REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

LAPANDAY FOODS CORPORATION (formerly merged with MALALAG VENTURES PLANTATION, INC.), Petitioner,	**CTA CASE NO. 9976**
	Members:
	DEL ROSARIO, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVUE, Respondent.	Promulgated: JUL 25 2019 : 10:53

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RESOLUTION

For resolution is respondent's "**Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**" filed on March 7, 2019, with petitioner's "**Comment/Opposition**" filed on April 15, 2019.

In his Motion, respondent Commissioner of Internal Revenue (CIR) prays that the present Petition for Review filed by Lapanday Foods Corporation (formerly merged with Malalag Ventures Plantation, Inc.) be dismissed for being time-barred and/or for lack of jurisdiction.

Respondent, citing Revenue Memorandum Circular (RMC) No. 54-2014 (which provides that if the administrative claim is not acted upon within 120 days, such inaction shall be deemed a denial), argues that petitioner's filing of the Petition for Review on November 20, 2018 was beyond the mandatory and jurisdictional 30-day period from the expiration of the 120- day period within which to elevate the CIR's inaction to the Court, *viz.*:

Taxable Quarter	Date of Filing of Administrative Claim	End of 120-day Period	End of 30-day Period from Lapse of 120-day Period	Date of Filing of Judicial Claim
First Quarter – ending March 31, 2007	August 27, 2008	December 25, 2008	January 24, 2009	November 20, 2018
Second Quarter – ending June 30, 2007	September 8, 2008	January 6, 2009	February 5, 2009	
Third Quarter – ending September 30, 2007	October 17, 2008	February 14, 2009	March 16, 2009	

Respondent further posits that the subsequent Letter of Denial dated October 4, 2018, which was received by petitioner on October 22, 2018, is inconsequential since it was issued after the lapse of the period within which petitioner could have elevated the "deemed denial" decision on its claim for refund.

Petitioner counter-argues that pursuant to Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, there are four scenarios from which the 30-day period to appeal to this Court may be reckoned, *viz.*: (1) CIR issues a decision within the 120-day period; (ii) CIR issues a decision on the 120th day; (iii) CIR does not issue a decision within the 120- day period; and, (iv) CIR issues a decision after the lapse of the 120-day period. Petitioner avers that the scenario in this case is the fourth one where the CIR issued the Letter of Denial after the 120th day.

Allegedly, the 120+30-day period under Section 112(C) is a claim-processing rule which does not restrict the subject matter over which this Court may exercise its jurisdiction; that the taxpayer's failure to comply with the 120+30-day period does not deprive the Court of its jurisdiction to take cognizance of the Letter of Denial dated October 4, 2018, as the 120+30-day period is merely directory and non-jurisdictional; and, that the Court should not limit the remedies available to petitioner, as a taxpayer, under Section 112(C) of the NIRC of 1997, as amended, for it would encroach on the plain reading of the law and the clear and historical intention of the Legislature to give taxpayers the option to appeal the decision or inaction of the CIR.

Finally, petitioner asserts that the deletion in Republic Act (RA) No. 10963, otherwise known as the Tax Reform and Acceleration and Inclusion Act (TRAIN Law), of the phrase *"where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial,"* leaves only one remedy for the taxpayer. It highlights therefore that, prior to TRAIN Law, the taxpayer has the option of either appealing the inaction of the CIR after the lapse of the 120-day period <u>or</u> await the decision of the CIR and appeal the same to this Court, albeit rendered beyond the 120-day period.

After carefully evaluating the records of the case and the parties' respective arguments, the Court holds that it has no jurisdiction over the present Petition for Review.

Section 112 of the NIRC of 1997, as amended by RA No. 9337, specifies the legal basis in a claim for refund or issuance of a tax credit certificate of input VAT, including the taxpayer's remedy of appeal to the Court of Tax Appeals (CTA) in case of an adverse decision or inaction of the CIR, *viz.*:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *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.**" *(Boldfacing supplied)*

Section 112(C) of the NIRC of 1997, as amended, speaks of two (2) periods:

(1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and,

(2) the 30-day period, which refers to the period for filing a judicial claim with the CTA.[1]

Contrary to petitioner's claim, jurisprudence is replete with cases which hold that the 120+30-day period is mandatory and jurisdictional.[2]

The inaction of the CIR on a claim during the 120-day period is, by express provision of law, "deemed a denial" of a claim, and the taxpayer has 30 days from the expiration of the 120-day period to file its judicial claim with the CTA; otherwise, its failure to do so renders the "deemed denial" decision of the CIR final and inappealable.[3] When the 120-day period lapses and there is inaction on the part of the CIR, **taxpayer must no longer wait for it to come up with a decision as the CIR's inaction is the decision itself**. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.[4] Any claim filed beyond the 120+30-day period provided by the NIRC is outside the jurisdiction of the CTA.[5]

In this case, petitioner alleges that it filed its administrative claims for the issuance of tax credit certificates of its input taxes on account of zero-rated sales on August 27, 2008, September 8, 2008, and October 17, 2008 for the first, second and third quarters of taxable year 2007, respectively.[6] It appears that petitioner filed its administrative claims well within the two-year prescriptive period

[1] Rohm Apollo Semiconductor Philippines vs. CIR, G.R. No. 168950, January 14, 2015.
[2] CIR vs. San Roque Power Corporation (G.R. No. 187485), Taganito Mining Corporation vs. CIR (G.R. No. 196113) and Philex Mining Corporation vs. CIR (G.R. No. 197156) February 12, 2013; Rohm Apollo Semiconductor Philippines vs. CIR, G.R. No. 168950, January 14, 2015.
[3] CIR vs. San Roque Power Corporation, G.R. No. 187485, February 12, 2013.
[4] Rohm Apollo Semiconductor Philippines vs. CIR, G.R. No. 168950, January 14, 2015.
[5] Silicon Philippines Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. CIR, G.R. No. 182737, March 02, 2016.
[6] Par. 2, Nature and Timeliness, Petition for Review.

under Section 112(A) of the NIRC of 1997, as amended, as shown hereunder:[7]

Taxable Quarter	Deadline for Filing an Administrative Claim	Date of Filing of Administrative Claim
First Quarter – ending March 31, 2007	March 31, 2009	August 27, 2008
Second Quarter – ending June 30, 2007	June 30, 2009	September 8, 2008
Third Quarter – ending September 30, 2007	September 30, 2009	October 17, 2008

With respect to the timeliness of the judicial claim, the Court needs to ascertain the expiry of the 120-day period as the said period is crucial in filing an appeal with the CTA.[8] The running of the 120-day period is reckoned from the date of submission of complete documents in support of the application for refund or issuance of tax credit pursuant to the first paragraph of Section 112(C) of the NIRC of 1997, as amended. The period within which the taxpayer may submit complete documents, however, has been clarified in ***Pilipinas Total Gas, Inc. vs. CIR***,[9] *viz.*:

> "Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants **shall submit such documents within thirty (30) days from request** of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**
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> Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

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[7] Mindanao I Geothermal Partnership vs. CIR, G.R. No. 197519, November 8, 2017.
[8] CIR vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.
[9] G.R. No. 207112, December 8, 2015.

> To summarize, for the just disposition of the subject controversy, **the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR**. Then, **upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing**.
>
> **In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC**. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.
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> It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*, such as the claim at bench." *(Boldfacing supplied)*

In this case, petitioner admits that it fully complied with all the necessary requirements to substantiate its claim; that it never received any notice from the respondent that the documents it submitted did not fully comply with the requirements laid down under the law and pertinent regulations; and, that it has been made to believe by respondent that its submissions fully complied with the requirements and were complete and sufficient to support its VAT credit application.[10]

Considering the aforesaid allegation, and the presumption that the complete documents accompanied the claim (absent any showing that the taxpayer was required to submit or actually submitted additional documents after the filing of the administrative claim),[11] the 120-day period is reckoned from the date of filing of petitioner's administrative claims on **August 27, 2008, September 8, 2008,** and **October 17, 2008** for the first, second and third quarters of taxable year 2007, respectively. Thus, respondent had until **December 25, 2008, January 6, 2009,** and **February 14, 2009** to act on the administrative claims. Due to inaction - *"deemed denial decision"*, petitioner should have filed its Petition for Review not later than

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[10] Par. 15, 18 and 19, Discussion, Petition for Review.

[11] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. CIR, G.R. No. 182737, March 2, 2016.

January 24, 2009, February 5, 2009 and **March 16, 2009** relating to its claims for the first, second and third quarters of taxable year 2007, respectively. Clearly, its Petition for Review filed only **November 20, 2018** is way beyond the 120+30-day mandatory and jurisdictional period.

In fact, even granting for the sake of argument that petitioner was allowed an extension by the respondent to submit complete supporting documents, and has actually submitted documents on *the last day of the two-year prescriptive period in line with the limitation provided in the aforesaid Total Gas case,* the 120-day period would have ended on **July 29, 2009, October 28, 2009** and **January 28, 2010**, respectively. Thus, petitioner could have elevated the claim to the Court until **August 28, 2009, November 27, 2009** and **February 27, 2010,** respectively. Sorely, since it filed its Petition for Review only on **November 20, 2018,** the same is clearly filed out of time thereby depriving this Court of jurisdiction thereon.

As regards respondent's reliance on the amended provision of Section 112(C) of the NIRC pursuant to RA No. 10963 or the Train Law, suffice it to say that the TRAIN Law took effect only January 1, 2018.[12] It is doctrinal that tax laws are prospective in operation, unless the language of the statute clearly provides otherwise,[13] which circumstance is wanting in this case.

WHEREFORE, in light of the foregoing considerations, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** filed on March 7, 2019 is **GRANTED**. There being no jurisdiction, the Petition for Review filed by petitioner on November 20, 2018 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[12] Sec. 87, RA No. 10963.
[13] CIR vs. Acosta, G.R. No. 154068, August 3, 2007.