

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

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

Petitioner,

- versus -

C.T.A. CASE  
NO. 1659

THE COMMISSIONER OF INTERNAL  
REVENUE,

Respondent.

x- - - - - x

R E S O L U T I O N

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

RESOLUTION -  
C.T.A. CASE NO. 1659

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to entertain the present appeal; and in the affirmative,  
(2) whether or not the petition states a cause of  
action against the respondent.

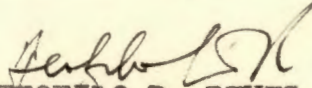
In resolving the first issue in the negative, we  
wish to point out that the jurisdiction of this Court  
over a case can not be presumed. Section 2 of Rule  
5 of the Rules of Court of Tax Appeals clearly pro-  
vides that the "Petition For Review" shall contain  
allegations showing jurisdiction in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

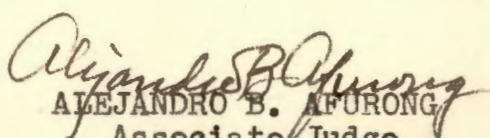
In the present case, petitioner did not allege in  
its petition for refund the date when it paid the  
alleged sum of ₱7,131.50; neither did it present any  
evidence to establish the same during the hearing.  
Therefore, we have no way of determining whether or not  
the present action was filed within the two-year period  
required by Section 306 of the National Internal Reve-  
nue 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.

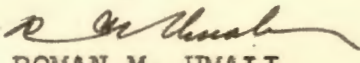
✓ PREMISES CONSIDERED, the present appeal is hereby  
dismissed.

SO ORDERED. ✓

Quezon City, November 29, 1965.

  
TEOFILO D. REYES, SR.  
Presiding Judge

  
ALEJANDRO B. AFURONG  
Associate Judge

  
ROMAN M. UMALI  
Associate Judge