REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

December 27, 1955

COLLEGE OF ORAL & DENTAL SURGERY,
Petitioner,

- versus -

C.T.A. CASE NO. 121

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

This involves a "Motion to Dismiss" filed by respondent on the ground that this Court lacks jurisdiction to entertain the "Petition For Review". The movant contends that the petition fof review having been filed on April 29, 1955, which is more than two years after payment of the taxes alleged to have been illegally and erroneously collected, this Court has no jurisdiction over this action.

A careful analysis and study of the record of this case has disclosed that the amounts sought to be refunded, have been collected and paid to the respondent on three different dates as follows: May 15, 1951, ₱4,333.39 per Official Receipt No. A-89348; September 16, 1951, ₱500.00 per Official Receipt No. A-350886; and May 15, 1952, ₱2,423.50 per Official Receipt No. A-34431 (Par. 2, Petition for Review). This fact is also corroborated by the letter sent by counsel for the petitioner, Attorney Antonio Ojeda dated November 15, 1952, addressed to the respondent Collector of Internal Revenue and marked as Annex "A" of the herein petition for review, under which letter the petitioner was claiming for the refund of the said taxes paid.

It is therefore very clear and apparent from the face of the pleading filed by the petitioner that from May 15, 1951, September 15, 1951 and May 15, 1952, when the sums of ₱4,333.39, ₱500.00, and ₱2,423.50, were respectively collected by the respondent, up to April 29, 1955, when the petition for review has been filed and docketed before this Court, more than two years had lapsed. Since an action for the refund of taxes must be filed within two years from the payment thereof pursuant to section 306 of the Tax Code, which requirement, in repeated pronouncements made by the Supreme Court and this Court, has been held to be substantive and jurisdictional (Bermejo v. Collector of Internal Revenue, G. R. No. L-3029, July 25, 1950; Wee Poco v. Posadas 64 Phil., 640), the failure to comply with this condition, is, we believe, fatal and bars the claim of the petitioner.

PREMISES CONSIDERED, this Court is of the opinion and so holds that the motion to dismiss is well taken, and the "Petition for Review" should be as it is hereby dismissed.

SO ORDERED.

Manila, Philippines, December 19, 1955.

(SGD.) MARIANO NABLE
Presiding Judge

I CONCUR:

(SGD.) AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
concurs in a separate
opinion.

E-Cr/1-5-56.