REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION, Petitioner,	CTA Case No. 10072
	Members:
- versus -	DEL ROSARIO, *PJ, Chairperson,* FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 26 2020 ; 9:52am

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RESOLUTION

In the Resolution dated January 28, 2020, the Court dismissed the present case on jurisdictional ground as petitioner failed to sternly observe the mandatory and jurisdictional 120+30 day periods enshrined under Section 112(C)[1] of the National Internal Revenue Code (NIRC), as amended. Pursuant to the foregoing provision, the Court's legal competence involving cases of input valued-added tax (VAT) refund cases is strictly confined on two occasions: *first,*

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[1] **SEC. 112.*Refunds or Tax Credits of Input Tax.-***

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(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.

when respondent renders an adverse decision ***within*** 120 days, and such decision was appealed by the taxpayer within 30 days from receipt thereof; or *second,* the taxpayer elevates its input VAT refund claim with the Court, within 30 days reckoned from the lapse of the 120-day period.[2]

Petitioner's administrative claim for input VAT refund relating to the first, second, third, and fourth Quarters of TY 2010 were respectively filed on June 9, 2011, June 10, 2011, September 9, 2011, and September 16, 2011. Counting 120-days therefrom, respondent had until October 7, 2011 for the 1st Quarter, October 8, 2011 for the 2nd Quarter, January 7, 2012 for the 3rd Quarter, and January 14, 2012 for the 4th quarter, to take action thereon, but failed.

Without any administrative adverse decision rendered by respondent within the 120-day period, petitioner had another 30 days from the lapse of the said period, or until November 8, 2011[3] for the 1st Quarter, November 8, 2011[4] for the 2nd Quarter, February 6, 2012 for the 3rd Quarter, and February 13, 2012 for the 4th Quarter to elevate the matter with the Court. Hence, its Petition for Review belatedly filed on April 16, 2019 deprived the Court of the requisite competence to hear the present case.

It was further ruled that while petitioner had elevated to the Court respondent's adverse Decision dated January 28, 2019, the same was rendered **beyond** his 120-day period to act which was until January 14, 2012. On this account, it may not be a proper subject of an appeal before this Tribunal.

Unconvinced, petitioner filed a Motion for Reconsideration dated February 13, 2020, arguing that:

a. The 120+30 days mandatory and jurisdictional periods, as upheld in jurisprudence finds no

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2 See *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 184266, November 11, 2013; and *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

3 November 6, 2011 fell on a Sunday. November 7, 2011 was officially declared a regular holiday (Eid al-Adha) pursuant to Proclamation No. 276, s. 2011.

4 See Note 3.

application in cases where respondent issues an adverse decision beyond the subject 120-day period prescribed under Section 112(C) of the NIRC, as amended;

b. Section 112(C) of the NIRC, as amended, legally permits taxpayers to appeal respondent's adverse decisions involving refund of input VAT irrespective of whether it was rendered within or outside the 120-day period;

c. Non-observance with the mandatory 120 and 30 day periods contemplated under Section 112(C) of the NIRC, as amended, does not affect the Court's jurisdiction over the subject matter relating to cases of input VAT refund; and

d. Respondent is estopped from pleading prescription since the Bureau of Internal Revenue (BIR) acted on its administrative claim despite the lapse of the 120-day period prescribed in Section 112(C) of the NIRC, as amended.

In his Comment/Opposition dated March 9, 2020, respondent mirrors the elucidation of, and the concomitant conclusion reached by the Court that it is devoid of jurisdiction to entertain the present case for petitioner's non-adherence with the 120+30 days mandatory and jurisdictional periods enshrined in Section 112(C) of the NIRC, as amended.

THE RULING OF THE COURT

Save for the last issue intimated by petitioner in its Motion for Reconsideration dated February 13, 2020, the contentions it advanced therein were meticulously addressed and passed upon by the Court in the assailed Resolution of January 28, 2020. To discuss them anew is surely a waste of time and resources of the Court.

On the other point, it is misleading for petitioner to claim that respondent is estopped from pleading prescription since he took action on its administrative claim notwithstanding the lapse of the 120-day period for him to decide the same prescribed under Section 112(C) of the

NIRC, as amended. A reading of the arguments, as well as the legal bases set forth in respondent's Motion for Early Resolution on Issue of Jurisdiction of the Honorable Court dated June 14, 2019, show that he sought for the dismissal of the case not because it had prescribed contrary to petitioner's position. Rather, respondent's prayer to jettison the case was anchored on the Court's lack of jurisdiction over the subject matter of the controversy.

Jurisprudence has it that *[i]n law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution.*[5] When a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void.[6] It is conferred by law and an <u>objection based on this ground cannot be waived by the parties</u>.[7]

Given that petitioner failed to stringently observe the 120+30 days mandatory and jurisdictional periods enshrined in Section 112(C) of the NIRC, as amended, and as expounded in pertinent case-law on the matter, respondent may not be procedurally faulted from challenging the action taken by petitioner as the Court does not possess the requisite competence to decide the case.

WHEREFORE, petitioner's Motion for Reconsideration dated February 13, 2020 is **DENIED**. The impugned Resolution dated January 28, 2020 is **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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5 See *Foronda-Crystal vs. Son,* G.R. No. 221815, November 29, 2017.
6 See *Bilag vs. Ay-Ay,* G.R. No. 189950, April 24, 2017.
7 See *Roldan vs. Spouses Barrios, et al.,* G.R No. 214803, April 23, 2018. Underscoring supplied.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice