REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2329
(CTA Case No. 10153)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

Promulgated:
JAN 0 5 2022
4:18 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

For review on appeal are the Resolution dated December 13, 2019[1] ("First Assailed Resolution") and the Resolution dated June 16, 2020[2] ("Second Assailed Resolution") of the CTA Third Division[3] (CTA Division) in the case of *Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue,* docketed as CTA Case No. 10153.

The dispositive portion of the First Assailed Resolution reads:

> "**WHEREFORE,** premised considered, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the

[1] *Rollo*, pp. 40-45.
[2] *Id.*, pp.46-48.
[3] Composed of Associate Justice Erlinda P. Uy, Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro.

Honorable Court is **GRANTED**. The Petition for Review docketed as CTA Case No. 10153, entitled *Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue* is **DISMISSED** for lack of jurisdiction.

SO ORDERED."

The dispositive portion of the Second Assailed Resolution reads:

"**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration (of the Honorable Court's Resolution dated 13 December 2019) is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is a duly organized and existing domestic corporation with principal address at 21/F Lepanto Building, 8747 Paseo de Roxas, Makati City.[4] It is engaged in mining of gold and other precious metals at its mine site in Mankayan, Benguet.[5] It is a VAT-registered and Board of Investments ("BOI")-registered entity as a new export producer of gold bullion, copper concentrate, gold, and silver.[6]

Respondent is the incumbent Commissioner of the BIR who has the authority to grant tax credit/refund under the law.[7]

On May 22, 2009, petitioner filed with the DOF-OSS its application for tax credit/refund of input VAT for first (1st), second (2nd), third (3rd), and fourth (4th) quarters of 2008 in the total amount of Forty Million Eight Hundred Ninety Six Thousand Six Hundred Forty Eight and 52/100 pesos (PhP 40,896,648.52).[8]

On July 22, 2019, petitioner received a copy of the letter dated March 29, 2019 of the BIR denying petitioner's application for VAT refund/credit, purportedly because petitioner failed to prove the validity of its claim.[9]

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[4] *Rollo*, p. 19.
[5] *Id.*, p. 20.
[6] *Id.*
[7] *Id*, p. 19.
[8] *Id.*, p. 22.
[9] *Id.*

On August 20, 2019, petitioner filed it Petition for Review before the CTA Division.[10]

On September 24, 2019, respondent filed an Answer.[11]

On October 16, 2019, respondent filed a "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court."[12]

On November 7, 2019, petitioner filed its "Comment/Opposition (to the Respondent's Motion for Early Resolution dated 16 October 2019)."[13]

On November 13, 2019, the Court Division submitted for resolution respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court," and cancelled until further notice the Pre-Trial Conference previously scheduled on December 4, 2019.[14]

On December 13, 2019, the Court Division granted respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court" and dismissed the petition, for lack of jurisdiction.[15]

On January 20, 2020, petitioner timely filed its "Motion for Reconsideration (of the Honorable Court's Resolution dated 13 December 2019)."[16]

On January 27, 2020, the Court Division ordered respondent to file a comment on petitioner's motion.[17] On February 5, 2020, respondent filed an "Opposition (Re: Motion for Reconsideration of the Resolution dated 13 December 2019)."[18]

On June 16, 2020, the Court Division denied, for lack of merit, petitioner's "Motion for Reconsideration (of the Honorable Court's Resolution dated 13 December 2019)."[19]

On September 11, 2020, the CTA *En Banc* granted petitioner's "Motion for Extension of Time to File Petition for Review."[20]

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[10] Division Docket, pp. 10-20; With attached Annexes, Division Docket, pp. 21-84.
[11] Division Docket, pp. 92-99.
[12] *Id.*, pp. 109-117.
[13] *Id.*, pp. 131-137.
[14] *Id.*, p.139.
[15] *Id.*, pp. 157-162.
[16] *Id.*, pp. 163-170.
[17] *Id.*, p. 172.
[18] *Id.*, pp.173-176.
[19] *Id.*, pp. 181-183.
[20] *Rollo*, p. 17.

Within the period of extension granted, petitioner filed its Petition for Review on September 25, 2020 before this Court.[21]

On October 13, 2020, the CTA *En Banc* ordered respondent to file his Comment.[22] Respondent filed a "Comment (Re: Petition for Review)" by registered mail on October 26, 2021.[23]

On January 6, 2021, this case was submitted for decision.[24]

Hence, this Decision.

ISSUE

In its petition, petitioner raised the following Grounds and Arguments:[25]

I. PETITIONER RESPECTFULLY SUBMITS THAT THE HONORABLE COURT IN DIVISION ERRED WHEN IT DISMISSED THE PETITION FOR REVIEW FOR LACK OF JURISDICTION PURPORTEDLY DUE TO IT BEING FILED OUT OF TIME.

THE DEADLINE FOR THE FILING OF THE PETITION MUST BE RECKONED FROM THE RECEIPT OF THE DENIAL LETTER FROM THE BIR AS REVENUE REGULATIONS NO. 1-2017 PROVIDES THAT <u>THE RESULT OF TAX CREDIT CLAIMS COVERED BY THE REVENUE REGULATION SHALL BE COMMUNICATED IN WRITING</u> BY THE CONCERNED REVENUE OFFICIAL.

II. THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE VAT REFUND CLAIM OF THE PETITIONER HAS BEEN DEEMED DENIED. ON THE CONTRARY, <u>THERE WAS ACTUAL DENIAL</u> OF THE PETITIONER'S CLAIM THROUGH THE 29 MARCH 2019 LETTER OF DENIAL ISSUED BY THE BIR WHICH CLEARLY STATES THAT THE PETITIONER'S CLAIM WAS PROCESSED AND

[21] *Rollo*, pp. 18-37.
[22] *Id.*, pp. 135-136.
[23] *Id.*, pp. 137-140.
[24] *Id.*, pp. 144-145.
[25] *Id.*, pp.23-25.

THAT IT IS DUE TO EXCESS DEDUCTIONS OVER THE AMOUNT APPLIED FOR AS TAX REFUND/CREDIT THAT THE CLAIM WAS DENIED.

III. THE HONORABLE COURT IN DIVISION ERRED IN FAILING TO APPLY THE PRINCIPLE OF EQUITABLE ESTOPPEL AGAINST THE RESPONDENT CIR, WHOSE DISAVOWAL OF SECTION 3, REVENUE REGULATIONS NO. 1-2017, THE 29 MARCH 2019 LETTER (WHICH THE BIR ITSELF ISSUED), AND THEIR LEGAL IMPLICATIONS RUNS COUNTER TO THE PRINCIPLES OF EQUITY AND FAIR PLAY.

IV. PETITIONER IS ENTITLED TO TAX CREDIT OF ITS FIRST (1^{ST}), SECOND (2^{ND}), THIRD (3^{RD}), AND FOURTH (4^{TH}) QUARTERS OF 2008 INPUT VAT ARISING FROM IMPORTATIONS OF CAPITAL AND CONSUMABLE GOODS AMOUNTING TO FORTY MILLION EIGHT HUNDRED NINETY SIX THOUSAND SIX HUNDRED FORTY EIGHT AND 52/100 PESOS (PHP 40,896,648.52).

V. THE HONORABLE COURT IN DIVISION ERRED IN DISMISSING THE PETITION OUTRIGHT, WHICH IS TANTAMOUNT TO A DENIAL OF THE RIGHT TO APPEAL AND A VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS.

Based on the foregoing, the issue in this case is **WHETHER THE COURT DIVISION ERRED IN DISMISSING THE PETITION FOR REVIEW FOR LACK OF JURISDICTION.**

Petitioner reiterates that the Petition for Review filed before the CTA Division had been timely filed under Section 112 (C) of the National Internal Revenue Code (NIRC), as amended, by Republic Act No. 10963.[26] It insists that the thirty (30)-day period for filing the petition for review should be reckoned from the receipt, *i.e.,* July 22, 2019, of the March 29, 2019 letter that the application was denied. [27]

[26] *Rollo*, p. 25.
[27] *Id.*, p. 28.

Petitioner states that there was no deemed denial in this case.[28] It insists that there was actual denial of its VAT refund claim for 2008 from reading of the said March 29, 2019 letter.[29]

On the other hand, respondent argues that the Petition for Review was filed beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred twenty (120) day period, thus, petitioner's contention are bereft of merit.[30]

THIS COURT'S RULING

The petition is denied.

In this case, petitioner filed its application for tax credit/refund of input VAT for the four (4) quarters of 2008 on May 22, 2009. On July 22, 2019, it received the March 29, 2019 letter that the application was denied. On August 20, 2019, it filed its Petition for Review before the CTA Division.

It is worthy to emphasize that petitioner itself admitted on its pleadings the relevant dates necessary in the determination of the timeliness of the filing of the petition for review.

In the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue,*[31] (*"San Roque case"),* the Supreme Court *En Banc* categorically recognized that if the CIR fails to decide within "a specific period", required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. Pertinent portion of the said Decision provides;

> "The charter of the CTA also expressly provides that if the Commissioner fails to decide within 'a specific period' required by law, such 'inaction shall be deemed a denial'[32] of

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[28] Rollo, pp. 29-31.
[29] *Id.*
[30] *Rollo*, pp. 137-138.
[31] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[32] Section 7. Jurisdiction. — The CTA shall exercise:
(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
(1) . . .
(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 of action, in which case the inaction shall be deemed a denial;**

> the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review."

Pertinent to this case is Section 112(C) of the NIRC of 1997, as amended, provides:

> "(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." *(Emphases Supplied)*

In the case of *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue,*[33] *(Sitel case)* the Supreme Court categorically stated that, "Based on the plain language of the foregoing provision [Section 112 (C) of the NIRC, as amended], **the CIR is given 120 days within which to grant or deny a claim for refund.** Upon receipt of CIR's decision or ruling denying the said claim, or **upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA.**" *(Emphases Supplied)*

In this case, there is deemed denial of petitioner's application for tax credit/refund of input VAT for failure of the CIR to decide the application within 120 days from filing of the administrative claim for tax credit/ refund. The CIR had until September 19, 2009, within which to decide the administrative claim. Counting 30 days from the expiration of the 120-day period, petitioner had until October 19, 2009 within which to appeal the inaction of the CIR to the CTA. However, it was only on August 20, 2019 that petitioner filed the Petition for Review to the CTA Division. The petition is, therefore, filed out of time. Petitioner's judicial claim cannot

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xxx xxx xxx *(Emphasis supplied)*

[33] G.R. No. 201326, February 8, 2017.

prosper for its failure to comply with the 30-day mandatory and jurisdictional period set forth by law.

This Court agrees with the findings of the CTA Division in the First Assailed Resolution that, "the Petition for Review was clearly filed out of time. As correctly pointed out by the respondent, the petitioner should have appealed its VAT refund/credit claim within thirty (30) days from the lapse of the one hundred twenty (120) day period or until 19 October 2009. However, petitioner only filed its judicial claim on 20 August 2019 or several years after the lapse of the said period."[34]

In the *San Roque case, supra,* the Supreme Court *En Banc* discussed that:

> "xxx **The application of the 120+30 day periods was first raised in *Aichi*,[35] which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional.** The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," **the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim.** xxx" *(Emphases Supplied)*

With respect to petitioner's reliance on RR No.1- 2017 and in Section 112 (C) of the Tax Code, as amended by Republic Act No. 10963, this Court also reiterates with approval the discussion of the CTA Division in the First Assailed Resolution, as follows:

> "Finally, reliance of petitioner in RR No. 1-2017 is of no moment. RR No. 1-2017 did not extend the period for a taxpayer to file its judicial claim in this Court. Neither can petitioner rely on Section 112 (C) of the Tax Code, as amended by Republic Act No. 10963, considering that the VAT refund/credit claim became deemed denied long before the effectivity of Republic Act No. 10963 on 1 January 2018."

Based on the foregoing, there is no reason to set aside the findings and conclusions of the CTA Third Division in the assailed Resolutions. For petitioner's failure to comply with the 120+30 day mandatory period, this

[34] *Rollo*, p. 43.
[35] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

Court finds that the CTA Division did not err in dismissing the case for lack of jurisdiction.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. Accordingly, the assailed Resolutions promulgated on December 13, 2019 and on June 16, 2020, respectively, by the CTA Third Division are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice