REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2177
(CTA Case No. 10026)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 03 2021 3:23 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Lapanday Agricultural and Development Corporation (**petitioner/LADC**) on 19 November 2019, pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It

[1] *Rollo*, pp. 1-42, with annexes.
[2] **SEC. 3**. *Who may appeal; period to file petition.* —
...

seeks to reverse and set aside the assailed Resolutions dated 09 August 2019[3] and 14 October 2019,[4] respectively, of the Court's Third Division[5] in CTA Case No. 10026, entitled *Lapanday Agricultural and Development Corporation v. Commissioner of Internal Revenue.*

The assailed Resolutions granted respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court (**Motion for Early Resolution**), and dismissed petitioner's Petition for Review for lack of jurisdiction.

The antecedent facts follow.

Petitioner is a domestic corporation duly organized and registered under the laws of the Philippines with principal address at Maryknoll Road, Barangay Pampanga, Lanang, Davao City. It is engaged in the production and export of fruits and other agricultural products the sales of which are classified as zero-rated, in accordance with Section 106(A)(2)(a)(1)[6] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[7]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[3] Division Docket, pp. 223-228.

[4] Id., pp. 264-268.

[5] The Third Division is composed of Hon. Associate Justice Erlinda P. Uy, as Chairperson, Hon. Associate Justice Ma. Belen M. Ringpis-Liban and Hon. Associate Justice Maria Rowena Modesto-San Pedro, as Members.

[6] **SEC. 106**. *Value-added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* –
...
(2) Zero-rated Sales of Goods or Properties. — The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* – The term *"export sales"* means:
(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
...

[7] Paragraph 15, Statement of Facts, Petition for Review, *Rollo*, p. 4.

authority to carry out the functions and duties of said office, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously paid taxes, as provided by law.

In January 2008 and April 2009, petitioner filed with the Bureau of Internal Revenue (**BIR**) its administrative claims for the issuance of tax credit certificates (**TCCs**), for excess and unutilized input value-added tax (**VAT**) attributable to zero-rated sales covering the four (4) quarters of taxable year (**TY**) 2007, evidenced by Claimant Sheets, in the aggregate amount of ₱17,787,151.38, on the dates indicated hereunder:

Period Covered (2007)	**Date of Filing of Administrative Claim**	**Amount of Claim**
1st Quarter (January to March)[8]	19 January 2008	₱3,883,147.11
2nd Quarter (April to June)[9]	19 January 2008	4,899,912.61
3rd Quarter (July to September)[10]	19 January 2008	6,479,279.03
4th Quarter (October to December)[11]	30 April 2009	2,524,812.63
Total Amount of Claim		**₱17,787,151.38**

Respondent did not act upon the said administrative claims until almost ten (10) years later. On 21 January 2019, petitioner received a Letter dated 03 December 2018[12] (**Denial Letter**), denying all four (4) administrative claims for tax credit on the following grounds: (1) failure to substantiate the zero-rated transactions with copies of the sales invoices; and, (2) failure to show that the amount applied for tax credit has been deducted from the available input VAT in the Quarterly VAT Returns as required under Section 110(C)[13] of the NIRC of 1997, as amended.

8 Claimant Sheet, Annex "P-12" attached to LADC's Petition for Review, Division Docket, p. 51.
9 Claimant Sheet, Annex "P-13" attached to LADC's Petition for Review, id., p. 52.
10 Claimant Sheet, Annex "P-14" attached to LADC's Petition for Review, id., p. 53.
11 Claimant Sheet, Annex "P-15" attached to LADC's Petition for Review, id., p. 54.
12 Annex "P-5" attached to LADC's Petition for Review, id., pp. 31-32.
13 **SEC. 110.** *Tax Credits.* —

...

(C) *Determination of Creditable Input Tax.* — The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.

...

On 20 February 2019 and within thirty (30) days from receipt of the Denial Letter, petitioner filed a Petition for Review before the Court in Division to appeal the denial of its administrative claims. The same was raffled to the Court's Third Division, docketed as CTA Case No. 10026.[14]

In his Answer[15] filed on 29 May 2019, respondent interposed the following Special and Affirmative Defenses: (1) the Petition for Review was filed out of time and as such, the Court has no jurisdiction over it; and, (2) even assuming that the case was filed within the reglementary period, the judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level.

On 14 June 2019, respondent filed a Motion for Early Resolution[16], assailing the Court in Division's jurisdiction on the basis that the judicial claim was filed out of time. Petitioner filed its Comment/Opposition[17] thereto on 04 July 2019.

In the assailed Resolution dated 09 August 2019[18], the Third Division granted respondent's Motion for Early Resolution and dismissed petitioner's judicial claim for lack of jurisdiction.

Aggrieved, petitioner filed a Motion for Reconsideration[19] (**MR**) on 06 September 2019. In response thereto, respondent filed his Comment/Opposition[20] on 01 October 2019.

The Court's Third Division then issued the assailed Resolution dated 14 October 2019,[21] wherein it denied petitioner's MR and upheld its 09 August 2019 Resolution.

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14 Id., pp. 10-26.
15 Id., pp. 173-185.
16 Id., pp. 188-195.
17 Id., pp. 199-221.
18 Supra at note 3.
19 Division Docket, pp. 229-254.
20 Id., pp. 257-262.
21 Supra at note 4.

Still unsatisfied, petitioner filed the instant Petition for Review[22] on 19 November 2019. Thereafter, the Court *En Banc* directed respondent to file his comment within ten (10) days from notice.[23]

After the filing of respondent's Comment/Opposition (Re: Petitioner's Petition for Review)[24] on 18 December 2019, the case was deemed submitted for decision on 05 February 2020.[25]

In the instant Petition for Review, petitioner assigns the following errors to the Third Division's actions[26]:

I.
THE HONORABLE COURT OF TAX APPEALS - THIRD DIVISION ERRED IN DECIDING THAT IT HAS NO JURISDICTION TO RULE ON THE DENIAL LETTER OF THE BUREAU OF INTERNAL REVENUE, AS APPEALED BY PETITIONER LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION WITHIN 30 DAYS FROM RECEIPT THEREOF; and,

II.
THE COURT OF TAX APPEALS - THIRD DIVISION ERRONEOUSLY DENIED PETITIONER LAPANDAY AGRICULTURAL DEVELOPMENT CORPORATION'S ENTITLEMENT TO ITS CLAIM FOR TAX CREDIT CERTIFICATE WHEN IT RULED THAT IT HAS NO JURISDICTION OVER THE CASE, EVEN WHEN SUCH CLAIM CAN BE FULLY SUPPORTED.

In support of the instant petition, petitioner puts forward the following arguments[27], to wit:

1. Section 112(C) of the NIRC of 1997, as amended, allows the taxpayer the alternative remedies of filing the judicial claim: (i) within the 30-day period from the receipt of the respondent's decision; or (**ii**) within the 30-day period after the expiration of the 120-day waiting period.

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22 Supra at note 1.
23 Resolution dated 05 December 2019, *Rollo*, pp. 97-98.
24 Id., pp. 99-104.
25 Id., pp. 106-107.
26 Grounds of the Petition, Petition for Review, id., p. 7.
27 Arguments and Discussion, Petition for Review, id., pp. 7-34.

a. Under Revenue Regulations (**RR**) No. 01-2017[28], Revenue Memorandum Circular (**RMC**) No. 54-2014[29] does not apply in cases where the administrative claim was filed before the effectivity of RMC 54-2014.

b. The mandatory and jurisdictional nature of the 120+30-day period upheld in various Supreme Court decisions and RMC 54-2014 does not apply in cases where respondent issues a decision on the claim for input VAT refund/TCC after the 120-day period.

c. Section 112(C) of the NIRC of 1997, as amended, clearly provides two (2) options to the taxpayer on how to appeal the decision of respondent denying the claim for input VAT refund/TCC.

d. The 120+30-day period under Section 112(C) of the NIRC of 1997, as amended, is a claim-processing rule which does not restrict the subject-matter jurisdiction of the Court.

e. 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.

2. Petitioner is entitled to its claim for TCC amounting to ₱17,787,151.38 pertaining to unutilized input VAT for TY 2007 attributable to its zero-rated export sales.

In his Comment/Opposition, respondent maintains that the Court in Division was correct in ruling that it has no jurisdiction over the case as the Petition for Review filed before it was filed beyond the reglementary period provided by law. Since the dismissal of the belatedly-filed petition was proper, his inaction on petitioner's administrative claims, which is "deemed a denial" decision, has attained finality and thus, inappealable.

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28 Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014.

29 Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.

We rule below.

After a careful review of the case and the parties' contrasting arguments, the Court *En Banc* is constrained to deny this petition.

The pivotal issue in this case is whether the Court's Third Division has jurisdiction to take cognizance of the Petition for Review in CTA Case No. 10026, filed by petitioner on 20 February 2019, to appeal respondent's Denial Letter dated 03 December 2018.

Section 112 of the NIRC of 1997, as amended, provides the procedure for filing a claim for VAT refund or credit, and prescribes the corresponding periods therefor. The provision states, in part:

> ...
> **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: ...
>
> ...
>
> (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.**[30]
> ...

[30] Emphasis supplied.

Section 112(C) of the NIRC of 1997, as amended, speaks of two (2) periods: (1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for a tax credit or refund; and, (2) the 30-day period, which refers to the period for filing a judicial claim with the CTA.[31]

Contrary to petitioner's position that the aforesaid 120+30-day period is merely directory and non-jurisdictional, the Supreme Court, in a long line of cases, has consistently interpreted the 120+30-day period in refund or tax credit cases, pursuant to Section 112(C) of the NIRC of 1997, as amended, as both mandatory and jurisdictional.[32]

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[33] (**Aichi**), the Supreme Court unequivocally ruled that the 120+30-day period under Section 112(C) of the NIRC of 1997, as amended, is mandatory and jurisdictional, such that judicial claims filed before the denial of the taxpayer's administrative claim or the lapse of the 120-day period in case of the CIR's inaction would be deemed premature, while judicial claims filed beyond the 30-day period after such denial or lapse would be deemed filed out of time.

However, in *Commissioner of Internal Revenue v. San Roque Power Corporation*[34] (**San Roque**), the Supreme Court recognized an exception to the mandatory and jurisdictional nature of the 120-day period. It ruled that BIR Ruling No. DA-489-03, dated 10 December 2003, provided a valid claim for equitable estoppel under Section 246[35] of the NIRC of 1997, as amended. In essence, the aforesaid BIR Ruling

[31] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, 14 January 2015.

[32] Some of these cases are: *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, 08 February 2017; *Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue*, G.R. No. 197980, 01 December 2016; *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, 13 June 2016; *Procter and Gamble Asia Pte Ltd. v. Commissioner of Internal Revenue*, G.R. No. 204277, 30 May 2016; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 182737, 02 March 2016; *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, 08 December 2015; *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. No. 204745, 08 December 2014; *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013; *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, 13 March 2013; *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, 06 October 2010.

[33] G.R. No. 184823, 06 October 2010.

[34] G.R. No. 187485, 12 February 2013.

[35] **SEC. 246.** *Non-Retroactivity of Rulings.* — ...

stated that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the Court by way of Petition for Review.

Thereafter, in *Taganito Mining Corporation v. Commissioner of Internal Revenue*[36] (**Taganito**), the Supreme Court reconciled the pronouncements in *Aichi* and *San Roque*, thus:

> ...
> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that during the period December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) to October 6, 2010 (when the *Aichi* case was promulgated), taxpayers-claimants need not observe the 120-day period before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim.**
> ...

Relevantly, in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[37] (**Silicon**), the Supreme Court explained that, while the general interpretative rule (*i.e.*, BIR Ruling No. DA-489-03), allowed the premature filing of judicial claims within the period 10 December 2003 up to 06 December 2010 (by providing that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review"), the said rule certainly did not allow the filing of a judicial claim long *after* the expiration of the 120+30 day period.

Complementing Section 112 of the NIRC of 1997, as amended, is Section 7 of Republic Act (**RA**) No. 1125[38], as amended by RA 9282[39], conferring exclusive appellate jurisdiction to the CTA to review on

36 G.R. No. 197591, 18 June 2014; italics in the original text and emphasis supplied.
37 G.R. No. 182737, 02 March 2016.
38 AN ACT CREATING THE COURT OF TAX APPEALS.
39 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

appeal the CIR's decision or inaction in cases involving refunds of internal revenue taxes, *viz*:

> ...
>
> **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 or 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 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[.]
>
> ...

Section 11 of RA 1125, as amended by RA 9282, categorically states that a party adversely affected by the CIR's decision or inaction may file an appeal before the CTA within 30 days after the receipt of such decision or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) above.

It is thus settled that the taxpayer may file the appeal within 30 days after the CIR denies the administrative claim within the 120-day waiting period, **or** it may file the appeal within 30 days from the expiration of the 120-day period if there is inaction on the part of the CIR.[40] It must be emphasized, however, that the judicial claim has to 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**.[41]

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40 *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, supra at note 31, citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, supra at note 34.

41 Supra at note 37.

Petitioner is thus gravely mistaken in its argument that the 120+30-day mandatory period in *San Roque* pertains only to premature filing of cases. In this regard, the Supreme Court categorically held in *Team Energy Corporation (formerly: Mirant Pagbilao Corporation, et al.) v. Commissioner of Internal Revenue*[42] (**Team Energy**) that the CIR's inaction on an administrative claim for tax credit or refund during the 120-day period is "deemed a denial", pursuant to Section 7(a)(2) of RA 1125, as amended by Section 7 of RA 9282, and the taxpayer has 30 days from the expiration of the 120-day period to file its judicial claim with the CTA; otherwise, its failure to do so renders the "deemed a denial" decision of the CIR final and inappealable.

Conversely put, when the 120-day period lapses and there is inaction on the part of the CIR, **the taxpayer must no longer wait for the CIR to come up with a decision as his inaction is the decision itself.**[43] By operation of law, the refund claim is deemed denied by the CIR's inaction. The taxpayer must then file an appeal within 30 days from the lapse of the 120-day waiting period.[44] Any claim filed in a period beyond the 120+30-day period provided by Section 112(C) of the NIRC of 1997, as amended, is outside the jurisdiction of the CTA.[45]

Based on the foregoing, We rule against petitioner's contentions that the 120+30-day period is not merely a claim-processing rule and that petitioner has no right to await the CIR's decision beyond the 120-day period.

The records disclose the following relevant dates showing the time when the VAT returns and administrative claims were filed, as well as the end of the two-year period to file said administrative claims:

Period Covered (2007)	End of the Quarter	Date of Filing of Return	Date of Filing of Administrative Claim	End of two-year period to file claim
1st Quarter	31 March 2007	25 April 2007[46]	19 January 2008[47]	31 March 2009

42 G.R No. 197663, 14 March 2018.
43 *Lapanday Agricultural & Development Corporation v. Commissioner of Internal Revenue*, CTA EB No. 2174 (CTA Case No. 9965), 22 September 2020.
44 Supra at note 31.
45 Supra at note 37.
46 Annex "P-8" attached to LADC's Petition for Review, Division Docket, pp. 46-47.
47 Supra at note 8.

Period Covered (2007)	End of the Quarter	Date of Filing of Return	Date of Filing of Administrative Claim	End of two-year period to file claim
2nd Quarter	30 June 2007	25 July 2007[48]	19 January 2008[49]	30 June 2009
3rd Quarter	30 September 2007	25 October 2007[50]	19 January 2008[51]	30 September 2009
4th Quarter	31 December 2007	26 January 2008[52]	30 April 2009[53]	31 December 2009

As shown in the table above, petitioner had until 31 March 2009, 30 June 2009, 30 September 2009, and 31 December 2009 to file its administrative claims for the 1st, second, third, and fourth quarters of 2007, respectively, reckoned from the end of each quarter. As alleged, petitioner filed its administrative claims for refund on 19 January 2008 for the first, second and third quarters, and on 30 April 2009 for the fourth quarter of TY 2007. Thus, petitioner filed its administrative claims for issuance of TCCs within the period prescribed by law.

With respect to the timeliness of the judicial claim, the Court must ascertain when the 120-day period lapses as the said period is crucial in filing an appeal with the CTA.[54] The running of the 120-day period is reckoned from the date of submission of complete documents in support of the application for refund or issuance of tax credit pursuant to the first paragraph of Section 112(C) of the NIRC of 1997, as amended.

As established in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[55] (**Total Gas**), a taxpayer has 30 days from request of the investigating/processing office within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR, and upon complete submission thereof or the expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund, *viz:*

[48] Annex "P-9" attached to LADC's Petition for Review, Division Docket, p. 48.
[49] Supra at note 9.
[50] Annex "P-10" attached to LADC's Petition for Review, Division Docket, p. 49.
[51] Supra at note 10.
[52] Annex "P-11" attached to LADC's Petition for Review, Division Docket, p. 50.
[53] Supra at note 11.
[54] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, supra at note 33.
[55] G.R. No. 207112, 08 December 2015; Citation omitted; emphasis and italics in the original text; emphasis and underscoring supplied.

...

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed — *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.

The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund — it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

...

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

<u>Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is</u>

> because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received" as provided under RMC No. 49-2003.
>
> **To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120[-]day period allowed to the CIR begins to run from the date of filing.**
>
> ...

Absent any showing that petitioner was required to submit or that it actually submitted additional documents after the filing of the subject administrative claims, and considering the presumption that the complete documents accompanied the said administrative claims, the 120-day period is reckoned from the date of filing of petitioner's administrative claims.

As can be gleaned from the table below, petitioner's judicial claim was filed way *beyond* the 120+30-day mandatory and jurisdictional period:

Taxable Quarter of 2007	Date of Filing of Administrative Claim	End of 120-day Period	End of 30-day Period from Lapse of 120-day Period	Date of Filing of Judicial Claim	Number of Years Late
1st Quarter	19 January 2008	18 May 2008	17 June 2008	20 February 2019	10.83
2nd Quarter	19 January 2008	18 May 2008	17 June 2008	20 February 2019	10.83
3rd Quarter	19 January 2008	18 May 2008	17 June 2008	20 February 2019	10.83
4th Quarter	30 April 2009	28 August 2009	27 September 2009	20 February 2019	9.54

Given the lapse of the 120-day period from the filing of the subject administrative claims without a formal decision from the CIR — "deemed a denial" decision, petitioner should have filed its Petition for Review not later than **17 June 2008** for the first, second and third quarters and **27 September 2009** for the fourth quarter.

Assuming for the sake of argument that respondent had allowed petitioner an extension of time to submit complete supporting documents, and petitioner submitted such documents until 31 March 2009, 30 June 2009, 30 September 2009 and 31 December 2009 (*i.e.*, on the last day of the two-year prescriptive period in line with the ruling in *Total Gas*) in relation to its claims for the first, second, third and fourth quarters of 2007, the 120-day period should end on 29 July 2009, 28 October 2009, 28 January 2010 and 30 April 2010, respectively; petitioner, therefore, had only until 28 August 2009, 27 November 2009, 27 February 2010 and 30 May 2010, respectively, to elevate its claims before the Court in Division.

Since the Petition for Review covering the four (4) quarters of TY 2007 was filed with the Court's Third Division only on 20 February 2019, *more than a decade thereafter*, the Court cannot now entertain petitioner's judicial claim. Accordingly, the respondent's "deemed a denial" decision became final and executory.

We also find no merit in petitioner's claim that respondent is now estopped from claiming prescription considering that the BIR still acted on petitioner's claim despite the lapse of the 120-day period.

The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result.[56] It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.[57]

The elements of estoppel are: *first*, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *second*, the other in fact relies, and relies reasonably or justifiably, upon that communication; *third*, the other would be harmed materially if the actor is later permitted to assert any claim

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[56] *Megan Sugar Corporation v. Regional Trial Court of Iloilo, Branch 68, Dumangas, Iloilo, et al.*, G.R. No. 170352, 01 June 2011.

[57] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, 05 May 2010.

inconsistent with his earlier conduct; and *fourth*, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[58]

In this case, petitioner failed to prove the foregoing elements. There is nothing in respondent's Denial Letter which could have misled petitioner into believing that it can still appeal respondent's "deemed a denial" decision. If anything, in issuing the Denial Letter, respondent merely affirmed the "deemed a denial" decision and did so under the assumption that he had to when RR 01-2017 exempted from RMC 54-2014 (which considered unacted administrative claims as deemed denied) the VAT credit/refund applications filed prior to the effectivity of said RMC.

In *Commissioner of Internal Revenue v. Mindanao I Geothermal Partnership*[59] (**Mindanao I**), citing *San Roque*, the Supreme Court has dealt with the issue on the application of jurisdiction by estoppel in regard to a claim for tax credit or refund, which can be applied, by analogy, to the present case. The relevant discussion in the said case is as follows:

> ...
>
> However, jurisprudence recognizes "jurisdiction by estoppel" as an exception to the general rule. The principle was first enunciated by this Court in the 1968 case of *Tijam, et al. v. Sibonghanoy, et al.* Over time, the Court has qualified the *Tijam* ruling. In *Calimlim, et al. v. Hon. Ramirez, etc., et al.*, the Court observed that succeeding cases invoking *Tijam* have lost sight of the exceptional circumstances which underpin the ruling therein, thus "*virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel*"; and in *La Naval Drug Corporation v. CA*, the Court clarified that estoppel, to constitute a conferment of jurisdiction, must be "*unequivocal and intentional.*" In *Tijam*, the Court ruled that the party raising lack of jurisdiction had been barred from doing so through estoppel by *laches*, because the defense was raised only in a motion to dismiss filed fifteen (15) years after it was impleaded as a party, and only after the plaintiff had moved for execution of the final judgment. Given the extremely belated invocation of the issue of lack of jurisdiction,

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[58] *British American Tobacco v. Camacho, et al.*, G.R. No. 163583, 20 August 2008.

[59] G.R. No. 192006, 14 November 2018; Citations omitted, italics in the original text and emphasis supplied.

the Court found it equitable and just to declare the party estopped from raising it.

The Court has reviewed the record and does not find any circumstance which would warrant the application of jurisdiction by estoppel as enunciated in *Tijam*. The precise meaning of Section 112 of the NIRC has been the subject of debate for many years; and the issue has only been scrutinized in detail and settled when the *Atlas*, *Aichi*, *Mirant*, and *San Roque* rulings came out. The Court's pronouncement in San Roque is instructive:

> **This Court cannot brush aside the grave issue of the mandatory and jurisdictional nature of the 120-day period** just because the Commissioner merely asserts that the case was prematurely filed with the CTA and does not question the entitlement of San Roque to the refund. The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a 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.** Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.
>
> **This Court cannot disregard mandatory and jurisdictional conditions mandated by law** simply because the Commissioner chose not to contest the numerical correctness of the claim for tax refund or credit of the taxpayer. Non-compliance with mandatory periods, non-observance of prescriptive periods, and non-adherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit, whether or not the Commissioner questions the numerical correctness of the claim of the taxpayer. **This Court should not establish the precedent that non-compliance 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 regards the amendment to Section 112(C) of the NIRC of 1997, as amended, pursuant to RA 10963 or the Tax Reform for Acceleration and Inclusion (**TRAIN**) Law, petitioner contends that this underlies the legislative intent that the lapse of the 120-day period (now, 90-day period under the TRAIN Law) does not automatically mean that the BIR has denied the application for tax credit/refund when it stated that the BIR may still act on the application after the 120-day period (now, 90-day period under the TRAIN Law).

We are not convinced.

The TRAIN Law took effect only on 01 January 2018[60], which was long after the lapse of the 120+30-day period as discussed above. It is doctrinal that tax laws are prospective in operation, unless the language of the statute clearly provides otherwise[61], which situation does not obtain in this case.

Lastly, it must be emphasized that a claim for tax credit or refund, like a claim for tax exemption, is construed strictly against the taxpayer. Thus, strict compliance with the 120+30-day period is necessary for such a claim to prosper.[62]

In sum, petitioner's belated filing of its judicial claim on 20 February 2019 is fatal to its claim for its failure to observe the mandatory 120+30-day period, and has therefore rendered the Court's Third Division devoid of jurisdiction over its Petition for Review.

WHEREFORE, premises considered, the instant Petition for Review dated 19 November 2019 filed by petitioner Lapanday Agricultural and Development Corporation is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated 09 August 2019 and 14 October 2019, respectively, in CTA Case No. 10026, entitled *Lapanday Agricultural and Development Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**

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60 Section 87, RA 10963.
61 *Commissioner of Internal Revenue v. Acosta*, G.R. No. 154068, 03 August 2007.
62 Supra at note 34.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice