Library

July 21, 1960

FIDELINO PABLO,
Petitioner,

- versus - C.T.A. CASE NO. 733

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

RESOLUTION

This is in connection with the incidental question of whether or not the instant appeal was seasonably filed.

Petitioner is the owner and operator of a cinema theater, known as Paz Theater, located at Aparri, Cagayan. In a letter dated December 9, 1955 (see Demand No. 14295, pp. 20-21, BIR rec.), then Acting Chief Melecio R. Domingo of the Assessment Department, Bureau of Internal Revenue, assessed and demanded from petitioner the sum of ₱3,372.53 as deficiency amusement tax and surcharge for the period from January 1, 1953 to June 30, 1955, plus a compromise penalty of ₱200.00 or a total of ₱3,572.53. This assessment was disputed by the petitioner in a letter dated January 6, 1956, which was addressed to and received by respondent on January 9, 1956. (Pp. 22-23, BIR rec.) On the strength of said letter, a reinvestigation was conducted on petitioner's amusement tax liability. On October 31, and November 21, 1956, the petitioner sent again directly to the respondent two separate letters protesting against the disputed deficiency amusement tax assessment, and advancing additional reasons and arguments why the said disputed assessment should be withdrawn and cancelled. (See pp. 29-30; 41-42, BIR rec.)

As a result of the reinvestigation, and after considering the protests of the petitioner, the respondent, in a letter dated June 23, 1958, reiterated to the petitioner the demand for payment of the original assessment, with the admonition that it be paid within 15 days otherwise he would be constrained to enforce it by summary administrative remedies. (Pp. 49-50, BIR rec.)

On August 13, 1958, the petitioner in a letter dated August 1, 1958 (p. 51, BIR rec.) offered, by way of compromise, the sum of ₱500.00 in full settlement of the assessment, which offer was rejected by the respondent in a letter dated October 16, 1959 (p. 64, BIR rec.). On December 2, 1959, the petitioner filed another request for reconsideration of respondent's letter of October 16, 1959. Again, this request was denied by respondent in a letter dated December 11, 1959 (pp. 65-66; 67, BIR rec.) which was allegedly received by petitioner on January 2, 1960. Hence, the present petition for review which was filed on January 14, 1960.

The issue is whether or not the appeal was interposed within the 30-day reglamentary period prescribed in Section 11 of Republic Act No. 1125.

The petitioner contends that the respondent, by his pleadings, admits that the decision appealable in this case is his letter of December 11, 1959, which was mailed on December 29 of the same year and admitted to have been received by him on January 2, 1960, is the basis of the computation of the 30-day period within which to appeal. And that, inasmuch as the present appeal was initiated on January 14, 1960, the same was seasonably filed within the reglamentary period fixed by law.

We find the contention of the petitioner untenable. Even granting arguendo that the respondent has made an express admission in paragraph 4 of his answer that the decision that should be the basis of the appeal is the letter of respondent dated December 11, 1959, that admission is not binding upon this Court. Following established precedents, and as repeatedly held by us, the parties to an action cannot stipulate as to which decision of the Commissioner of Internal Revenue is appealable in determining whether or not this Court has jurisdiction over the case. (Janda v. Collector of Internal Revenue, C.T.A. No. 87, Feb. 23, 1956; Saraos v. Bur. of Int. Rev., C.T.A. No. 229, March 5, 1956; Lealda Electric Co., Inc. v. Collector of Internal Revenue, C.T.A. No. 266, Dec. 22, 1956.)

To our mind, the decision appealable to this Court is the letter-decision dated June 23, 1958, which was rendered after the petitioner had sent three separate letters contesting the original assessment issued by the Chief of the Assessment Department of the Bureau of Internal Revenue (St. Stephen's Association vs. Collector of Internal Revenue, G.R. No. L-11238, Aug. 21, 1958). This letter-decision of June 23, 1958, must have been received by petitioner on or before August 1, 1958, the date when petitioner wrote to the respondent the letter dated August 1, 1958, offering by way of compromise the payment of the sum of ₱500.00 in full settlement of the assessment. The said letter of June 23, 1958, was sent by registered mail, but it does not show when petitioner actually received it. Neither have the parties submitted concrete evidence on this regard. Be it as it may, and considering that it was received only on August 1, 1958, when the letter offering compromise settlement was made, we believe that the right to appeal has already been lost by laches.

From August 1, 1958 to August 13, 1958 when said letter was actually received by respondent 12 days of the 30-day reglamentary period had expired. The running of the period was suspended until the offer was denied in a letter dated October 16, 1959 (see p. 64, BIR rec.) sent by respondent by ordinary mail to counsel for petitioner at 215 Juan Luna, Manila, on November 2, 1959. (Exh. "1", p. 14, CTA rec.) Accordingly, and pursuant to Section 8, Rule 27 of the Rules of Court, it must be considered received by the addressee after 5 days from the date of mailing, that is, on November 7, 1959 (Perez v. Ysip, 81 Phil. 218).

From November 7, 1959 to December 2, 1959, when petitioner's letter for reconsideration of even date was filed, 25 days had already expired. The running of the period was interrupted from the said date up to January 2, 1960, when respondent's letter dated December 11, 1959 denying said request for reconsideration was admittedly received by petitioner. From January 2, 1960, to the filing of the present petition for review on January 14, 1960, another 12 days also expired. All in all, the petitioner consumed 49 days which is far beyond the 30-day period fixed by law, and therefore we have no jurisdiction over this case. (Pangasinan Transportation Co., Inc. v. Blaquera, G.R. No. L-13101, April 29, 1960.)

WHEREFORE, in view of the foregoing considerations, the "Petition" filed with this Court on January 14, 1960, should be, as it is hereby dismissed for lack of jurisdiction, with costs against the petitioner.

SO ORDERED.

Manila, July 21, 1960

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote:

ROMAN M. UMALI
Associate Judge