REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

RICHARD L. LILE,
Petitioner,

- versus -

C.T.A. CASE NO. 278

COLLECTOR OF INTERNAL REVENUE,
Respondent.

4/15/57

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RESOLUTION

This is in connection with the "Motion To Dismiss" filed by the respondent on January 25, 1957, on the ground that this Court has no jurisdiction to hear and determine the instant case.

The following facts, briefly stated, have been preliminarily established. Respondent, in his letter dated October 24, 1955 (Exh. "1", Motion, p. 66 BIR rec.), demanded from the petitioner the total amount of ₱29,465.11 as sales tax prescribed under Section 186 including surcharge and penalty for the violation of Section 183 in relation to Section 209 of the National Internal Revenue Code. The tax involved herein is for the manufacture and sale of quick lime and hydrated lime by petitioner, corresponding to the 1st quarter of 1951 to the 1st quarter of 1952. This letter of demand, addressed to petitioner, was however returned unopened to respondent by a certain Garvin C. Alcos of the Lilestone & Company, Inc., on the ground that petitioner herein was then abroad (Exh. "A", Motion, p. 68, BIR rec.). The same letter was transmitted to and received by petitioner on December 7, 1955 (par. 10, Petition for Review; Exh. "B", Motion). Counsel for petitioner in a letter dated December 15, 1955 (Exh. "B", Motion, p. 74, BIR rec.), which was received by respondent on December 16, 1955 (BIR Stamp on Exh. "B"), requested as follows:

> "The aforesaid letter was delivered by one of your agents to the office of Mr. Lile on December 7, 1955. Inasmuch as our client is abroad, we request that the running of the period of thirty days referred to in your letter be suspended until after Mr. Lile's return to the Philippines. In case of the delay of our client's return, we shall communicate with him as to the facts of this case and formally take up the same with your office."

In reply to the above request, respondent in his letter of January 9, 1956 (Exh. "C", Motion, p. 85, BIR rec.) said:

> "With reference to your letter dated December 15, 1955, concerning the internal revenue case of your client, Mr. Richard L. Lile, I have the honor to inform you that, considering the reason advanced therein, your client is hereby granted until February 29, 1956, within which to pay the sum of ₱29,465.11 demanded in our letter dated October 24, 1955.
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> "In view thereof, it is requested that you advice Mr. Lile to pay the said sum of ₱29,465.11 on or before February 29, 1956, in order that this case may be closed."

However by a letter dated January 6, 1956 (Exh. "2", Motion, p. 76 BIR rec.) received by respondent on the same date (BIR Stamp on Exh.

"2"), petitioner requested for the withdrawal or countermanding of the assessment, which request was reiterated in a letter dated February 10, 1956. This request was denied by respondent in his letter dated March 26, 1956 (Exh. "3", Motion, p. 99 , BIR rec.), and received by petitioner on May 7, 1956 (p. 5, Petition for Review). Upon said denial, the instant petition for review was filed by petitioner before this Court on June 4, 1956.

The sole issue to be resolved in this incident is whether or not the petition for review herein was filed within the 30-day period prescribed by section 11 of Republic Act No. 1125.

There is no question that the decision of respondent Collector of Internal Revenue that should be appealed to this Court is the assessment in his letter of demand dated October 24, 1955. However, petitioner maintains that the decision of respondent dated October 24, 1955 was modified by respondent in his answer to the petition for review due to an alleged change in the capacity of petitioner. It is contended that respondent, in his Answer, admitted the allegation that petitioner was merely an officer and stockholder of the Lime Products Mfg. Inc. and at the same time explained that the demand for the payment was made on petitioner in his capacity as president and manager of the said corpo oration. Accordingly, as alleged, this explanation modified the letter of demand of October 24, 1955.

We cannot agree with petitioner that respondent's letter of October 24, 1955, Exhibit "1", Motion, assessing and demanding from the former the payment of the sum of ₱29,465.11 as sales tax, surcharge and penalty, was modified by the answer to the petition for review. The respondent did not admit the allegation in the petition to review (see Petition for Review, paragraph 14 (a), page 5) to the effect that petitioner was " a former stockholder and officer of said corporation (Lime Products Mfg., Inc.)" On the contrary, in paragraph 9, page 4 of the Answer, petitioner "denies specifically the allegations contained in paragraph 14 of the petition for being argumentative and mere conclusions of fact and law." Moreover, even assuming arguendo that there was such a modification of the letter-decision of October 24, 1955, the modification is not a decision within the contemplation of Section 7 of Republic Act No. 1125, under which this Court is empowered to review by appeal "decisions of the Collector of Internal Revenue in cases involving disputed assessments x x x ". An assessment has been defined as:

"An assessment of taxes ' is the act of fixing and determining the proportion of tax chargeable to the distinct items of property.' Webb v. Bidwell, 15 Minn. 479, 493 (Gil. 394, 397)"

"An 'assessment' fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls. Dallas Joint Stock Land Bank of Dallas v. State, Tex. Civ. app., 118, S.W. 2d 941, 942."

"' Assessments' as the term is used in the law relative to taxation, means the adjustment of the shares of the contribution by several toward a common beneficial object according to the benefit received. Adams, Meldrum & Anderson Co. v. City of Shelbyville, 57 NE 114, 122, 154 Ind. 467, 87 Am. St. Rep. 240, Palmer v. Stumph, 29 Ind. 329, 333, 335." (Words & Phrases, Vol. 4, p. 428)

In fine, assessment in taxation is a determination of how much the taxpayer should contribute in taxes.

In the case at bar, the assessment for the basic tax contained in the letter-decision of October 24, 1955 was consistently maintained by respondent. Consequently, we find and so hold that there was no legal modification of the said decision.

We shall now proceed to determine whether or not the instant petition for review was filed within the 30-day period from receipt of the decision of the Collector of Internal Revenue in pursuance of section 11 of Republic Act No. 1125. From December 7, 1955, when the petitioner received the assessment, to January 6, 1956, when the request for reconsideration was received by the respondent, we find that the petitioner consumed thirty (30) days. The running of the period of appeal was suspended from January 6, 1956, when the petitioner filed his request for withdrawal or countermanding of the assessment, but resumed to run upon his receipt of the denial of his request for reconsideration on May 7, 1956. From May 7, 1956, when the petitioner filed the present petition for review, he consumed another twenty-eight (28) days. Consequently, the petitioner consumed a total of fifty-eight (58) days before he filed his petition for review.

Petitioner contends that the thirty-day period within which to appeal to this Court should be counted from December 14, 1955, the date when his attorneys received the letter-decision of October 24, 1955. We cannot sustain this propositiion for the reason that said letter-decision was admittedly received by petitioner himself on December 7, 1955 (see Petition for Review, p. 4 and Exh. "B", Motion). Consequently, the statutory period of thirty days should begin from the date it was received by petitioner. And even assuming arguendo that the period of appeal should be reckoned from December 14, 1955, when the counsel for petitioner actually received the assessment, the petition for review would still have been filed out of time, because in such case he would have consumed fifty-one (51) days,

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It is further argued that the time to appeal was suspended during the 30-day period of grace granted by respondent to petitioner within which to pay the ₱29,465.11 and should therefore be discounted for purposes of the computation of the time within which to appeal. It should be noted that the extension granted was related only to the time of payment. We are therefore of the opinion that such period of grace could not be deemed to have tolled the running of the statutory period of appeal.

IN VIEW OF THE FOREGOING, the petition for review is hereby dismissed for lack of jurisdiction, with costs against the petitioner.

SO ORDERED.

Cebu City for Manila, April 15, 1957.

(SGD) MARIANO NABLE
Presiding Judge

I CONCUR:

(SGD.) AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI did not take part.