REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CARMEN COPPER CORPORATION, Petitioner,	**CTA CASE NO. 8873**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 2 0 2017 11:05 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For this Court's resolution is petitioner's **Motion for Reconsideration**, filed through registered mail on January 6, 2017, and received by this Court on January 19, 2016, with respondent's **Comment/Opposition (Re: Motion for Reconsideration)**, filed on February 1, 2017.

Petitioner seeks reconsideration of the Court's Decision promulgated on December 16, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED**, for lack of merit.
>
> **SO ORDERED.**"[2]

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[1] Docket vol. II, pp. 947-966.
[2] Docket vol. II, p. 965.

In the assailed Decision, the Court ruled that it has no jurisdiction to entertain the judicial refund case considering that the Petition for Review was filed 422 days after the lapse of the 30-day period to appeal. The Court held that it can only take cognizance of such matters as are clearly within its statutory authority. And if the Court has no jurisdiction over the nature of the action, its only jurisdiction is to dismiss the case.

Petitioner argues that the Petition for Review was filed within thirty (30) days from the decision denying the administrative claim pursuant to Section 112(C) of the National Internal Revenue Code of 1997, as amended. It contends that on May 30, 2013, it filed its request for reconsideration of respondent's partial denial of its administrative claim with the Bureau of Internal Revenue's Large Taxpayers Service, which was eventually denied on July 18, 2014. Petitioner alleges that the request for reconsideration was necessary because under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he should have availed himself of all the means of administrative processes afforded him.

Moreover, petitioner avers that respondent took cognizance of the request and even ruled on the new issues raised by petitioner in relation to the partial denial of its administrative claim. Thus, it submits that it would be contrary to the sound administration of the laws and inconsistent with the elementary principles of right dealing and good faith if its judicial claim is dismissed only because both parties complied with the doctrine of exhaustion of administrative remedies with respect to the resolution of the request.

On the other hand, respondent argues that petitioner's contention that it filed the instant Petition for Review with the Court within 30 days from the denial of its administrative claim for refund is untenable. Respondent points out that petitioner received the denial of its administrative claim on May 23, 2013 but petitioner filed the instant Petition for Review only on August 18, 2014. Respondent contends that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation, and as such, they are looked upon with disfavor.

The Court finds no merit in petitioner's Motion for Reconsideration.

First, as correctly found by the Court in the assailed Decision, petitioner belatedly filed its appeal to the partial denial of its administrative claim with this Court, thus, it has no jurisdiction to entertain the judicial claim, to wit:

> "In this case, respondent partially denied petitioner's administrative claim for refund through a letter dated April 1, 2013 which was received by petitioner on May 23, 2013. Counting 30 days therefrom, petitioner had until June 22, 2013 within which to appeal the partial denial of its administrative claim before the Court of Tax Appeals. Since June 22, 2013 fell on a Saturday, petitioner had until June 24, 2013, the next working day, within which to file its judicial claim.
>
> However, instead of filing its judicial claim with this Court, petitioner opted to filed a letter-request with the BIR Large Taxpayers Service on May 30, 2013, requesting reconsideration of the disallowance of the input VAT amounting to ₱72,637,412.34. Petitioner only filed the present Petition for Review on August 18, 2014, after it received a letter from respondent on July 18, 2014, denying its letter-request for reconsideration for lack of legal basis. Thus, petitioner's judicial claim was belatedly filed as it was filed 422 days after the lapse of the 30-day period to appeal.
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> xxx xxx xxx
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> Considering that the petitioner's Petition for Review was filed 422 days after the lapse of the 30-day period to appeal, the Court has no jurisdiction to entertain the same. The CTA can only take cognizance of such matters as are clearly within its statutory authority. And if the court has no jurisdiction over the nature of the action, its only jurisdiction is to dismiss the case."

Moreover, under Section 112 (C) of the NIRC of 1997, as amended, the taxpayer can file an appeal on his administrative claim for refund or credit 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, to wit:

"SEC. 112. **Refunds or Tax Credits of Input Tax.**–

xxx xxx 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."

Thus, the 30-day prescriptive period should be reckoned from the date of receipt of the decision denying the administrative claim or after the lapse of the 120-day period. Petitioner should have filed its judicial claim after it received the letter partially denying its administrative claim for refund. It should not have filed the letter-request for reconsideration on the partial denial of its administrative claim. There is nothing in the law which states that the start of the 30-day period can be reckoned from the receipt of the denial of the request for reconsideration on the partial denial of its administrative claim.

Furthermore, the mandatory and jurisdictional character of the 120+30 day prescriptive periods in claims for refund of input VAT must be emphasized. In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*[3], the Supreme Court ruled that strict compliance with the 120+30 day periods is necessary for a claim of tax refund or credit to prosper, citing the pronouncement in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[4], to wit:

[3] G.R. No. 180434, January 20, 2016.
[4] G.R. No. 187485, February 12, 2013.

> "To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. **One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper**, whether before, during or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional." (*Emphasis ours*)

Lastly, the Court stresses that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. A refund is not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT or that such tax was admittedly illegally, erroneously or excessively collected.[5] Corollarily, a taxpayer's non-compliance with the mandatory 120+30 day period is fatal to the petition. Otherwise, the mandatory and jurisdictional conditions impressed by law would be rendered useless.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on December 16, 2016.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

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

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[5] *Harte-Hanks Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205721, September 14, 2016.

I CONCUR:

CAESAR A. CASANOVA
Associate Justice