duly accomplished, within five (5) days from

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> the receipt hereof. If x x x x x x we do not hear from you, this Office will feel free to presume that you have already abandoned your request for reinvestigation, x x x x x x the immediate collection of the sum of ₱30,303.42, plus x x x x x x x by means of the remedies provided for by law."

On March 18, 1963, respondent sent a letter to petitioner stating finally that for petitioner's failure to submit the required waiver of the statute of limitations, he considered the request of reconsideration as abandoned by petitioner, and, therefore, requested for the payment of the sum of ₱30,303.18, as deficiency income tax plus 5% surcharge and 1% monthly interest, otherwise the collection thereof will be enforced by summary remedies. (Exh. 6, p. 34, Vol. I, BIR rec.) The pertinent portion of the letter of respondent of March 18, 1963 is quoted hereunder:

> "x x x x x x
>
> In view thereof, it is presumed that his request for reconsideration has been abandoned. It is, therefore, requested that the abovestated amount of ₱30,303.18 plus 5% surcharge and 1% monthly interest from February 1, 1962 be paid not later than April 18, 1963 otherwise its collection will be immediately enforced by means of the summary remedies provided by law."

After the death of taxpayer, respondent Commissioner of Internal Revenue filed a claim for the payment of the said deficiency income taxes for the years 1956, 1957 and 1958 in the sum of

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₱30,303.18, in Special Proceedings No. Q-6832 entitled "Intestate Estate of Don Lino Gutierrez," which was pending before the Court of First Instance of Quezon City. (Exhs. C and 12, p. 274, Vol. II, BIR rec.)

On April 29, 1964, an informer sent a letter to the Commissioner of Internal Revenue denouncing the late Lino Gutierrez for tax evasion. (p. 34, Vol. II, BIR rec.) As a consequence thereof, the Special Investigation Division of the Bureau of Internal Revenue conducted another investigation of the income tax returns of the taxpayer for 1957, 1958, 1959, 1960 and 1962. On June 28, 1965, after a thorough investigation into the case, an assessment was issued against and demanding from petitioner Don Lino Gutierrez & Sons, Inc. (Exhs. B and 8, pp. 155-157, Vol. II, BIR rec.) the total amount of ₱170,730.81, as deficiency income tax for the years in question, inclusive of 50% surcharge and ½% monthly interest, itemized as follows:

90-AR-17894-64/57

Net income per return	₱50,783.87
Add: Undeclared 50% Gain	41,107.89
Net income per investigation	₱91,891.76
Less: Personal & Addt'l exemptions	3,000.00
Amount subject to tax	₱88,890.76
Tax due thereon	₱22,981.00
Less: Amount already assessed	9,559.00
B a l a n c e	₱13,422.00
Add: 50% surcharge	6,711.00
½% monthly interest from 6-20-59 to 6-20-62	2,415.96
TOTAL AMOUNT DUE & COLLECTIBLE	₱22,548.96

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90-AR-25057-64/58

Net income per return		₱71,111.96
Add: Undeclared 50% Gain		28,534.87
Net income per investigation		₱99,646.83
Less: Personal & addt'l exemptions		3,000.00
Amount subject to tax		₱96,646.83
Tax due thereon		₱25,906.00
Less: Amount already assessed		15,776.00
B a l a n c e		₱10,130.00
Add: 50% surcharge		5,065.00
½% monthly interest from 6-20-59 to 6-20-62		1,823.40
TOTAL AMOUNT DUE & COLLECTIBLE		₱17,018.40

90-AR-319231-64/59

Net income per return		₱ 18,161.70
Add:		
(1) Undeclared 50% gain on sale of Mandaluyong & San Felipe Neri Land	3,089.42	
(2) Undeclared gain on Cristobal property	144,233.62	
(3) Undeclared interest income per information	7,000.00	154,323.04
Net income per investigation		₱172,484.74
Less: Personal & addt'l exemptions		3,000.00
Amount subject to tax		₱169,484.74
Tax due thereon		₱ 74,097.00
Less: Amount already assessed		2,319.00
B a l a n c e		₱ 71,778.00
Add: 50% surcharge		35,889.00
½% monthly interest from 4-19-60 to 4-19-63		12,920.04
TOTAL AMOUNT DUE & COLLECTIBLE		₱120,587.04

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90-AR-1-317066-64/60

Net income per return		₱12,054.21
Add: Interest not declared as per information		
2/2/60 HSBC No. J325941 - 6,659.32		
2/15/60 HSBC No. J332780 - 3,500.00		
12/19/60 HSBC No. J344282 - 9,750.00		19,909.32
Net income per investigation		₱31,963.53
Less: Personal & Addt'l exemptions		3,000.00
Amount subject to tax		₱28,963.53
Tax due thereon		₱ 6,169.00
Less: Amount already assessed		891.00
B a l a n c e		₱ 5,278.00
Add: 50% surcharge		2,639.00
½% monthly interest from 4-18-61 to 4-18-64		950.04
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 8,867.04

90-AR-334734-64/62

Net income per return		₱18,509.95
Add: Gain on sale of Calamba Property:		
Selling Price	₱21,237.82	
Original Cost . ₱19,189.37		
Less: Res. for Dep. . 2,319.86	(16,869.51)	4,368.31
Net income per investigation		₱22,878.26
Less: Personal & addt'l. exemptions		3,000.00
Amount subject to tax		₱19,878.26
Tax due thereon		₱ 3,451.00
Less: Amount already assessed		2,402.00
B a l a n c e		₱ 1,049.00
Add: 50% surcharge		524.50
½% monthly interest from 4-17-63 to 6-17-65		136.37
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 1,709.87

Taxpayer's counsel, upon receipt of the above assessment, filed a protest, and requested for a reinvestigation, in a letter dated August 9, 1965, on the ground that the assessment is not based on facts and is contrary to law. (Exh. 9, p. 162, Vol. II, BIR rec.)

In subsequent letters dated August 30, 1965, December 10, 1965 and March 2, 1966, respectively, respondent Commissioner of Internal Revenue requested that taxpayer execute a waiver of the statute of limitations. On March 26, 1966, taxpayer executed an indefinite waiver of the defense of prescription. (Exh. 10, p. 182, Vol. II, BIR rec.)

Respondent, upon receipt of the waiver, gave due course to the protest. As a result of this investigation, respondent wrote petitioner, in his letter of June 19, 1968, that the assessments pertaining to the years 1956, 1957 and 1958 have already become final and executory, and that only the assessments for the years 1959, 1960 and 1962 shall be made the subject of the request for reinvestigation, involving the amounts of ₱120,587.04, ₱8,867.04 and ₱1,709.87 under Assessment Nos. 90-AR-31923-64/59, 90-AR-1-317066-64/60 and 90-AR-334734-64/62, respectively. (p. 274, Vol. II, BIR rec.)

Before the respondent rendered a decision on the said protested assessments for 1959, 1960 and 1962, and after considering the letter of June 19, 1968 of respondent as the decision on the aforesaid protested assessments, taxpayer filed with this Court its petition for review on July 22, 1968. In the answer filed on February 4, 1969, respondent prayed, among other things, that the petition or appeal be dismissed on the ground that this Court did not acquire jurisdiction over the same.

Six months later, respondent wrote petitioner in a letter dated August 29, 1969 (Exh. 15, pp. 338-340, Vol. II, BIR rec.), requesting the latter to pay the total amount of ₱89,665.60 as deficiency income taxes, inclusive of the 50% surcharge for the years 1957, 1958, 1959 and 1962. Said letter was received by the petitioner on May 21, 1970. (Exh. 16-B, p. 360, Vol. II, BIR rec.)

After more than three (3) years had elapsed from the receipt of the decision on petitioner's protest, dated August 29, 1969, petitioner filed an amended petition for review on August 18, 1971, alleging therein new matters, but which did not touch anything regarding the aforesaid decision of respondent dated August 29, 1969, requiring

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petitioner to pay P89,665.60 as deficiency income taxes, plus 50% surcharge, for the years 1957, 1958, 1959 and 1962.

The issues involved in this case are as follows:

1. Whether or not the instant petition for review was filed within the reglementary 30-day period from the receipt of the decision of respondent Commissioner of Internal Revenue provided for under Section 11 of Republic Act No. 1125;

2. Whether or not the right of the Commissioner of Internal Revenue to collect the deficiency income taxes for the years in question has prescribed;

3. Whether the deficiency income tax assessments for the years in question is made in accordance with law; and

4. Whether or not the imposition of the 50% surcharge on the August 29, 1969 assessment is proper and legal.

With regard to the first issue, counsel for petitioner alleged that the assessment issued by respondent Commissioner of Internal Revenue on February 1, 1962 is null and void because no notice of any kind was received by petitioner. Counsel further alleged that the assessments for 1956, 1957 and 1958 can never become final, executory and demandable because the letter of respondent of June 19, 1968, which was received by petitioner on June 22, 1968, "produces no other effect than this decision on the Motion For Reconsideration filed

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for and in behalf of taxpayer Lino Gutierrez, which was appealed to this Honorable Court within the 30-day period prescribed by Republic Act No. 1125." (Par. 1, Opposition to Motion to Dismiss.) He concludes that the petition for review having been filed on July 22, 1968, the same was, therefore, filed on time.

On the other hand, respondent Commissioner of Internal Revenue contends that the petition for review was filed beyond the 30-day reglementary period prescribed under Republic Act No. 1125. He argued that the said petition for review having been filed only on July 22, 1968, it was filed more than five (5) years from the date of respondent's letter dated March 18, 1963 which he considers as his appealable decision.

It was stated, heretofore, that per the records of the Bureau of Internal Revenue, it was on February 1, 1962 that respondent, after a routinary investigation, sent to Don Lino Gutierrez the first letter assessing and demanding from the latter the total amount of ₱30,303.18 as deficiency income taxes for the years 1956 to 1958. (pp. 17-19, Vol. I, BIR rec.) The said letter of assessment and demand of February 1, 1962, contrary to the assertion of petitioner's counsel to the effect that it was not received, was actually received by petitioner, evidenced by his letter to respondent dated August 27, 1962, when he requested for a review and reinvestigation of the assessment for the years 1956 to 1958. (pp. 21-26, Vol. I, BIR rec.)

Upon receipt by respondent of the above letter of petitioner for review and reinvestigation, he lost no time in writing petitioner twice, first, on October 18, 1962, and, second, on November 15, 1962, requesting petitioner, in both instances, to accomplish enclosed blank forms for the purpose of waiving the defense of prescription, and to return the accomplished forms within five (5) days so that he may review and reinvestigate the disputed assessments. (pp. 27 and 28, Vol. I, BIR rec.) However, no reply or action was taken thereon by petitioner. This was considered by respondent to mean as an act of abandonment by petitioner of his request for a review and reinvestigation of the deficiency income tax assessment for the taxable years 1956, 1957 and 1958. Consequently, respondent issued and served upon taxpayer his letter-decision dated March 18, 1963, pertinent portions of which is hereunder quoted once more for emphasis:

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> "x x x x x x
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> In view thereof, it is presumed that his request for reconsideration has been abandoned. It is, therefore, requested that the abovestated amount of ₱30,303.18 plus 5% surcharge and 1% monthly interest from February 1, 1962 be paid not later than April 18, 1963 otherwise its collection will be immediately enforced by means of the summary remedies provided by law."

As can easily be noted, when the Commissioner of Internal Revenue states in effect in his letter to taxpayer that the Bureau of Internal Revenue will proceed to collect the tax, such statement indicates the finality of his decision. The aforequoted letter of respondent states that the request for reconsideration has been abandoned and that if the said tax assessed in the amount of ₱30,303.18, plus surcharges, will not be paid, it will thus be immediately enforced by summary remedies provided by law, is in effect a denial of the request for review and reinvestigation of the assessment. And when petitioner did not appeal this said decision, the same became final and executory. This is in line with the ruling of the Supreme Court, cited by respondent, in the case of Dy Pac & Co., Inc. vs. Court of Tax Appeals, et al, G.R. No. L-31369, October 18, 1977, 79 SCRA 442, thus:

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> "Paragraph 1 of Section 11 of Republic Act No. 1125, in express terms, allows appeal from 'decision or ruling of the Commissioner of Internal Revenue.' The word 'decision' has been interpreted to mean <u>decisions</u> of the Commissioner of Internal Revenue on protests of taxpayers against assessments 1/ And, in computing the 30-day period for appeal to the Tax Court, counting should begin from the date or receipt of the decision of the Commissioner on the disputed assessment. 2/ However, where several requests for reconsideration have been filed with the Commissioner, it would appear that the communication from the latter overruling taxpayer's request for reconsideration and affirming the disputed assessment in terms clearly indicating finality of the action taken constitutes the appealable decision or ruling."

However, in 1964, another tax investigation of the deficiency income taxes of petitioner also for the year 1957, and including the years 1960 and 1962, was conducted at the instance of an informer who denounced the late Don Lino Gutierrez for tax evasion. (p. 34, Vol. II, BIR rec.) After a more detailed and thorough investigation, another letter of assessment and demand dated June 28, 1965 was issued and sent to the taxpayer. (Exhs. B & 8, pp. 155 to 157, Vol. II, BIR rec.) It must be noted that this assessment and demand dated June 28, 1965 was subject of a protest by counsel for petitioner, as per his letter dated August 9, 1965. (p. 162, Vol. II, BIR rec.)

Considering the above protest, respondent requested the taxpayer to execute the requisite waiver of the statute of limitation. While waiting for said waiver, respondent Commissioner of Internal Revenue in the meantime wrote the taxpayer, through counsel, on November 19, 1965 (p. 36, Vol. I, BIR rec.), requesting the payment of the previous assessments, one was for the amount of ₱11,338.00, plus statutory penalties adjudged against the estate and in favor of respondent in the case of the late Don Lino Gutierrez vs. Collector (now Commissioner) of Internal Revenue, G.R. No. L-19537, and the other was for the amount of ₱30,303.18, representing deficiency income taxes for the years 1956, 1957 and 1958, plus statutory penalties for late payment. This assessment was subject of respondent's claim in Special Proceedings No. 2-6832, Intestate Estate of the late Don Lino Gutierrez, and which the deceased son and administrator of the estate, Antonio Gutierrez, promised to pay when the Supreme Court decides the case in favor of the respondent Commissioner of Internal Revenue in G.R. L-19537.

Finally, on March 26, 1966, taxpayer executed an indefinite waiver of the statute of limitation in accordance with Section 332 of the National

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Internal Revenue Code. (Exh. 10, supra.) Immediately thereafter, a more detailed and thorough investigation of the income tax cases for the years in question was conducted. As a result thereof, respondent sent his letter of demand dated June 16, 1968 assessing against and demanding from petitioner the payment of the total amount of ₱170,730.81, which represented deficiency income taxes for the years 1957 to 1960 and 1962. However, respondent Commissioner of Internal Revenue after realizing that the taxpayer had already been assessed on February 1, 1962, for the years 1956 to 1958, and that said assessments have become final, wrote said letter dated June 19, 1968, stating in effect that the assessments for 1956, 1957 and 1958 against petitioner were those issued on Februäry 1, 1962 which were valid and subsisting. Pertinent portions of said letter is quoted herein below:

> "x x x x, please be informed that as per records of this Office, the 1956, 1957 and 1958 deficiency income taxes of your said client in the total amount of ₱30,303.18 were already assessed on February 1, 1962 under Assessment Nos. AR-13987-61-56, AR-17894-61/65 and AR-25057-61/58, respectively. The said assessments for ₱30,303.18 have already become final and executory and are the subject matter of a proof of claim by this Office in Special Proceedings No. Q-6832, entitled Intestate Estate of Don Lino Gutierrez pending before the

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> Court of First Instance of Quezon City. Consequently, the later assessments for 1957 and 1958 issued on June 28, 1965 are hereby cancelled and the previous assessments for 1956, 1957 and 1958 issued on February 1, 1962 are declared valid and subsisting.
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> x x x. Henceforth, your said protest will pertain only to the contested assessments for the years 1959, 1960 and 1962, involving x x x." (underlining ours) (Letter, p. 370, Vol. II, BIR rec.)

The above letter of June 19, 1968, received by petitioner on June 22, 1968, was not contested or protested by counsel for petitioner. Instead, considering the same as the decision of respondent Commissioner of Internal Revenue, it right away appealed the same to the Court of Tax Appeals on July 22, 1968.

On February 4, 1969, respondent filed his answer to the petition for review asserting that this Court has no jurisdiction over the case, and at the same time prayed for the dismissal thereof.

Six (6) months after the filing of his answer to the petition for review, respondent, on August 29, 1969, assessed against and demanded from petitioner deficiency income taxes in the amount of P89,665.60 inclusive of surcharge and interest for the years 1957, 1958, 1959 and 1962. (pp. 338-340, Vol. II, BIR rec.) With the exception of that assessment covering the years 1957 and

1958, which as aforesaid had become final and executory, per respondent's letter dated June 19, 1968, the aforesaid letter of August 29, 1969, became the final decision insofar as the tax years 1959 and 1962 were concerned. However, inasmuch as no particular appeal was taken from that decision of August 29, 1969, which covers deficiency income tax assessments for 1959, 1960 and 1962, we have no jurisdiction to decide the same.

With respect to the appeal from the decision dated March 18, 1963, (Exh. 6, p. 34, Vol. I, BIR rec.), which was brought to us only on July 22, 1968, it was filed more than five (5) years from the date of respondent's decision. (p. 34, Vol. I, BIR rec.) Said petition for review, therefore, insofar as the assessments for 1956, 1957 and 1958 are concerned, was filed beyond the 30-day reglementary period provided for under Republic Act No. 1125.

WHEREFORE, the instant petition for review is hereby dismissed for lack of jurisdiction, with costs against petitioner.

SO ORDERED.

Quezon City, December 28, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge