REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LAPANDAY FOODS CORPORATION,	**CTA *EB* NO. 2176**
Petitioner,	*(CTA Case No. 9949)*
	Present:
-versus-	**DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	FEB 16 2021 4:12 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW (Re: Resolution dated 13 August 2019 and Resolution dated 24 October 2019) ("Petition")** filed last 19 November 2019[1] with respondents' **COMMENT/OPPOSITION Re: Petitioner's Petition for Review ("Opposition")** filed on 28 January 2020.[2]

[1] Records, pp. 1-91.
[2] *Id.*, pp. 100-107.

The Parties

Petitioner **LAPANDAY FOODS CORPORATION. ("Lapanday")** is a duly registered domestic corporation with principal address at Maryknoll Road, Barangay Pampanga, Lanang, Davao City.

Respondent **COMMISSIONER OF INTERNAL REVENUE ("CIR")** is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously paid taxes, as provided by law. He may be served summons, pleadings and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

Petitioner alleges that it filed before respondent administrative claims for issuance of tax credit certificates ("TCC") for its excess and unutilized input Value Added Taxes ("VAT") on account of zero-rated sales covering the 2nd and 3rd quarters of taxable year ("TY") 2006 on 28 April 2008.[3]

These were collectively denied by respondent in a Letter, dated 16 April 2018 ("Denial Letter"), which was received by petitioner on 14 September 2018.[4] The grounds stated in the Denial Letter were the following:

1) The input taxes on local purchases of goods and services were not properly supported by corresponding sales invoices and official receipts in conformity with ***Revenue Audit Memorandum Order No. 2-93.***

2) Petitioner failed to show proof that the amount applied for TCC has been deducted from the Quarterly VAT Return.

3) Failure to submit the copy of the BIR Authority to Print to prove that the zero-rated sales invoices issued for the period of the claim were duly registered with the BIR.[5]

Upon receipt of the Denial Letter, petitioner filed a Petition for Review before the Court in Division on 15 October 2018 to appeal the denial of its administrative claims.[6]

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[3] *Id.*, p. 5.
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*; See Petition for Review, Annex "D", Petition, *Id.*, pp. 51-66.

On 31 May 2019, respondent filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court assailing the Court in Division's jurisdiction on the basis that the judicial claim was filed out of time.[7] Petitioner filed a Comment/Opposition in response thereto on 24 June 2019.[8]

Thereafter, the Court in Division issued a Resolution, dated 13 August 2019, dismissing the judicial claim for lack of jurisdiction.[9] Following receipt of said Resolution on 16 August 2019,[10] petitioner filed a Motion for Reconsideration (Of the Resolution dated 13 August 2019) on 30 August 2019.[11]

The Court in Division then issued a Resolution, dated 24 October 2019, denying petitioner's Motion for Reconsideration (Of the Resolution dated 13 August 2019),[12] which was received by petitioner on 4 November 2019.[13]

Thus, the instant Petition was filed on 19 November 2019.

Afterwards, this Court issued a Resolution, dated 20 December 2019, requiring respondent to file a Comment on the Petition within ten (10) days from notice.[14] Thereafter, respondent filed a Motion to Admit Attached Comment on 28 January 2020[15] attaching therein the Opposition.

On 19 February 2020, this Court issued a Resolution granting respondent's Motion to Admit Attached Comment. With the admission of the Opposition, the Petition was likewise submitted for Decision.[16]

Hence, this Decision.

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[7] See Resolution, dated 13 August 2019, Annex "B", Petition, *Id.*, p. 35-45.
[8] *Ibid.*
[9] *Ibid.*
[10] Records, p. 6.
[11] See Motion for Reconsideration (Of the Resolution dated 13 August 2019), Annex "E", Petition, *Id.*, pp. 67-87.
[12] Annex "C", Petition, *Id.*, pp. 46-50.
[13] Records, p. 6.
[14] *Id.*, pp. 92-94.
[15] *Id.*, pp. 95-99.
[16] *Id.*, pp. 105-107.

<u>The Assigned Errors</u>

In the **Petition,** petitioner raised the following issues: [17]

"(A)

THE HONORABLE COURT IN DIVISION ERRED IN DECIDING THAT IT HAS NO JURISDICTION TO RULE ON THE DENIAL LETTER OF THE BIR, AS APPEALED BY THE PETITIONER WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF.

(B)

IN RULING THAT IT HAS NO JURISDICTION OVER THE CASE, THE COURT IN DIVISION ERRONEOUSLY DENIED PETITIONER'S ENTITLEMENT TO ITS CLAIM FOR TCC, WHEN SUCH CLAIM CAN BE FULLY SUPPORTED."

<u>Arguments of the Parties</u>

Petitioners posed the following arguments:[18]

1. The ***pre-TRAIN Law*** version of ***Section 112 (C) of the Tax Code*** allowed the taxpayer the alternative remedies of filing the judicial claim (1) within the 30-day period from the receipt of decision of respondent, or (2) within the 30-day period after the expiration of the 120-day waiting period.

    a. Petitioner availed of the first remedy which is to await for respondent's decision before it validly filed its judicial claim.

    b. The assailed interpretation, under the old version of ***Section 112 (C) of the Tax Code,*** of the mandatory and jurisdictional nature of the 120-day waiting period and the 30-day filing period will result in the **Denial Letter** being void itself, and ***Revenue***

[17] *Id.*, p. 6.
[18] *Id.*, pp. 7-26.

Regulations No. 01-2017 ("RR 1-17") on continuing the processing of claims prior to the issuance of ***Revenue Memorandum Circular No. 54-2014 ("RMC 54-14")*** being without effect.

c. The history of the 120-day period shows that it was developed to support the interest of the taxpayer, by allowing him a remedy even before respondent's decision is issued, and to force him to act in a timely manner.

d. This Court's jurisdiction, as established by law, clearly makes a distinction between the two (2) causes of action: (a) cases on respondent's decision, and (b) the inaction of respondent beyond a period specified in the ***Tax Code.***

e. Even the current ***TRAIN Law*** reinforces the intention that the 30-day period is for the benefit of the taxpayer, and now is clearly reckoned from receipt of respondent's decision.

f. Following legislative intent, as manifested in the ***TRAIN Law,*** it is respondent, and not the taxpayer, who is accountable for the mandatory nature of the period to process the input tax refund/TCC. In fact, failure to comply with the period to process such VAT refund claims is a criminal offense of the responsible officer/agent.

2. Petitioner is entitled to its claim for TCC amounting to Php24,267,869.07 pertaining to unutilized input taxes for TY 2006 attributable to its zero-rated export sales.

In the **Opposition,** respondent alleged that this Court was correct in ruling that it has no jurisdiction over the case.[19]

The Ruling of the Court En Banc

This Court resolves to ***DENY*** *the* ***Petition*** *for lack of merit.*

Section 112 (C) of the NIRC does not provide alternative remedies to the taxpayer. Petitioner belatedly filed its judicial claim.

[19] *Id.*, pp. 100-102.

Petitioner's main contention is that the ***pre-TRAIN Law*** version of ***Section 112 (C) of the Tax Code*** provided for two (2) remedies available to a taxpayer seeking to appeal an unfavorable action on its administrative claim for input VAT refund, namely, file a judicial claim within 30 days from: a) receipt of respondent's adverse decision, or b) upon expiration of the 120-day period given to respondent to act upon said administrative claim for input VAT refund. It is petitioner's position that these remedies are alternative in nature. Thus, petitioner argues that it cannot be deprived of its right to appeal an adverse decision issued beyond the 120-day period given to respondent to decide. This is erroneous.

The ***pre-TRAIN Law*** version of ***Section 112 (C) of the Tax Code*** provides, as follows:

> **"SEC. 112. Refunds or Tax Credits of Input Tax. -**
>
> 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 Subsections (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."

While this provision provides for two (2) points within which the 30-day period to file a judicial claim may start, namely: a) upon expiration of the 120-day period given to respondent to act on a request for input tax refund, and b) upon receipt of respondent's adverse decision, the same are not alternative in nature.

The 30-day period given to a taxpayer to file a judicial claim for input tax refund shall start from whichever of the two starting points comes first. Taxpayers do not have the option to wait for an actual adverse decision by respondent before filing a judicial claim before this Court if the 120-day waiting period has already lapsed. Otherwise, such judicial action would be belatedly filed, thereby causing this Court to lose its jurisdiction to try the same. This rule is known as the mandatory and jurisdictional 120+30-day period enunciated by the Supreme Court in ***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.[20]

The rationale for the mandatory and jurisdictional 120+30-day period is that an inaction by respondent within the 120-day period given him to decide a claim for input tax refund is treated as a denial in itself. Hence, there is no more need for a taxpayer to wait for an actual denial as its request for input VAT refund has been deemed denied, by express provision of law.[21]

In ***Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,***[22] the Supreme Court had a chance to categorically declare that a judicial appeal must be instituted immediately within 30 days from the expiration of the 120-day period given to respondent to decide claims for input tax refund considering that such inaction by respondent is already considered a denial of such claims, *viz:*

> "A final note, the taxpayers are reminded that that when the 120-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 **<u>must file an appeal within 30 days from the lapse of the 120-day waiting period."</u>**
> (Emphasis and underscoring, Ours)

Further, in ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,***[23] the High Court ruled that "**<u>any claim filed in a period</u>** less than or **<u>beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA."</u>**[24]

It is undisputed that petitioner filed its administrative claims for input tax refund for the 2nd and 3rd quarters TY 2006 on 28 April 2008. Applying the 120-day waiting period, respondent had until 26 August 2008 within which to decide said administrative claims for input VAT refund. Considering that respondent did not act upon said administrative claims within the said 120-day waiting period, petitioner should have filed its judicial claims with this Court on or before 25 September 2008, following the 30-day period given to taxpayers within which to file a judicial claim. As petitioner filed the present Petition only on 19 November 2019, the same was undoubtedly belatedly filed.

[20] G.R. No. 187485, G.R. No. 196113 and G.R. No. 197156, 12 February 2013.
[21] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, 12 February 2013.
[22] G.R. No. 168950, 14 January 2015.
[23] G.R. No. 182737, 02 March 2016.
[24] Emphasis and Underscoring, Ours.

Considering this, the Court in Division indeed had no jurisdiction to entertain the Petition as petitioner failed to comply with the mandatory and jurisdictional 120+30-day period.

RR 1-17 did not provide an exception to the mandatory and jurisdictional 120+30-day period.

Petitioner argues that the assailed interpretation of the mandatory and jurisdictional nature of the 120+30-day period will result in the Denial Letter being void itself, and ***RR 1-17*** on continuing the processing of claims prior to the issuance of ***RMC 54-14*** being without effect. This is misplaced.

A perusal of ***Section 2 of RR 1-17*** shows that claims filed prior to ***RMC 54-14*** were merely ordered to be continuously processed administratively but not judicially. It did not whatsoever create an exception to the mandatory and jurisdictional 120+30-day period, which was put into place by law and affirmed by jurisprudence. A mere regulation cannot create an exception not provided by the law it seeks to implement. Implementing rules and regulations may not enlarge, alter or restrict the provisions of the law they seek to implement.[25]

RR 1-17 was only issued to restart the processing of administrative claims for input VAT refund which were deemed denied due to the erroneous application of ***RMC 54-14.***[26] However, this is solely confined in the BIR level and does not extend to the judicial level.

The provisions of the TRAIN Law are inapplicable to the present case.

Petitioner further argues that Congress intended taxpayers to have a right to judicially appeal decisions on its claims for input tax refund even if the same was issued beyond the 120-day period. According to petitioner, this intention was expressed under the ***TRAIN Law*** when Congress amended ***Section 112 (C) of the Tax Code*** by simply reckoning the 30-day period to appeal a denial of a claim for input VAT refund only from receipt of respondent's decision (with the 120-day waiting period removed as tacking point of said 30-day period to appeal). For petitioner, this only shows that a

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[25] Pilipinas Kao, Inc. v. Honorable Court of Appeals and Board of Investments, G.R. No. 105014, 18 December 2001.
[26] Section 2, RR 1-17.

judicial appeal filed after 30-days from: a) the inaction by respondent within the 120-day waiting period or b) after receipt of a denial in writing were two (2) separate and distinct remedies ever since. Again, this argument is erroneous.

The ***TRAIN Law*** is inapplicable to the Petition considering that the former took effect only on 1 January 2018[27] while the latter involved claims for input taxes incurred during TY 2006. Hence, whatever legislature intended during its deliberations and eventual passage of the ***TRAIN Law*** is wholly irrelevant to the Petition. Tax laws are applied prospectively unless otherwise expressly provided for.[28]

Following the above discussions, this Court deems it unnecessary to resolve the remaining issues.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolution, dated 13 August 2019, and Resolution, dated 24 October 2019, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

[27] Section 87, Republic Act No. 10963.
[28] Commissioner of Internal Revenue v. Acosta, G.R. No. 154068, 3 August 2007.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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