REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ANG GEE & COMPANY,
Petitioner,

- versus -

C.T.A.
CASE NO. 13

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

11/11/57

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

R E S O L U T I O N

This is in connection with the special defense raised by respondent in his answer that the instant petition for review was filed beyond the thirty-day period prescribed by section 5, Rule 8 of the Rules of Court a preliminary hearing on the incident was conducted on August 12, 1957 as if a motion to dismiss had been filed.

The following facts have been preliminarily established. It appears that petitioner by a letter dated April 4, 1954 (Exhs. "A" & "1", p. 2, BIR rec.), and received by respondent on April 10, 1954 (see p. 1, Memorandum for Petitioner), requested the latter for the refund of the total amount of ₱1,853.02 (subsequently reduced to ₱1,518.51 in the "Amended Petition for Review") alleged to have been erroneously paid to respondent as fixed and percentage taxes of petitioner's restaurant business for the years 1952 and 1953. Petitioner's claim for refund was denied by respondent in his letter dated April 27, 1954 (Exhs. "B" & "2", p. 3, BIR rec.), which was sent to the former by ordi-

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nary mail on May 8, 1954 (Exhs. "E" & "5", p. 67 CTA rec.). However, the actual date of receipt by petitioner of this letter does not appear from the records. Subsequently, in another letter dated July 28, 1954 (Exhs. "C" & "3", p. 5, BIR rec.), petitioner requested respondent to hold in abeyance the final action on its claim for refund pending determination by the Supreme Court of the case of Crispulo Malicsi vs. Collector of Internal Revenue, G. R. No. L-7578, on the ground that the said case is similar to petitioner's claim for refund. This letter was received by the respondent on July 30, 1954 (see Exhs. "C" & "3", <u>supra</u>). Respondent in his letter dated August 27, 1954 (Exhs. "D" & "4", p. 6 BIR rec.), which was received by petitioner on September 8, 1954 (see p. 1, Memorandum for the Petitioner), advised the latter that the decision of April 27, 1954 (Exhs. "B" & "2", <u>supra</u>) had already become final on account of petitioner's failure to file an appeal before this Court within 30 days from receipt thereof. The instant petition for review was subsequently filed by petitioner before this Court on September 16, 1954.

The only issue here is whether or not a seasonable appeal was made in accordance with the provisions of section 11, Republic Act No. 1125.

There is no doubt that the decision which is subject to appeal before this Court is that contained in respondent's letter of April 27, 1954, denying petitioner's request for refund. Even assuming, that the said decision of respondent was received by petitioner on May 13, 1954, nevertheless, the computation of the thirty-day period within which to appeal to this Court, should be counted not from said date but from July 21, 1954, when this Court was organized and began to regularly function as such (see Ipekdjian Merchandising Co. vs. Collector of Internal Revenue, C.T.A. Case No. 107, October 5, 1955).

Hence, for the proper computation of the 30-day period to appeal, it becomes incumbent to determine whether or not the letter of petitioner dated July 28, 1954 (Exhs. "C" & "3", supra), partakes of the nature of a request for reconsideration of respondent's decision which suspends the thirty-day period of appeal to this Court. (Norton & Harrison Co. vs. Collector of Internal Revenue, citing Libuet vs. Auditor General, G. R. No. L-10160, June 27, 1957.)

We are of the opinion that petitioner's letter of July 28,1954 cannot be considered as a request for reconsideration which tolls the running of the 30-day period. In the case of Crispulo Malicsi vs. Collector of Internal Revenue, C.T.A. Case No. 12, June 29, 1957, which involves an issue substantially identical with that in the instant case, we held:

> "The petitioner, however, contends that his letter dated July 28, 1954 is tantamount to a motion to stay judgment and therefore suspended the running of the 30-day period to file the appeal. We find the contention not well taken. His letter contained no request that respondent's decision be reconsidered, rather it was merely a petition that the 'question of refund be held in abeyance'.

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> It did not stop the running of the time to appeal because it was not of the nature of a request for reconsideration of the respondent's decision. Moreover, the Collector of Internal Revenue has no power or authority to extend the 30-day period within which to appeal as fixed by Congress in Section 11 of Republic Act No. 1125." (Underscoring supplied.)

In view of the fact that the letter in question of petitioner did not suspend the running of the period within which to appeal, we shall now determine whether the instant petition for review was filed within the 30-day period prescribed by section 11 of Republic Act No. 1125. From July 21, 1954, the date of organization of this Court, to September 16, 1954, the date of filing before this Court of the instant petition for review, fifty-seven (57) days were consumed by the petitioner. It is therefore evident that the instant appeal was not instituted within the reglamentary period of thirty days, and consequently, we cannot take cognizance of this case.

IN VIEW OF THE FOREGOING, the instant petition for review should be, as it is hereby, dismissed for lack of jurisdiction. With costs against petitioner.

SO ORDERED.

Manila, Philippines, November 11, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I dissent for the same reasons stated in my dissenting opinion in Malicsi v. Collector of Internal Revenue, C.T.A. Case No. 12, June 29, 1957.

ROMAN M. UMALI
Associate Judge

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