REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

TANG HO DE LI SENG GIAP,
WILLIAM LEE, HENRY LEE,
SOFIA LEE TEEHANKEE,
THOMAS J. LEE, ANTHONY P.
LEE, JULIA LEE KAW, CHARLES
LEE, VALERIANA LEE YU,
VICTOR LEE, SILVINO LEE,
MARY LEE YU, JOHN LEE and
PETER LEE, for themselves
and as HEIRS OF LI SENG
GIAP, Deceased,
Petitioners,

- versus - C.T.A. CASE NO. 279

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

5/18/57

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RESOLUTION

This is a petition to review the decision of respondent Collector of Internal Revenue denying the request for tax credit or refund of the sum of ₱3,637.49 alleged to have been erroneously collected. After answer has been filed, respondent asked for a preliminary hearing on the question of jurisdiction raised by way of affirmative defense.

There is no dispute as to the facts pertinent to the issues before us, which facts may be stated as follows:

In a letter dated January 26, 1956, (Exhs. "6" and "F", p. 175, BIR rec.), petitioners requested respondent for a tax cfedit of ₱3,637.49 which was allegedly overpaid as estate and inheritance taxes. The latter denied this request in his letter dated

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February 6, 1956 (Exhs. "1" and "A-1", pp. 179-180, BIR rec.), but there is no showing when this denial was received by petitioners. However, petitioners made a request for its reconsideration in a letter dated February 16, 1956 (Exhs. "2" and "B", pp. 182-183, BIR rec.), which was denied by the respondent on March 9, 1956, (Exhs. "3" and "C", p. 191, BIR rec.). On March 16, 1956, (Exhs. "4" and "D", p. 194, BIR rec.) petitioners acknowledged receipt of the denial without stating when and how said receipt was made, and at the same time reiterated their request for reconsideration of respondent's decision. This second request for reconsideration was likewise denied by respondent on March 22, 1956 (Exhs. "5" and "E", pp. 197-198, BIR rec.) but, like in the previous communication, there is no showing when it was received by petitioners.

Thereupon, petitioners, on April 12, 1956, appealed to the Secretary of Finance said adverse decision of respondent (Exh. "H", pp. 33-34, C.T.A. rec.).

In a letter dated May 18, 1956, (Exh. "K", p. 204, BIR rec.), respondent informed petitioners of the denial of their appeal to the Secretary of Finance, but as in previous communications, there is no evidence indicating the date when this letter was received by petitioners. The instant petition for review was filed with this Court on June 4, 1956.

The amount of ₱3,637.49, which is the object of the request for tax credit or refund, is allegedly overpaid balance of various payments made under Official Receipts Nos. 755, 1281, 1280, 1282, 1284, 1283, 1271, 1272, 1273, 1274, 1275, 1276, 1277 and 1278 (Gift Taxes) all dated June 12, 1951; Official Receipt No. 3800 (Estate Tax) dated January 14, 1953; and Official Receipt No. 39554 dated April 7, 1953, Nos. 39504 and 39033 (Inheritance Taxes) dated May 21, 1953 (pars. 11 and 13, Petition for Review; Exhs. "1" and "G", p. 173, BIR rec.). The written claim for tax credit was filed with the respondent on January 27, 1956, (Exhs. "F" and "6", p. 175, BIR rec.).

The jurisdiction of this Court to take cognizance of this case is disputed by the respondent on two grounds, to wit: (a) that the appeal was not filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125; and (b) that the claim for refund or tax credit was not filed within the 2-year period provided for in Sections 306 and 309 of the National Internal Revenue Code.

We have consistently ruled that the appealable decision contemplated in Sections 7 and 11 of Republic Act No. 1125, 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 Saracs vs. Bureau of Internal Revenue, C.T.A. Case No. 229, March 5, 1956; Robert L. Janda vs. J. Antonio Araneta, Acting Collector of Internal Revenue, C.T.A. Case No. 87, February 23, 1956; Merced Drug House vs. Collector of Internal Revenue, C.T.A. Case No. 180, May 21, 1956). Applying this criterion to the instant case, the appealable decision is the letter of respondent to the petitioners dated February 6, 1956 (Exhs. "1" and "A"), which contains the determination made or arrived at by respondent on petitioners' request for refund, which determination remained unaltered and unmodified up to the filing of the present petition for review despite repeated requests for reconsideration.

There being no evidence showing how and when respondent's letters, marked Exhibits "1", "3" and "5", denying petitioners' request for reconsiderations, marked Exhibits "F", "B" and "D", were received by petitioners, we are giving the benefit of a doubt in favor of petitioners by considering that the said respondent's letters were received by petitioners on the same day the latter filed the requests for reconsideration. Consequently, none of the 30-day statutory period to appeal was consumed up to April 12, 1956 when petitioners took the case on appeal to the Secretary of Finance.

Petitioners however contend that their appeal to the Secretary of Finance suspended the running of the period up to May 30, 1956, when they received the letter of the respondent dated May 18, 1956 (Exh. "K", p. 204, BIR rec.).

Petitioners argue thus:

> "On April 12, 1956, (Exh. "H"), in order to exhaust all administrative remedies, petitioners addressed their 1st Indorsement to the Secretary of Finance requesting for a reconsideration of the decision of respondent Collector. On May 30,1956, petitioners received letter of respondent Collector dated May 18, 1956, (Exh. "K", p. 204, BIR rec.), in his answer to the above 1st Indorsement, reiterating his denial of the request of petitioners for tax credit, at the same time, <u>informing the herein petitioners of their right, within 30 days from receipt of said letter to appeal to the Court of Tax Appeals if they so desire, which appeal was filed by petitioners on June 4, 1956.</u>" (Underlining supplied)

We find this argument not well taken. The appeal to the Secretary of Finance cannot be deemed to have the effect of suspending the reglamentary period of 30 days within which an appeal may be brought to this Court under Section 11 of Republic Act No. 1125. By said law the Court of Tax Appeals is vested with exclusive appellate jurisdiction to review decisions of the Collector of Internal Revenue involving disputed assessments, refunds of taxes, etc. Where the taxpayer chooses to avail himself of the remedy of judicial review prescribed by Republic Act No. 1125, he must appeal the Collector's decision directly to this Court without making an intermediate appeal to the Secretary of Finance.

Obviously, petitioners rely upon the statement of the respondent in his letter of May 18, 1956 which we quote:

> "Should you further assail the legality of this decision, you may appeal to the Court of Tax Appeals within thirty (30) days from your receipt hereof, in accordance with Section 11, of Republic Act No. 1125." (Exh. "K", p. 204, BIR rec.)

This statement cannot be given force and effect. For as we have elsewhere stated ". . . . . jurisdiction, especially over suits against the state, can not be the subject of waiver, compromise, or agreement. Much less, therefore, can a statement or opinion of any administrative officer enlarge or restrict the clear and explicit provision of law contained in Section 11 of Republic Act No. 1125." (St. Stephen's Association, et al. vs. Collector of Internal Revenue, C.T.A. Case No. 173, April 15, 1956.) We may add, that to admit such interpretation would lead to undesirable consequences as it would permit respondent to arbitrarily fix the period to appeal beyond that contemplated by law.

The statutory period within which to appeal therefore commenced from April 12, 1956 when petitioners received respondent's letter dated March 22, 1956, (Exh. "5"), denying the former's request for reconsideration dated March 16,1956 (Exh. "D"). The petition for review, therefore, should have been filed within thirty (30) days from said date or not later than May 12, 1956. The instant petition for review having been filed only on June 4, 1956, it follows that the appeal was effected 22 days after the prior statutory period within which to appeal had expired and this Court is thereby barred from considering this case.

In view of the foregoing considerations, it is needless for us to pass upon the second issue of whether or not the claim for refund or tax credit was filed within the two year statutory period.

FOR ALL THE FOREGOING CONSIDERATIONS, for lack of jurisdiction, the herein petition for review should be, as it is hereby dismissed, with costs against the petitioners.

SO ORDERED.

Manila, Philippines, May 18, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

AUGUSTO M. LUCIANO
Associate Judge
(On Leave)