IRINEO P. SILVA,
Petitioner,

- versus - Nov. 26/56 C.T.A. CASE NO. 214

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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RESOLUTION

This is a petition to review the assessment of common carrier's percentage tax covering the period from January 1, 1948 to March 31, 1953 in the amount of ₱2,080.07 and an extrajudicial penalty of ₱100.00 alleged to be due from petitioner.

Although this case was already heard on the merits and submitted for decision, it appeared to the Court that it could not acquire jurisdiction over the same as the petition for review was not brought within the statutory period of thirty days, pursuant to section 11 of Republic Act No. 1125. Whereof, in an Order dated October 9, 1956, the parties were required by this Court to submit evidence and memoranda on this question. On the hearing of this incident, petitioner submitted oral and documentary evidence.

The facts as could be gathered from the pleadings and of the evidence of the parties, show that on August 7, 1953, the respondent sent to petitioner an assessment and demand of common carrier's percentage tax, based on a report of Assistant Agent Primitivo G. Valencia, in the amount of ₱2,080.07 plus a compromise penalty of ₱100.00 (Exhibit 8, p. 93, BIR record). In a letter dated September 9, 1953, the petitioner, through counsel, requested for a hearing of his tax case before the Conference Staff of the Bureau of Internal Revenue (Exhibit 9, p. 92, BIR record). After several postponements, the case was heard by the Conference Staff on February 17, 1954, March 2, 1954 and March 9, 1954 (Exhibits 10 and 12, B and C, pp. 14-28, 38-42 and 79-81, BIR record). On January 18, 1955, the Conference Staff recommended that, based on their findings, petitioner is liable for the common carrier's percentage tax as previously assessed and demanded by respondent. On the basis of the findings and recommendation of the Conference Staff (Exhibit 14, pp. 5-9, BIR record), respondent, in a letter dated February 5, 1955, maintained the assessment and reiterated his demand for the payment of the same. For a better understanding of the case, the said letter which petitioner received on or about February 8, 1955 is quoted hereunder:

> "In connection with your pending internal revenue case in the sum of ₱2,180.07 as deficiency percentage tax, surcharge and penalty, I have the honor to inform you that, as a result of your failure to disprove before the Conference Staff of this Office the validity of the assessment made against you, the demand contained in our letter dated August 7, 1953 for the payment of the aforesaid sum of ₱2,180.07 is hereby reiterated.

> "In view thereof, it is requested that payment of the said sum of ₱2,180.07 be made within ten (10) days from your receipt hereof; otherwise, this Office will be constrained to enforce the collection thereof thru the summary remedies provided for by law." (Exhibit 13, p. 3, BIR record.)

On July 26, 1955, petitioner alleged to have received an assessment from the Municipal Treasurer of Makati, Rizal, and demanding the payment of ₱2,180.07 common carrier's percentage tax including compromise penalty (par. 3, Amended Petition for Review). Although respondent denied knowledged of this assessment (par. 2, Answer) this appears to be identical to the assessment first referred to above. Petitioner, in a letter dated August 5, 1955 addressed to respondent, requested for a reassessment on the ground that the last mentioned assessment was excessive (Exhibit A, p. 2, BIR record). In reply thereto, respondent sent a letter dated October 22, 1955 to petitioner, which we quote:

> "In reply to your letter dated August 5, 1955 requesting reassessment of your pending internal revenue case involving the sum of ₱2,180.07, I regret to inform you that, as you failed to show that the decision rendered by the Conference Staff of this Office was erroneous, this Office can find no valid ground upon which to set aside the aforesaid decision.
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> "<u>You may, however, take your case before the Court of Tax Appeals within thirty (30) days from your receipt hereof, pursuant to section 11 of Republic Act 1125.</u>" (Underline supplied) (Exhibit F, p. 1, BIR record).

A petition for review was filed with this Court on November 28, 1955, and was amended on January 6, 1956.

In accordance with the provisions of section 11, Republic Act No. 1125, the person adversely affected by the decision of the Collector of Internal Revenue may appeal the same to this Court within thirty (30) days from the receipt thereof. In the instant case the decision which petitioner could have appealed to this Court was that rendered on February 5, 1955 which petitioner received on February 8, 1955. Therefore, counting from February 8, 1955, the reglementary period of thirty days within which an appeal may be taken expired on March 10, 1955. Since the instant petition for review was filed only on November 28, 1955, it becomes manifest that the appeal was filed out of time. We are therefore constrained to hold that we could not acquire jurisdiction over the present appeal.

IN VIEW OF THE FOREGOING, the petition for review should be as it is hereby dismissed with costs to petitioner.

SO ORDERED.

Manila, November 26, 1956.

MARIANO NABLE
Presiding Judge

WE CON-

CUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge