19-000075-0085

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10036

ORICA PHILIPPINES INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CABRERA & COMPANY
28th Floor, Philamlife Tower
8767 Paseo de Roxas, Makati City

GREETINGS:

You are hereby notified by these presents that on **May 14, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 15, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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ORICA PHILIPPINES INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10036

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

MAY 14 2024, 1:10PM

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RESOLUTION

MANAHAN, *J.:*

For this Court's resolution is petitioner's *Motion for Reconsideration (Re: 19 December 2023 Decision of the Honorable Court of Tax Appeals-Special First Division)* filed on January 18, 2024, with respondent's *Comment and Opposition (Re: Motion for Reconsideration dated 18 January 2024)* filed on February 7, 2024.

Petitioner prays for the reversal of the Court's Decision dated December 19, 2023, the dispositive portion of which, reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Petitioner sets forth the following arguments in support of its Motion for Reconsideration, to wit:

1. The judicial appeal for the value-added tax (VAT) refund for the fourth (4th) quarter of calendar year (CY) 2016 was filed within the prescriptive period provided under the pertinent provisions of the Tax Code and its implementing regulations;

2. The applicable law at the time of filing of the administrative and judicial claims for refund is Section 112 (C) of the Tax Code, as amended by the TRAIN Law, hence, the jurisprudential bases of the Honorable Court are not in all fours with the instant case; and

3. To construe inaction of the Respondent as deemed denial contravenes the intention of the lawmakers in deleting the "deemed denied" provision of the Tax Code under TRAIN."

Petitioner maintains that the administrative and judicial claims for refund were both filed within the period prescribed by the relevant law, specifically Section 112 (A) and (C) of the 1997 National Internal Revenue Code (NIRC), as amended. It narrates that it filed an application for refund with the Bureau of Internal Revenue (BIR) on September 25, 2018 on its alleged unutilized input VAT for the fourth quarter of 2016 and received a letter from the BIR partially denying said claim on December 7, 2018. Petitioner firmly asserts that the Petition for Review (appealing the partial denial of its claim) filed with the Court on January 7, 2018 and reckoned from its date of receipt on December 7, 2018, was well-within the thirty (30)-day period prescribed by said Section 112 (C) of the 1997 NIRC, as amended. It alleges that the Court erred in ruling that its failure to file a timely judicial appeal within thirty days upon the lapse of the ninety-day (90) period proved fatal to its cause. Petitioner emphasizes that the claim for refund was filed under the provisions of Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion Law otherwise known as the TRAIN Law which took effect on January 1, 2018. It argues that Section 112 (C) as amended by the TRAIN Law already removed the phrase "inaction" thereby rendering inapplicable the jurisdiction of the Court over inactions of the Commissioner of Internal Revenue (CIR) in cases where no action was done within a specified/prescribed period. To put it simply, petitioner claims that the phrase "inaction shall be deemed a denial" as found in Section 7 of RA 1125, as amended by RA 9282 finds no place when the instant claim for refund was filed with the BIR. Petitioner reasons that it is no longer mandatory on its part to file a Petition for Review within thirty-days from the lapse of the ninety-day period and insists that it had the option to wait for the decision of the CIR and then file a Petition for Review with the Court within thirty days from its receipt as was done in the instant case.

Petitioner also rejects the application of the decision of the Supreme Court in the case of *Silicon Philippines, Inc., (formerly Intel Philippines Manufacturing Inc. vs. Commissioner of Internal Revenue (Silicon* case*)*,[1] cited by the Court in the assailed Decision and asserts that said case involved claims for input VAT refund covering taxable year 2001 which was before the enactment of the TRAIN Law, hence, should not have been the basis for the conclusion reached by the Court.

In his *Comment and Opposition,* respondent cites the same provisions of Section 112 (A) and (C) of the 1997 NIRC, as amended, and interprets it differently and maintains that the inaction of the CIR within the ninety-day period is still considered a "deemed denial" of the claim for refund which has to be mandatorily elevated to the Court within thirty-days from its expiration, otherwise, the "decision" of the CIR becomes final and unappealable. Respondent echoes the ruling of the Court in the assailed Decision and states that the 90 + 30 day period to file a judicial appeal is mandatory and jurisdictional and that failure to observe said period is a cause for the dismissal of the action for lack of jurisdiction.

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[1] G.R. No. 182737, March 2, 2016.

RULING OF THE COURT

After a careful consideration of petitioner's *Motion for Reconsideration*, the Court finds no compelling reason to modify or reverse the assailed Decision.

In concise terms, petitioner argues that it can still wait until the respondent issues a decision on its application or claim for refund even after the lapse of the ninety-day period and appeal said decision to the Court within 30 days from its receipt. It anchors this theory on the amendments introduced by the TRAIN Law particularly on Section 112 (C) of the 1997 NIRC which removed the phrase "failure on the part of the Commissioner to act on the application within the period prescribed above" and the addition of the phrase "the failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90) day period shall be punishable under Section 269 of this Code."

We find petitioner's arguments without merit.

It must be emphasized that the assailed Decision dismissed the Petition for Review for lack of jurisdiction based specifically on Section 7 (a)(1) and (2) of RA 1125[2], as amended by RA 9282[3], quoted as follows:

> Section 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

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[2] An Act Creating the Court of Tax Appeals.

[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging the Membership, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for other Purposes.

> *(2)* **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, **refunds of internal revenue taxes**, fees, or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial.** *(Emphases supplied)*

Section 11 of RA 1125, as amended by RA 9282 provides as follows:

> Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts, **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.** *(Emphasis supplied)*

xxx xxx xxx

As elucidated in the assailed Decision, the "inaction" provided in the afore-quoted CTA Charter occurs when respondent fails to decide within a specific period required by law. *i.e.*, upon the lapse of the ninety (90) day period provided in Section 112 (C) of the 1997 NIRC, as amended by the TRAIN Law. The advent of the TRAIN Law did not have the effect of repealing and/or amending the provisions of RA 1125, as amended by RA 9282, and still remains a good law. In the *Silicon* case[4] cited in the assailed Decision, the Supreme Court made it clear that the 30-day period is reckoned from the receipt of respondent's decision or ruling or after the expiration of the 120-day (now 90-day) period, **whichever is sooner.** On a practical standpoint, to eliminate the "deemed denial" scenario would place the taxpayers at the mercy of the revenue officers who might not act on their claims for refund leaving them with

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[4] *Ibid.*

no other recourse on their "unacted" claims for refund pending with the BIR.

The petitioner's failure to file a judicial appeal within 30 days from the lapse of the 90-day period deprives the Court of the requisite jurisdiction to take cognizance of the case.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration (Re: 19 December 2023 Decision of the Honorable Court of Tax Appeals-Special First Division)* filed on January 18, 2024 is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(no part)
ROMAN G. DEL ROSARIO
Presiding Justice

(See Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

REPUBLIC OF THE PHILIPPINES
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ORICA PHILIPPINES INC.,
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CTA Case No. 10036

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 14 2024 1:10PM

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CONCURRING OPINION

REYES-FAJARDO, *J.*:

I agree with the *ponencia* that the Court of Tax Appeals (CTA) in Division lacks jurisdiction over CTA Case No. 10036. I, however, take this opportunity to rectify petitioner's erroneous perception advanced in its Motion for Reconsideration (Re: 19 December 2023 Decision of the Honorable Court of Tax Appeals-Special First Division), *i.e.*, the Bureau of Internal Revenue (BIR)'s adverse decision rendered *outside* the ninety (90)-day period to decide an administrative claim for input Value-Added Tax (VAT), may be appealed to the CTA in Division.

In refund of unused input VAT attributable to zero-rated sales, the CTA in Division may only take cognizance of a refund claimant's judicial claim, upon strict adherence with Section 112(C) of the 1997 National Internal Revenue Code (NIRC). Juxtaposed below are the *then* Section 112(C) of the NIRC, with Section 112(C) of the NIRC, as amended by Republic Act (RA) No. 10963, otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN):

Section 112(C) of the NIRC, **prior to** amendment by TRAIN	Section 112(C) of the NIRC, as amended by TRAIN
SEC. 112. Refunds or Tax Credits of Input Tax. – . . . **(C)** *Period within which Refund or Tax Credit of Input Taxes shall be Made.* **- In proper cases, the Commissioner shall grant a refund or** issue the tax credit certificate for **creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof. **In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period,** appeal the decision or the unacted claim with the Court of Tax Appeals.[1]	*SEC. 112. Refunds or Tax Credits of Input Tax. –* . . . *(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.* - **In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application** filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial. **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.[2]

[1] Boldfacing supplied.
[2] Boldfacing supplied.

Indeed, TRAIN introduced amendments on the then Section 112(C) of the NIRC. To be precise, the Legislature removed the phrases "or the failure on the part of the Commissioner to act on the application within the period prescribed above," "or after the expiration of the one hundred twenty day-period" in the second paragraph thereof. The same provision, too, states that the taxpayer may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the CTA. These variations might lead one to deduce that the BIR's adverse decision in an administrative claim for unutilized input VAT refund may be elevated to the CTA in Division, irrespective of whether the same was rendered within or outside the ninety (90)-day period to decide such administrative claim. Yet, *Commissioner of Internal Revenue v. Secretary of Justice, et al.*[3] taught us that:

> A law must not be read in truncated parts: its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.
>
> In constructing a statute, courts have to take the thought conveyed by the statute as a whole: construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.

By *wholistically* reading Section 112(C) of the NIRC, as amended by TRAIN, with RA No. 1125, as amended by RA No. 9282, only the adverse decision rendered by the BIR ***within*** the ninety (90)-day period prescribed therein, may be the subject of an appeal before the Court in Division. Bear in mind:

First. The first paragraph of Section 112(C) of the NIRC, as amended by TRAIN, states that "[i]n proper cases, the Commissioner **shall** grant a refund for creditable input taxes within ninety (90)

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3 G.R. No. 177387, November 9, 2016, citing *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 170680, October 2, 2009.

days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial." Jurisprudence holds that "... the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature." [4] Therefore, the claimant's administrative claim for input VAT refund must be decided by the BIR, *within* the ninety (90)-day prescribed period under Section 112(C) of the NIRC, as amended by TRAIN.

Second. The second paragraph of Section 112(C) of the NIRC, as amended by TRAIN, penalizes the failure of any BIR official, agent, or employee to decide on an administrative claim for input VAT refund, within the ninety (90)-day period prescribed therein. Punishing the pertinent BIR personnel's failure to render an adverse decision *within* said ninety (90)-day period underscores the compulsory nature of the time to decide the administrative claim in Section 112(C) of the NIRC, as amended.

Third. Likewise, in the second paragraph of Section 112(C) of the NIRC, as amended by TRAIN, the word 'decision' was preceded by the definite article 'the.' The definite article 'the' particularizes the subject spoken of, and refers to a certain object, as opposed to the article 'a' which refers to the indefinite.[5] It means that the BIR adverse decision in input VAT refund cases specifically pertains to one decided within the ninety (90)-day period to decide an administrative claim, as commanded by the first paragraph of the same provision of the Code.

Ergo, petitioner erred in arguing that the amendments introduced by TRAIN on Section 112(C) of the NIRC allows an appeal to the CTA in Division, the BIR's adverse decision rendered ***outside*** the ninety (90)-day period decide an administrative claim for input VAT refund.

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4 *UCPB General Insurance Company v. Hughes Electronics Corporation,* G.R. No. 190385, November 16, 2016.

5 See *Commissioner of Internal Revenue v. GMA Network Films, Inc.,* CTA EB No. 2441, October 17, 2022. Citations omitted.

of

FOR THESE REASONS, I **CONCUR** with Associate Justice Catherine T. Manahan in: (1) **DENYING** petitioner's Motion for Reconsideration (Re: 19 December 2023 Decision of the Honorable Court of Tax Appeals-Special First Division); and (2) **AFFIRMING** the Decision dated December 19, 2023 in CTA Case No. 10036.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice