REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JAIME BAUTISTA,
Petitioner,

- versus -

C.T.A. CASE NO. 39

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

This is in connection with the verbal motion to dismiss the above-entitled case for lack of jurisdiction submitted by respondent's counsel for resolution by this Court.

Although no formal motion to dismiss was filed, a preliminary hearing was had thereon, the question of jurisdiction having been pleaded as an affirmative defense in respondent's answer (sec. 5, rule 8, Rules of Court).

The petitioner herein, Jaime Bautista, is one of the heirs of the deceased Brigida Jacobo de Bautista who died on May 12, 1948.

On May 9, 1953, the Collector of Internal Revenue wrote a letter to Mr. Vicente Bautista, Attorney for the estate of the deceased Brigida Jacobo de Bautista and one of the heirs of the latter, assessing and demanding from the said estate the amount of ₱8,768.40 as estate and inheritance taxes plus 1% interest as will have accrued thereon from January 1, 1952 to the date of payment. (pp. 85-88, B.I.R. record).

As will be seen on page 1 of the duplicate copy of this letter, a copy thereof was received by Attorney Vicente Bautista on June 16, 1953. (p. 88, B.I.R. record).

On October 30, 1953, the Collector of Internal Revenue issued a warrant of distraint and levy on the personal and real properties of the heirs of the deceased Brigida Jacobo de Bautista to satisfy the estate and inheritance tax demanded which by then had increased to ₱10,491.31. (p. 94, B.I.R. record).

As a follow up, on December 16, 1953, the Chief of the Assessment Department of the Bureau of Internal Revenue wrote a letter to the City Treasurer of Manila giving the names of the heirs of the deceased Brigida Jacobo de Bautista, their respective addresses and the corresponding numbers of the transfer certificates of title of real properties in the names of said heirs against which the collection of the estate and inheritance taxes assessed and demanded could be enforced. (p. 96, B.I.R. record). In said letter, the name of the herein petitioner, Jaime Bautista, is listed among the seven heirs of the deceased Brigida Jacobo de Bautista with address at 1338 Juan Luna, Manila.

On May 21, 1954, the Deputy Collector of Internal Revenue wrote a letter to Mr. Vicente Bautista, Attorney for the estate of the deceased Brigida Jacobo de Bautista and one of the heirs of the latter, reiterating the demand for payment of the estate and inheritance tax liability from the estate. (pp. 106-107, B.I.R. record). In said letter, the Deputy Collector of Internal Revenue itemized the individual share of each heir in the estate and inheritance tax demanded. The petitioner herein Jaime Bautista, as one of the heirs of the deceased Brigida Jacobo de Bautista, was assessed the amount of ₱1,514.96. A copy of this letter of demand was

Y

served to Attorney Vicente Bautista on May 22, 1954. (p. 107, B.I.R. record). All the other heirs including the herein petitioner were likewise sent a copy of this letter (p. 106, B.I.R. record).

On June 9, 1954, Mr. Vicente Bautista, as Attorney for the estate of the deceased Brigida Jacobo de Bautista and in his own right as heir, filed a bond in favor of the Republic of the Philippines in the amount of ₱8,000.00, with the Luzon Surety Company, Inc. as surety , to guarantee the payment of the tax demanded. (pp. 112-113, B.I.R. record).

On September 8, 1954, the City Treasurer of Manila wrote a letter (Exhibit A, petition) to the herein petitioner notifying him that his share in the real property registered in his name and Angles Bautista bearing T.C.T. No. 33328 would be sold at public auction at 9:00 A.M. on November 5, 1954 to satisfy the estate and inheritance tax demanded in the amount of ₱1,514.96.

On November 3, 1954, the petitioner Jaime Bautista filed a petition for review before this Court of the decision of the respondent Collector of Internal Revenue assessing and demanding from him the amount of ₱1,514.96 as his share in the estate and inheritance tax due from the estate of the deceased Brigida Jacobo de Bautista.

On November 4, 1954, the petitioner herein through his counsel, Attorney Jose Y. Garde, wrote a letter (Exhibit B, petition, pp. 123-124 BIR record) to the Collector of Internal Revenue stating, among other things, that the petitioner was never informed prior to September 10, 1954 of the decision of the respondent Collector of Internal Revenue assessing and demanding from him the amount of ₱1,514.96 and that the petitioner has been residing at No. 23 Sierra Madre, Quezon City, for the last five years and not at 1338 Juan Luna St., Manila, where all the communication of the Bureau of Internal Revenue were sent.

In his answer, respondent's counsel alleges as special defense that this Court lacks jurisdiction to hear this appeal for failure on the part of the petitioner to file before this Court his petition for review within the 30-day period fixed by section 11 of Republic Act No. 1125 which reads as follows:

> "SEC. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

It appears from the record that the decision appealed from assessing and demanding from the estate of the deceased Brigida Jacobo de Bautista estate and inheritance taxes in the amount of ₱8,768.40 was rendered by the respondent on May 9, 1953. As stated above, the lawyer of the estate of the deceased Brigida Jacobo de Bautista received a copy of this decision on June 16, 1953. The lawyer of the estate did not ask for a re-consideration of this decision but instead wrote a letter to the Collector of Internal Revenue, dated July 14, 1953, declaring his intention to appeal said decision to the Board of Tax Appeals. (p. 89, B.I.R. record). On May 21, 1954, the Deputy Collector of Internal Revenue wrote a letter to Mr. Vicente Bautista, Attorney for the estate of the deceased Brigida Jacobo de Bautista and one of the heirs of the latter, reiterating the demand for payment of the estate and inheritance tax liability from the estate (pp. 106-107, B.I.R. record). In said letter, the Deputy Collector of Internal Revenue itemized the individual share of each heir in the estate and inheritance tax demanded. The petitioner herein, Jaime Bautista, as one of the heirs of the deceased Brigida Jacobo de Bautista, was assessed the amount of ₱1,514.96. A copy of this letter of demand was served to Attorney Vicente Bautista on May 22, 1954. (p. 107, B.I.R. record). All the other heirs including the herein petitioner were likewise sent a copy of this letter (p. 106, B.I.R. record).

The petitioner claims that he was not apprised of the letter of demand sent by the Collector of Internal Revenue to Attorney Vicente Bautista on May 9, 1953. He likewise claims not to have received a copy of the letter of demand sent by the Collector of Internal Revenue on May 21, 1954, although on the left hand margin of page 2 of said letter there is an annotation to the effect that he was furnished a copy of the same at his known address at 1338 Juan Luna, Manila. Petitioner's counsel alleges that the letters containing the final assessment and demand for payment from the Collector of Internal Revenue dated May 9, 1953 and May 21, 1954 were never received by the petitioner the latter having resided for the last five years at 23 Sierra Madre, Quezon City and not at 1338 Juan Luna, Manila where said letters were addressed.

We cannot be convinced by the allegation of the petitioner that it was only on September 10, 1954, that he came to know of the decision of the Collector of Internal Revenue dating as far back as May 9, 1953, that there was an assessment against him in the amount of ₱1,514.96 as one of the heirs of the deceased Brigida Jacobo de Bautista. Could it be possible for petitioner not to know of such assessment when Attorney Vicente Bautista, the lawyer of the estate, filed on June 9, 1954 a surety bond in the amount of ₱8,000.00 for and in behalf of all the heirs in favor of the Republic of the Philippines to guarantee the payment of the tax demanded? If it were true that the petitioner had been residing at 23 Sierra Madre, Quezon City, for the last five years, how come he received the notice of sale of the City Treasurer (Exhibit A, petition) on September 10, 1954, at 1338 Juan Luna, Manila, the address appearing on said exhibit? Under paragraph (v), section 69, rule 123 of the Rules of Court, a letter duly directed and mailed is presumed to have been received in the ordinary course of business.

Assuming that the petitioner received the decision of the respondent Collector of Internal Revenue sometime in the later part of May 1954, as we believe he did in the ordinary course of business, what then was his remedy upon receipt of said decision if he was not agreeable to it? Since at that time this Court was not yet in existence, one of the remedies left to the petitioner was to pay the tax demanded and then file an action for its refund before the Court of First Instance of Manila as it is his right under section 306 of the National Internal Revenue Code. This he failed to do before the creation of this Court, otherwise there would be no question as to the jurisdiction of this Court to try and decide the case under section 22 of Republic Act No. 1125 which reads as follows:

> "SEC. 22. Pending cases to be remanded to Court. - All cases involving disputed assessment of Internal Revenue taxes or customs duties pending determination before the Court of First Instance shall be certified and remanded by the respective clerk of court to the Court of Tax Appeals for final disposition thereof."

The petitioner was likewise negligent in the protection of his interest by not appealing the decision of the Collector of Internal Revenue dated May 21, 1954, to the Board of Tax Appeals as his lawyer had planned to do. Again, had he done so, we would have no difficulty in assuming jurisdiction over this case now under the last paragraph of section 21 of Republic Act No. 1125 which reads as follows:

> "x x x x x. And provided, further, That all cases now pending in the said Board of Tax Appeals shall be transferred to the Court of Tax Appeals and shall be heard and decided by the latter to all intents and purposes as if they had been originally filed therein."

The law creating this Court (Republic Act No. 1125) was approved on June 16, 1954, and according to section 24 thereof, the Act shall take effect upon its approval.

Undoubtedly, the failure on the part of the petitioner to file his action before the creation of this Court, before the defunct Board of Tax Appeals or before the Court of First Instance of Manila, could have been cured had he within a reasonable time after the creation of this Court or at least within 30 days from June 16, 1954, filed his petition for review before this Court. The petitioner actually filed his petition for review before this Court on November 3, 1954, or a period of over four (4) months after the creation of this Court.

The petitioner claims that he learned of the decision of the respondent Collector of Internal Revenue assessing and demanding from him the amount of ₱1,514.96 only on September 10, 1954. Granting that this be so, then he should have filed his petition for review of said decision before this Court within thirty (30) days from September 11, 1954 or on or before October 10, 1954. So it is apparent that even if we were to give the petitioner all the benefit of the doubt, still his "Petition for Review" filed before this Court on November 3, 1954 as well as his "Urgent Motion to Suspend Sale" filed on November 4, 1954 were filed beyond the 30-day period fixed in section 11 of Republic Act No. 1125.

WHEREFORE, finding the motion to dismiss of respondent's counsel well-founded and meritorious, the same is hereby granted.

Let this case be, as it is hereby dismissed, for lack of jurisdiction, with costs against petitioner.

SO ORDERED.

Manila, Philippines, June 20, 1955.

AUGUSTO M. LUCIANO
Associate Judge

MARIANO NABLE
Presiding Judge