REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR SIBULAN, INC., *Petitioner,*	CTA EB No. 1689 (CTA CASE No. 9009)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 17 2019 3:46 p.m.

x--x

RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution on July 1, 2019 of this Court En Banc is petitioner Hedcor Sibulan Inc.,'s Motion for Reconsideration of the Decision[1] promulgated on March 13, 2019, the dispositive portion of which reads as follows:

Decision dated March 13, 2019:

"**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated 21 February 2017 and the Resolution dated 05 July 2017 rendered by the Second Division of this Court are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED."

---

[1] En Banc Docket, pp. 167-185.

In the instant Motion, petitioner insists that the Court erred in ruling that it has no jurisdiction over the present petition.

We DENY the Motion for Reconsideration.

A perusal of the Motion for Reconsideration shows that the grounds raised therein are mere reiterations of petitioner's arguments, which have already been comprehensively discussed and passed upon by this Court in the assailed Decision. Nonetheless, this Court shall emphasize the applicability of *San Roque*[2] and *Mindanao II Geothermal Partnership*[3] cases cited in the assailed Decision which ruled that the 120+30-day period is mandatory and jurisdictional.

We reiterate, pertinent to the issue in the case at bar is Section 112(C) of the NIRC of 1997, as amended, 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 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)

---

[2] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[3] G.R. Nos. 193301 and 194637, March 11,2013.

L

Under this premise, it can be presumed that Section 112 (C) of the 1997 NIRC, as amended, has three (3) validly legal scenarios:

SCENARIOS	**APPEAL to the CTA**: (a) Within 30 days from receipt of the CIR's decision of denial; **OR** (b) After the expiration of the 120-day period.
1. CIR issues decision before the lapse of 120 days from filing of administrative claim.	1. Taxpayer files judicial claim within 30 days from receipt of the decision without need to wait anymore for the 120th day.
2. CIR issues decision on the 120th day from filing of administrative claim.	2. Taxpayer files judicial claim within 30 days from the 120th day the decision was issued.
3. CIR does not issue decision within 120 days from filing of administrative claim.	3. Taxpayer files judicial claim within 30 days after the 120th day.

However, it seems that petitioner insists on a 4th scenario, wherein the CIR issues a decision after the 120th day from filing of administrative claim. In this case, the taxpayer opts to wait for the final decision of the CIR even after the lapse of the 120th day and only then will the taxpayer file, within 30 days from receipt of such decision, a judicial claim. This contention is misplaced.

Based on the plain language of Section 112 (C) of the 1997 NIRC, as amended, only three (3) possible results may be expected from the CIR on the filing of a claim for refund or request for the issuance of tax credit certificate, namely:

(1) the claim or request will be granted;

(2) the claim or request will be denied; or

(3) the 120-day period had lapsed without any action on the part of respondent.

As to the third result, Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282, and implemented by Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides, to wit:

L

> "Sec. 7. Jurisdiction. -The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 2. **<u>Inaction by the Commissioner of Internal Revenue in cases</u>** involving disputed assessments, **<u>refunds of internal revenue taxes</u>**, 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, **<u>where the National Internal Revenue Code provides a specific period of action</u>**, in which case **<u>the inaction shall be deemed a denial</u>**;" (Emphasis supplied)

It may be recalled, that from the time of its filing of the administrative claim for refund on December 12, 2012 with the BIR, respondent had to act on said claim until April 11, 2013 but no action was made, not until February 12, 2015 when petitioner received a letter from the BIR denying its claim for refund. Thus, petitioner had only 30 days from April 11, 2013 to elevate its appeal to this Court or until May 14, 2013.[4]

However, petitioner only filed its petition for review on March 13, 2015, which was beyond the prescribed period. hence, rendering such petition beyond the jurisdiction of this Court for being filed out of time.

Let it be stressed that the law is absolute, and that in all such instances, the appeal to this Court should be made within 30 days and this rule is affirmed by the Supreme Court in the *San Roque case and Mindanao cases*.

Petitioner argues that the "deemed denial" doctrine applies only to cases where there are "no actions" from or

---

[4] 30th day, being a Saturday, and May 13, 2013, being a national holiday, the deadline for filing the petition was on May 14, 2013, pursuant to Section 1, Rule 22 of the Rules of Court which provides:

Section 1. How to compute time. In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included**<u>*. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.*</u>**

L

there is "inaction" by the BIR. Accordingly, it is asserted that since the Bureau of Internal Revenue took positive actions on its claim, it was therefore justified in relying on such "actions" and wait for respondent CIR's actual decision. This conception has no leg to stand on.

In the case at bar, considering that there is no actual denial of the claim, it should be treated as inaction.

Inaction by the CIR "in cases involving the refund of creditable input tax, arises only after the lapse of 120 days. Thus, prior thereto and without a decision of the CIR, the CTA, as a court of special jurisdiction, has no jurisdiction to entertain claims for the refund or credit of creditable input tax. "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 of 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. Without a decision or inaction x x x deemed a denial of the Commissioner, the CTA has no jurisdiction over a petition for review." Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, both periods are hereby rendered jurisdictional. Failure to observe 120 days prior to the filing of a judicial claim is not a mere non-exhaustion of administrative remedies, but is likewise considered jurisdictional. **The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material**.[5]

Thus, contrary to petitioner's protestation, there is no option on its part to await the decision of respondent after the lapse of the 120-day period from which date the taxpayer can appeal to the Court within 30 days.

Further, to subscribe to petitioner's theory that respondent can issue a decision on the administrative claim after or beyond the 120-day period is to give respondent unlimited or indefinite period to decide the administrative

---

[5] Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue, G.R. No. 184266, November 11, 2013.

h

claim lodged before him. That is certainly not the intention of the law.

Lastly, petitioner should be aware that the *San Roque case and Mindanao case* are decisions of the Supreme Court and this Court is mandated to take cognizance of such as ruled in the case of *The Heirs of Felicidad Canque vs. Court of Appeals et al,.*[6] to wit:

> "Clearly, the Court of Appeals committed a reversible error because it palpably failed to consider in its August 25, 1994 Decision the aforementioned ruling of the Supreme Court promulgated twenty months earlier on January 27, 1993. Unfortunately, this is not the first time for this Court to come upon such a slip. *Peltan Development vs. Court of Appeals* ruled that **every court must take cognizance of decisions this Court has rendered because they are proper subjects of mandatory judicial notic**e xxx [and] more importantly form part of the legal system. We stress that **members of the bench have a responsibility to know and to apply the latest holdings of the Supreme Court**. The nature of their calling requires no less." (Emphasis supplied)

Moreover, it is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the *doctrine of stare decisis* as amply explained in the case of *Amelia D. De Mesa et al. vs. Pepsi Cola Products, Inc. et al.,*[7] to wit:

> The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:
>
> > ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. It requires our courts to follow a rule already

[6] The Heirs of Felicidad Canque vs. Court of Appeals et al., G.R. No. 119184, July 21, 1997.
[7] Amelia D. De Mesa et al. vs. Pepsi Cola Products, Inc. et al., G.R. Nos. 153063-70, August 19, 2005.

h

> established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. (emphasis supplied)

All told, the Court finds no compelling reason to modify nor reverse the findings of the assailed Decision dated March 13, 2019.

WHEREFORE, premises considered, petitioner Hedcor's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice