JOSE CONCEPCION, as Ancillary
Administrator of the Estate
of Mary H. Mitchell-Roberts
(deceased), and JACK F. MIT-
CHELL-ROBERTS,
Petitioners,

- versus -

C.T.A.
CASE NO. 168

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

4/29/57

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

RESOLUTION

This is in connection with the question of jurisdiction or more particularly whether or not the petitioners Jose Concepcion, as Ancillary Administrator of the Estate of Mary H. Mitchell-Roberts, and Jack F. Mitchell-Roberts have filed their petition for review before this Court within the thirty-day period prescribed under section 11 of Republic Act No. 1125.

Although this question was not raised by respondent Collector of Internal Revenue in his answer, the Court in order to place things in their proper order, motu proprio called the attention of the parties regarding the matter for resolution before trying and deciding the case on the merits.

After giving the parties an opportunity to be heard in connection with this particular incident, it appears that on December 24, 1953, the respondent Collector of Internal Revenue provisionally assessed the estate left by the deceased Mary H. Mitchell-Roberts, estate and inheritance taxes and penalties amounting to ₱2,031.12 (p. 22, BIR rec.) based on an amended estate and inheritance tax return (p. 8, BIR rec.) filed on July 7, 1953 by the petitioner Jose Concepcion; that on February 2, 1954, Assessment No. Est. A-19008-53 (p. 42, BIR rec.) was issued by the respondent assessing the said estate the amount of ₱862.22 as estate tax and ₱884.62 as inheritance tax or a total of ₱2,746.84; that on June 4, 1954, petitioners' counsel wrote to the respondent (Exhibit I, pp. 43-46, BIR rec.) claiming exemption in behalf of his clients from payment of the taxes in question which letter was received by the Collector the following day, June 5, 1954; that petitioners' counsel followed this up with a memorandum (Exhibit J, pp. 48 to 55, BIR rec.) wherein he reiterated his previous request for exemption for his clients from payment of the taxes in question; that petitioners' counsel on January 24, 1955 and February 21, 1955, respectively, again wrote to the Collector (pp. 57, 58, BIR rec.) reiterating his previous request for exemption and requesting an early decision of the case; that on March 1, 1955, the Collector decided (pp. 59-65, BIR rec.) the protest against the petitioners holding them liable for the amount of ₱3,103.11 as transfer taxes and penalties with instructions to pay the same not later than March 31, 1955; that in a letter dated March

15, 1955, the petitioners through counsel requested for a reconsideration (Exhibit 2, pp. 66-74, BIR rec.) of the last mentioned decision of the respondent; that the letter of petitioners' counsel dated March 15, 1955 was actually received by the respondent on March 23, 1955 (Exhibit 2-A, p. 74, BIR rec.); that on June 21, 1955, the respondent denied the request for reconsideration of petitioners' counsel reiterating once again his demand for payment of the amount of ₱3,103.11 (Exhibit 3, pp. 75-79, BIR rec.); that respondent's last letter of June 21, 1955 was received by petitioners' counsel on June 30, 1955 (Exhibit 4, p. 4, t.s.n. of November 19, 1956); and that on July 29, 1955, the petitioners filed their petition for review before this Court.

Under section 11 of Republic Act No. 1125, the taxpayer is given thirty (30) days after receipt of a decision or ruling of the Collector within which to file his appeal before this Court.

The records show that the last unchanged and final assessment of the Collector was that contained in his letter, Exhibit 1 (pp. 59-65, BIR rec.), of March 1, 1955. This is the decision which may be reviewed by this Court. (Angel Saraes vs. BIR, C.T.A. Case No. 229; Merced Drug House vs. Collector of Internal Revenue, C.T.A. Case No. 180; Ventanilla vs. Board of Tax Appeals, G.R. No. L-7384, December 19, 1955). However, since the said decision was sent by ordinary and not registered mail by respondent, the latter was not able to present evidence as to the exact date of its receipt by petitioners; Giving the petitioners all the benefit of doubt, we shall compute the running of the thirty (30) day period fixed under section 11 of Republic Act No. 1125 from March 15, 1955, the date when petitioners' counsel requested for reconsideration of said decision. Counting the period from March 15, 1955, the date appearing in the letter of petitioners' counsel containing the request for reconsideration to March 23, 1955, the date of actual receipt of the afore-mentioned letter, we find that petitioners have consumed a total of eight (8) days of the thirty (30) days alloted them under section 11 of Republic Act No. 1125. There is no evidence whatsoever to show that this letter of reconsideration of petitioners' counsel dated March 15, 1955, was sent either by ordinary or registered mail much less the exact date of mailing. We are inclined to believe it was sent by special messenger to the Bureau of Internal Revenue on or about March 23, 1955, although it is dated March 15, 1955. Had there been positive evidence as to the exact date of mailing of said letter of reconsideration, we would not have counted the full eight (8) days against petitioners but instead would have applied the provision of section 1, Rule 27 of the Rules of Court.

The thirty-day period was suspended from March 23, 1955 the date when the letter of reconsideration of March 15, 1955 of petitioners was actually received by respondent until June 30, 1955, the date when the letter of denial for reconsideration of the respondent, Exhibit 3 (pp. 75-79, BIR rec.) of June 21, 1955, was actually received by the petitioner. From June 30, 1955, when petitioners' admittedly received respondent's letter denying their request for reconsideration to July 29, 1955 when they filed their petition for review before this Court, a total of twenty-nine (29) days were consumed, plus eight (8) days, gives us a total of thirty seven (37) days. Thus, it is obvious that the present petition for review was filed beyond the reglementary period of thirty (30) days fixed under section 11 of Republic Act No. 1125.

Counsel for petitioners, however, contends that "the 30-day period provided in section 11 of Republic Act No. 1125 is not a jurisdictional requirement but is merely in the nature of limitations relative to prescription of action against the Collector of Internal Revenue, which may be waived by express statement or impliedly waived if not set up as a defense in a timely motion to dismiss or in his Answer." (p. 4, Petitioners' Opposition to Motion to Dismiss).

We have had occasion to pass upon this same issue in Merced Drug House vs. Collector of Internal Revenue (C.T.A. Case No. 180, May 21, 1956) where we held:

> " x x x x x that the question whether or not an appeal has been filed with this Court within the statutory period of thirty days is jurisdictional and may be raised by respondent at any stage of the proceedings.

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'It is a well settled rule of law that questions of jurisdiction can be raised at any stage of the proceeding or action. It is a rule likewise well settled both in American and Philippine jurisdictions, that if a statutory remedy provides as a condition *sine qua non* that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional, and failure to comply therewith may be raised in a motion to dismiss (Callahan vs. Chesapeake & Ohio R. Co., 5 Fed. Rules Service, p. 99, cited in 1 Moran, Commentaries on the Rules of Court, p. 175) for the reason that prescription of action is a matter of substantive law. x x x.' (Bay View Hotel, Inc. v. Collector of Internal Revenue, C.T.A. Case No. 80, Nov. 21, 1955; see 1 Moran, Commentaries on the Rules of Court, p. 169.)

"In a similar case where the petition for review was filed with this Court beyond the thirty-day period, both the taxpayer and the Collector of Internal Revenue prayed that the case be decided on the merits. This Court nevertheless dismissed the case for lack of jurisdiction.

'The right to appeal from a decision of the Collector of Internal Revenue being a statutory right, the same can be invoked only in accordance with the requisites which the law has provided for the purpose. (Wee Poco v. Posadas, 64 Phil. 648; Secretary of Agriculture v. Court of First Instance, G.R. No. L-7752, May 27, 1955.) Failure to comply with the requirements is fatal; and the defect may not be cured by the allegation of the parties that they understood or regarded respondent's letter of January 14, 1955 as his final decision, and that they 'firmly believed that the jurisdictional requirements had been fully complied with.' Jurisdiction can not be conferred upon this Court by agreement of the parties.'" (Robert L. Janda v. J. Antonio Araneta, C.T.A. Case No. 87, Feb. 23, 1956.)

IN VIEW OF THE FOREGOING, let the above-entitled case be, as it is hereby dismissed for lack of jurisdiction, with costs against petitioners.

SO ORDERED.

Manila, April 29, 1957.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge