CRISTETA G. CAGUIOA,
Petitioner,

- versus - C.T.A. CASE NO. 222

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

1/28/57

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RESOLUTION

This is in connection with the order of this Court dated November 7, 1956, issued motu proprio requiring the parties to submit evidence and/or memoranda as to whether or not the present petition for review was filed within the thirty-day period prescribed by section 11 of Republic Act No. 1125. The hearing of this incident was set on December 8, 1956 at which time the parties presented their respective evidence. On this question counsel for petitioner adopted the entire record of the Bureau of Internal Revenue consisting of 73 pages, as his exhibits.

The following facts appear from the record. In a letter dated October 9, 1954 (Exhibit 1, p. 42, BIR record), respondent Collector of Internal Revenue assessed and demanded from petitioner, as operator of the San Fabian Electric Plant, the sum of ₱928.59 as deficiency franchise tax and surcharge, covering the period from the second quarter of 1950 to the second quarter of 1953. In another letter dated October 20, 1954 (Exhibit 2, p. 49, BIR record) respondent assessed and demanded from the petitioner also as operator of the San Jacinto Electric Plant the sum of ₱101.66, as deficiency percentage tax, surcharge and fixed tax, covering the period from 1949 to June 1953. There is no showing, however as to when petitioner received these letters, but it may be presumed that they were received, at the latest on November 4, 1956. On this date, petitioner addressed a letter to respondent which the latter received on November 6, 1954 (Exhibit 3, p. 52, BIR record), wherein the petitioner acknowledged receipt of the afore-mentioned letters of demand for the payment of the deficiency taxes of the San Fabian and San Jacinto Electric Plants, and at the same time requested for the reconsideration of the assessment in that the penalties imposed be eliminated therefrom. The request was reiterated by petitioner in a letter dated November 9, 1954 (p. 51, BIR record) which respondent received on November 10, 1954. These request for reconsideration were denied by respondent in his letter dated November 18, 1954 (p. 53, BIR record). Although there is no evidence as to the date petitioner received the last named letter, this may be assumed to have been received at the latest on February 5, 1955 when petitioner addressed a letter on even date to respondent (Exhibit 4, p. 57, BIR record) and received on the same day, wherein petitioner manifested her willingness to pay the tax deficiency provided payments were to be made by installments. This request was granted by the respondent in his letter dated February 7, 1955 (Exhibit 5, p. 58, BIR record). However, in a letter dated February 28, 1955 and received by the respondent on March 3, 1955 (p. 59, BIR record) petitioner asked for "a due consideration and re-investigation of the sum of ₱1,010.25 representing deficiency franchise, percentage and fixed taxes together with surcharge on the gross receipts x x x". This was followed by a letter dated November 3, 1955 (received November 9, 1955, see Exhibit 6, p. 70, BIR record) wherein petitioner questioned the legality of the assessments and asked that the same to be withdrawn. It was there contended by petitioner that the 5% tax on the gross earnings provided for in Republic Act No. 39, amending section 259 of the National Internal Revenue Code, is not applicable to the franchise of the petitioner herein. In addition, petitioner requested for the recomputation of the assessment, the same to be based on a 1% tax on the gross earnings pursuant to section 10 of her franchise and not 2% as has been collected from her, and thereby sought refund of whatever excess payment petitioner might have made. Respondent denied this request in a letter dated December 1, 1955 (Exhibit 7, p. 73, BIR record), which petitioner received on December 14, 1955. Consequently, the present petition for review was filed with this Court on December 20, 1955, in which petitioner prays that the decision of respondent be reversed and the latter ordered to refund the amount of ₱547.82.

The sole issue in this incident is whether or not the present appeal was filed within the reglementary period of thirty days provided by section 11 of Republic Act No. 1125.

Although both parties seem to treat respondent's letter dated December 1, 1955 (Exhibit 7, p. 73, BIR record), as the decision from which an appeal should be taken, we find that the appealable decision, within the purview of sections 7 and 11, Republic Act No. 1125 are respondent's letters dated October 9, 1954 (Exhibit 1, p. 47, BIR record) and October 20, 1954 (Exhibit 2, p. 49, BIR record).

> "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 and reversed by said official, or appealed to a superior authority in accordance with law." (Angel Sarmos v. Bureau of Internal Revenue, C.T.A. Case No. 229, March 5, 1956; see Auyong Hian v. Collector, C.T.A. Case No. 242, August 20, 1956 and the cases cited therein.)

These letters involve the assessments of deficiency percentage tax and although petitioner had repeatedly sought their reconsideration, the same have not been revised or modified.

Based on the foregoing facts and premises, petitioner consumed a total of thirty-four (34) days in perfecting her appeal to this Court computed as follows:

From November 4, 1954 when petitioner is presumed to have received respondent's decision to November 6, 1954 when petitioner filed her petition for reconsideration	2 days
From February 5, 1955, when petitioner is presumed to have received respondent's letter denying reconsideration to March 3,1955 when respondent received petitioner's request for further review of the assessment	26 days
From December 14, 1955 when petitioner received respondent's letter denying reconsideration thereof to December 20, 1955 when petition for review was filed with this Court	6 days
	34 days

From the above it will clearly show that petitioner failed to file a seasonable appeal from the decision of respondent pursuant to section 11, Republic Act No. 1125.

Moreover, we believe that insofar as petitioner's claim for the refund of alleged excess payment of taxes, she should have complied with the requirement of section 306 of the National Internal

Code, which states:

> "Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty." (Underscoring ours.)

In this case, the claim for refund of taxes involve payments made for the San Fabian Electric Plant between the period from January 22, 1951 and July 20, 1953. Assuming arguendo that a part of the taxes were illegally or erroneously collected and paid, the claim for the refund of any part thereof would be barred by the aforecited provision of law since the present action for refund thereof has been instituted after 2 years, 3 months and 20 days had elapsed counted from the latest date of payment of the taxes on which the claim is demanded. The demand having been filed beyond the two-year period prescribed by section 306 of the Tax Code the suit is now barred (see Roberson Co. vs. Collector, G.R. No. L-9352, November 29, 1956; Paracale Gumaus Consolidated Mining Co. vs. Silverio Blaquera, C.T.A.

Case No. 211, August 22, 1956, and the cases cited therein).

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

SO ORDERED.

Manila, January 28, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

In the result:

ROMAN M. UMALI
Associate Judge