REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LAPANDAY FOODS CORPORATION, Petitioner,	**CTA CASE NO. 9949**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA, BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 13 2019 9:00 a.m.

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RESOLUTION

For this Court's resolution are the following:

1. respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**, filed on May 31, 2019, with petitioner's **Comment/Opposition**, filed on June 24, 2019;

2. petitioner's **Omnibus Motion (a) For Leave to File and Admit Attached Supplemental Judicial Affidavit and (b) to Recall Witness**, filed on June 10, 2019, without respondent's comment despite notice, as per Records Verification Report dated July 9, 2019, and

3. petitioner's **Motion to Admit the Attached Judicial Affidavit of Mr. Napoleon S. Siggaoat (On the Report Submitted 10 June 2019)**, filed on July 4, 2019.

The Court shall first resolve respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court.

In the instant motion for early resolution, respondent claims that the issue on jurisdiction can be easily resolved on the face of the petition alone. According to petitioner, the filing of the subject petition on October 15, 2018 was already beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred twenty (120) day period, following Section 112 (D) of the 1997 National Internal Revenue Code (NIRC), as amended.

Respondent further claims that, assuming that the subject administrative claims for the second and third quarters of the taxable year 2006 were timely filed on April 28, 2008, respondent had 120 days, or until August 26, 2008, within which to act on the same. But since it was not acted upon by respondent within the said 120-day period, petitioner had 30 days from the expiration of the 120-day period, or until September 25, 2008, to file its petition before the Court of Tax Appeals (CTA) under Revenue Memorandum Circular No. 54-2014. Thus, it is respondent's position that the October 15, 2018 petition was already filed beyond the mandatory and jurisdictional 30-day period from the lapse of the 120-day period.

Lastly, in insisting that the 120+30-day period is mandatory and jurisdictional, respondent cites the ruling in *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[1] and *Northwind Power Development Corporation vs. Commissioner of Internal Revenue*[2] as his additional legal bases.

As such, respondent moves for the early resolution on the issue of jurisdiction as this could save the precious time of the Court and avoid unnecessary expenditure of resources on the part of the government.

Petitioner, on the other hand, argues that Section 112 (C) of the 1997 NIRC, as amended, has four (4) validly legal scenarios:

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[1] G.R. No. 204788 (Should have been G.R. No. 205279), April 26, 2017.
[2] CTA Case No. 9202, December 18, 2018.

Scenario	**Appeal to the CTA within 30 days from: (a) the receipt of the decision denying the claim, 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.	Taxpayer files judicial claim within 30 days from receipt of the decision without need to wait anymore for the lapse of the 120-day period.
2. CIR issues decision on the 120th day from filing of administrative claim.	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.	Taxpayer files judicial claim within 30 days after the 120th day.
4. CIR issues decision after the 120th from filing of administrative claim.	Taxpayer files judicial claim within 30 days from receipt of the decision.

For petitioner, the present case involves the 4th scenario as there was a decision rendered in its administrative claim, which it allegedly received on September 14, 2018. The thirtieth (30th) day following September 14, 2018 fell on October 14, 2018, a Sunday. As such, petitioner had until October 15, 2018, the next working day, to file its judicial claim before the CTA.

Petitioner also submits that the 120+30-day period under Section 112 (C) of the 1997 NIRC, as amended, is only a claim processing rule which does not restrict the subject matters within the jurisdiction of the CTA; and that the legislative history of the 120+30-day would show that such rule is not mandatory or jurisdictional, but was meant only to allow the CIR more time to decide on the taxpayer's claim for refund/tax credit. As such, petitioner has the right to await the decision of the CIR and to appeal the denial thereof.

Lastly, petitioner argues that respondent is estopped from claiming prescription as the Bureau of Internal Revenue (BIR) still acted on petitioner's claims despite the lapse of the 120-day period, following the ruling in *Procter and Gamble Asia PTE Ltd. vs. Commissioner of Internal Revenue*[3] *(Procter and Gamble Asia case).*

After a careful consideration of the above arguments, the Court finds that it has no jurisdiction to entertain the present petition.

Section 112 (A) and (C) of the National Internal Revenue Code of 1997, as amended, provides for the period when to file an administrative claim for refund with the BIR and a judicial claim for refund with the CTA, to wit:

> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> (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 such input tax has not been applied against output tax: x x x.
>
> 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**. (*Emphases supplied*)

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[3] G.R. No. 204277, May 30, 2016.

The jurisprudence interpreting Section 112 was summarized by the Supreme Court in *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[4] *(Mindanao II Geothermal Partnership case)* in this wise:

> "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 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)*
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> B. 120+30-Day Period
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> 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] G.R. No. 191498, January 15, 2014.

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)"* (Emphases supplied)

Further, in the recent case of *San Roque Power Corp. vs. Commissioner of Internal Revenue,*[5] the Supreme Court categorically stated that the 120-day period is mandatory and jurisdictional from date of the effectivity of the 1997 NIRC on January 1, 1998. It further ruled that a taxpayer can file a judicial claim (1) only within 30 days after the Commissioner of Internal Revenue (CIR) partially or fully denies the claim within the 120-day period, or (2) only within 30 days from the expiration of the 120-day period, if the CIR does not act within such period.

In view of the foregoing jurisprudence, petitioner's contention that the 120+30-day rule in Section 112 (C) is only a mere claim processing rule that does not restrict the subject-matter jurisdiction of the Court, and that non-compliance with the 30-day period does not deprive the CTA of its jurisdiction to adjudicate on the assailed Letter of Denial dated April 16, 2018, have no leg to stand on.

Significantly, it bears noting that in *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*[6], the Supreme Court clarified that the inaction of the CIR within the 120-day period provided under Section 112 (C) should be deemed as denial of its administrative claim. Thus, the taxpayer need not further wait for the CIR to come up with a decision thereafter.

Furthermore, in the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[7], the Supreme Court noted that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit — or actually submitted — additional documents after the filing of the administrative claim, it is

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[5] G.R. No. 203249, July 23, 2018.
[6] G.R. No.168950, January 14, 2015.
[7] G.R. No. 182737, March 2, 2016.

presumed that the complete documents accompanied the claim when it was filed.

In this case, there is no allegation as to when petitioner submitted additional documents in support of its administrative claim for refund. Thus, the supporting documents are presumed submitted upon the filing of petitioner's administrative claims on April 28, 2008. Counting 120 days from the said date, respondent had until August 26, 2008 within which to act on petitioner's claim for refund. Thus, petitioner had 30 days, or until September 25, 2008 to elevate the "deemed denial decision" of respondent with the CTA, by way of filing a Petition for Review. As such, the filing of petitioner's appeal on October 15, 2018 is clearly beyond the mandatory 120+30-day period, thereby resulting in the finality of the "deemed denial decision" of the CIR.

This Court, likewise, does not agree with petitioner's contention that respondent is deemed estopped from claiming prescription considering that the BIR still acted on petitioner's claim despite the lapse of the 120-day period, as this matter was already resolved by the CTA En Banc in *SMCC Philippines, Inc. vs. Commissioner of Internal Revenue*[8], in this wise:

> "x x x **the decision of the BIR denying SMCC's claim for refund on September 20, 2011, which was issued after the 120+30-day period, is inconsequential for purposes of reckoning the 30-day period to appeal to the CTA. Respondent's 'deemed denial decision' became final and unappealable in view of SMCC's failure to make a timely appeal to the CTA within thirty (30) days from the lapse of the 120-day period on September 17, 2010 or until October 17, 2010**.
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> In *Chemrez, Inc. vs. Commissioner of Internal Revenue*, the Court En Banc articulated on the concept of a 'deemed denial decision' after the lapse of the 120-day period without the BIR's action on the claim, which 'deemed denial' if not timely appealed with the CTA becomes final and inappealable, x x x." (Emphasis supplied)

[8] CTA EB Case No. 1360 (CTA Case No. 8356), March 21, 2017.

Lastly, petitioner cannot find solace in the ruling of the Supreme Court in *Procter and Gamble Asia case*,[9] since the taxpayer's judicial claim therein was filed on September 27, 2007, or during the effectivity of BIR Ruling No. DA-489-03, which is a known exception to the doctrine enunciated in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[10] *(Aichi case)*, pursuant to the above stated *Mindanao II Geothermal Partnership case*. Pertinent portions of the Decision in *Procter and Gamble Asia case* are herein quoted for ready reference:

> "In accordance with the equitable estoppel principle under Section 246 of the NIRC, we ruled in *San Roque-Taganito* that **there are exceptions to the strict rule that compliance with the *Aichi* Doctrine is mandatory and jurisdictional, one of which is BIR Ruling No. DA-489-03**. If the CIR issues a ruling, either a specific one applicable to a particular taxpayer or a general interpretative rule applicable to all taxpayers, and, as a result, misleads the taxpayers affected by the rule, into filing prematurely judicial claims with the CTA, the CIR cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim.
>
> Since then, this Court has consistently adopted the ruling in *San Roque-Taganito* in holding that BIR Ruling No. DA-489-03 is an exception to the Aichi Doctrine. We see no reason to disturb what is now a settled ruling.
>
> Therefore, as **a general interpretative rule, all taxpayers may rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003, until its effective reversal by the Aichi Doctrine adopted on October 6, 2010. Thus, judicial claims for tax credit or refund instituted before the CTA should be given due course, despite their failure to comply with the 120- and 30-day periods**." (*Emphases supplied*)

Based therefrom, all judicial claims for tax credit or refund instituted after the Supreme Court's ruling in *Aichi case*, like the instant case, should comply with the 120+30-day period.

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[9] See Footnote No. 6.
[10] G.R. No. 184823, October 6, 2010.

Taking the foregoing into consideration, petitioner's belated filing of its judicial appeal on October 15, 2018 deprived this Court of its jurisdiction to act on the same.

WHEREFORE, premises considered, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, the instant **Petition for Review** is hereby **DISMISSED** for lack of jurisdiction.

In view of the foregoing, the resolution of petitioner's **Omnibus Motion (a) For Leave to File and Admit Attached Supplemental Judicial Affidavit and (b) to Recall Witness**, and **Motion to Admit the Attached Judicial Affidavit of Mr. Napoleon S. Siggaoat (On the Report Submitted 10 June 2019)** are considered **MOOT**.

SO ORDERED.

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

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice