REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ANGEL SARAOS,
Petitioner,

- versus - C.T.A. CASE NO. 229

BUREAU OF INTERNAL REVENUE,
Respondent.

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R E S O L U T I O N

Petitioner, an operator of a rice mill in Bantay, Ilocos Sur, was required by respondent, in a letter dated November 13, 1952, to pay ₱1,025.78 as deficiency percentage tax including surcharge, for the period from the first quarter of 1951 to the second quarter of 1952, pursuant to Sections 183 and 189 of the National Internal Revenue Code, plus ₱20.00 as compromise in case petitioner desired to settle extrajudicially his penal liability under Section 209 for violation of said Sections 183 and 189. Not satisfied with the assessment, petitioner requested that the case be reviewed by the Conference Staff of the Bureau of Internal Revenue. During the hearing, petitioner offered to settle the case by compromise by virtue of which he would pay ₱102.50 in full and complete settlement of the case.

The Conference Staff, after considering the circumstances of the case, favorably recommended the settlement of the case by compromise, but it believed that the amount of ₱102.50 offered by pe-

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titioner was too low, and for this reason it suggested the amount of ₱300.00, which was approved by respondent. Accordingly, in a letter dated April 5, 1954, petitioner was advised that his offer to compromise the case was acceptable, but that his offer of ₱102.50 was "too low and inadequate." Respondent then suggested that the sum of ₱300.00 would be acceptable, which amount could be paid "immediately upon your receipt hereof to the deputy provincial treasurer thereat so that this case may be closed." (Page 69, BIR records.)

Petitioner not having answered the letter of respondent dated April 5, 1954, the latter wrote another letter on August 8, 1955, stating that "unless you effect payment of the said sum of ₱300.00 to the Deputy Provincial Treasurer thereat, on or before August 20, 1955, this Office will at once proceed to take drastic action against you in accordance with law, without further notice." (Page 70, BIR records.) Petitioner, in a letter dated August 18, 1955, again requested that the case be reviewed, giving rise to the implication that the counterproposal of respondent was not acceptable to the former. (Page 72, BIR records.) On September 24, 1955, respondent advised petitioner that notwithstanding his allegations, "this Office can find no valid reason to further reduce the said amount of ₱300.00." Petitioner was, therefore, requested to pay the said amount "within ten (10) days from

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your receipt hereof, in order that this case may be closed." On January 4, 1956, petitioner filed with this Court a petition for review of the alleged decision of respondent requiring the former "to pay ₱300.00 allegedly due as percentage tax and surcharge."

Counsel for respondent, on January 14, 1956, filed a motion to dismiss the petition for review on the grounds that (1) this Court has no jurisdiction over the case, and (2) the petition states no cause of action.

It is alleged that this Court has no jurisdiction to entertain the herein petition for review for the reason that it was filed beyond the 30-day period provided in Section 11 of Republic Act No. 1125. We quote from the "Motion to Dismiss:"

> "Under the foregoing facts, it is obvious that the final decision in the instant case of the respondent is contained in his letter dated April 5, 1954. And petitioner admits in paragraph 5 of the petition that he received the decision of the respondent contained in a letter dated August 8, 1955, demanding payment of the sum of ₱300.00. In his letter of August 18, 1955 petitioner admits having received respondent's letter dated August 8, 1955. It may therefore be safely assumed that petitioner received respondent's letter dated August 8, 1955 sometime before August 18, 1955. Under section 11 of Republic Act No. 1125 it provides that any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue may file an appeal in the Court of Tax Appeals within thirty (30) days after the receipt of such decision or ruling. Inasmuch as the instant petition was filed with this Honorable Court only on January 4, 1956, or more than five (5) months after the receipt of respondent's

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> decision, it is obvious that the same was filed beyond the reglementary period. Hence, this Honorable Court has no jurisdiction to take cognizance of this case."

Both petitioner and respondent seem to agree that the final decision of respondent in this case which is appealable to this Court is the decision contained in the letter of respondent dated April 5, 1954. This is erroneous. As already adverted to above, the decision of respondent requiring petitioner to pay ₱1,025.78 was contained in the letter of the former dated November 13, 1952. During the hearing conducted by the Conference Staff petitioner offered to compromise the case by the payment of ₱102.50. To this proposal, respondent replied in his letter of April 5, 1954 that he was agreeable to the compromise settlement of the case provided the amount offered would be increased to ₱300.00. The said letter of April 5, 1954 states, in part, as follows:

> "However, your offer to extrajudicially settle the case by the payment of the sum of ₱102.50 is too low and inadequate. It is, therefore, suggested that you increase your offer to ₱300.00 and pay immediately upon your receipt hereof to the deputy provincial treasurer thereat so that this case may be closed."

It is quite clear that the letter of April 5, 1954 merely contained a counterproposal for the settlement of the case by compromise, which is authorized under Section 309 of the National Internal Revenue Code. It is in no way a decision

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which is appealable to this Court. Petitioner is at liberty to accept or reject the counterproposal of respondent, as in fact he impliedly rejected it when he asked for further review of the case in his letter of August 18, 1955. Therefore, the proposal to compromise the case remained open for further negotiations, and if no agreement could be reached, respondent's duty is to enforce his decision to collect the sum of ₱1,025.78, the said decision having become final and unappealable.

A taxpayer who feels himself aggrieved by a decision of the Collector of Internal Revenue may appeal to this Court within 30 days after receipt of such decision, pursuant to Sections 7 and 11 of Republic Act No. 1125. Section 7 of said Act provides that this Court shall exercise 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."

The term "decisions" mentioned in Section 7 refers to 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.

Section 309 of the Revenue Code authorizes the Collector of Internal Revenue to "compromise any civil or other case arising under this Code or other

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law or part of law administered by the Bureau of Internal Revenue." The term "compromise" has been defined as -

> "A settlement by arbitration or by consent reached by mutual concessions; a reciprocal abatement of extreme demands or rights, resulting in an agreement; x x x " (Webster's New International Dictionary.)

When respondent made a counter-offer in his letter of April 5, 1954 to the offer of compromise submitted by petitioner, it was not a decision made which would become final and executory unless revised or modified by the former, or appealed to a superior authority. Petitioner, as we have said, was at perfect liberty to accept or reject it; and in case of rejection, petitioner could not be legally bound by the counter-offer, and neither could the respondent enforce the same. It follows that the counter-offer made by respondent in his letter of April 5, 1954, is not a decision within the meaning of Sections 7 and 11 of Republic Act No. 1125, which is appealable to this Court.

Even granting <u>arguendo</u> that the final decision of respondent which is appealable to this Court is contained in the letter of August 5, 1954, we agree with counsel for respondent that the herein petition for review filed on January 4, 1956 was filed out of time (Section 11, Republic Act No. 1125), and that it states no cause of action (Section 2, Rule 5, Rules of the Court of Tax Appeals, 51 O.G. No. 9, p. 4635, September, 1955).

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FOR THE FOREGOING CONSIDERATIONS, the herein petition for review is hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, Philippines, March 5, 1956.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

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