MANUFACTURER'S BANK & TRUST COMPANY as trustee for GeM Trust Plans,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

C.T.A. CASE NO. 1659

RESOLUTION

The petitioner filed on July 2, 1965 a "Petition For Review," praying for the refund of the sum of ₱7,131.50, representing alleged income tax illegally assessed and collected by the respondent.

On August 18, 1965, an answer was filed by the respondent, setting forth as special and affirmative defenses, among others, the following: (1) that this Court has no jurisdiction to take cognizance of this case; and (2) that the instant petition for review states no cause of action.

On September 18, 1965, pursuant to respondent's motion dated August 23, 1965, this Court held a preliminary hearing on the issues raised by the respondent in his special and affirmative defenses, during which, both parties did not introduce evidence in support of their respective stand, except the claim for refund dated July 1, 1965 (Exh. "1" for respondent, p. 2, BIR rec.), which petitioner filed with the Commissioner of Internal Revenue on July 2, 1965.

The questions to be considered in this incident are: (1) Whether or not this Court has jurisdiction to entertain the present appeal; and in the affirmative, (2) whether or not the petition states a cause of action against the respondent.

In resolving the first issue in the negative, we wish to point out that the jurisdiction of this Court over a case can not be presumed. Section 2 of Rule 5 of the Rules of Court of Tax Appeals clearly provides that the "Petition For Review" shall contain allegations showing jurisdiction in the court, x x x."

In the present case, petitioner did not allege in its petition for refund the date when it paid the alleged sum of ₱7,131.50; neither did it present any evidence to establish the same during the hearing. Therefore, we have no way of determining whether or not the present action was filed within the two-year period required by Section 306 of the National Internal Revenue Code. We believe and so hold that the failure of petitioner to allege and prove this jurisdictional fact is fatal to its suit for refund. For the same reason, it becomes inevitable for us to declare that the petition for review states no cause of action.

PREMISES CONSIDERED, the present appeal is hereby dismissed.

SO ORDERED.

Quezon City, November 29, 1965.

TEOFILO D. REYES, SR.
Presiding Judge

ALEJANDRO B. AFURONG
Associate Judge

ROMAN M. UMALI
Associate Judge

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