19-000396-0072

CTA Form No. 8

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10148

**CEAMSA ASIA, INC.,**
Petitioner,

- versus -

**NOTICE OF RESOLUTION**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**To:**

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

**COMMISSIONER OF INTERNAL REVENUE**
Thru: Litigation Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

**ATTY. SYLVIA R. ALMA JOSE**
**ATTY. AYESHA HANIA B. GUILING-MATANOG**
**ATTY. CLARISSA J. VIRTUDES-BABARAN**
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
BIR Road, Diliman, Quezon City

**ESCALANTE PIOQUINTO-ENRIQUEZ ENRIQUEZ QUIAMBAO GUILLERMO & SANCHEZ (EPEEQ LAW)**
7th and 10th Floors, The Athenaeum Buliding,
160 L.P. Levite Street, Salcedo Village,
Makati City

***GREETINGS:***

You are hereby notified by these presents that on **June 21, 2023,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 27, 2023.**

**Atty. Margarette Y. Guzman**
Executive Clerk of Court III

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SPECIAL FIRST DIVISION***

**CEAMSA ASIA, INC.**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA Case No. 10148**

Members:

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

Promulgated:

JUN 21 2023, 1:45PM

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# RESOLUTION

**MANAHAN, *J.:***

This resolves petitioner's *Motion for Reconsideration*,[1] posted on February 27, 2023 and received by the Court on March 2, 2023, with respondent's *Opposition (Re: Motion for Reconsideration)*,[2] filed on March 27, 2023.

Petitioner assails the Decision,[3] dated February 3, 2023, which dismissed the Petition for Review on the ground of lack of jurisdiction, for being belatedly filed. The Court found that the administrative claim for refund/issuance of tax credit certificate (TCC) of the alleged unutilized input value-added tax (VAT) for taxable year January 1, 2017 to December 31, 2017 in the amount of Php6,565,007.35 was timely filed. However, the judicial claim was filed beyond the 90+30-day period, applicable to inaction of the Commissioner of Internal Revenue (CIR). The Court also held that petitioner's receipt of the decision denying the administrative claim for refund beyond the 90-day period does not alter the jurisdictional period within which to appeal to the Court of Tax Appeals due to inaction.

---

[1] Docket, Vol. II, pp. 1010-1018.
[2] Docket, Vol. II, pp. 1036-1040.
[3] Docket, Vol. II, pp. 994-1006.

In its *Motion*, petitioner states that nowhere in Section 112 of the National Internal Revenue Code (NIRC) of 1997, as last amended by Republic Act (RA) No. 10963,[4] otherwise known as TRAIN Law, was it provided that the thirty (30)-day period to appeal must be reckoned from the lapse of the ninety (90)-day period or the receipt of the CIR's decision, whichever is sooner.

Petitioner also states that the doctrines laid out in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[5] (Silicon case) and *ROHM Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[6] (ROHM case) are not applicable, since in these cases the CIR did not issue any actual decision on the claim for tax refund. Petitioner argues that the 90+30-day period no longer exists under the current Section 112(C) of the 1997 NIRC, as amended.

Respondent, on the other hand, vehemently objects to petitioner's *Motion*, citing the discussion of the Court in the assailed Decision.

We deny the *Motion*.

To recall, Section 112(C) of the 1997 NIRC, as amended by the TRAIN Law, provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx
>
> (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)

---

[4] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.
[5] G.R. No. 182737, March 2, 2016.
[6] G.R. No. 168950, January 14, 2015.

> 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 the ninety (90)-day period shall be punishable under Section 269 of this Code.

The Bureau of Internal Revenue (BIR) also issued Revenue Memorandum Circular No. 17-2018, which states:

> I. Claims for value-added tax (VAT) refund:
>
> A. General Policies
> xxx
>
> 5. xxx
>
> **Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period**. The denial letter shall be signed by the Commissioner of Internal Revenue (CIR)/Deputy Commissioner – Operations Group (DCIR-OG)/ Assistant Commissioner (ACIR)/Regional Director, as the case may be.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,*[7] the Supreme Court stated:

> "A final note, the taxpayers are reminded that when the 120-day [now 90-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 [now 90-day] waiting period."

Thus, from the filing of petitioner's administrative claim on March 28, 2019, respondent had ninety (90) days or until June 26, 2019, to act on the said claim. In case of inaction within the said ninety (90)-day period, petitioner has thirty

[7] G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation v. Commissioner of Internal Revenue*, G.R. No. 252821, September 2, 2020.

(30) days from such expiration to file its judicial claim, or until July 26, 2019.

In the present case, the BIR issued the letter denying petitioner's entire claim for refund on June 6, 2019, which while dated within the ninety (90)-day period, was received by petitioner only on July 2, 2019, which was already beyond the ninety (90)-day period.[8]

Petitioner then posted its judicial claim, via the present *Petition for Review*,[9] on August 1, 2019, which was beyond the 90+30-day period for respondent to resolve the administrative claim and for petitioner to file its judicial claim, which ended on July 26, 2019.

It is reiterated that the "judicial claim should be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day [now 90-day] period, whichever is sooner."[10] Petitioner's receipt of the June 6, 2019 letter on July 2, 2019 does not alter the jurisdictional period within which to appeal due to inaction. Here, the thirty (30)-day period to appeal to the CTA due to inaction commenced on June 27, 2019, after the lapse of the 90-day period on June 26, 2019, and ended on July 26, 2019.

Clearly, the Petition for Review in this case, posted only on August 1, 2019, was filed out of time. Thus, this Court has no jurisdiction.

**WHEREFORE**, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

**SO ORDERED.**

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

---

[8] Par. 2, Stipulated Facts, JSFI, Docket – Vol. I, p. 217; Exhibit "P-2", Docket – Vol. I, pp. 30 to 31.
[9] Docket – Vol. I, pp. 13 to 25.
[10] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

---

**WE CONCUR:**

(With due respect, see Dissenting Opinion)
**ROMAN G. DEL ROSARIO**
Presiding Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SPECIAL FIRST DIVISION

**CEAMSA ASIA, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Accused.

**CTA CASE NO. 10148**

Members:

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

Promulgated:

JUN 21 2023 1:45 PM

x-----------------------------------------------------------------------x

## DISSENTING OPINION

***DEL ROSARIO, P.J.:***

After much introspection and consideration, I am constrained to deviate from the position I have taken in the assailed Decision. I submit that Ceamsa Asia, Inc.'s Petition for Review was filed within the thirty (30)-day period to appeal to the Court of Tax Appeals.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963 or the Tax Reform Acceleration and Inclusion (TRAIN) Law, reads as follows:

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

In the landmark case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[1] the Supreme Court envisioned two scenarios anent the then-one hundred twenty (120)-day period [now ninety (90)-day period] for the CIR to act on the administrative claim: "(1) when a decision is issued by the CIR before the lapse of the 120 [now 90]-day period; and (2) when no decision is made after the 120 [now 90]-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA."

The jurisdictional nature of filing an appeal upon the lapse of the then-one hundred twenty (120)-day period is sourced from the text of Section 112(C) of the NIRC of 1997 before its amendment by the TRAIN Law.

With the amendment of Section 112 of the NIRC by the TRAIN Law, the question is: may a refund claimant seek immediate recourse to this Court upon the lapse of the ninety (90)-day period under Section 112(C) of the NIRC of 1997, as amended?

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[2] the Supreme Court characterized the then-one hundred twenty (120)-day [now ninety (90)-day] period as the taxpayer's "waiting period" within which the taxpayer should await for the decision of the CIR. The "waiting period" is the time expressly given by law to the CIR to decide whether to grant or deny the taxpayer's application for tax refund or credit.[3]

Relatedly, Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, reads as follows:

> "Sec. 7. *Jurisdiction*. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

---

[1] G.R. No. 184823, October 6, 2010.
[2] G.R. No. 168950, January 14, 2015.
[3] *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021.

ON

xxx xxx xxx

> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations 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**; x x x" (*Boldfacing supplied*)

As discussed, the ninety (90)-day period within which the CIR must decide on the administrative claim for refund is a "specific period of action" in contemplation of the above-quoted provision. **Thus, when the CIR fails to act on the refund claim within the said period, the "inaction [of the CIR] shall be deemed a denial" of the refund claim, and the taxpayer has recourse to this Court upon the lapse of the ninety (90)-day period.**

Section 11 of RA No. 1125, as amended by RA No. 9282, provides:

> "Sec. 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**, xxx **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the <u>expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein</u>**." (*Boldfacing and underscoring supplied*)

Consistent with the above-quoted provision, in relation to Section 7(a)(2) of the CTA Charter, the taxpayer may file an appeal to this Court within thirty (30) days from the lapse of the ninety (90)-day period.

Another question now comes into mind: is recourse to this Court within thirty (30) days upon the lapse of the ninety (90)-day period a ***permissive*** alternative remedy which the taxpayer may take in lieu of filing an appeal from receipt of the CIR decision? In other words, can a claimant choose between: (*i*) filing an appeal upon the lapse of the "waiting period"; and, (*ii*) filing an appeal upon receipt of the decision or ruling of the CIR, even if it is issued after the lapse of the ninety (90)-day period?

It is a well-settled rule in statutory interpretation that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation, especially with regard to tax laws where there should be strictness in requiring adherence to the letter of the law.[4]

As currently worded, Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, vests jurisdiction upon this Court, upon the filing of the appeal within thirty (30) days from the taxpayer's **receipt** of the full or partial denial of the refund claim. The **choice**, therefore, of bringing an appeal upon the lapse of the "waiting period" is not found in Section 112(C), but is specified in Section 7(a)(2) of RA No. 1125, as amended.

The situation is analogous to the procedure in protesting assessments under Section 228 of the NIRC of 1997, as amended, wherein the taxpayer is granted the **choice** of waiting for the decision or ruling of the CIR on the administrative claim before filing an appeal with this Court **OR** filing an appeal upon the lapse of the "waiting period". Precisely, when a taxpayer files an administrative claim, the taxpayer expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if the taxpayer chooses to wait for the decision or ruling of the CIR. This is because the "waiting period" is primarily intended for the benefit of the taxpayer.[5]

In summary, under the present text of Section 112(C) of the NIRC of 1997, as amended, in relation to Sections 7(a)(2) and 11 of RA No. 1125, as amended, the taxpayer has two (2) options as to when he can interpose an appeal, *viz.*:

(1) File a petition for review with this Court within thirty (30) days upon the lapse of the ninety (90)-day period within which the CIR should act on the claim; or,

(2) Await the decision or ruling of the CIR and file a petition for review with this Court within thirty (30) days upon receipt of such decision or ruling.

Considering these two (2) divergent options, the same are mutually exclusive and resort to one bars the application to the other.

In this case, petitioner's administrative claim was timely filed on **March 28, 2019**.[6] From the filing of petitioner's administrative claim, the CIR had ninety (90) days therefrom, or until **June 26, 2019**, within

---

[4] *Commissioner of Internal Revenue vs. Julieta Arete*, G.R. No. 164152, January 21, 2010.
[5] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[6] Exhibit "P-1", BIR Records, p. 157.

which to decide the refund claim. Respondent issued a Denial Letter denying petitioner's claim for refund on **June 6, 2019**.[7] Records reveal, however, that petitioner received the Letter dated June 6, 2019 only on **July 2, 2019**.[8]

If the thirty (30)-day period was counted from the lapse of the ninety (90)-day period, petitioner only had until **July 26, 2019** within which to file its judicial claim. With the receipt, however, of the Denial Letter dated June 6, 2019 on July 2, 2019, petitioner effectively chose to await the decision or ruling on its administrative claim. Thus, it had thirty (30) days from receipt of said Denial Letter, or until **August 1, 2019**, within which to file the judicial claim.

Considering that the present Petition for Review was filed on **August 1, 2019**, I submit that the present Petition for Review was filed within the thirty (30)-day prescriptive period to appeal and the Court has jurisdiction to resolve the present controversy.

All told, I VOTE for the Court to: *(i)* **GRANT** petitioner's **Motion for Reconsideration**; *(ii)* **REVERSE** and **SET ASIDE** the assailed Decision dated February 3, 2023; and, *(iii)* **GIVE DUE COURSE** to Petition for Review and decide the case on the merits.

**ROMAN G. DEL ROSARIO**
Presiding Justice

[7] Exhibit "P-2", Docket Vol. I, pp. 30-31.
[8] Par. 2, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket Vol. I, p. 217.