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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

URBAN ESTATES, INC.,
Petitioner,

-versus- C.T.A. CASE No. 640

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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March 28, 1963

DECISION

This is a petition to review the deficiency income tax assessment made by respondent against petitioner in the amount of ₱6,105.00 for the year 1954.

Petitioner is a domestic corporation engaged in real estate business, more particularly in the sale of subdivision lots on installment basis. It entered into a verbal contract with the firm Sycip, Gorres, Velayo & Co., in pursuance of which contract the latter firm audited from January to March, 1954 petitioner's books of accounts for the calendar year 1953. In April, 1954, petitioner received the firm's bill for audit fee in the amount of ₱475.00, which the former paid and entered in its cash disbursement book by an entry under date of April 20, 1954.

Similarly, petitioner paid Atty. Mariano Manahan ₱540.00 for legal services rendered by the latter in 1953 in an ejectment case. The bill for legal services was presented sometime in May, 1954 and it was posted in petitioner's cash disbursement book by an entry under date of May 20, 1954.

On March 31, 1955, petitioner filed its income tax return for the calendar year 1954 on an accrual basis. On March 20, 1957, respondent assessed against petitioner a deficiency income tax in the sum of ₱6,105.00 for 1954 as a result of the disallowance of the audit and legal fees in the amounts of ₱475.00 and ₱540.00, respectively, and the inclusion of ₱29,507.78 as undeclared income arising from accrued interest for the said year.

On April 12, 1957, petitioner wrote a letter requesting the withdrawal or cancellation of the aforesaid assessment, which request was denied by respondent on June 15, 1957. The decision denying the request was received by petitioner on June 29, 1957 (p. 2, C.T.A. rec.).

On July 9, 1957, petitioner, in a letter received by respondent on the same date (p. 74, BIR rec.), once more requested for a reconsideration of the deficiency assessment, at the same time submitting a memorandum of authorities in support of its contention. This request was denied by respondent in his letter dated November 20, 1958, but received by petitioner only on March 7, 1959 (p. 2, C.T.A. rec.). Hence, the present petition for review which was filed on March 30, 1959.

As a special and affirmative defense, respondent alleges that this Court is without jurisdiction to hear and decide this case for failure of petitioner to file the petition for review within the reglementary period of thirty (30) days.

The issues presented in the pleadings of the parties are as follows:

1. Whether or not this Court has jurisdiction to decide this case;

2. Whether or not the amounts of ₱475.00 and ₱540.00 representing audit and legal fees for services may be allowed as deductions in petitioner's income tax return for 1954; and

3. Whether or not petitioner, which made its income tax return for 1954 on the basis of accrued income, may validly return its interest income for the same year on the cash basis.

In connection with the question of jurisdiction, it is the position of respondent that the instant appeal was instituted beyond the 30-day period provided for in Section 11 of Republic Act No. 1125 for the reason that petitioner's second letter of July 9, 1957, requesting the reconsideration of the assessment, being merely pro-forma, did not interrupt the running of the prescriptive period.

The contention that the second letter of July 9, 1957 did not interrupt the prescriptive period is without merit. The fact that this letter did not advance new grounds not previously alleged did not make it pro-forma for the purpose of determining whether or not its filing disturbed the flight of the prescriptive period. It is to be noted that the first letter of reconsideration was directed to the deficiency assessment. The second letter sought the reconsideration of respondent's decision denying the first letter of petitioner. Therefore, the filing of the second letter interrupted the statutory period prescribed in Section 11 of Republic Act No. 1125.

While it is true that the second letter of reconsideration was not pro forma, nevertheless, we find that the present petition for review was filed out of time. From June 29, 1957, when the denial of the request for reconsideration dated April 12, 1957 was received by petitioner to July 9, 1957, the date the second request for reconsideration was filed, ten days had already expired. The running of the period was interrupted from this latter date to March 7, 1959 when the letter denying the second request for reconsideration was received by petitioner. From March 7, 1959 to the filing of the present petition for review on March 30, 1959, another 23 days passed. All in all, petitioner consumed a period of 33 days, which is 3 days beyond that prescribed by Section 11 of Republic Act No. 1125.

Having reached a conclusion on the jurisdictional issue adverse to petitioner, we deem it unnecessary to consider the other issues.

WHEREFORE, the petition for review in the above-entitled case filed with this Court on March 30, 1959, is hereby dismissed for lack of jurisdiction, with costs against petitioner.

SO ORDERED.

Manila, March 28, 1963.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge