REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**CTA EB No. 2462** (CTA Case No. 10105)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
	Promulgated: MAY 24 2023 11:24am

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RESOLUTION

REYES-FAJARDO, J.:

For the Court En Banc's (the "Court") resolution is petitioner's Motion for Reconsideration (of the Decision dated October 6, 2022), filed on October 21, 2022.[1]

On October 6, 2022, the Court promulgated a Decision[2] (the "assailed Decision") affirming Resolution dated June 9, 2020 and the Resolution dated February 8, 2021 of the Court of Tax Appeals ("CTA") Third Division (the "Court in Division") in CTA Case No. 10105, thereby denying petitioner's prayer for the issuance of tax

1 Motion for Reconsideration, Docket – pp. 114 to 119.
2 Decision, Docket – pp. 102 – 113.

credit certificate ("TCC") or cash refund in the amount of Eighteen Million Two Hundred Ninety-One Thousand Eight Hundred Seventy-Six and 41/100 Pesos (₱18,291,876.41), allegedly representing petitioner's input value-added tax ("VAT") claims for the first, second, and third quarters of taxable year ("TY") 2010, for want of jurisdiction. The dispositive portion reads:[3]

> "**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Resolution dated June 9, 2020 and the Resolution dated February 8, 2021 of the Third Division of this Court in CTA Case No. 10105 are **AFFIRMED.**
>
> **SO ORDERED**."

In the Motion for Reconsideration, petitioner argued that the "120-day rule," under the old text of Section 112 of the National Internal Revenue Code ("NIRC") of 1997, as amended, was no longer applicable when it elevated the case to the Court in Division in 2019 following the amendments introduced under Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion ("TRAIN") Law.[4]

Under Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law,[5] the 120-day period was shortened to a period of 90 days from the date of submission of complete documents in support of the refund application for the Commissioner of Internal Revenue ("CIR") to act on a taxpayer's application for refund, to wit:

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

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3 Decision, Docket - p. 110.
4 Took effect on January 1, 2018.
5 Motion for Reconsideration, Docket - p. 115.

> 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.** [6]

Petitioner then theorized that because the TRAIN Law had removed the phrase "*or failure on the part of the Commissioner to act on the application within the period prescribed above*"[7] from the old text of Section 112, it likewise removed the seeming mandatory nature of the 120-day period[8] for the taxpayer to appeal the deemed denied decision before the CTA. Hence, petitioner posited that it still has a right to appeal the decision of the CIR, made through the Denial Letter dated January 17, 2019,[9] with the CTA within thirty (30) days from its receipt thereof. Petitioner stressed that it filed its Petition for Review ("Petition")[10] with the Court in Division within thirty (30) days from receipt of the actual denial by the CIR of its claim for refund, consistent with Section 112(C) of the NIRC of 1997, as amended.

We are not convinced.

The TRAIN Law took effect only on January 1, 2018, which was long after the lapse of the 120+30-day mandatory and jurisdictional period in this case as fully discussed by the Court in the assailed Decision. The Petition filed in 2019 involved input VAT claims for the first, second, and third quarters of TY 2010. Hence, whatever legislature intended during its deliberations and eventual passage of the TRAIN Law on January 1, 2018 is wholly irrelevant to the Petition.

It is doctrinal that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary

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6 Emphasis of petitioner adapted.
7 Motion for Reconsideration, Docket – p. 116.
8 Now 90-day period under the TRAIN Law.
9 Petition for Review, Docket – p. 19.
10 Dated and filed on July 4, 2019.

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implication.[11] Accordingly, there being no clear legislative intent to retroactively apply the TRAIN Law, the same should only be applied prospectively. As such, petitioner's reliance on the aforesaid TRAIN Law amendment is clearly misplaced.

Moreover, Revenue Regulations No. 13-2018[12] implementing the VAT provisions of the TRAIN Law, clearly provides that all claims for refund/TCC filed prior to January 1, 2018 will be governed by the 120-day processing period.[13] Since petitioner filed its claims for refund before 2018, the 120-day period under the old text of Section 112 of the NIRC, as amended, shall still be applied.

It must also be emphasized that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[14] Tax refund cannot be allowed unless granted in the most explicit and categorical language and is strictly construed against the claimant who must discharge such burden convincingly.[15] Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper.[16]

WHEREFORE, in light of the foregoing considerations, the Court finds no compelling reason to reconsider or modify the assailed Decision. Petitioner's Motion for Reconsideration (of the Decision dated October 6, 2022) is **DENIED** for lack of merit.

SO ORDERED.

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11 *BPI Leasing Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 127624, November 18, 2003; *Commissioner of Internal Revenue v. Acosta*, G.R. No. 154068, August 3, 2007.

12 Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended, March 15, 2018.

13 *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Co., Inc.*, G.R. No. 212727, February 1, 2023.

14 *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

15 *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corp.*, G.R. No. 147295, February 16, 2007.

16 *Silicon Philippines, Inc., (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. Nos. 184360 & 184361, February 19, 2014.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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

ON OFFICIAL BUSINESS
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice