REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FRANKLIN BAKER COMPANY OF THE PHILIPPINES,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11592

Members:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

10:57 AM

x - x

RESOLUTION

Before this Court are petitioner's:

1. **Motion for Reconsideration** filed on December 26, 2024; and,

2. **Motion to Admit Verified Declaration** filed on March 12, 2025.

In its *Motion for Reconsideration*, petitioner seeks reconsideration of the Resolution dated December 5, 2024 (assailed Resolution), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant *Petition for Review* filed on August 16, 2024 is **DISMISSED** for lack of jurisdiction.

To recall, the Court held that petitioner's judicial claim was filed out of time, thereby divesting this Court of its jurisdiction over the subject matter. In the assailed Resolution, the Court reckoned the 30-day period to file the judicial claim for refund of excess/unutilized input VAT from the lapse of the 90-day period for respondent to act on petitioner's administrative claim for refund and not from the receipt of respondent's letter dated June 25, 2024 (*Denial Letter*) denying its claim.

Petitioner insists that the jurisprudence relied upon by the Court was promulgated in 2014 when the prevailing version of then Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, was worded to include remedies for inaction by the CIR. According to petitioner, the rule applicable to a claim for refund filed in 2022 is that the only manner by which such claim can be elevated to the Court is to appeal the decision of the CIR denying or partially granting a claim for refund. Allegedly, there is no longer an option to file a case with the CTA based on the inaction of the Bureau of Internal Revenue (BIR). Further, the 90-day period mentioned in Section 112 of the NIRC of 1997, as amended, is only for the purpose of imposing criminal sanction on the BIR official, employee, or agent who failed to timely act on the claim. Petitioner concludes that there is nothing in the provision which states that failure by the BIR to render a decision is basis for a claimant to elevate the case to the Court.

After evaluation of the petitioner's arguments, the Court finds no compelling reason to reverse or modify the assailed Resolution.

Nevertheless, if only to put the issue to rest, the Court shall further expound the rationale behind its ruling.

Section 112(C) of the NIRC of 1997, as amended by Republic Act (R.A.) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, and R.A. No. 11976,[1] or the Ease of Paying Taxes (EOPT) Act, provides:

> Section 112. Refunds or Tax Credits of Input Tax. –
>
> (C) Period within which the Refund of Input Taxes shall be Made. - In proper cases, **the Commissioner shall grant a refund for creditable input taxes <u>within ninety (90) days</u> from the date of submission of invoices and other documents in support of the application filed in accordance** with Subsections (A) and (B) hereof: *Provided,* That for this purpose, the VAT refund claims shall be classified into law, medium , and high risk claims with the risk classification based on amount of VAT refund claim, tax compliance history, frequency of filing VAT refund claims, among others: *Provided, further*, That medium and high risk claims shall be subject to audit or other verification processes in accordance with the Bureau of Internal Revenue's national audit program for the relevant year: *Provided,* finally, 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 within the ninety (90)-day period.
>
> In case of full or partial denial of the claim for tax refund, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, <u>within thirty (30) days</u>** from the receipt of the decision denying the claim or **after the expiration of the**

[1] Effective January 22, 2024.

> **ninety (90)-day period, appeal the decision with the Court of Tax Appeals**: *Provided, however*, That failure on the part of any official, agent, or employee of the Bureau of Internal Revenue to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. (*Emphasis and underscoring added*)

Based on the above-quoted provision, it is clear that the respondent is mandated to act on a taxpayer's application for refund **within 90 days** from the date of submission of documents in support of the said application. In case of full or partial denial, the taxpayer may appeal the decision with this Court within 30 days from receipt of the decision denying the claim. On the other hand, if respondent failed to act on the application within the prescribed period, the taxpayer may appeal the same within 30 days from expiration of the 90-day period.

Further, Section 7(a)(2) and Section 11 of R.A. No. 1125, as amended by R.A. 9282, expressly confer upon this Court jurisdiction over instances of inaction by the respondent in cases involving claims for refund of internal revenue taxes, *viz.*:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, 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, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; (*Emphasis added)*
>
> xxx xxx xxx
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**. (*Emphasis added)*

The above provisions clearly provide for the remedy in case no decision was issued within the 90-day period provided under Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law and EOPT Act.

Thus, upon the lapse of the 90-day period without action by the respondent, the taxpayer need not await an express denial. The inaction is deemed a denial, subject to judicial appeal to this Court within 30 days, consistent with prevailing law and jurisprudence.[2]

As to petitioner's argument that, as far as respondent is concerned, the administrative claim for refund was filed on April 22, 2024, thereby, the 90-day period expired on July 21, 2024 and, thus, petitioner's judicial claim filed on August 16, 2024 was filed within 30 days from respondent's inaction, the Court is not convinced.

Revenue Memorandum Circular (RMC) No. 71-2023 dated June 23, 2023 provides when the 90-day period for VAT refund claims under Section of the 1997 NIRC, as amended, begins to run as follows:

> I. General Policies
>
> 1. Pursuant to Section 2 of Revenue Regulations (RR) No. 26-2018, which amended Sections 4.106-5, 4.108-5, 4.112-1 and 13 of RR No. 13-2018, the time frame to process and grant claims for VAT refund is 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 Sections 112 (A) and (B) of the Tax Code of 1997, as amended, up to the release of the payment for the approved amount of the refund.

The same RMC categorically requires the submission of complete supporting documents upon the filing of the application for refund, to wit:

> I. GENERAL POLICIES
>
> xxx
>
> 4. The taxpayer-claimant shall ensure the completeness and authenticity of the documentary requirements upon filing of the application for VAT refund. Hence, **only applications with complete documentary requirements, as enumerated in the Checklist of Requirements (Annexes A.1, A.2 or A.3, whichever is applicable), shall be received and processed by the authorized processing office.**
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> xxx
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> II. DOCUMENTS TO BE SUBMITTED BY THE TAXPAYER-CLAIMANT UPON FILING OF THE APPLICATION FOR VAT CREDIT/REFUND

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[2] *Commissioner of Internal Revenue vs. Dohle Shipmanagement Philippines Corporation*, G.R. No. 246379, August 19, 2024; *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

> 1. The **application/s must be accompanied with complete supporting documents enumerated in the Checklist of Requirements** under Annexes A.1, A.2 or A.3, whichever is applicable. As could be gleaned from the said list of mandatory requirements, most documents or data that can be culled from the records of the BIR are no longer required to be submitted in compliance with The Ease of Doing Business Law (R.A. No. 11032). However, the taxpayer-claimants are not precluded from submitting copies of the same to aid the processing offices in the timely processing of the claim.

Based on the foregoing, the 90-day period commences from the date of submission of the official receipts or invoices and other documents in support of the application. Furthermore, only applications with complete supporting documents shall be processed by the BIR.

Here, petitioner alleged in its *Petition* that the claim was filed on April 1, 2024.[3] Moreover, in the attached Judicial Affidavits of petitioner's witnesses, it was consistently averred that the administrative claim was filed on April 1, 2024. The pertinent portions are quoted below:

Judicial Affidavit of Ms. Jannette N. Pel[4]

> Q22: When was this claim for refund filed with the BIR?
>
> A22: **It was filed last April 1, 2024.**
>
> Q23: How do you know that it was filed on the said date?
>
> A23: As relayed to me by one of the authorized representatives of Franklin Baker Company of the Philippines, Ms. Reggie Quilingan, they submitted the application and the supporting documents to the office of the VAT Claim Audit Division of the BIR national office last April 1, 2024. xxx

Judicial Affidavit of Mr. Reggie Quilingan[5]

> Q8: As an authorized representative of Franklin Baker Company of the Philippines in relation its claim for refund of unutilized input VAT for the 1st, 2nd, 3rd and 4th quarters of taxable year 2022, what did you do pursuant to such appointment?
>
> A8: Aside from assisting in collating documents in support of Franklin Baker Company of the Philippines' claim for refund for unutilized input VAT for the four quarters of taxable year 2022, **I also went to the VAT Credit Audit Division of the BIR National Office to file the subject administrative claim for refund last April 1, 2024.**
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> xxx

[3] Paragraphs 19 to 22, *Petition for Review*, Docket, pp. 13-14.
[4] Annex "F" of the *Petition for Review,* Docket, p. 37.
[5] Annex "G" of the *Petition for Review,* Docket, pp. 44-45.

> Q11: Let me direct your attention to the portion of the form where there appears a stamp Received with the date April 22, 2024, why do you say that it was filed April 1, 2024?
>
> A11: As I said earlier, I personally went to the VAT Credit Audit Division at the BIR National Office last April 1, 2024. We also wrote certain information on a page of the logbook of the said office with the heading "VAT Refund Claim Filers, April 1, 2024 – GS Sherwin R. Larubes"[6]

Thus, the filing of the administrative claim with the supporting documents indeed appears to be April 1, 2024.

Petitioner cannot claim on one hand that it timely filed its administrative claim on April 1, 2024, within the 2-year prescriptive period,[7] and claim on the other that the respondent considered its administrative claim as filed on April 22, 2024 in its bid to reverse the Court's earlier ruling.

All told, the Court finds no reversible error in the assailed Resolution.

ACCORDINGLY, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

Further, petitioner's **Motion to Admit Verified Declaration** is **NOTED without ACTION**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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6 Annex "B", Docket p. 26
7 Paragraphs 19 to 22, *Petition for Review*, Docket, pp. 13-14.