KER & COMPANY, LTD.,
Petitioner,

- versus - C.T.A. CASE NO. 244

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

1/5/57

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

R E S O L U T I O N

In 1953, respondent assessed against petitioner deficiency income tax for the years from 1947 to 1950, as follows:

1947	₱42,342.30
1948	18,651.87
1949	139.67
1950	12,813.00
Total . .	₱73,946.84

Upon request of petitioner for reconsideration, respondent reassessed the deficiency income tax due from the former, in a letter dated January 5, 1954, as shown below:

1947	₱27,026.28
1948	18,651.87
1949	139.67
1950	8,542.00
Total . .	₱54,359.82

In his letter of May 22, 1954, counsel for petitioner requested reconsideration of the assessment contained in respondent's letter of January 5, 1954.

This request was allegedly denied in a letter of respondent of July 28, 1954, receipt of which is denied by petitioner. Another letter dated December 9, 1954, was sent by respondent to counsel for petitioner reiterating the assessment of January 5, 1954. While not specifying the specific date of receipt of said letter of December 9, 1954, counsel for petitioner acknowledged receipt of said letter in his letter to respondent dated August 1, 1955, but actually filed with the Bureau of Internal Revenue on August 23, 1955. In said letter of August 1, 1955, counsel for petitioner reiterated his previous request for reconsideration of the assessment. Respondent denied the request in his letter dated January 23, 1956 (not January 26, 1956), received by counsel for petitioner on February 1, 1956. (See par. 11, Petition for Review.) In the meantime, a warrant of distraint and levy having been issued to enforce collection of the deficiency income tax assessed against petitioner, the present petition for review with preliminary injunction was filed on March 1, 1956.

Respondent has filed a motion to dismiss the herein appeal on the ground that it was filed beyond the statutory period of thirty days prescribed in Section 11 of Republic Act No. 1125.

Under the facts stated above, we find that the decision of respondent which is appealable to this Court under Sections 7 and 11 of Republic Act No. 1125 is the one contained in his letter of January 5, 1954, the same having remained unaltered and unmodified up to the date the appeal was filed. (See Angel Sarzos v. Bureau of Internal Revenue, C.T.A. No. 229, March 5, 1956; Merced Drug House v. Collector of Internal Revenue, C.T.A. No. 180, May 21, 1956; Dirk Van Dongen v. Collector of Internal Revenue, C.T.A. No. 268, July 31, 1956; Tomas B. Villamin v. Collector of Internal Revenue, C.T.A. No. 258, July 31, 1956; St. Stephen's Association v. Collector of Internal Revenue, C.T.A. NO. 173, August 15, 1956; Auyong Hian v. Collector of Internal Revenue, C.T.A. No. 242, August 30, 1956; Pacific Vegetable Corporation v. Collector of Internal Revenue, C.T.A. No. 297, October 28, 1956.) The said decision was sought to be reconsidered in a letter of counsel for petitioner dated May 22, 1954. Since the decision was rendered prior to the organization of this Court, the thirty-day period within which the same may be appealed started to run from July 21, 1954, unless on that date there was a pending request for reconsideration, in which case the period for appeal is to be counted from the date notice of the denial of the request for reconsideration is served upon the appellant. (See Santiago Gancayco v. Collector of Internal Revenue, C.T.A. No. 287, Oct 27, 1956, and cases cited therein.)

In this case, while it appears that the request for reconsideration was purportedly denied in a letter of respondent dated July 28, 1954, it has not been shown that the same was received by petitioner or his counsel. It was the letter of respondent of December

9, 1954 which was acknowledged by counsel for petitioner in his letter dated August 1, 1955 and filed with the Bureau of Internal Revenue on August 23, 1955. Giving petitioner the benefit of the doubt, the denial of the request for reconsideration may be considered to have been received on August 1, 1955. The thirty-day period commenced to run from that date and was suspended when the request for reconsideration was filed on August 23, 1955. The period started to run again upon receipt on February 1, 1956 by counsel for petitioner of the denial of the request for reconsideration dated January 23, 1956 to the date the petition for review was filed on March 1, 1956. From August 1, 1955 to August 23, 1955 and from February 1, 1956 to March 1, 1956 petitioner consumed a total of 52 days.

Accordingly, the herein petition for review was filed beyond the statutory period of thirty days prescribed in Section 11 of Republic Act No. 1125; we must, therefore, decline to take cognizance of the same.

WHEREFORE, the petition for review with preliminary injunction is hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, January 5, 1957

ROMAN M. UMALI
Associate Judge

WE CON-

RESOLUTION-
C.T.A. CASE NO. 244

CUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge