Republic of the Philippines
COURT OF TAX APPEALS
Manila

September 20, 1955

STA. CLARA LUMBER CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 91

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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RESOLUTION

This is in connection with the affirmative defense of lack of jurisdiction interposed by counsel for respondent Collector of Internal Revenue in his answer to the petition for review. More particularly, respondent's counsel alleges that this Court has no jurisdiction to entertain the present action because the appeal was filed beyond the 30-day period prescribed by section 11 of Republic Act No. 1125. Inasmuch as the issue raised is one of jurisdiction, the Court, upon verbal motion made by counsel for the respondent on July 5, 1955 when this case was called for hearing, ruled in open court that the same should first be resolved before proceeding with the trial of the case on the merits.

The records of this case show that the decision of respondent Collector of Internal Revenue which is the subject of the instant appeal was rendered on November 5, 1951. The petitioner Sta. Clara Lumber Co., Inc. appealed the said decision to the then Board of Tax Appeals which decided the case in favor of the respondent and against the petitioner on May 25, 1952. Dissatisfied with the adverse decision of the Board of Tax Appeals, the petitioner appealed said case to the Supreme Court.

On March 30, 1954, the Supreme Court rendered a resolution on the appeal of the petitioner, which reads as follows:

> "Following the decision in the case of University of Sto. Tomas vs. Board of Tax Appeals, G.R. No. L-5701, June 23, 1953, the Court resolved to dismiss, without prejudice the appeal in G.R. No. L-5914, Sta. Clara Lumber Co., Inc. vs. The Board of Tax Appeals."

A copy of this resolution of the Supreme Court was received by the petitioner on April 19, 1954, and from the records of the Supreme Court it became final and executory on May 4, 1954.

Ten (10) days after the approval of Republic Act No. 1125, on June 16, 1954, petitioner Sta. Clara Lumber Co., Inc. filed with the Supreme Court a motion for the reconsideration of the resolution of the said Court, dismissing the appeal without prejudice, but the said motion was denied by the Supreme Court it appearing that the motion for reconsideration was filed long after the resolution of March 30, 1954 had become final.

On March 5, 1955, the petitioner filed the instant petition to review the decision of respondent Collector of Internal Revenue of November 5, 1951.

With the above-stated facts as a basis, which are uncontroverted, the only question to resolve in this incident is whether or not this Court has jurisdiction to hear and decide the instant case.

Section 11 of the law creating this Court (Republic Act No. 1125) reads in part 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, x x x x x may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling." (Underscoring supplied.)

The above quoted provision should be applied and interpreted in relation to the resolution of the Supreme Court dismissing without prejudice the appeal of the petitioner herein in G.R. No. L-5914, Sta. Clara Lumber Co., Inc. vs. the Board of Tax Appeals.

In the case of Ipekdjian Merchandising Co., Inc. vs. Collector of Internal Revenue, C.T.A. Case No. 107, this Court in its resolution on July 26, 1955, stated among others, in interpreting an identical resolution of the Supreme Court which was also rendered on March 30, 1954, the following:

> "The resolution of the Supreme Court of March 30, 1954, dismissing without prejudice the appeal of petitioner Ipekdjian Merchandising Co., Inc. was based on the decision of the same Court in the case of University of Sto. Tomas vs. Board of Tax Appeals, G.R. No. L-5701, June 23, 1953. In the said case, the Supreme Court declared Executive Order No. 401-A of January 5, 1951, creating the Board of Tax Appeals, as null and void in so far as it deprived the Courts of First Instance of their jurisdiction to act on internal revenue cases under section 306 of the National Internal Revenue Code. More specifically, the Supreme Court held that Part IV of said Executive Order which provided for the review of the decisions of the Board of Tax Appeals by the Supreme Court, was without force and effect. In other words, the Supreme Court's ruling was that a party adversely affected by a decision of the Board of Tax Appeals cannot directly appeal the Board's decision to the Supreme Court, but must first bring his case to the Court of First Instance."
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> . . . . . The Supreme Court, therefore, in its resolution of March 30, 1954, in effect, ruled that it did not have jurisdiction over the appeal of the petitioner, and accordingly dismissed it without depriving petitioner Ipekdjian Merchandising Co., Inc. of its right, at that time, to bring its case to the proper Court of First Instance."

In the case at bar, the only available remedy of the petitioner when it received on April 19, 1954, the Supreme Court's resolution of March 30, 1954 dismissing the case <u>without preju-</u>

dice, was to pay the sales tax assessed and demanded by the respondent, and then file a suit for its refund under section 306 of the Tax Code with the Court of First Instance of Manila, because at that time this Court was not yet in existence. Petitioner Sta. Clara Lumber Co., Inc. failed to take this step.

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.

We believe that Congress in enacting the organic law of this Court (Republic Act No. 1125) intended to provide a finality to the decisions or rulings of the Collector of Internal Revenue on the matter of an assessment of taxes in each instance. It could not have been the intention of Congress to provide for a finality after the given 30-day period as regards assessment made subsequent to the effectivity of Republic Act No. 1125 and left without finality those assessments made prior to said law. On the other hand, and to be consistent and reasonable, Congress must have contemplated an application of the law in such a manner that all assessments of taxes must be given finality so that the instant case must be treated with this view in mind.

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 the 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.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the "Petition for Review" filed on March 5, 1955 by Sta. Clara Lumber Co., Inc., is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Manila, Philippines, September 20, 1955.

(SGD.) MARIANO NABLE
Presiding Judge

(SGD.) AUGUSTO M. LUCIANO
Associate Judge

(SGD.) ROMAN M. UMALI
Associate Judge

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