REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BAY VIEW HOTEL, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 80

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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Nov. 21/55

RESOLUTION

This is a motion to dismiss by the respondent, Collector of Internal Revenue, asking for the dismissal of the petitioner's First Cause of Action as alleged in the petition, for lack of jurisdiction for failure on the part of the petitioner to bring this action within the two years period after payment as provided in Section 306 of the Tax Code. The petitioner in his opposition to the motion, contends that the respondent having failed to raise that ground in a motion to dismiss before filing the answer, or alleged it as an affirmative defense in the answer, is deemed to have waived it pursuant to Sections 9 and 10, Rule 9 of the Rules of Court.

There is no dispute as to the facts involved herein. The petitioner paid in taxes the amount of ₱1,934.50 on July 19,1952 which included <u>inter alia</u> the sum of ₱773.80 claimed in petitioner's First Cause of Action to have been illegally and erroneously collected by the respondent. This petition for review was filed only on February 16, 1955, or exactly 2 years, 6 months, and 27 days after the payment of the tax, which is well beyond the two year period prescribed in section

306 of the National Internal Revenue Code.

It is a well settled rule of law that questions of jurisdiction can be raised at any stage of the proceeding or action. It is a rule likewise well settled both in American and Philippine jurisdictions, that if a statutory remedy provides as a condition sine qua non that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional, and failure to comply therewith may be raised in a motion to dismiss. (Callahan v. Chesapeake & Ohio R. Co. 5 Fed Rules of Service p. 99, cited in 1 Moran, Commentaries on the Rules of Court p. 175) for the reason that prescription of action is a matter of substantive law. (Tanbunting v. De Leon L-2184, August 11, 1950; Hongkong & Shanghai Banking Corp. v. Ibañez de Aldecoa & Pelet Co. 330 Phil. 255; Viuda de Hernaez v. Jison 40 O.G. 3646, 74 Phil. 72).

Likewise, the Supreme Court as well as this Court have repeatedly adhered to the established doctrine that, as an action for refund of internal revenue taxes alleged to have been illegally and erroneously collected is a suit against the state, and as it can not be sued without its consent, strict compliance with the requirements of the law is required whenever or wherever such consent is given. (Philippine Constitutional Law, Laurel & Malcolm pp. 191-195; Wee Poco v. Posadas 64 Phil. 640; Visayan Electric Co. v. David C.T.A. R-3119 August 12, 1955; Hoa Hin & Co. v. David C.T.A., August 11, 1955).

The requirements and conditions provided in section 306 of the Tax Code being substantive and jurisdictional, whether or not they are pleaded in a motion to dismiss, the matter involved being one of jurisdiction, the Court may take cognizance of the same _motu proprio_, and dismiss the petition. In the present case the taxpayer had failed to comply with the requirements of section 306 of the Tax Code in order that a suit against the state for the recovery of taxes may prosper. It matters not that the motion to dismiss for none compliance with the requirements of section 306 of the Tax Code, has been filed only after the respondent has answered for as already stated, it can be raised at any stage of the action or proceeding.

FOR ALL THE FOREGOING CONSIDERATIONS, this Court is of the opinion and so holds that the motion to dismiss filed by the respondent against the petitioner's FIRST CAUSE OF ACTION alleged in its petition for review is well taken, and the same is hereby dismissed.

SO ORDERED.

Manila, Philippines, November 21, 1955.

MARIANO NABLE
Presiding Judge

We concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge