CARMELO S. TOLENTINO,
represented by Crispulo
Tolentino,
Petitioner,

\- versus - C.T.A. CASE NO. 953

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

RESOLUTION

This is in connection with the "Motion to Dismiss" filed by the respondent on October 19, 1960.

Petitioner was employed with the Morrison-Knudsen Afghanistan, Inc. at Kandahar, Afghanistan during the period from July, 1955 to December, 1956. For the years 1955 and 1956, the Royal Afghan Government collected from him the sums of $24.72 and $105.63, respectively, as income taxes (p. 30, BIR rec.). Upon filing his income tax returns on August 1, 1957 for the years 1955 and 1956, respondent issued to petitioner Assessment Notices Nos. 43A-6865-57-55 dated September 24, 1957 for the sum of ₱135.00 and 43-1-414089-57-56 dated October 4, 1957 for the sum of ₱156.00, respectively. Petitioner promptly paid the assessments on September 24, 1957 under Official Receipt No. 0535603 and on October 15, 1957 under Official Receipt No. 0536596.

On December 11, 1957, petitioner requested for the revision of the assessments and the refund of the amounts paid thereunder. This request was denied by the respondent on July 18, 1958. On August 18, 1960, petitioner sought a reconsideration of respondent's denial of July 18, 1960. This request for reconsideration was denied by respondent on August 24, 1960. And, on September 29, 1960, petitioner filed his petition for review before this Court.

On October 19, 1960, respondent moved to dismiss the petition for review on the ground that "the right of petitioner to recover the amounts alleged to have been erroneously paid as income taxes has already prescribed," and that, therefore, this Court has no jurisdiction over the present case.

Judicial suits or proceedings for the recovery of taxes alleged to have been erroneously or illegally assessed and collected should comply with the procedural requirements provided in both Section 306 of the National Internal Revenue Code and Sections 7 and 11 of Republic Act No. 1125. In other words, the judicial action should be instituted both within two years from the date of payment of the tax and within 30 days from receipt of the decision of the Commissioner denying the claim for refund. Both requirements are jurisdictional and non-compliance therewith would bar the appeal and deprive this Court of its jurisdiction to entertain the same. (See Paracale Gumaus Mining Co. v. Blaquera, C.T.A. Case No. 211, Aug. 22, 1956; Larida v. Collector of Internal Revenue, C.T.A. Case No. 548, Sept. 29, 1959; College of Oral and Dental Surgery v. Court of Tax Appeals, G. R. No. L-10446, Jan. 28, 1958; Republic v. Del Rosario, G. R. No. L-10460, Mar. 11, 1959; Gibbs v. Collector of Internal Revenue, G. R. No. L-13453, Feb. 29, 1960; Pangasinan Transportation Co. v. Blaquera, G. R. No. L-13101, April 29, 1960.)

In the case at bar, the petition for review was filed only on September 29, 1960, or after almost three years from the payment of the tax on September 24, 1957 and October 15, 1957. Likewise, more than two years have already elapsed from the date petitioner received respondent's letter-decision dated July 18, 1958 denying his request for refund to the date this case was instituted in this Court. Clearly, therefore, the statutory jurisdictional requirements above referred to have not been met.

Petitioner, however, addressed his appeal to this Court's sense of equity. To deny the instant motion to dismiss and thereby allow petitioner to prosecute his action to recover would be a subversion of the provisions of Section 306 of the Tax Code and Section 11 of Republic Act No. 1125. It is settled that equity cannot be applied to subvert established rules of law.

IN VIEW OF THE FOREGOING, the "Petition for Review" filed in the above-entitled case on September

29, 1960 is hereby dismissed, without pronouncement as to costs.

SO ORDERED.

Manila, December 12, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I concur in the result.

ROMAN M. UMALI
Associate Judge