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, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 13 2019 3:38 p.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by petitioner Hedcor Sibulan, Inc., under *Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals*[1] *and Rule 43 of the Rules of Court, as amended*, seeking the reversal of the Decision dated 21 February 2017[2] and the Resolution dated 05 July 2017[3] rendered by the Second Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated February 21, 2017:

---

[1] *SEC. 4. Where to appeal; mode of appeal.*-x x x

xxx xxx xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justice Caesar A. Casanova and Associate Justice Catherine T. Manahan, En Banc Docket, pp.54-84.
[3] *Id.*, pp.86-91.

"**WHEREFORE**, the instant Petition for Review filed by Hedcor Sibulan, Inc., is **DISMISSED** for lack of jurisdiction.

SO ORDERED."

Resolution dated July 5, 2017:

"Accordingly, the motion is DENIED for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record, read as follows:

Petitioner Hedcor Sibulan, Inc. is a domestic company duly organized and existing in accordance with the laws of the Republic of the Philippines, with address at Darong, Sta. Cruz, Davao del Sur, Philippines. As stated in its Articles of Incorporation, petitioner is primarily engaged in the business of power generation through hydropower.

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue ("BIR"), vested by law with authority to collect all taxes, grant refunds, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the National Internal Revenue Code (NIRC) of 1997, as amended.

In 2008, a Certificate of Endorsement was issued by the Department of Energy (DOE) stating that the 42-Megawatt (MW) Sibulan Hydro Electric Power Plant, owned and operated by petitioner, and located in Barangay Sibulan, Municipality of Santa Cruz, Province of Davao del Sur is consistent with the Power Development Plan (PDP) of the government, pursuant to the Implementing Rules and Regulations of RA 9136. Hence, according to

[4] Supra note 2.

G

the certificate, petitioner shall be entitled to all rights and privileges consistent with the laws, rules and regulations pertinent thereto, subject to compliance with the requirements of the Energy Regulatory Commission (ERC), Philippine Grid Code, Wholesale Electricity Spot Market and the DOE's PDP preparation.

Moreover, petitioner is duly authorized by the ERC to operate facilities used in the generation of electricity as evidenced by Certificate of Compliance No. 15-05-M-56M issued on May 18, 2015 covering Plant A and Certificate of Compliance No. 15-05-M-54M issued on May 18, 2015 covering Plant B. Petitioner was duly issued Certificates of Compliance for said plants by the ERC. Furthermore, petitioner is registered with the BIR as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997, as amended, with Taxpayer Identification No. 005-633-984-VAT.

On the following dates, petitioner filed with the BIR its Original and Amended Quarterly VAT Returns for the period covering the 1st quarter to the 4th quarter of calendar year 2011:

QUARTER	BIR Form	Period Covered	Date Filed
4th	2550Q (Original)	October to December 2011	January 10, 2012
4th	2550Q (Amended)	October to December 2011	February 2, 2012
3rd	2550Q (Original)	July to September 2011	October 25, 2011
3rd	2550Q (Amended)	July to September 2011	April 3, 2012
2nd	2550Q (Original)	April to June 2011	July 19, 2011
2nd	2550Q (Amended)	April to June 2011	February 20, 2012
1st	2550Q (Original)	January to March 2011	April 20, 2011
1st	2550Q (Amended)	January to March 2011	February 20, 2012

On December 12, 2012, petitioner filed with BIR Revenue District Office (RDO) No. 115, an administrative claim for the refund of its alleged excess and unutilized input VAT for CY 2011 in the amount of P11,616,706.74.

On the same date, petitioner also transmitted 'complete supporting documents pursuant to Section 112(D) of the 1997 NIRC and RMO No. 53-98 in relation to [the] VAT refund claim for the first (1st) to fourth (4th) quarter of 2011'.

In response to the administrative claim, on February 11, 2013, OIC Regional Director Glen A. Geraldina of Revenue Region No. 19 issued the following Letters of Authority (LOA), which authorized Group Supervisor Mary Urduja Ong and Revenue Officer Lucilyn Lacdao of RDO No. 115 to examine petitioner's books of accounts and other accounting records for CY 2011:

1. LOA SN eLA201000075407/LOA-115-2013-00000009 for the examination of petitioner's financial records for all internal revenue taxes except VAT; and,

2. LOA SN eLA201000075406/LOA-115-2013 00000008 for the examination of financial records relating to petitioner's VAT.

On March 1, 2013, petitioner received a Checklist of Requirements/Access to Records Request pursuant to the LOAs dated February 11, 2013.

On July 30, 2013, BIR RDO No. 115 sent a Fifteen-Day Notice to petitioner which computed the input VAT credit or refund claim in the amount of P11,157,536.37 based on the investigation made and requested it to appear for an informal conference.

On August 12, 2013, petitioner again received a Fifteen-Day Notice (Amended) which revised the amount of input VAT claim to P11,517,943.06 and reiterated the request for an informal conference. During trial, petitioner's witness explicitly admitted

h

that it "was made to understand that the evaluation of the amount of the VAT claim to which it is entitled has been completed with the issuance of the Amended 15-day Notice and that no additional documents were required to be further submitted."

However, in a letter dated August 27, 2013, petitioner nonetheless responded to the fifteen-day notices by requesting for the reduction of the input tax disallowance of P98,760.68 to P89,195.67 and submitting documents in support of its position.

Thereafter, on December 13, 2013, an undated Closing Agreement was signed by petitioner's Assistant Vice President for Finance Arazeli L. Malapad and respondent's Revenue District Officer Josie Lourdes C. Tang, Group Supervisor Mary Urduja A. Ong and Revenue Officer Lucilyn R. Lacdao. The Closing Agreement concluded the audit of CY 2011 triggered by the filing of petitioner's administrative claim.

Furthermore, both parties agreed that, "after a complete and thorough investigation" the petitioner's total deficiency tax amounted to P445,894.21 and that the determination of the tax liabilities shall be "final and exclusive."

The Closing Agreement is reproduced entirely for ready reference:

"C L O S I N G A G R E E M E N T

This agreement, made in duplicate under and in pursuance to Section 7 of the National Internal Revenue Code as amended under R.A. 8424 or the Tax Reform Act by and between_ and The Commissioner of Internal Revenue.

W I T N E S S E T H

WHEREAS, as it has been finally determined after a complete and thorough investigation, that the 2011 Income & Other Internal Revenue Tax Liabilities of HEDCOR SIBULAN, INC., including increments itemized as follows:

Income Tax Deficiency	P
Withholding Tax Deficiency	424,516.64
Value Added Tax Deficiency	
Other Taxes- Final Tax	21,377.57
TOTAL DEFICIENCY TAX	**P 445,894.21**

Payment of the above amount shall be made; (Check appropriate box):
____ Upon receipt of the corresponding Assessment Notice

L

____ Upon issuance of Payment Order in order to stop the running interest incident to delinquency.

I understand that the report of verification submitted by the Revenue Officer is subject to review and approval by higher authorities which may result in further changes in the amount of my tax liability.

WHEREAS, the above determination is hereby agreed by the said taxpayer after all discrepancies found have been fully explained to his entire satisfaction.

MOREOVER, I agree that any discrepancy later on arising from Letter Notices, Third Party Information and any Cross matching of data are not covered by this investigation and were not disclosed during conduct of audit, hence remain to be my accountability.

NOW, THEREFORE, for and in consideration of the foregoing, the said taxpayer and the Commissioner of Internal Revenue hereby mutually agreed that the determination of the tax liabilities as set forth above shall be final and exclusive, and the taxpayer hereby waives the statute of limitation prescribed in Section 203 and other relevant provisions of the National Internal Revenue Code as amended by R.A. 8424 of the Tax Reform Act and consents to the Assessment and Collection of the tax found due as above computed and waives his/her right to claim pay or refund of the amount which may be paid in accordance with this agreement. PROVIDED, however, that any change or modification of applicable statutes will render this agreement ineffective to the extent that it is dependent upon such statutes.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents.

SIGNED THIS _______ Aurora 3rct, Digos City Davao del Sur, Philippines.

Taxpayer's Name
(signed)

A.L Malapad
HEDCOR SIBULAN, INC
(Taxpayer)

WITNESS TO SIGNATURE OF TAXPAYER:

(signed)
LUCILYN R. LACDAO
Investigating Revenue Agent Officer

(signed)
MARY URDUJA A. ONG
Group Supervisor

Noted by:

(signed)
JOSIE LOURDES C. TANG
Revenue District Officer" (underscoring supplied)

On the same day, December 13, 2013, petitioner filed BIR Forms 0605 and paid P445,894.21 through the EFPS Payment System, detailed as follows:

Income Tax Deficiency	P ------------
Withholding Tax Deficiency	424,516.64
Value-Added Tax Deficiency	------------

Other Taxes- Final Tax	21,377.57
Total Deficiency Tax	**P 445,894.21**

Also, on December 13, 2013, petitioner transmitted copies of the payment forms to RDO No. 115.

Accordingly, in a letter also dated December 13, 2013, Revenue District Officer Tang confirmed petitioner's payment of P445,894.21. It reads:

December 13, 2013

THE PRESIDENT
HEDCOR SIBULAN, INC.
Sta. Cruz, Davao del Sur

Sir/Madam:

Please be informed that the Letter Authority 115-2013-0000009/115-2013-00000008 issued to HEDCOR SIBULAN, INC. with address at Sibulan Sta. Cruz Davao del Sur for verification of all its tax liabilities for taxable year 2011 has already been paid thru electronic filing and payment system (EFPS) on December 13, 2013 in the amount of P445,894.21.

In view thereof, the entire internal revenue docket of 2011 under the above cited letter of authority will be forwarded to the Regional Office for review and approval of the report with recommendation that the same will be considered closed and terminated.

Very truly yours,

(signed)
JOSIE LOURDES C. TANG
Revenue District Officer"
(underscoring and emphasis supplied)

However, in a letter dated March 24, 2014, more than three months after the Closing Agreement and despite the December 13, 2013 letter concluding the audit, petitioner submitted additional sets of documents to RDO No. 115 in support of its claim. The submission was allegedly prompted by request for additional documents through a telephone call by the revenue officer.

Subsequently, in a letter dated April 3, 2014, petitioner again transmitted additional documents such as certified copies of billing statements, statements of accounts, invoices and official receipts. For several months since this last submission of documents, petitioner "failed to

L

receive any communication from the BIR until December 29, 2014".

Through a letter dated December 29, 2014, Commissioner Kim S. Jacinto-Henares notified petitioner that effective January 1, 2015, it will be classified as a large taxpayer pursuant to Revenue Regulations (RR) No. 17-2010 and will be under the jurisdiction of RDO No. 121, the Excise Large Taxpayers Audit Division 1.

On February 12, 2015, petitioner received a letter from Regional Director Glen A. Geraldina, denying its input VAT refund or credit claim allegedly due to its failure to submit supporting documents within the period provided by law.

Accordingly, on March 13, 2015, petitioner lodged its judicial claim by filing the instant Petition for Review before the Court. x x x"

After trial on the merits, the Court in Division directed both parties to submit their respective Memoranda. Petitioner filed its Memorandum on March 2, 2016 while respondent filed its Manifestation adopting his Answer as his memorandum on January 8, 2016.

Thereafter, the case was considered submitted for decision. On February 21, 2017, the Court in Division rendered the assailed Decision which dismissed the Petition for Review for lack of jurisdiction for being filed beyond the statutory period. Aggrieved, respondent filed a Motion for Reconsideration, but the same was denied in a Resolution dated July 5, 2017. Hence, this Petition for Review was filed.

Petitioner insists that the Court in Division acquired jurisdiction over the case as its Petition for Review was timely filed within the 30-day period as required in Section 112 of the NIRC, as amended.

The Petition for Review must fail for being time-barred.

Judicious evaluation of the arguments presented by petitioner warrant an immediate dismissal of the case for the same is patently without merit. The Court in Division aptly

L

concluded that it has no jurisdiction over the case as the judicial claim was belatedly filed by petitioner.

Section 112(C) of the NIRC, as amended, provides judicial remedy relative to taxpayers' claim for refund of input VAT attributable to zero-rated sales, viz:

> "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." (Emphasis supplied)

Likewise, Section 7(a)(1), (2) and 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, reads as follows:

> "SEC. 7. Jurisdiction. -The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or

L

other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees 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 for action, in which case the inaction shall be deemed a denial; xxx" (Emphases supplied)

"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 xxx 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. x x x"

Based on the foregoing provisions, the concerned taxpayer may appeal to this Court a decision or an inaction, which is deemed a denial, of the Commissioner of Internal Revenue, within thirty (30) days from receipt of the decision, ruling or inaction of the latter after the expiration of the period fixed by law for action.

We shall again emphasize the applicability of the *Commissioner of Internal Revenue vs. San Roque Power Corporation*[5] and *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[6] which ruled that the 120+30-day period is mandatory and jurisdictional. The Supreme Court provided a "Summary of Rules on Prescriptive Periods Involving VAT," to wit:

"We summarize the rules on **<u>the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code</u>**, as follows:

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

L

> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. **<u>If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.</u>**
>
> (3) **<u>A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR</u>**.
>
> (4) All taxpayers, however, can rely on BIR Ruling No. DA489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on October 6, 2010, as an exception to the mandatory and jurisdictional 120+30-day periods." (Emphasis supplied)"

Relative thereto, in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*[7], the Supreme Court reminded all taxpayers as follows:

> "The error of the taxpayer lies in the fact that it had mistakenly believed that a judicial claim need not be filed within 30 days from the lapse of the 120-day period. It had believed that the only requirement is that the judicial claim must be filed within the two-year period under Sections 112(A) and (B) of the 1997 Tax Code.
>
> In other words, Rohm Apollo erroneously thought that the 30-day period does not apply to

---

[7] G.R. No. 168950, January 14, 2015.

L

> cases of the CIR's inaction after the lapse of the 120-day waiting period, and that a judicial claim is seasonably filed so long as it is done within the two year-period. Thus, it filed the Petition for Review with the CTA only on 11 September 2002.
>
> These mistaken notions have already been dispelled by *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc*. (Aichi and San Roque. Aichi clarified that it is only the administrative claim that must be filed within the two-year prescriptive period. San Roque, on the other hand, has ruled that the 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> xxx xxx xxx
>
> 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 must file an appeal within 30 days from the lapse of the 120-day waiting period." (Emphasis and underscoring supplied)

With the foregoing jurisprudential pronouncements, it can be easily discerned that petitioner's contention that the denial and dismissal of the case constitutes a deprivation of the taxpayer of its lawful and statutory right to appeal a clearly erroneous decision deserves scant consideration. Apparently, the error in the said contention is that it presupposes that the 120-day period under Section 112(C) of the NIRC of 1997, as amended, may be disregarded; and that petitioner may just wait for the respondent's decision.

However, contrary to petitioner's position, Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, and the Rohm Apollo case, are clear that an inaction within a period fixed by law for action is already deemed a denial, and thus, should already be appealed after the expiration of the said prescribed period , which in this case, refers to the

h

120-day period under Section 112(C) of the NIRC of 1997, as amended.

Moreover, the ruling in the Rohm Apollo case was even bolstered by the High Court, in the later case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[8], to wit:

> "Whether respondent rules in favor of or against the taxpayer - or does not act at all on the administrative claim -within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.
>
> xxx xxx xxx
>
> The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, ***any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.***" (Emphases and underscoring supplied)

As to the determination of the submission of complete documents, records reveal that when petitioner filed its administrative claim, on December 12, 2012, the transmittal letter[9] to the BIR indicated ***"We transmit herewith the complete supporting documents pursuant to Section 112(D) of the 1997 NIRC and RMO No. 53-98 in relation to Hedcor Sibulan Inc.'s VAT refund claim. x x x".***

In a long line of cases decided by the Supreme Court, it has consistently held that the taxpayer ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running

[8] G.R. No. 182737, March 2, 2016.
[9] Division Docket, Exhibit "P-7"

L

of the 120- day period. The ruling of the Supreme Court in the case of *Hedcor, Inc. v. Commissioner of Internal Revenue*[10] is instructive, thus:

> "**It is worth emphasizing at this point that the burden of proving entitlement to a tax refund is on the taxpayer. It is logical to assume that in order to discharge this burden, the law intends the filing of an application for a refund to necessarily include the filing of complete supporting documents to prove entitlement for the refund**. Otherwise, the mere filing of an application without any supporting document would be as good as filing a mere scrap of paper. Besides, the taxpayer was already given two (2) years to determine its refundable taxes and complete the documents necessary to prove its claim. The alleged completion of supporting documents after the filing of an application for an administrative claim -and worse, after the filing of a judicial claim - is tantamount to legal maneuvering, which this Court will not tolerate." (emphasis supplied)

Applying the foregoing in the case at bar, petitioner can neither deny nor contradict its own words and representations that it has indeed submitted the "complete supporting documents" to the respondent on December 12, 2012, the same day that it filed its administrative claim. Petitioner was allowed to wait for any decision or action from the CIR for 120 days from December 12, 2012 or until April 11, 2013. Thereafter, if there was "failure on the part of the Commissioner to act on the application within the period prescribed", it only had 30 days from April 11, 2013, or until May 14, 2013[11] to file its judicial claim. Regrettably, petitioner decided to wait until February 12, 2015 for respondent's written denial.

---

[10] G.R. No. 207575, July 15, 2015.

[11] 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***. 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.***

ﬁ

In sum, petitioner's failure to strictly observe the mandatory period lead to the loss of its right to claim the refund. As correctly observed by the Court in Division, to reiterate:

> "It bears emphasis that the following circumstances should have been compelling enough to dispel any doubt from the petitioner that the credit or refund was not forthcoming from the BIR:
>
> *First*, since December 12, 2012 when the administrative claim was filed, there had been almost a year of audit in connection with the administrative claim until its conclusion with the December 13, 2013 Closing Agreement.
>
> *Second*, the Closing Agreement did not grant petitioner's claim at all. Instead, it resulted in deficiency assessment which the petitioner paid.
>
> *Third*, there was respondent's inaction for about two (3) month between the December 13, 2013 Closing Agreement and the March 24 2014 and April 3, 2014 submissions, allegedly prompted by a telephone call from the revenue officer.
>
> *Fourth* and most significantly, petitioner cannot deny that there was the 120-day inaction *after* the April 3, 2014 submission. Accordingly, these prior events should have prompted petitioner to realize early on that any credit or refund was highly unlikely.
>
> *Finally,* as borne out by petitioner's admission, it was only in December 29, 2014 that petitioner heard again from the respondent. By this time, *more than* two (2) years have passed since the filing of the administrative claim on December 12, 2012 and certainly *more than* 120 days since April 3, 2014. These gaps stretch indisputably beyond the 120 days granted for the respondent to act on the claim in Section 112.

> At the latest, petitioner's prudent measure and response should have been to elevate its claim to the Court within 30 days from the lapse of 120-days, on or before September 1, 2014."

In view of the foregoing, petitioner now attempted to dissuade this Court of its interpretation of what constitutes *"inaction"* or *"deemed denied"* decision, and when it should be applied in order to compensate for its inadvertence in observing the mandatory 120+30 period.

Let petitioner be reminded that to allow its allegations to prevail would set a dangerous precedent. Consequently, the reckoning period for the 120 days would be at the mercy of taxpayers. It thereby gives them the discretion to decide when to submit the complete supporting documents, even after the two-year prescriptive period for filing an administrative claim has lapsed. Clearly, this is not the intention of the law.

Lastly, even granting for the sake of argument that petitioner may have relied on the rules under Section 228[12] of the 1997 NIRC, as amended, which was used in the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[13], which ruled that a taxpayer has two options, either to file a petition for review with the CTA within 30 days after the expiration of the 180-day period or await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision. Such reliance is totally inapplicable in this case. Unlike in the

---

[12]SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x.

xxx xxx xxx

> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[13] G.R. No. 171251, March 05, 2012.

h

Lascona case, the case at bar involves a claim for refund and not disputed assessment.

In this regard, the legal basis for the filing of such petition before the CTA is under Section 3(a)(2), Rule 4 of the RRCTA which provides that:

> "SEC. 3. Cases within the jurisdiction of the Court in Divisions. -The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> 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 relation 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 or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; **Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned**, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year

h

> period under Section 229 of the National Internal Revenue Code;"

The above-mentioned rule has no equivalent provision for refund cases. Thus, the option of awaiting respondent's decision does not apply in the instant case.

Needless to say, this Court is enjoined to adhere to judicial precedents, such as the afore-mentioned cases. In *Commission on Higher Education vs. Dasig*[14], the Supreme Court ruled in this wise:

> " ... it is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts. **'A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation**.' 'There is only one Supreme Court from whose decision all other courts should take their bearings,' so declared Justice J. B. L. Reyes." (Emphases supplied)

At this juncture, it must be pointed out that the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise. For failure to comply with the statutory conditions, petitioner must therefore bear the consequences. It has lost its right to claim a refund by virtue of its own failure to observe the prescriptive period.

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.

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

---

[14] G.R. No. 172776, December 17, 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice