REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEALDA ELECTRIC
CO., INC.,
Petitioner,

versus

CTA CASE NO. 1979

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

9/30/69

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RESOLUTION

Petitioner, grantee of a franchise to operate an electric and power plant, was required to pay a franchise tax at the rate of 5% of its gross earnings under Section 259 of the National Internal Revenue Code, as amended, in lieu of 2% as provided in its franchise, pursuant to the decision of the Supreme Court in Lealda Electric Co., Inc. v. Commissioner of Internal Revenue, G.R. No. L-16428, April 30, 1963. In addition to the deficiency franchise tax of ₱80,428.10 for the period from April 1, 1959 to December 31, 1963, petitioner was also required to pay the sum of ₱16,085.62 as 25% surcharge for late payment, which amounts were paid by installment, the last of which was paid on June 30, 1965. Sometime in February, 1966, a written claim for refund was filed by petitioner for the recovery of the said sum of ₱16,085.62, on the ground that the decision of the Supreme Court in the case cited above is silent as to petitioner's liability for the surcharge. The claim for refund was denied by respondent in his letter dated September 30, 1968, which was allegedly received by petitioner on November 29, 1968, on the ground that since the amount sought to be recovered was paid to the City of Legaspi and the municipality of Locsin (formerly Daraga), which amount has not been remitted to the National Treasury, he (respondent) "cannot take cognizance of (petitioner's) claim for lack of cause of action." Hence, this appeal.

Respondent has filed a motion to dismiss the appeal on the grounds that petitioner has no cause of action against him and that this Court has no jurisdiction to entertain the appeal for having been filed beyond two years from the date of payment of the said surcharge.

The surcharge in question amounting to ₱16,085.62 was collected and paid pursuant to Section 259 of the National Internal Revenue Code. Section 309 of said Code provides that a claim for refund of any national internal revenue tax or penalty erroneously or illegally paid must be filed within two years from the date of payment, and the decision of the Commissioner of Internal Revenue denying the claim for refund must be appealed to this Court within 30 days from the date of receipt of the decision of the Commissioner (Sec. 11, Republic Act No. 1125), but in no case beyond two years from the date of payment. (Sec. 306, Revenue Code; see Collector v. Sweeney, 106 Phil. 59; Gibbs v. Collector, 107 Phil. 232; Koppel v. Collector, G.R. No. L-10550, September 16, 1961.)

Here, it is admitted that the surcharge in question was paid on June 30, 1965, and the appeal from the decision of respondent was filed on December 12, 1968, or after more than two years from the date of payment. Accordingly, this Court has no jurisdiction to entertain the herein appeal. For this reason, it becomes unnecessary to pass squarely upon the question whether or not the amount in question is a municipal tax or a penalty for late payment thereof. In any case, the result would be the same.

In view of the foregoing, the herein appeal is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Quezon City, September 30, 1969.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge