MINDANAO LUMBER COMPANY,
INC.,
Petitioner,

versus

CTA CASE NO. 1666

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

When this Petition for Review was heard for the first time on June 21, 1967, respondent, before proceeding with the trial, interposed a motion to dismiss same alleging failure to pay the docket fee on time and this is now the question presented for resolution.

It appears that on May 12, 1965 petitioner received the decision of the Commissioner of Internal Revenue denying its claim for refund of sums paid for specific taxes under question in this case. On June 7, 1965 petitioner filed by registered mail its petition for review of said decision without remitting the docket fee. Instead, petitioner inquired as to the amount of the docket fee in the same letter of transmittal, requesting the clerk of this court to wire his answer collect. On June 21 the Court of Appeals received the aforesaid letter of transmittal. The envelope containing same must have been addressed to the Court of Appeals for it was delivered there, and there is nothing to show that it was correctly addressed to this Court. Thereafter, the Court of Appeals sent the petition to this Court which received it on July 7, 1965.

In the meanwhile, in a telegram of July 3, 1965 sent to the clerk of court of the Court of Tax Appeals and received by said clerk on July 7, 1965, petitioner reiterated its request for information as to the amount of the docket fee. On July 8, 1965 the said clerk of court sent a wire to petitioner informing same that the total docket fee was ₱30.00. On the same day of July 8, 1965, but apparently before petitioner received said wire of said clerk of court, petitioner sent to this Court ₱60.00 for docket fee which amount was received by the latter on July 14, 1965.

Pursuant to Section 8 of Republic Act No. 1125 authorizing this Court to promulgate rules and regulations for the conduct of the business of the Court, the Rules of the Court of Tax Appeals was promulgated on September 10, 1955 (published in the Official Gazette, September 1955, Vol. 51, No. 9). Section 3 of Rule 5 of the aforesaid Rules provides that "no appeal shall be received for filing by the Clerk of this Court unless the petitioner submits proof of payment of the docketing fees". The docket fee for this petition was sent by mail only on July 8, and was received by said clerk on July 14, 1965 after the period for appeal expired on June 12, 1965. It was obviously out of time.

Interpreting Section 2 of Rule 40 of the Rules of Court promulgated by the Supreme Court, which is the counterpart of Section 3 of the Rules of this Court as regards docket fees, the Supreme Court held in the cases of Valdez v. Acumen (L-13536, Jan. 29, 1960) and Dacudao v. Dueñas (L-14355, May 20, 1960) that if the appellate court docketing fee is paid beyond the reglementary period, the appeal should be dismissed. There seems to be no valid reason for departing from this interpretation cloak as it is with authority.

We do not find of decisive consequence the fact that petitioner mailed its petition for review five days before the expiration of the period for appeal with an inquiry as to the amount of the docket fee. Petitioner was negligent in addressing the envelope incorrectly, negligent in not making a timely inquiry by wire as to the amount of the docket fee, negligent in not referring itself to the Rules of this Court, the provisions of which it is, in the first place, presumed to know. In the case of Municipal Board, etc. v.

Board of Assessment Appeals, etc. (CTA Case No. 851, Resolutions of April 5 and May 17, 1967 of the Supreme Court) error in the interpretation of the rule anent the time of payment of the docket fee was not considered valid excuse for failure to pay said fee on time; much less should a negligent lack of knowledge thereof at the decisive time be condoned.

WHEREFORE, this petition is hereby dismissed.

SO ORDERED.

Quezon City, August 30, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge