REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10026

Members:

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

Promulgated:
OCT 14 2019 9:00a.m.

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RESOLUTION

For resolution is Petitioner's "Motion for Reconsideration (Of the Resolution dated 09 August 2019)"[1] ("Motion for Reconsideration") filed on September 06, 2019, with Respondent's "Comment/Opposition Re: Petitioner's Motion for Reconsideration" filed on October 01, 2019.

The Motion for Reconsideration seeks to set aside the Resolution[2] issued on August 09, 2019 ("Assailed Resolution") granting Respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court"[3] and dismissing the instant case for lack of jurisdiction. Petitioner also prays that a new Resolution be issued giving due course to Petitioner's "Petition for Review".

On September 11, 2019, the Court issued a Resolution[4] requiring Respondent to comment on Petitioner's Motion for Reconsideration within fifteen (15) days from notice. Upon receipt thereof or the lapse of the period granted, the incident shall be deemed submitted for the resolution of the Court.

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1 Docket, pp. 229-254.
2 *Id.* pp. 223-228.
3 *Id.* pp. 188-195.
4 *Id.* p. 256.

In response thereto, Respondent filed his "Comment/Opposition Re: Petitioner's Motion for Reconsideration" on October 01, 2019. Consequently, pursuant to the Resolution issued on September 11, 2019, the incident is now deemed submitted for resolution.

In its Motion for Reconsideration, Petitioner avers that the "120+30 day period" under Revenue Memorandum Circular (RMC) No. 54-2014 and various Supreme Court decisions does not apply to cases where the Commissioner of Internal Revenue ("CIR") issues a decision on the Value-Added Tax ("VAT") refund after the 120-day period. Petitioner posits that these decisions are of a different factual milieu and should not be applied in the instant case. Case in point are *Commissioner of Internal Revenue v. San Roque Power Corporation*[5] ("*San Roque*") and *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[6] ("*Mindanao II*") which only dealt with the premature filing of a judicial claim.

Petitioner also argues that Section 112 (C) of the National Internal Revenue Code ("NIRC") of 1997 shall be interpreted to mean that taxpayers may opt to wait for the decision of the CIR even beyond the 120-day period before it elevates the same to the Court of Tax Appeals (CTA); and that CTA is not deprived of its jurisdiction as long as the matter was brought within thirty (30) days from receipt of CIR's decision, following *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[7] ("*Lascona*").

Lastly, Petitioner contends that there is a distinction between "claim processing rules" and rules governing "subject-matter jurisdiction". 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 CTA. The taxpayer's failure to comply with the "120+30 day period" does not deprive the CTA of its jurisdiction to adjudicate on the assailed Letter Denial[8] dated February 13, 2018 issued by the BIR denying Petitioner's claim for VAT refund/tax credit.

Respondent on the other hand asserts that the Court was correct in ruling that it had no jurisdiction.

After a careful consideration, We find that Petitioner did not raise new grounds that would warrant the reversal of the Assailed Resolution. Petitioner's arguments are mere reiterations and constitute neither compelling nor cogent reason to modify, much less reverse the Resolution dated August 08, 2019.

The pronouncement of the Supreme Court in *San Roque* and *Mindanao II* is plain, clear and leaves no room for interpretation. The taxpayer can file an appeal in

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[5] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[6] G.R. No. 191498, January 15, 2014.
[7] G.R. No. 171251, March 05, 2012.
[8] *Id.*, Joint Stipulation of Facts and Issues, Summary of Admitted Facts, par. 3, p. 389.

one of two ways: (1) file the judicial claim within thirty (30) days after the CIR denies the claim <u>within the 120-day period</u>, or (2) file the judicial claim within thirty (30) days from the expiration of the 120-day period <u>if the CIR does not act within the 120-day period</u>.

As We have pointed out in the Assailed Resolution, in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[9], it was emphasized that the lapse of the 120-day period constitutes a denial by the BIR, and an appeal within thirty (30) days therefrom must already be made by the taxpayer.

This is consistent with Section 3(a)(2), Rule 4 of the Revised Rules of the CTA ('RRCTA")[10], the pertinent portion of which states:

> "**SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> 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**..."[11]

Again, the CIR is given one hundred twenty (120) days to decide on the application for refund or a tax credit certificate. If he does not decide within that period, taxpayers must elevate the matter to the CTA within thirty (30) days after the lapse thereof. Otherwise, the Court will be deprived of jurisdiction to hear and determine the case.

In addition, the reliance by Petitioner on *Lascona* is erroneous. A careful reading of the said case shows that Section 228[12] of the NIRC of 1997 (*i.e.*,

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[9] G.R. No. 168950, January 14, 2015.
[10] A.M. No. 05-11-07-CTA, November 22, 2005.
[11] *Emphasis supplied.*
[12] SEC. 228. Protesting of Assessment. – xxx

xxx xxx xxx

administrative protest to the Final Assessment Notice, in the case of disputed assessments) was construed in relation to Section 3(a)(2), Rule 4 of the RRCTA, particularly on the remedy of the taxpayer in case the CIR failed to decide on the taxpayer's protest within the 180-day period prescribed under Section 228, to wit:

> "**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**...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 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 <u>should the taxpayer opt to wait the final decision</u> 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..."[13]

Said provision undoubtedly provides that in cases of disputed assessments, the taxpayer has the option either to appeal the inaction of the CIR or to wait for the final decision of the CIR before filing an appeal.

In cases of inaction of CIR on claims for refund within one hundred twenty (120) days, no similar option applies. Had the Supreme Court intended to confer with the Court in Division jurisdiction over cases involving claims for refund beyond

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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 *Emphasis and underscoring supplied.*

the "120+30-day period", it would have specifically included the words "refund", "one hundred twenty (120) days," and "Section 112" in the above Section 3(a)(2), Rule 4 of the RRCTA.

Regrettably, Petitioner's non-compliance with the said mandatory period of "120+30 days" is fatal to its claim for refund for the first, second and third quarters of 2008, resulting in this Court's lack of jurisdiction over the said judicial claim.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration (Of the Resolution dated 09 August 2019)" is **DENIED** for lack of merit. The Resolution dated August 09, 2019 dismissing the instant case for lack of jurisdiction is **UPHELD**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice