REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HEDCOR, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9218

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 22 2016 ; 10:40 a.m.

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RESOLUTION

For the Court's resolution is respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** filed on August 22, 2016, with petitioner's **Comment/Opposition (Re: Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated August 22, 2016)** filed on October 4, 2016.

In his motion, respondent maintains that the Court has no jurisdiction over the subject matter of the case. Respondent contends that petitioner's claim for refund was filed beyond the two (2)-year prescriptive period and that the Petition for Review was also filed beyond the thirty (30)-day period for filing judicial claim.

On the other hand, petitioner claims, among others that the 120-day period under Section 112 of the National Internal Revenue Code of 1997 as amended and the requirement to appeal an "unacted claim" within 30 days from the lapse of the 120 days do not apply in this case since the BIR acted upon its claim although beyond the 120-day period. Petitioner, therefore, argues that the 30-day period to file judicial claim should be reckoned from the receipt of BIR's letter on November 10, 2015, denying its claim for refund or issuance of TCC. Hence, counting 30 days from November 10, 2015, petitioner had until December 10, 2015 to file its judicial claim.

The Court finds merit in respondent's motion.

It bears emphasis that "jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits."[1]

Moreover, it has long been established that "the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. Hence, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim."[2]

Relevantly, Section 112(A) and (C) of the NIRC of 1997, as amended governs the timeliness of the filing of administrative and judicial claims for refund, as follows:

> "SEC. 112. Refunds or Tax Credits of Input Tax. –
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> (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

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[1] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.
[2] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

such input tax has not been applied against output tax: xxx

xxx xxx xxx

(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**. (*Emphasis supplied*)

xxx xxx xxx"

In the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[3], the Supreme Court laid down the summary of rules on prescriptive periods for claiming refund or credit of input VAT, as follows:

"SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. *Two-Year Prescriptive Period*

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable

[3] G.R. No. 191498, January 15, 2014.

quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. (*San Roque*)

B. *120+30 Day Period*

1. The taxpayer can file an appeal in one of two ways: (1) **file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period**, or (2) **file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period**.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. **Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force**. (*San Roque*)" (*Emphasis supplied*)

The foregoing provisions show that prior to seeking judicial recourse before the Court, a VAT-registered taxpayer may apply for the issuance of a TCC or refund of creditable input tax attributable to zero-rated or effectively zero-rated sales, within 2 years after the close of taxable quarter when the sales or purchases were made. In the case of *Commissioner of Internal Revenue vs. Burmeister and*

Wain Scandinavian Contractor Mindanao, Inc.[4], the Supreme Court discussed the 2-year period requirement in filing an administrative claim for refund or issuance of TCC, as follows:

> "xxx Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer '**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 the creditable input tax due or paid to such sales.' **In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit 'within two (2) years,' which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription." (*Emphasis supplied*)

Furthermore, the second paragraph of Section 112(C) of the NIRC of 1997, as amended, shows that the respondent is given a 120-day period from submission of complete documents in support of the administrative claim within which to act on claims for refund/applications for issuance of TCC. Upon denial of the claim or application, or upon expiration of the 120-day period, the taxpayer only has 30 days within which to appeal said adverse decision or unacted claim before the Court. In the case of *Team Energy Corporation (formerly Mirant Pagbilao Corporation)* vs. *Commissioner of Internal Revenue*[5], the Supreme Court elaborates on this second paragraph of Section 112(C) [previously Section 112 (D)], as follows:

> "xxx The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) **when a decision is issued by the CIR before the lapse of the 120-day period**; and (2) **when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA**. As we see it then, the 120-day period is crucial in filing an appeal with the CTA." (*Emphasis supplied*)

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[4] G.R. No. 190021, October 22, 2014.
[5] G.R. No. 197760, January 13, 2014.

From the foregoing, petitioner can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the respondent denies the claim **within the 120-day period**, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the respondent does not act within the 120-day period. Corollary thereto, the "decision" contemplated by Section 112 is a decision issued by the respondent before the lapse of the 120-day period within which the latter may act on petitioner's claim. The inaction of the respondent on petitioner's claim during the 120-day period is, by express provision of law, "deemed a denial" of the latter's claim. Petitioner had therefore 30 days from the expiration of the 120-day period to file its judicial claim with the Court.

In the case of *Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc.,*[6] the Supreme Court ruled that:

> "In *San Roque*, one of the respondents similarly filed its petition for review with the CTA well after the 120+30-day period. In denying the taxpayer's claim for refund, this Court explained that:
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> xxx xxx xxx
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> xxx. The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences. xxx"

In this case, the relevant dates as regards petitioner's filing of its claim for refund or issuance of TCC are provided below:

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[6] G.R. No. 184145, December 11, 2013.

Taxable Year	**Last day of filing administrative claim (within 2 years after the close of the taxable quarter)**	**Filing date of administrative claim/ Submission of complete documents**	**Last day of the 120-day period from the filing of filing administrative claim (reckoned from the submission of complete documents on May 3, 2011)**	**Last day of the 30-day period for filing judicial claim**	**Filing date of the Petition for Review**
2006	September 30, 2008 (the close of the third quarter of taxable year 2006 was on September 30, 2006)	August 20, 2008[7]/November 12, 2008 (as per Annex P-22 of the Petition for Review[8]) or May 3, 2011 (as per petitioner's Pre-Trial Brief[9])	August 31, 2011	September 30, 2011	December 10, 2015

Records show that petitioner allegedly filed its administrative claim for refund or issuance of TCC on August 20, 2008 and submitted its last additional documentary evidence on May 3, 2011. Counting 120 days from May 3, 2011, the BIR then had until August 31, 2011, within which to decide the claim. Petitioner had 30 days from the lapse of 120 days on August 31, 2011 or until September 30, 2011 to file its judicial claim.

Applying the foregoing law and jurisprudence, it is clear that petitioner had indeed complied with the required 2-year period within which to file a refund/tax credit claim with the BIR by filing its administrative claim on August 20, 2008 (within the period after the close of the third quarter of taxable year 2006 when the relevant sales or purchases were made). Petitioner's judicial claim filed on December 10, 2015 was, however, filed beyond the 30-day prescriptive period.

Notably, Section 112(C) of the NIRC of 1997, as amended, specifically states that in case of failure on the part of the respondent to act on the application within the 120-day period prescribed by law, respondent only has thirty (30) days after the expiration of the 120-day period to appeal the unacted claim with this Court. Since

[7] Petition for Review, docket, p. 10.
[8] Docket, p. 93.
[9] Docket, p. 210.

respondent's judicial claim for the third quarter of taxable year 2006 was filed before the Court only on December 10, 2015, which was way beyond the mandatory 120+30 days to seek judicial recourse, such non-compliance with the said mandatory period of 30 days is fatal to its refund claim on the ground of prescription.

Hence, the Court has no other recourse but to deny petitioner's judicial claim for non-compliance with the mandatory provisions of Section 112 of the NIRC of 1997, as amended.

WHEREFORE, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, **Petition for Review** filed on December 10, 2015 is **DISMISSED** for lack of jurisdiction.

The presentation of petitioner's witness Richard S. Querido set on February 7, 2017 at 9:00 a.m. is **CANCELLED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice