REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CITY ASSESSOR OF CEBU,
Petitioner,

- versus - C.T.A. CASE NO. 159

CONSUELO NOEL,
Respondent.

x- - - - - - - - - - - - - - - -x Sept. 13/55

R E S O L U T I O N

This is in connection with the "Motion to Dismiss Petition for Review" dated July 29, 1955, filed by counsel for respondent Consuelo Noel on the ground that the petition for review was not filed on time or within the 30-day period prescribed in section 11 of Republic Act No. 1125, the law creating this Court.

From the pleadings filed by the parties and the testimony of Mr. Genaro Ursal, City Assessor of Cebu and petitioner herein, who appeared and testified in his behalf when the instant motion to dismiss and the opposition thereto was heard before this Court on August 27, 1955, the following facts were duly established:

On April 16, 1955, petitioner City Assessor of Cebu received his copy of the decision of the Board of Assessment Appeals of the City of Cebu, which is the subject of the present petition for review. Believing that the said decision is erroneous, the petitioner, on April 26, 1955, filed a motion for its reconsideration which was denied by the Board of Assessment Appeals on May 14, 1955.

The order denying the motion for reconsideration "was verbally transmitted to the petitioner by the Secretary of the Board of Assessment Appeals on June 17, 1955", (see page 1, Opposition to Motion to Dismiss) and on the following day, the petitioner filed his notice of appeal. (Appeal on Assessment, Provincial Form No. 139, Revised.) On June 23, 1955, the petitioner admittedly received his copy of the written order of May 14, 1955 of the Board of Assessment Appeals dismissing the motion for reconsideration, and on July 15, 1955, the petitioner sent to this Court by registered mail his petition for review in the form prescribed in the rules and regulations adopted by this Court.

From the facts above stated over which there is no dispute, we are now called upon to resolve as a prejudicial question, whether or not the "Petition For Review" filed by the herein petitioner was made within the reglementary period prescribed in section 11 of Republic Act No. 1125.

The provision in question reads as follows:

> "Sec. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling." (underscoring supplied.)

We believe and so hold that the instant petition for review was filed beyond the 30-day period prescribed in the above-quoted provision of Republic Act No. 1125. Following the accepted and established procedure of computing time known as "exclude-the-first and include-the-last-day method" which is followed in this jurisdiction (Rule 28, Rules of Court; Art. 13, Civil Code of the Phil.; Sec. 13, Rev. Adm. Code), it is clear that from April 16, 1955 - the date when the petitioner received the copy of the decision of the City Board of Assessment Appeals, to April 26, 1955 - the date when the petitioner filed before that Board his motion for reconsideration of said decision, ten (10) days had elapsed. The petitioner admits the correctness of this computation of time. (p. 2, Opposition to Motion to Dismiss).

The filing of the motion for reconsideration on April 26, 1955, therefore, stopped the running of the 30-day period within which to appeal to this Court, and said interrupted time started to run again on the day when notice of the order of denial of motion for reconsideration was given to the petitioner. As stated by the petitioner in his opposition to the motion to dismiss, the suspension of the period to appeal ended on June 17, 1955. Consequently, applying the rule on the computation of time, the period of time to appeal expired on July 7, 1955. Obviously, the instant petition for review was not filed on time since the same was mailed in Cebu City only on July 15, 1955.

Even if we were to grant the petitioner all the benefit of the doubt, and take June 23, 1955 - the day when the petitioner allegedly received the copy of the order denying the motion for reconsideration, instead of June 17, 1955 - when he was verbally notified of the said order, as the starting point from which to compute the remaining period of time to appeal, still the instant petition to review the decision of the Board of Assessment Appeals of the City of Cebu, was filed beyond the reglementary period provided for in section 11 of Republic Act No. 1125.

From June 23, 1955, the petitioner herein had only twenty (20) days, or more specifically until July 13, 1955, within which to perfect his appeal to this Court. Inasmuch as the petition for review was sent to this Court by mail on July 15, 1955, we rule that the said petition was filed two (2) days after the expiration of the 30-day period within which to appeal.

With reference to the filing of the notice of appeal on June 18, 1955, and its sufficiency to perfect the appeal to this Court, it shall suffice to quote hereunder our ruling of June 24, 1955 on the same question of law in the case of Yu Tiong & Company vs. Commissioner of Customs, C.T.A. Case No. 134:

"We have carefully considered the contention of respondent's counsel, and are of the opinion that it is meritorious. Pursuant to section 8 of Republic Act No. 1125, this Court, by its resolution of July 21, 1954, adopted in the interim for the guidance and observance of party litigants, the Rules and Regulations dated February 7, 1952 of the defunct Board of Tax Appeals. Rule 9 of the said Rules and Regulations provides as follows:

"Within thirty (30) days from notice of an order or decision issued by the Collector of Internal Revenue, the Commissioner of Customs, or Provincial or City Board of Assessment Appeals in the cases enumerated in Section 8 of Executive Order No. 401-A, the aggrieved party may file with the Board of Tax Appeals (Court of Tax Appeals) a written petition for the review of such order or decision." (underscoring supplied.)

"Conformably to the above-quoted rule, we hold that petitioner Yu Tiong & Company failed to perfect its appeal within the time prescribed by section 11 of Republic Act No. 1125. The petitioner should have filed, not only its notice of appeal, but also its petition for review, within thirty (30) days after it received a copy of the decision of the Commissioner of Customs, or more particularly, on or before May 2, 1955. After May 2, 1955, the decision of respondent Commissioner of Customs became final and executory, and therefore not appealable.

x x x x

"Moreover, if we adopt a contrary rule, and consider the filing of the mere notice of appeal within thirty (30) days from receipt of the decision appealed from as a sufficient compliance of section 11 of Republic Act No. 1125, without requiring the filing of the petition for review within the same period of time, a glaringly absurd consequence would result. The aggrieved party, by the simple expedient of filing the notice of appeal within thirty days from receipt of the decision, can arrogate to himself the power to determine the period of time for filing the petition for review which may be one year, two years or any number

> of years. In fact, if such aggrieved party, after filing the notice of appeal, decides not to file the petition for review, the decision which is the subject of the notice of appeal will never become final and executory."

WHEREFORE, in view of the foregoing considerations, the motion to dismiss the petition for review, filed by counsel for the respondent is hereby granted.

Let this case be, as it is hereby dismissed for lack of jurisdiction, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, September 13, 1955.

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge