REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

# SECOND DIVISION

**LEAD EXPORT AND AGRO-DEVELOPMENT CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10161**

**Members:**

CASTAÑEDA, JR., Chairperson, *and*
BACORRO-VILLENA, JJ.

Promulgated:
DEC 1 1 2020 8:15 am

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# RESOLUTION

For the Court's resolution is petitioner's **Motion for Reconsideration (of the Resolution dated 12 March 2020)**, filed on 03 July 2020, with respondent's **Opposition (Re: Motion for Reconsideration of the Resolution dated 12 March 2020)**, filed on 27 July 2020[1].

In the 12 March 2020 Resolution, the Court granted respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court and dismissed the Petition for Review for lack of jurisdiction.

As the records show, petitioner is seeking the refund or issuance of tax credit certificate of its unutilized value-added tax (**VAT**) for the 3rd and 4th Quarters of 2008. The administrative claims were timely filed on 08 October 2009 and 16 December 2009, respectively. However, the Petition for Review was only filed on 05 September 2019. Thus, the Court dismissed the belatedly filed Petition for Review for lack of jurisdiction.

[1] Received by the Court on 25 August 2020.

The Court notes that petitioner merely reiterates in its Motion for Reconsideration the arguments put forward in its Opposition to respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court.

Petitioner essentially belabors that it timely filed the instant Petition for Review within thirty (30) days from receipt of the Denial from the Bureau of Internal Revenue (**BIR**). It insists on its option to wait for the decision on its claim even beyond the 120-day period.

Respondent, on the other hand, points out that the judicial claim for refund was only filed on 05 September 2019, beyond the 120+30 day period. Hence, he prays for the denial of petitioner's motion for lack of merit.

**Petitioner's Motion for Reconsideration is devoid of merit.**

In the seminal cases of *Commissioner of Internal Revenue (**CIR**) v. Aichi Forging Company of Asia, Inc.*[2] *and CIR v. San Roque Power Corporation/ Taganito Mining Corporation v. CIR/ Philex Mining Corporation v. CIR*[3], the Court interpreted the 30-day period of appeal as mandatory and jurisdictional. Thus, non-compliance with the mandatory 30-day period renders the petition before the CTA void. The ruling in said cases confirms the mandatory and jurisdictional character of the 30-day period of appeal.[4]

Verily, to lend credence to petitioner's arguments would run counter to the mandate of Section 112 of the National Internal Revenue Code of 1997 (**NIRC**), as amended, as well as the interpretation of the Supreme Court. The issues as to the reckoning date of the two-year prescriptive period and the remedies available to the taxpayer have long been laid to rest.

Nonetheless, We find it apt to quote the Supreme Court ruling in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*[5], *viz:*

---

2 GR No. 184823, 06 October 2010.
3 G.R. Nos. 187485, 196113, 197156, 08 October 2013.
4 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, 23 July 2018.
5 G.R. No. 173241, 25 March 2015.

...

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

...

B. 120+30 Day Period

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 applied, whether there is a denial or inaction on the part of the CIR.
3. As a general rule, <u>the 30-day period to appeal is both mandatory and jurisdictional.</u> (*Aichi and San Roque*)
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. <u>Late filing is absolutely prohibited, even during the time when BIR Ruling DA-489-03 was in force. (*San Roque)*</u>

...

Evidently, SPI belatedly filed its judicial claim. It filed its Petition for Review with the CTA 391 days after the lapse of the 120-day period without the CIR acting on its application for tax credit/refund, way beyond the 30-day period under Section 112 of the 1997 Tax Code. SPI herein is in exactly the same position as Philex Mining in *San Roque*. Thus, the declarations of the Court on the judicial claim of Philex Mining in *San Roque* are just as applicable to that of SPI:

...

The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and [u]nappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.**

> Because the 30-day period for filing its judicial claim had already prescribed by the time SPI filed its Petition for Review with the CTA Division, the CTA Division never acquired jurisdiction over the said Petition. The CTA Division had absolutely no jurisdiction to act upon, take cognizance of, and render judgment upon the Petition for Review of SPI in CTA Case No. 6170, regardless of the merit of the claim of SPI. The Court stresses that the 120/30-day prescriptive periods are mandatory and jurisdictional, and are not mere technical requirements. The Court should not establish the precedent that noncompliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements.
>
> . . .
>
> As this Court has repeatedly emphasized, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund or credit. 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. Noncompliance with the mandatory periods, nonobservance of the prescriptive periods, and nonadherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit, whether or not the CIR questions the numerical correctness of the claim of the taxpayer. For failure of Silicon to comply with the provisions of Section 112(C) of the NIRC, its judicial claims for tax refund or credit should have been dismissed by the CTA for lack of jurisdiction.[6]
>
> . . .

Clearly, the Court has no jurisdiction over a judicial claim that did not observe the 120+30 day rule and thus can only be deemed to have been belatedly filed.

**WHEREFORE**, petitioner's **Motion for Reconsideration (of the Resolution dated 12 March 2020)** is **DENIED** for lack of merit.

**SO ORDERED.**

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

---

[6] Emphasis and in the original text; underscoring supplied.

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice