REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LIM TIO, DY HENG and DEE HUE,
Petitioners,

- versus - C.T.A. CASE NO. 126

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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RESOLUTION

This is a petition for review of the decision of the Collector of Internal Revenue requiring the petitioners, Lim Tio, Dy Heng and Dee Hue, to pay the sums of ₱946.25, ₱1,663.16 and ₱5,242.36, respectively, as manufacturers' fixed and percentage taxes, surcharge and penalty imposed by the National Internal Revenue Code. The case was originally instituted in the former Board of Tax Appeals which dismissed the appeal and affirmed the decision of the respondent. (See B.T.A. Case No. 102, December 13, 1952.) On December 22, 1952 said petitioners filed a motion for reconsideration which was denied by the Board on December 29, 1952. On February 2, 1953, the petitioners appealed to the Supreme Court, which appeal was dismissed without prejudice on March 30, 1954 (G. R. No. L-6470, March 30, 1954.) The decision of the Supreme Court became final and executory on April 29, 1954. The motions of petitioners for reinstatement of the case in the Supreme Court were denied on the ground that said motions were filed long after the resolution of March 30, 1954, dismissing the appeal in said case without prejudice, had become final.

When the Supreme Court dismissed the case without prejudice for lack of jurisdiction, the provisions of Executive Order No. 401-A, series of 1951 in regard to appeals from the decisions of the defunct Board of Tax Appeals having been invalidated by said Court (University of Sto. Tomas v. Board of Tax Appeals, G. R. No. L-5701, June 23, 1953), petitioners were left free to institute the proper judicial proceedings in a court of competent jurisdiction after complying with the requisites provided by law. The appeal of petitioners from the decision of the Board of Tax Appeals was dismissed on March 30, 1954, which dismissal became final and executory on April 29, 1954. Republic Act No. 1125, creating this Court, not having as yet been approved at the time, the sole remedy of petitioners was to pay the taxes assessed against them, file a claim in writing for refund thereof with the Collector of Internal Revenue within 2 years after payment, and, within the same period, with or without a decision being rendered by the Collector, institute an action for recovery in the proper Court of First Instance.(Sec. 306, National Internal Revenue Code.) This was the sole remedy provided by law in case a taxpayer desired to contest in court the validity of an internal revenue tax which he believed to be erroneously or illegally collected. The said remedy being exclusive, no other remedy could be substituted for it. The records do not show that petitioners took any step to comply with the requirements of Section 306 of the Revenue Code. Instead, they waited until May 5, 1955, when they filed with this Court the present petition for review, or about ten months after the organization of this Court.

Republic Act No. 1125 creating this Court was approved and took effect on June 16, 1954. Section 7 of said Act confers upon a taxpayer the right to appeal from a decision of the Collector of Internal Revenue without first paying the tax, and section 11 provides that such appeal must be filed with this Court within 30 days after receipt of the decision. Obviously, the petition for review in the instant case filed with this Court on May 5, 1955, was filed out of time (the decision of respondent having been rendered sometime in 1952) and may be dismissed *motu proprio* by this Court for lack of jurisdiction. The fact that the appeal to the former Board of Tax Appeals was filed on time, and from there it was elevated to the Supreme Court which dismissed the appeal without prejudice, did not have the effect of perpetuating the right of petitioner to institute in this Court proceedings for the review of the decision of respondent. This has been the view consistently adhered to in various cases already decided by this Court. (See Jaime Bautista v. Collector of Internal Revenue, C. T. A. No. 39, June 20, 1955; Sta. Clara Lumber Co., Inc. v. Collector of Int. Rev., C. T. A. No. 91, Sept. 20, 1955; Ipekdjian Merchandising Co., Inc., C. T. A. No. 107, Oct. 1, 1955; Marsman Development Co. v. Collector of Int. Rev., C. T. A. Nos. 116 & 117, Nov. 14, 1955.)

Considering, however, the confused situation caused by the invalidation of the provisions of Executive Order No. 401-A regarding appeals from the decisions of the Board of Tax Appeals to the Supreme Court and the consequent dismissal by said Court of various tax cases appealed to it, we have taken quite a liberal view of the question relative to the period within which such cases may be instituted in this Court. We have held that in such cases the petitions for review of the decisions of the Collector of Internal Revenue could be filed with this Court within 30 days from July 21, 1954, when it was formally organized with the appointment of two of its Judges and the adoption by it (provisionally) of the rules of the Board of Tax Appeals. We quote from a decision in a case similar to the instant case:

> "With the creation of this Court on June 16, 1954, a new remedy was made available to the petitioner, i.e., to 'file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.' (Section 11, Republic Act No. 1125.) Considering the circumstances of the instant case, the petitioner could have availed itself of this new remedy, and for reasons of equity, this Court by a unanimous concurrence of its members, has resolved that the thirty (30) day period within

which to appeal to this Court in cases of similar nature, should be counted not from the receipt of respondent's decision dated November 5, 1951, or of the Supreme Court's resolution of March 30, 1954, dismissing petitioner's appeal without prejudice, but from July 21, 1954, when this Court was already regularly functioning with the appointment of its two Judges and its Clerk of Court and with the adoption by it in the interim of the Rules and Regulations of the defunct Board of Tax Appeals for the guidance and observance of taxpayers who would like to question the decisions of the Collector of Internal Revenue.

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"In the case at bar, inasmuch as petitioner Sta. Clara Lumber Co., Inc. filed its petition for review only on March 5, 1955, or almost 9 months after the creation of this Court and far beyond July 21, 1954, when this Court was ready and open for business, we are of the opinion that the same was filed beyond the reglementary period within which to perfect an appeal to this Court, as fixed by Section 11 of Republic Act No. 1125." (Sta. Clara Lumber Co., Inc. v. Collector of Internal Revenue, C. T. A. No. 91, Sept. 20, 1955; see also Marsman Development Co. v. Collector of Internal Revenue, C. T. A. Nos. 116 & 117, Nov. 14, 1955.)

This case is exactly on all fours with the cases already decided by this Court. We find nothing of record which would justify the application to this case of a different rule.

It is argued that petitioners could not have filed with this Court a petition for review within 30 days from July 21, 1954, because on July 3, 1954, they filed a motion for reinstatement of the case with the Supreme Court and the case was decided only on February 11, 1955. The motion for reinstatement was filed with the Supreme Court solely for the purpose of seeking a review of the case on the merits by said Court under Section 21 of Republic Act No. 1125, authorizing said Court to decide on the merits all cases decided by the former Board of Tax Appeals and thence appealed to the Supreme Court and were then pending in that Court at the time of the approval of said Act on June 16, 1954. The motion for reinstatement was filed long after the decision of the Supreme Court had become final and executory. It was admittedly a futile attempt to revive what had long been pronounced dead. For this Court to consider the filing with the Supreme Court of a motion for reinstatement of a case that had been previously dismissed by said Court, and had long become final, as a justification for the filing of petitions for review beyond the legal period, would do violence to the law which prescribes a certain and definite period within which appeals must be perfected. If the view of petitioners is correct, the law would be rendered nugatory. In the case of a decision of the Collector of Internal Revenue which has become final because no appeal has been filed with this Court within 30 days after receipt of the decision, the taxpayer concerned could, if we are to believe petitioners in this case, by the simple expedient of merely filing a request for reconsideration, say after one year, revive his right to appeal. We find no sanction for it in law or in equity.

Finally, it is alleged that to dismiss the present petition for review would be to require the parties to litigate anew on the same issue, which is contrary to the spirit of Section 2, Rule 1 of the Rules of Court, requiring courts to assist the parties obtain a speedy and inexpensive suits. Under the law, the petitioners herein may pay the taxes assessed against them, request refund thereof within 2 years after payment, and appeal from the decision of the Collector of Internal Revenue within the time prescribed by law, if the claim for refund is denied. That this remedy is still available to petitioners may be admitted; but the existence of another remedy and the consequent delay and expense to be entailed where the improper remedy is to be dismissed are not valid reasons for this Court to disregard the plain and specific provisions of law. Our sole function is to interprete the law; we can not legislate.

FOR THE FOREGOING CONSIDERATIONS, the herein petition for review is hereby dismissed with costs against petitioners.

Manila, January 31, 1956.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge