MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 365

JOSE ARAÑAS, in his capacity as Collector of Internal Revenue,
Respondent.

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

7/31/57

R E S O L U T I O N

This is in connection with petitioner's "Motion to Dismiss the Counterclaim", interposed in the "Answer" of respondent Collector of Internal Revenue, on the ground that this Court has no jurisdiction over the subject matter of said counterclaim.

From the pleadings of the parties it appears that petitioner filed with respondent a claim for the refund of the amount of ₱379,241.77 allegedly as overpayment for franchise taxes for the operation of its electric plants and sale of its properties during the period from the third quarter of 1946 to the fourth quarter of 1953. In a letter dated April 13, 1955 respondent approved in part petitioner's claim and determined that only the amount of ₱110,926.75 was refundable as overpaid franchise taxes for 1952 and 1953. However, respondent withheld out of said refundable sum the amount of ₱69,484.38 as deficiency franchise and sales taxes for the period covering January 1, 1948 to December 31, 1951. This last named

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amount consisted of deficiency franchise tax for said period in the sum of ₱67,113.15 and the sum of ₱2,371.23 as alleged sales tax due on the sales of crushed rocks produced in petitioner's quarry in Rizal during the same period.

In a letter dated January 31, 1957 petitioner herein filed with respondent on February 5, 1957 a claim for the refund of the aforesaid amount of ₱69,484.38. There being no action by respondent on this claim for refund, petitioner on April 10, 1957 filed with this Court the instant petition for review.

On May 27, 1957 respondent filed his "Answer" wherein he interposed therein by way of counterclaims, two alleged deficiencies for franchise tax of petitioner (a) in the amount of ₱51,476.41 for the taxable period covering the years 1952 to 1953 and (b) in the sum of ₱38,116.85 for the year 1954. The said deficiencies were the subject matter of respondent's letters of demand dated July 12, 1955 and October 26, 1956, respectively. However, both deficiencies have been the subject of two separate requests for reconsideration thereof respectively dated August 30, 1955 and October 26, 1956 which were filed by petitioner with respondent. The said requests have allegedly been referred by respondent to the Auditor General for investigation and to date appears to be still pending consideration.

In support of this motion, it is contended by

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petitioner that sections 7 and 11 of Republic Act No. 1125 do not authorize the filing by respondent of these counterclaims because the same would be tantamount to an original action against the taxpayer which is not within the jurisdiction of this Court. Petitioner further contends that:- (1) the present action is premature in that the subject matter covered in each counterclaim is still under study and reinvestigation by respondent; (2) the subject-matter of said counterclaims are not necessarily connected with the principal case; and (3) the taxes involved in the counterclaims cover periods distinct and separate from the taxes embraced in the instant petition for review. Respondent, on the other hand, maintains that the law could not have intended to deprive him of the exercise of that inherent right of every respondent to utilize all available defenses needed to defeat claims filed against him.

The rule on counterclaims is found in section 3 of Rule 10 of the Rules of Court which reads:

> "SEC. 3. Counterclaim or cross-claim in the answer. - The answer may contain any counterclaim or cross-claim which a party may have at the time against the opposing party or a co-defendant, provided that the court has jurisdiction to entertain the claim and can, if the presence of third parties is essential for its adjudication, acquire jurisdiction of such parties."

As may be observed from the foregoing rule, it is essential that the Court has jurisdiction to entertain the counterclaim. In this regard it is to be

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noted that one of the counterclaims is for the sum of ₱51,476.41 as alleged deficiency franchise tax for 1952 and 1953. The assessment involved here is still under reinvestigation or is pending in view of petitioner's request for reconsideration thereof. There is no showing that the reconsideration thereof has been denied and that respondent insists on the assessment after a reinvestigation of the case. As the matter stands at the present, there is still no decision of respondent which may be brought on appeal to this Court within the purview of Sections 7 and 11 of Republic Act No. 1125. The same circumstance occurs in the case of the alleged deficiency franchise tax of ₱38,116.85 for 1954 included in the counterclaim. No decision having been rendered by the Collector in both cases, this Court cannot take cognizance of the alleged deficiency franchise taxes involved in the counterclaims in question. This finding however does not in any way bar respondent from taking the necessary and proper action to effect finally the assessment of the said deficiencies and obtain collection thereof through the remedies provided by law.

We therefore find it unnecessary to pass upon the other contentions presented in this case.

IN VIEW OF THE FOREGOING, petitioner's "Motion to Dismiss Counterclaim" should be as it is hereby granted, and respondent's counterclaims are hereby

RESOLUTION -
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dismissed without prejudice.

SO ORDERED.

Manila, Philippines, July 31, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI concurs & dissents in a separate opinion.

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