REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LAPANDAY FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO.9938

Members:

CASTAÑEDA, JR., *Chairperson, and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 02 2019

1:30 p.m.

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RESOLUTION

For this Court's resolution are the following:

1. respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**, filed on February 19, 2019, with petitioner's **Comment (To Respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated 12 February 2019)**, filed on March 11, 2019; and

2. petitioner's **Urgent Motion for More Time (To Submit Report of the Independent Certified Public Accountant)**, filed on April 10, 2019.

In the instant motion for early resolution of the issue on jurisdiction, respondent avers that, assuming the petitioner administrative claim were filed on time on September 23, 2008, he has 120 days or until January 21, 2009 within which to decide whether or not the administrative claim should be granted. Respondent contends that, Revenue Memorandum Circular (RMC)

No. 54-2014 provides that if the administrative claim is not acted upon within the 120 days, such inaction shall be deemed a denial.

According to respondent, the 120+30 day period is mandatory and jurisdictional, citing the ruling of the Supreme Court in the case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[1].

Respondent alleges that petitioner filed the administrative claim for refund on September 23, 2008. Counting 120 days after filling of the administrative claim with the respondent and 30 days after the respondent denial by inaction, the last day for filling the judicial claim with the CTA is on February 20, 2009. Respondent further argues that petitioner filed the judicial claim only on September 28, 2018, thus, this Court can no longer exercise jurisdiction on the instant petition as this was allegedly filed out of time.

As such, respondent prays for the dismissal of the instant case on the ground that this Court lacks jurisdiction to entertain the same.

On the other hand, petitioner opposes respondent motion on the grounds that the former was entitled to the refund or tax credit of its excess input tax credit and the judicial claim was timely filed and has not prescribed.

According to petitioner, Section 112 (C) of the Tax Code provides two (2) options to the taxpayer, either: possible scenarios (1) file a Petition for Review with the CTA within thirty (30) days after the expiration of the 120-day period; (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

Petitioner states that the 120+30 day period under Section 112 (C) is a claim-processing rule which does not restrict the subject-matter jurisdiction of this Court. Petitioner cited the case of *Arbaugh vs. Y & H Corporation*, where the U.S. Supreme Court applied the so-called "bright line" test to distinguish jurisdictional conditions from claim-processing requirements or elements of a claim. It further argues that applying the "bright line" test in *Arbaugh* case, it will be clearly shown by a study of the legislative history of the 120+30 day

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[1] G.R. Nos. 193301 and 194637, March 11, 2013.

provision in Section 112 of the current Tax Code of 1997, as amended by Republic Act (RA) No. 8424, is non-jurisdictional.

Petitioner contends that during the deliberations on House Bill No. 11197, which became RA No. 7716, on August 17, 1993, the Chairman of the Committee on Ways and Means of the House of Representatives noted the problem of unresolved claims for refund pending in the BIR. It further contends that the Chairman observed that the 60-day period given to the CIR to grant claims for refund of input taxes was often not being observed by the latter. According to petitioner, the legislature gave the taxpayer the option to file their judicial claims with the CTA within thirty (30) days from receipt of the decision denying their administrative claim or after the expiration of the sixty (60) day period given to the CIR to decide. Petitioner likewise states that as in RA No. 7716, there was also no intention in R.A. 8424 to limit the period when the taxpayer is made to receive the CIR's decision on the claim for refund, such that the 120 days is directed to the CIR, and not to the taxpayer.

Petitioner states that it received the decision of the CIR denying the claim for refund/tax credit on August 31, 2018 and filed the petition for review on September 28, 2018, or within 30 days from receipt of the decision in accordance with Section 112 (C) of the NIRC.

Based on the Petition for Review, petitioner filed with the Bureau of Internal Revenue (BIR) a claim for issuance of tax credit certificate (TCC) for excess input taxes in the amount of ₱6,668,213.60 for third quarter of the taxable year 2006 on **September 23, 2008.**[2] On **August 31, 2018**, petitioner allegedly received a letter dated April 16, 2018 from respondent denying the former's application for tax credit.[3] Thus, on **September 28, 2018**, petitioner filed the instant Petition for Review before this Court.[4]

The crux of the issue is whether petitioner may appeal the adverse decision of respondent on the administrative claim beyond the 120+30 day periods provided by law.

Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

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[2] Paragraph (Par.) 17, Petition for Review, Docket, vol. I, p.15.
[3] Par. 18, Petition for Review, Docket, vol. I, p.15-16.
[4] Petition for Review, Docket, vol. I, p. 12.

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** -
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> xxx xxx xxx
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> (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.
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> 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."

Relevantly, in the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue*,[5] Supreme Court held that:

> "Hence, from the effectivity of the 1997 NIRC on 1 January 1998, the procedure has always been definite: the 120-day period is mandatory and jurisdictional. Accordingly, a taxpayer can file a judicial claim (1) only within thirty days after the Commissioner partially or fully denies the claim within the 120-day period, or (2) **only within thirty days from the expiration of the 120-day period if the Commissioner does not act within such period**." (Emphasis supplied)

It is clear from the foregoing that an appeal may be made within 30 days from the denial of the Commissioner before the 120-day period lapsed, or from the lapse of the 120 day in case of inaction of the CIR.

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[5] G.R. No. 203249, July 23, 2018.

Further, in *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*[6], the Supreme Court emphasized:

> "A final note, the taxpayers are reminded that when the 120-day period lapses and there is inaction on the part of the CIR, **they must no longer wait for it to come up with a decision thereafter**. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period." (Emphasis supplied)

Also, the Supreme Court explained in the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[7] that failure on the part of the CIR to act on the application within the 120-day period shall be deemed a denial, to wit:

> "Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. **Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial**.
>
> Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit 47 — or actually submitted — additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed." (*Emphasis supplied.*)

In this case, there is no allegation as to when petitioner submitted documents in support of its administrative claim. Thus, applying the above-cited cases, the supporting documents are

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[6] *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[7] G.R. No. 182737, March 2, 2016.

presumed submitted upon the filing of the corresponding administrative claim on September 23, 2008. Counting 120 days from the said date, respondent had until January 21, 2009 within which to act on petitioner's claim for refund. Considering that respondent failed to act on the said claim within the 120-day period, petitioner have 30 days from the lapse of the said 120-day period, or until February 20, 2009, within which to file a judicial appeal before this Court.

Clearly, the filing of the instant Petition for Review on September 28, 2018, or more than nine years after the prescribed period, was filed out of time.

The Court stresses that the 120/30-day prescriptive periods are mandatory and jurisdictional, and are not mere technical requirements. The Court should not establish the precedent that noncompliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements.[8] To reiterate, the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise.[9]

Taking the foregoing into consideration, petitioner's belated filing of its judicial appeal on September 28, 2018 is fatal to its claim for its failure to observe the mandatory 120+30-day prescriptive periods, and has therefore rendered the Court devoid of jurisdiction over the instant Petition for Review.

WHEREFORE, premises considered, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, the instant **Petition for Review** is hereby **DISMISSED** due to lack of jurisdiction.

In view of the foregoing, the resolution of petitioner's **Urgent Motion for More Time (To Submit Report of the Independent Certified Public Accountant)** is considered **MOOT**.

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[8] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 173241, March 25, 2015.

[9] *Hedcor Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207575, July 15, 2015.

SO ORDERED.

Juanito C. Castañeda, Jr.	Cielito N. Mindaro-Grulla
JUANITO C. CASTAÑEDA, JR.	**CIELITO N. MINDARO-GRULLA**
Associate Justice	Associate Justice