REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

DIRK VAN DONGEN,
Petitioner,

- versus -

C.T.A.
CASE NO. 268

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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RESOLUTION

This is a petition to review the decision of the Collector of Internal Revenue assessing an amount of ₱444.03 as deficiency income tax for the year 1949. On May 17, 1956, the respondent filed a "Motion to Dismiss" the petition on the ground of lack of jurisdiction of this Court to entertain the appeal.

The facts of the case as appearing from the pleadings are as follows: The petitioner on February 14, 1950 filed an income tax return for the year 1949. On July 7, 1955, the respondent sent to the petitioner a letter, accompanied by a notice of assessment dated June 25, 1955, demanding the payment of deficiency income tax for the year 1949 in the amount of ₱444.03 plus the corresponding penalties. Both the assessment and letter were received by petitioner on July 15, 1955. On July 25, 1955, petitioner filed with respondent a letter dated July 23, 1955 requesting the cancellation and withdrawal of the assessment for the reason that the right of the respondent to assess the tax had prescribed, in that more than five (5) years had elapsed from the filing of his income tax returns to the issuance of the assessment. On November 26, 1955, petitioner received the letter of respondent denying petitioner's request for cancellation and withdrawal of the assessment, and stating that the government had still the right to assess the deficiency income tax because petitioner's income tax return was fraudulent and the prescriptive period applicable thereto was ten (10) years under section 332 of the Tax Code. On December 2, 1955, the petitioner filed a letter with the respondent requesting that the latter reconsider his ruling of November 17, 1955 claiming that his income tax return was not fraudulent because the deductions made by the petitioner was due to error or mistake of law and therefore do not constitute fraud. On April 12, 1956, petitioner received respondent's letter dated March 28, 1956, again denying petitioner's request for reconsideration. On May 5, 1956 petitioner filed with this Court the herein "Petition For Review" against which respondent filed the "Motion to Dismiss" on the ground that the appeal was filed beyond the reglementary period of thirty days prescribed by Section 11 of Republic Act No. 1125. Respondent argues that the thirty-day period should be reckoned from July 15, 1955, when petitioner received the assessment and letter of respondent. Petitioner on the other hand contends that the period should be counted from November 26, 1955, when petitioner received respondent's letter denying the reconsideration requested by petitioner.

Under sections 7 and 11 of Republic Act No. 1125, a taxpayer may appeal from a decision of the Collector of Internal Revenue within 30 days after receipt of such decision. The decisions of the Collector of Internal Revenue which are appealable to this Court refer to "determinations made or arrived at by the Collector which would become final and executory unless modified or reversed by said official, or appealed to a superior authority in accordance with law." (Angel Saraos vs. Bureau of Internal Revenue, C.T.A. Case No. 229, prom. March 5, 1956; Merced Drug House vs. Collector of Internal Revenue, C.T.A. Case No. 180, prom. May 21, 1956). In these two cases, this Court resolved that the assessment or letter of demand sent by the Collector of Internal Revenue to a taxpayer requiring the latter to pay the taxes indicated therein is a "decision" in that it is a determination of the taxpayer's liability, and contains the substantial and dispositive part thereof (Ventanilla v. Board of Tax Appeals, G.R. L-7384, Dec. 19, 1955). This view finds support in the case of Bull v. U.S. (1935, 295 U.S. 247; 79 L. Ed. 1421) wherein it was stated:

> "A tax is an exaction by the sovereign, and necessarily the sovereign has an enforcible claim against everyone within the taxable class for the amount lawfully due from him. The statute prescribes the rule of taxation. <u>Some machinery must be provided for applying the rule to the facts in</u>

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> <u>each taxpayer's case, in order to ascertain the amount due. The chosen instrumentality for the purpose is an administrative agency whose action is called an assessment</u>. The assessment may be a valuation of property subject to taxation which valuation is to be multiplied by the statutory rate to ascertain the amount of tax. Or it may include the calculation and fix the amount of tax payable, and assessments of federal estate and income taxes are of this type. Once the tax is assessed the taxpayer will owe the sovereign the amount when the date fixed by law for payment arrives. Default in meeting the obligation calls for some procedure whereby payment can be enforced . . . . <u>The assessment is given the force of a judgment, and if the amount assessed is not paid when due, administrative officials may seize the debtor's property to satisfy the debt</u>." (at 259-260, 1427; underscoring, added)

Applying the foregoing doctrine to the instant case, we find that respondent's letter dated July 7, 1955 with the accompanying assessment constituted the decision of the respondent, in that the taxpayer's liability was determined therein. Hence, it follows that the 30-day period within which to appeal the decision to this Court should be reckoned from July 15, 1955, the date petitioner received such decision. The period to appeal was then suspended on July 25, 1955, when he filed his request for reconsideration with the Collector of Internal Revenue and began to run again on November 26, 1955, when petitioner received respondent's letter denying the said request for reconsideration. The period to appeal was again interrupted by petitioner's second request for reconsideration filed with the respondent on December 2, 1955, but resumed to run once again on April 12, 1956, when petitioner received respondent's letter denying the same. Since, the herein petition for review was filed on May 5, 1956, a total of thirty-nine (39) days had been consumed by petitioner before his appeal was perfected, which is manifestly beyond the period prescribed by law within which to appeal to this Court. We are therefore of the opinion and so hold that this Court could not assume jurisdiction over the herein petition to review.

In view of our conclusion above, we find it no longer necessary to resolve the "Motion to Require the Stenographer to Produce Stenographic Notes" filed by the respondent, on June 14, 1956, the same having become academic.

WHEREFORE, the herein "Petition For Review" is hereby dismissed for lack of jurisdiction, with costs against the petitioner.

SO ORDERED.

Manila, July 31, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

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