REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RURAL BANK OF GRACE PARK, INC.,
Petitioner,

- versus -

C.T.A. CASE No. 2238

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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RESOLUTION

This refers to respondent's motion, dated June 10, 1971, seeking the dismissal of the instant petition for review on the ground that it was instituted beyond 30 days from receipt of the decision of respondent denying petitioner's claim for refund; hence, this Court, under Section 11 of Republic Act No. 1125, lacks jurisdiction to entertain the same.

The petition for review alleges that on April 15, 1969, petitioner, a rural bank created under Republic Act No. 720, as amended, paid under protest the amount of ₱1,397.08, as corporate income tax for the year 1968; that a day thereafter, or on April 16, 1969, petitioner wrote a letter to respondent requesting refund of the tax paid on the ground that it is exempt from the payment of income tax under the provisions of Republic Act No. 720, as amended; and that it filed with this Court the instant petition for review inasmuch as the 2-year period prescribed by law[1] was about to expire without respondent having acted on its claim for refund.

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[1]Section 306, National Internal Revenue Code.

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In seeking the dismissal of the instant appeal, respondent, however, avers that he had already rendered a decision on petitioner's claim for refund but the same, despite due receipt thereof by petitioner, was not seasonably appealed to this Court pursuant to Section 11 of Republic Act No. 1125.

The issues posed for our resolution are: (a) whether or not respondent has rendered a decision on petitioner's claim for refund; and in the affirmative, (b) whether or not the said decision was appealed to this Court within the period provided for by law.

Section 11 of Republic Act No. 1125, which is the law applicable to the case at bar, provides in part as follows:

> SEC. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. x x x (Emphasis supplied.)

During the hearing of this incident, respondent adduced oral and documentary evidence to prove that a decision had been rendered on petitioner's claim for refund and that petitioner failed to appeal the same to this Court within the period provided in Section 11 of Republic Act No. 1125.

Respondent presented Marcial Pons, Jr. of the General Service Division, Bureau of Internal Revenue,

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who testified[2] that he is the custodian of record of mailing and is in charge of receiving, sending and recording of mails; that he received, for mailing, a letter of respondent, dated May 29, 1970, denying petitioner's claim for refund and recorded the gist thereof in his record book (Exhs. 1 & 1-A); that he stamped the said letter and sent it by registered mail with return card, as evidenced by Registry Receipt No. 76291 (Exhs. 3 & 3-A); that the addressee, petitioner herein, actually received the letter of respondent on July 18, 1970, through one of its employees, as shown by: (a) the Registry Return Receipt (Exh. 4, p. 7, BIR rec.; Exhs. 5 & 5-A) and (b) certification by the Postmaster of Caloocan City Post Office that Registered Letter No. 76291 was delivered and received by petitioner's representative, Espenilia Abella Florentino (Exh. 6, p. 21, BIR rec.).

The facts established above, and to which no valid objection was interposed by petitioner, indubitably show that, on May 29, 1970, a decision was rendered by respondent on petitioner's claim for refund and the same was received by the latter on July 18, 1970. Applying Section 11 of Republic Act No. 1125, petitioner had only 30 days from receipt of said decision, or until August 17, 1970, within which to perfect its appeal to this Court. However, petitioner interposed its appeal to

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[2]Hearings of September 25 and October 2, 1971.

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this Court only on March 20, 1971, or more than 8 months after it received the decision on its claim for refund. Obviously, the appeal has been filed beyond the 30-day period set by law, and this Court has no jurisdiction to entertain the same.

It has been held that "x x x where payment has already been made and the taxpayer is merely asking for its refund, he must first file with the (Commissioner) of Internal Revenue a claim for refund before taking the matter to the Court, as required by section 306 of the National Internal Revenue Code and that appeals from decisions or rulings of the (Commissioner) of Internal Revenue to the Court of Tax Appeals must always be perfected within 30 days after the receipt of the decision or ruling that is being appealed, as required by Section 11 of Republic Act No. 1125." (Johnston Lumber Co., Inc. vs. Court of Tax Appeals, 101 Phil. 151; see also Gibbs vs. Coll. of Int. Rev., 107 Phil. 232.)

IN VIEW OF ALL THE FOREGOING, the herein appeal is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Quezon City, October 30, 1971.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge Estanislao R. Alvarez
did not take part.

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