LA PAZ Y BUEN VIAJE (LA DICHA CIGAR AND CIGARETTE FACTORY),
Petitioner,

- versus - C.T.A. CASE NO. 323

Dec. 27, 1957

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of the Collector of Internal Revenue holding the petitioner liable for the payment of ₱12,066.00, as deficiency specific tax on "largos" cigarettes manufactured by it and removed from its factory from September, 1949 to September 22, 1950, and of the sums of ₱200.00 and ₱300.00 as "administrative" or "compromise" penalties. Respondent claims that the petition for review was filed beyond the statutory period of thirty days, and, assuming that it was timely filed, the amounts already mentioned have been validly assessed.

It appears that on December 4, 1952, respondent assessed against petitioner the sum of ₱484,762.61, itemized as follows:

1. Deficiency specific tax on "Black Jack" and "Daily Double" cigarettes manufactured and removed from petitioner's factory from July, 1949 to November 11, 1950 .... ₱450,406.70

2. Deficiency specific tax on "largos" cigarettes manufactured and removed from the factory from September, 1949 to September 22, 1950 ---	₱ 12,066.00
3. Deficiency specific tax on 5,680,500 "cortos", "Black Jack" and "Daily Double" cigarettes manufactured and removed from the factory from January to March, 1950, covered by the so-called "Z" invoices ---------	11,361.00
4. Fixed and percentage taxes and surcharge as importer during the year 1947 ---------	10,938.91
5. Compensating tax ------------	3,679.20
TOTAL -----------	₱484,762.61

The deficiency specific tax on cigarettes under Items 1 to 3 were assessed by virtue of Section 137 of the National Internal Revenue Code; the fixed and percentage taxes and surcharge, under Sections 182, 183 and 186; and the compensating tax, under Section 190.

In the letter of respondent dated December 4, 1952, petitioner was also asked to "settle extra-judicially" its violations of the Revenue Code and Regulations No. 27 of the Department of Finance by paying the sum of ₱10,000.00, in addition to the sum of ₱484,762.61.

The case was thereafter reinvestigated by the Conference Staff of the Bureau of Internal Revenue, upon petition of counsel for petitioner. After hearing, wherein petitioner presented oral and documentary evidence, a memorandum was submitted by counsel for petitioner. On October 1, 1953, the Conference Staff submitted its findings and recommended that -

> "x x x the assessments against La Dicha Cigar & Cigarette Factory of ₱450,406.70, ₱11,361.00 and ₱10,928.91, be withdrawn and the assessment of ₱12,066.00 collected from the taxpayer. For failure of the factory to observe the provisions of Revenue Regulations No. 27 in advising this Bureau of changes in the quantities of cigarettes that it proposed to produce from one kilo of leaf tobacco, it is also respectfully recommended that an administrative penalty of ₱300.00 be imposed against the factory."

Following the recommendation of the Conference Staff, respondent revised the assessment contained in his letter of December 4, 1952. The revised assessment contained in respondent's letter of October 10, 1953 reads as follows:

> "Reference is made to your internal revenue case involving the assessments amounting to ₱450,406.70, ₱12,066.00, ₱11,361.00, as deficiency specific taxes; and ₱10,928.91 as fixed, compensating and sales taxes and surcharge.
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> "In the hearings of this case before the Conference Staff of this Office, it was found out that no evidence could sustain the assessments of ₱450,406.70, ₱11,361.00 and ₱10,928.91. However, the assessment of ₱12,066.00 representing the deficiency specific tax on the 'largos' cigarettes manufactured by you was determined to be in accordance with law. These findings were confirmed by the Chief, Field Revenue Service, who concurred in the recommendation made thereon by the Conference Staff.
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> "In view thereof, the assessments of ₱450,406.70, ₱11,361.00 and ₱10,928.91 are hereby withdrawn. As regards the assessment of ₱12,066.00, it is requested that the same be paid immediately after this decision takes effect, together with the further amounts of ₱200.00 as administra-

> tive penalty for your violation of section 137 in relation to section 172 of the National Internal Revenue Code and ₱300.00 as administrative penalty for violation of Revenue Regulations 27 penalized under section 352 of the Tax Code.
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> "In accordance with Executive Order No. 401-A, this decision will take effect sixty (60) days after a copy thereof has been received by the Board of Tax Appeals, Manila." (Exh. 2, p. 218, BIR records.)

The revised assessment was received by counsel for petitioner on October 13, 1953.

Petitioner not having paid the sums of ₱12,066.00 and ₱500.00, or a total of ₱12,566.00, mentioned in the revised assessment, respondent advised petitioner in a letter dated November 12, 1954 to pay the same, otherwise corresponding action would be taken on the latter's bond. (See Exh. 3) It does not appear from the records of his office that any reply was received from petitioner so that on June 18, 1955 respondent again wrote to petitioner requiring it to pay the sum of ₱12,566.00, informing petitioner at the same time that "the decision of this Office contained in its letter to you dated October 10, 1953, copy enclosed herewith, had already become final, it appearing that no action thereon was taken by the defunct Board of Tax Appeals." (Exh. 5.) A copy of this letter was furnished counsel for petitioner. (Exh. B.)

On June 27, 1955, counsel for petitioner made mention of the fact that he submitted a letter dated October 20, 1953, requesting reconsideration of the

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decision of respondent dated October 10, 1953, the decision which was submitted to the Board of Tax Appeals for review. Counsel also stated that he sent a reply to respondent's letter of November 12, 1954 calling attention to his letter of October 20, 1953. For convenience, pertinent portions of the letter of counsel for petitioner dated July 27, 1955 are quoted below:

> "Permit me to draw your attention that on November 12, 1954, you addressed a letter of the same tenor to my client demanding payment of the aforesaid sum of ₱12,566.00 on the same ground that the aforesaid decision of October 10, 1953 has become final and enforceable.
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> "In my answer to your said letter, I drew your attention to the fact that the decision of October 10, 1953 has not become final for the reason that on October 20, 1953, I requested the reconsideration of the aforesaid decision in so far as it pertains to the aforesaid sum of ₱12,566.00 and your Office has not yet rendered a decision on the said request for reconsideration. In enclosed a copy of said request for reconsideration to my aforesaid letter of November 20, 1954.
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> "When I received a copy of your letter to my client, dated June 18, 1955, I began to wonder why you should keep on demanding payment of the amount when you have not yet acted on my request for reconsideration, and I found that there was missing from the docket of this case my request for reconsideraiion, as well as my letter to you of November 20, 1954, to which I enclosed a copy of my request for reconsideration. It is fortunate for my client that I am able to preserve the file copy of my request for reconsideration bearing the dated stamp of the Conference Staff duly initialed by the Secretary of said Staff, otherwise you could have insisted that the decision of October 10, 1953 has become final, and enforce payment of the amount of ₱12,566.00, as specific tax and penalty." (Exh. C.)

Evidence having been presented in regard to the filing by counsel for petitioner of his letter dated October 20, 1953 requesting reconsideration of the decision of respondent dated October 10, 1953, the filing of said request for reconsideration has been sufficiently established. However, the effect of the filing of said request for reconsideration will be considered in due time.

In answer to the letter of counsel for petitioner of July 27, 1955, respondent in his letter of September 27, 1955 (Exh. 6) denied specifically the request for reconsideration dated October 20, 1953. In his letter of October 25, 1955 (Exh. D), counsel for petitioner acknowledged receipt of the letter of respondent of September 27, 1955, and again requested reconsideration of the decision. This was filed with the office of respondent on October 26, 1955. In another letter of the same date (October 25, 1955), counsel for petitioner appealed the decision of respondent to the Secretary of Finance. On June 14, 1956, without waiting for the decision of the Secretary of Finance, respondent denied the request for reconsideration. (Exh. 7.) In his third indorsement of July 27, 1956, addressed to respondent, the Secretary of Finance affirmed the decision of the former. Respondent advised counsel for petitioner of the decision of the Secretary of Finance in a letter dated August 6, 1956, which was received by said counsel on October 3, 1956. The petition for review was filed with this Court on

November 2,1956.

Under the facts stated above, was the petition for review filed within 30 days after receipt by petitioner of the decision of respondent, pursuant to Section 11 of Republic Act No. 1125?

Section 7 of Republic Act No. 1125 confers upon this Court exclusive appellate jurisdiction to review by appeal decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue. We have consistently held that the term "decision" in cases involving disputed assessments of internal revenue taxes refers to -

> "x x x determinations made or arrived at by the Collector which would become final and executory unless modified or reversed by said official, or appealed to a superior authority in accordance with law." (Angel Saraos v. Bureau of Internal Revenue, C.T.A. No. 229, March 5, 1956. See also Janda v. Collector, C.T.A. No. 87, Feb. 23, 1956; Merced Drug House v. Collector, C.T.A. No. 180, May 21, 1956; Dirk Van Dongen v. Collector, C.T.A. No. 268, July 31, 1956; Villamin v. Collector, C.T.A. No. 258, July 31, 1956; St. Stephens Ass. v. Collector, C.T.A. No. 173, Aug. 15, 1956; Auyong Hian v. Collector, C.T.A. No. 242, Aug. 30, 1956; Gancayco v. Collector, C.T.A. No. 287, Oct. 27, 1956; Pacific Vegetable Oil Corp. v. Collector, C.T.A. No. 297, Oct. 28, 1956; Lealda Electric Co. v. Collector, C.T.A. No. 266, Dec. 22, 1956; Ker & Co. v. Collector, C.T.A. No. 244, Jan. 5, 1957; Central Azucarera v. Collector, C.T.A. No. 195, Jan. 15, 1957; Caguioa v. Collector, C.T.A. No.222, Jan. 28, 1957; North Camarines Lumber Co. v. Col-

lector, C.T.A. No. 248, Jan. 30, 1957; The Pangasinan Transp. Co. v. Blaquera, C.T.A. No. 153, July 11, 1957; Alfredo Y. de Vera v. Collector, C.T.A. No. 167, July 24, 1957; Norton & Harrison v. Collector, C.T.A. No. 254, September 26, 1957; Emilio G. Cuaycong, Collector C.T.A. No. 395, Oct. 14, 1957.)

Obviously, the final decision of respondent in this case is his decision of October 10, 1953. In that decision, his original assessment in the aggregate sum of ₱484,762.61 was reduced to only ₱12,066.00. This revised assessment has remained unaltered until now. In fact, respondent repeatedly told petitioner that he could not revise the same as it had become final after sixty days from the date of receipt by the former Board of Tax Appeals of a copy of said decision, pursuant to Section 8 of Executive Order No. 401-A, Series of 1951.

At the time the final decision of respondent was rendered, petitioner had two remedies, the first was administrative and the other judicial. It could have appealed the decision of respondent to the then Board of Tax Appeals (which was in existence up to June 16, 1954, when it was abolished by Section 20 of Republic Act No. 1125) within thirty days from the date of receipt of the decision, or it could have paid the tax and sued for recovery thereof after complying with the requisites provided in Section 306 of the National Internal Revenue Code. Neither of these remedies was availed of by petitioner. Instead, it filed a request for reconsideration of the final decision of respondent in the belief that the latter still had the power to revise or cancel the assessment. Let us now consider the effect of said request for reconsideration.

Executive Order No. 401-A conferred upon the Board of Tax Appeals exclusive jurisdiction to review by appeal decisions of the Collector of Internal Revenue, the Commissioner of Customs and the various city and provincial Boards of Assessment Appeals. In addition, it was empowered to review motu proprio decisions of said tax officials within sixty days from the date of submission of a copy of a decision. In University of Sto. Tomas v. Board of Tax Appeals, G.R. No. L-5701, June 23, 1953, Executive Order No. 401-A was declared invalid in so far as it deprived the Courts of First Instance of their jurisdiction under Section 306 of the Revenue Code (referring to actions for recovery of internal revenue taxes erroneously or illegally collected), but the rest of its provisions affecting the organization and administrative functions of the Board was held valid. The effect of this decision recognizing the validity of Executive Order No. 401-A relating to the administrative functions of the Board was to limit the functions of the Board to administrative appeals, review and approval of compromise and refund cases, and motu proprio review of other decisions of the Collector of Internal Revenue, the Commissioner of Customs, and the provincial and city Boards of Assessment Appeals where the taxpayers concerned failed to appeal. In cases involving internal revenue taxes, taxpayers could either appeal to the Board or pay the tax and sue for recovery in the proper Court of First Instance under Section 306 of the Revenue Code. In other words, the Board was the highest administrative body that could determine internal revenue cases, thereby depriving the Secretary of Finance of his appellate powers. (See Secs. 8 and 9, Ex. Ord. No. 401-A.)

In the instant case, the final decision of respondent was not appealed by petitioner to the Board. It merely sought the reconsideration of said decision. However, respondent sent to the Board a copy of his decision, advising petitioner that said decision would become final after sixty days from the date of receipt by the Board of said copy of the decision, unless otherwise revised or amended by said Board. Section 8 of Executive Order No. 401-A, in accordance with which respondent furnished a copy of his decision to the Board, provides:

> "Nótwithstanding that no appeal has been filed, when the public interest so requires the Board may nevertheless, within sixty (60) days from the receipt of copy thereof, review <u>motu proprio</u> any decision of the Collector of Internal Revenue, the Commissioner of Customs, or of the provincial or city Board of Assessment Appeals concerned, and, after proper notice and hearing, it may, as the case may be, affirm, reverse or otherwise modify said decision."

The Board having been vested with the power to review <u>motu proprio</u> any decision of the Collector of Internal Revenue, once a copy of a decision has been submitted to the Board for review under Section 8 of Executive Order No. 401-A, the Collector of Internal Revenue loses jurisdiction over the case. After the Board had acquired jurisdiction over a case, the Collector may not entertain any request for reconsideration of the decision. There seems to be no sense in conferring upon the Board the power of review and at the same time retaining in the Collector the power to revise or reconsider a decision that has been submitted to the Board for review. Moreover, to permit the Collector to alter, amend, or revise a decision which has been submitted to the Board for review would be to sanction interference by a subordinate administrative official with the function conferred by law upon a superior administrative body. Therefore, if the Board reviews the case and renders a decision, the decision is final and conclusive administratively. (See Industrial Textiles Manufacturing Co. v. Collector, Manila Civil Case No. 22613, June 10, 1956.) If the Board does not review the case, after the sixty-day period, the decision of the Collector also becomes final as the same is considered to have been impliedly affirmed by the Board. Of course, the taxpayer was not precluded from raising the validity of the assessment, because under the law then in force he could pay the tax and thereafter sue for its recovery in the proper Court of First Instance. (See University of Sto. Tomas v. Board of Tax Appeals, supra.)

When, therefore, the Board did not review the decision of respondent dated October 10, 1953, the said decision became final after 60 days from the date of its receipt of a copy thereof. The request for reconsideration filed by counsel for petitioner with the office of respondent dated October 20,1953 did not have effect of preventing the said decision from becoming final. What should have been done, if petitioner wanted to exhaust all administrative remedies, was to ask the Board to set the case for hearing so that it could present its side of the case, or it could have appealed to said Board by virtue of Section 9 of Executive Order No.401-A.

We deem it necessary to pass upon the legal effects of submitting a decision of the Collector of Internal Revenue to the Board of Tax Appeals for review motu proprio under Section 8 of Executive Order No. 401-A solely for the purpose of determining whether or not the present appeal was filed within the statutory period.

Section 11 of Republic Act No. 1125 provides that the party adversely affected by a decision of the Collector of Internal Revenue may appeal such decision to this Court within thirty days after receipt thereof. Where, however, the decision of the Collector was rendered prior to the creation of this Court, we have construed the law liberally so as to permit the party adversely affected by such decision to appeal within thirty days from July 21, 1954, when this Court was formally organized with the appointment of two of its members and the adoption, in the interim, of the Rules of the former

690

Board of Tax Appeals. Accordingly, an appeal file more than 30 days after July 21, 1954, had to be dismissed for lack of jurisdiction. (See Sta. Clara Lumber Co. v. Collector, C.T.A. No. 91, September 20, 1955; Ipekdjian Merchandising Co. v. Collector, C.T.A. No. 107, Oct. 1, 1955.) But if on that date there was a pending request for reconsideration of the decision of the Collector, the thirty-day period within which to appeal is to be counted from the date of notice of the denial of the request for reconsideration. (Gutierrez v. Collector, C.T.A. No. 65, Aug. 31, 1955; Samson v. Collector, C.T.A. No. 232, Oct. 27, 1956; Gancayco v. Collector, C.T.A. No. 287, Oct. 27, 1956; Convention of Phil. Baptist Churches v. Collector, C.T.A. No. 149, Nov. 23,1956; Mariano Marquez Lim v. Collector, C.T.A. No. 241, Dec. 24, 1956; Ker & Co. v. Collector, C.T.A. No. 244, Jan. 5, 1957; St. Paul's Hospital v. Collector, C.T.A. No. 105, Feb. 21, 1957; Asturias Sugar Central v. Collector, C.T.A. No. 207, Feb. 25, 1957; Jose Concepcion v. Collector, C.T.A. No. 168, April 29, 1957.) A motion for reconsideration has been held as having the effect of suspending the running of the period within which to appeal. (Bustos v. Collector, C.T.A. No. 139, July 22, 1955; Libuet v. Auditor General, G.R. No. L-10160, June 28, 1957.)

While this Court has consistently adhered to the rule that a request for reconsideration filed in good faith suspends the running of the statutory period, it is to be understood that such request for reconsideration was filed before the decision of the Collector became administratively final. This must be so because a cause of action that has already expired cannot be revived by a request for reconsideration filed after the decision has become final. (Asturias Sugar Central v. Collector, C.T.A. No. 207, February 25, 1957; Antonio Co Po v. Collector, C.T.A. No. 313, Nov. 23, 1957.) Similarly, a request for reconsideration in a case where the Collector has lost his power to reconsider his decision is of no legal consequence.

In the instant case, the decision of respondent of October 10, 1953 was submitted to the former Board of Tax Appeals on the same date. (See page 279, BIR records.) The said decision became final sixty days from the date of receipt by the Board of a copy of said decision. The request for reconsideration dated October 20, 1953 filed with the office of respondent by counsel for petitioner does not have the effect of suspending the running of the thirty-day period from July 21, 1954, as respondent has no authority to reconsider a decision that had long become final by virtue of its implied affirmance by the former Board of Tax Appeals, a superior administrative body. The fact that the Board was subsequently abolished does not affect decisions which had become final and conclusive before its abolition. Petitioner, therefore, had only 30 days from July 21, 1954 within which to appeal to this Court. Since the appeal was filed only on November 2, 1956, the same was obviously filed out of time.

At any rate, even granting that the request for reconsideration dated October 20, 1953 suspended the running of the thirty-day period within which to appeal to this Court, and that the period started to run only from the date of receipt by petitioner of the denial of said request for reconsideration, petitioner has nevertheless lost its right to appeal. The evidence of record shows that the said request for reconsideration was denied in the letter of respondent dated September 27, 1955. (Exh. 6.) It is not shown when this was received by counsel for petitioner, but it appears that he filed another request for reconsideration on October 25, 1955 (Exh. D). Assuming that the denial of the request for reconsideration was received on the same date that the last motion for reconsideration was filed on October 25, 1955, no time was lost and the running of the period for appeal continued to be suspended. The request for reconsideration dated October 25, 1955 (filed on October 26, 1955) was denied in the letter of respondent dated June 14, 1956, apparently received not later than June 29, 1956. (See page 336, BIR records.) The letter of counsel for petitioner of June 29, 1956 requesting respondent to "hold collection until (his appeal was) decided by the Secretary of Finance" does not have the effect of further suspending the running of the statutory period for appeal. An appeal to the Secretary of Finance from the decision

687

of the Collector of Internal Revenue does not suspend the running of the 30-day period provided in Section 11 of Republic Act No. 1125. (Tang Ho v. Collector, C.T.A. No. 279, May 18, 1957.) From June 29, 1956 to November 2, 1956, when the present appeal was filed, petitioner consumed more than 120 days, and consequently petitioner has lost its right to appeal. When it decided to appeal to the Secretary of Finance and to wait for the latter's decision instead of coming directly to this Court, petitioner took the risk of forfeiting its right to seek judicial review of respondent's decision. Consequently, it has only itself to blame for its own action.

It is contended that the thirty-day period should be counted from the date of receipt by counsel for petitioner of respondent's letter of August 6, 1956. This letter was received by counsel for petitioner on October 3,1956. The letter of respondent dated August 6, 1956 merely advised counsel for petitioner that the Secretary of Finance had affirmed the decision of the former. For convenience, the said letter of August 6, 1956 is quoted below:

> "With reference to the pending internal revenue case of your client, La Paz y Buen Viaje (La Dicha Cigar and Cigarette Factory), 429 Asuncion, Manila, involving the sum of ₱12,066.00 as deficiency specific tax on 6,033,000 'largos' cigarettes manufactured and removed from its place of production during the period from September, 1949 to September 22, 1950, which you appealed to the Department of Finance, pursuant to your letter dated October 25, 1955, I have the honor to inform you that the said Department

affirmed the decision of this Office holding your client liable for the payment thereof. Accordingly, it is requested that you urge your client to pay the said sum of ₱12,066.00 immediately upon your receipt hereof; otherwise, this Office will at once take the necessary steps toward the forfeiture of the bond filed by your client, wherein you appear as surety.

"Aside from the said sum of ₱12,066.00, it is also requested that payment be made of the amount of ₱500.00 as compromise penalty." (Exh. 8, p. 368, BIR records.)

It is apparent from the letter quoted above that it was not a decision denying the request for reconsideration dated October 25, 1955. As already stated, the said request for reconsideration was denied in the letter of respondent dated June 14, 1956. Accordingly, the contention of petitioner that the thirty-day period should be counted from October 3, 1956 must be dismissed as untenable.

Finding that the herein appeal was filed beyond the 30-day period provided in Section 11 of Republic Act No. 1125, the same has to be, as it is hereby, dismissed for lack of jurisdiction. With costs against petitioner.

SO ORDERED.

Manila, December 27, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

(Note: Decision not appealed - final)