N

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ROMANA LOPEZ, doing business under the firm name - formerly New Colon Bakery, presently Romana's Bakery,
Petitioner,

- versus -

SILVERIO BLAQUERA, Collector of Internal Revenue,
Respondent.

C.T.A.
CASE NO. 545

October 26, 1959

10/26/59

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

R E S O L U T I O N

This is in connection with the defense of lack of jurisdiction. The respondent, in his answer to the petition for review, alleged as one of his special and affirmative defenses, that this Court has no jurisdiction to take cognizance over the instant case because the petition for review was filed by the petitioner beyond the 30-day reglamentary period prescribed in Section 11 of Republic Act No. 1125.

When this case was called for hearing on the merits, on April 15, 1959, at Cebu City, the counsel for the petitioner moved orally that this question of jurisdiction be resolved first. The said motion was granted and the parties were allowed to submit their respective evidence on the question. The counsel for the respondent submitted documentary evidence in support of his defense of lack of jurisdiction, which the counsel for the petitioner adopted as his own. Hence, as far as the resolution of this question of jurisdiction is concerned, there is no controversy between the petitioner and the respondent as to the material facts of the case.

139

It appears from the documentary evidence on record that the deficiency percentage tax assessments in the amounts of ₱715.48 and ₱7,100.00 (Demand Nos. 13837 & 13821; Exhs. "1" & "6", pp. 2 & 36, BIR rec.) were received by the petitioner on November 12, 1955. (Par. 2, Petition for Review.) On November 21, 1955, the petitioner protested against the deficiency assessments, claiming that she had religiously paid the correct amounts of all the percentage taxes due from her, as evidenced by duly issued official receipts. (Exh. "2-A", p. 3, BIR rec.)

On December 19, 1955, the respondent, after considering the protest of the petitioner, reiterated his demand for the payment of the deficiency assessments. On January 5, 1956, the petitioner, requested for a reconsideration of respondent's decision on the disputed assessments, contending that the authorities cited in the letter-decision of December 19, 1955 are not applicable to her case. (Exh. "5-A", p. 7, BIR rec.) On February 8, 1956, the respondent referred petitioner's request for reconsideration of January 5, 1956 to the BIR Regional Director at Cebu City for study and appropriate action. (Exh. "5", p. 8, BIR rec.)

On July 12,1956, the petitioner filed before the Court of First Instance of Cebu, Civil Case No. R-4633, seeking among other things, to enjoin the respondent from collecting the deficiency tax and surcharge in question. (Exhibit "11") When pressed for the payment of the tax assessments, the petitioner, on November 14,1956, wrote the respondent the following letter (Exh. "7", p. 37, BIR rec.):

> "S i r s :
>
> Your office had contacted my client, the Romana's Bakery of Colon Street, this City, by phone for the collection of alleged deficiency taxes. Please note that at present a case is pending in the sala of the Honorable Jose Rodriguez between my client and the Collector of Internal Revenue regarding the same alleged deficiency taxes. Until the said case shall have been definitely settled and a categorical ruling shall have been made, collection for the alleged deficiency taxes would be premature.
>
> Very truly yours,
>
> (Sgd.) LUIS V. DIONES
> Attorney for the
> Romana's Bakery."

On April 30, 1958, the Court of First Instance of Cebu dismissed petitioner's action for injunction. A copy of the order of dismissal was received by the petitioner on May 14, 1958. (Exh. "11"; see par. 4, Petition for Review.)

On May 27, 1958, the respondent issued a warrant of distraint and levy against the properties of the petitioner. (Exh. "9", p. 39, BIR rec.) And on June 18, 1958, the petitioner filed the instant appeal before this Court.

On the above-stated facts, we shall determine whether or not the present case was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125.

We note that the respondent's letter-decision of December 19, 1955 is the disputed deficiency percentage tax assessment which is appealable to this Court. (St. Stephen's Assn. vs. Collector of Internal Revenue, G. R.

No. L-11738, Aug. 21, 1958.) Even if we will be very liberal to the petitioner, and consider without deciding that the running of the 30-day period within which to appeal was suspended during the time that the petitioner's action for injunction against the respondent was pending in the Court of First Instance of Cebu, and start the counting of the 30-day period only from the dismissal of the aforesaid civil case by the Court of First Instance of Cebu, still more than 30 days elapsed. The petitioner received from the Court of First Instance of Cebu a copy of the order of dismissal on May 14, 1958 and the instant case was filed before this Court on June 18, 1958. (See p. 75-A, CTA rec.) To be precise, the petitioner consumed thirty-five (35) days. The appeal was not filed on time, and therefore, we have no jurisdiction to hear and decide the same. (See Tan Chuan vs. Blaquera, C.T.A. Case No. 546, a similar companion case filed by the same counsel Atty. Luis V. Dicres, which was also dismissed in a resolution dated October 9, 1959, for failure to file the appeal within the prescribed 30-day period.) We find and so hold that the case at bar was not filed on time.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the "Petition for Review" filed before this Court on June 18, 1958 is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Manila, October 26, 1959.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

142

ROMAN M. UMALI
Associate Judge

142

142