REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

HENRY R. CANOY,
Petitioner,

- versus - C.T.A. CASE NO. 256

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

May 28/56

R E S O L U T I O N

This is in connection with the motion to dismiss filed by respondent Collector of Internal Revenue on April 20, 1956 of the petition for review filed by the petitioner on March 28, 1956 for lack on the part of this Court to assume jurisdiction over the case. Basically, the motion is predicated on the failure of the petitioner to perfect his appeal within the thirty (30) days reglementary period prescribed in Section 11, of Republic Act No. 1125.

The pertinent facts upon which the question of jurisdiction raised may be resolved are as follows: that the petitioner, in two successive letters dated April 27, 1955, (Annex "B"-Petition), and dated July 15, 1955, (Annex "C"-Petition), respectively, requested for the refund of the sum of ₱1,314.62 representing the percentage tax on gross receipts from October 1, 1952, to December 31, 1954, collected by the respondent from the petitioner as operator of "DXCC" Radio Station, located in Del Mar Street, Cagayan de Oro City. (pars. 3 and 4 Petition for Review); that on July 29, 1955, respondent denied these two requests for refund in a letter (Annex "D" and par. 5, Petition for Review); that on August 24, 1955, in a letter marked Annex "E"-Petition for Review, the petitioner asked for reconsideration of the denial of the requests for refund; that on October 25, 1955, the respondent definitely turned down the request for reconsideration (p. 8, Petition for Review) contained in a letter decision marked Annex "G"-Petition for Review, which was received by the petitioner on November 11, 1955, as evidenced by the Registry Return Receipt card No. 72014 attached to the record and marked Exhibit "1"-respondent (Annexes 1 and 1-A, motion to dismiss); that in the meantime, petitioner's counsel, unaware of the decision (Annex "G"-Petition), turning down the requests for reconsideration of the claim for refund, also filed a motion for reconsideration dated January 13, 1956, (Annex "H"-Petition) which was likewise denied by the respondent in his reply letter dated January 17, 1956, (Annex "I"-Petition), received by counsel for petitioner on February 27, 1956, wherein respondent reiterated his ruling of October 25, 1955, and at the same time calling attention to the fact, that in case of appeal, the thirty day period has to be computed from November 11, 1955, when petitioner received the decision and that counsel's motion for reconsideration is the same as that of his client.

The petitioner contends that the thirty day period to perfect the appeal should commence from February 27, 1956, and not from November 11, 1955, alleging, "that in this connection the Chief of the Legal Division of the Bureau of Internal Revenue, stated that for purposes of appeal the thirty (30) days period shall start from February 27, 1956, the date of receipt by petitioner of the last letter of denial of the claim for refund" (par. 10, petition for review).

We can not subscribe and agree with this contention of the petitioner. The final decision of respondent from which appeal should be taken, is that contained in the letter dated October 25, 1955, which was received by the petitioner on November 11, 1955, as evidenced by the Registry Return Receipt card marked Exhibit "1-respondent". The finality of this decision of October 25, 1955 is set forth categorically in the second paragraph thereof which states:

> "If you are dissatisfied with this decision, you may file an appeal in the Court of Tax Appeals within thirty days after the receipt hereof."

Said admonition, was even reiterated in the letter of the respondent dated February 17, 1956, (Annex I-petition) addressed to petitioner's counsel stating:

> "In reply to your letter dated January 13, 1956 (motion for reconsideration), requesting the allowance of the claim of your client, Mr. Henry Canoy, for the refund of the sum of ₱1,314.82 as alleged overpaid percentage taxes for the period from October 1, 1952 to December 31, 1954, inclusive, I have the honor to inform you that the same can not be granted by this office inasmuch as the issues raised by you have already been sufficiently discussed in our letter of July 29, 1955, to Mr. Henry Canoy. Moreover, this office has denied the request for reconsideration of Mr. Canoy contained in

> his letter of August 24, 1955, on October 25, 1955, wherein Mr. Canoy was advised to file an appeal in the Court of Tax Appeals within thirty days after the receipt thereof if he was dissatisfied with the said decision. The said letter of October 25, 1955 was receipted for by one Segundo Vasquez in behalf of Mr. Canoy sometime after November 11, 1955 when the said letter was received in the post office of Cagayan de Oro City." (underline ours.)

The petitioner's claim that the Chief of the Legal Division of the Bureau of Internal Revenue has stated "that for purposes of appeal the thirty (30) day period shall start from February 27, 1956", is not supported by the evidence, or record of this case. But even assuming arguendo that the Chief of the Legal Division has really made that statement, the same can never be considered as a modification of the decision of the Collector of Internal Revenue promulgated on October 25, 1955. Moreover, that statement or commitment, is not binding upon this Court, and can not legally alter the basic facts established by the record of this case, upon which our resolution must stand.

Having arrived at the conclusion that the thirty day period to appeal, must commence to run from November 11, 1955, and it appearing of record that the petition for review in the present case was filed only on March 28, 1956, or a period approximately seventy-seven (77) days after receipt by the petitioner of the final decision of the respondent, we are therefore constrained to hold that this Court has no jurisdiction to take cognizance of the above-entitled case pursuant to the provisions of Section 11 of Republic Act No. 1125, which limits the right of appeal to this Court to thirty (30) days from receipt by the taxpayer of the final decision of the Collector of Internal Revenue.

WHEREFORE, premises considered, the petition for review is hereby dismissed for lack of jurisdiction, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, May 28, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

MARIANO NABLE
Presiding Judge
(On Leave)