REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LEAD EXPORT AND AGRO-DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10075

Members:

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

Promulgated:

NOV 17 2020
4:00 p.m.

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RESOLUTION

For the Court's resolution is respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**, filed on November 19, 2019, with petitioner's **Comment/Opposition**, filed on December 9, 2019.

In the instant motion, respondent moves for the early determination of this Court's jurisdiction considering that the issue of jurisdiction is not an evidentiary matter that will require trial to resolve the same. He maintains that on the face of the petition alone, the question of jurisdiction may easily be resolved.

Respondent states that the Petition for Review was filed on April 25, 2019. Hence, the same was filed beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred twenty (120) day period pursuant to Section 112(D)[1] of the Tax Code. Respondent summarizes the relevant dates as follows:

Quarter 2010	Filing of Administrative Claim	120-day period (Deemed Denied)	30-days after the denial	Date of Filing Petition

[1] Should be Section 112(C) of the NIRC of 1997, as amended.

First	June 09, 2011	October 07, 2011	November 06, 2011	**April 25, 2019**
Second	June 09, 2011	October 07, 2011	November 06, 2011	
Third	June 10, 2011	October 08, 2011	November 07, 2011	
Fourth	August 31, 2011	December 29, 2011	January 28, 2012	

Respondent invokes Revenue Memorandum Circular (RMC) No. 54-2014, which provides that if the administrative claim is not acted upon within 120 days, the inaction shall be deemed a denial. Accordingly, petitioner has 30 days from the lapse of 120 days or until November 6, 2011 for the first and second quarter, November 7, 2011 for the third quarter, and January 28, 2012 for the fourth quarter, within which to file a judicial claim before the Court of Tax Appeals (CTA). In the instant case, the petition was filed only on April 25, 2019; therefore, the judicial claim was filed out of time.

Respondent also contends that his subsequent denial is of no moment, and the same has no bearing due to the explicit and clear nature of the issuance, which is also supported by jurisprudence. Moreover, respondent emphasizes that the denial letter has been rendered long after the lapse of the period within which the petitioner could have elevated the matter to this Court. Consequently, he avers that this Court has no jurisdiction over the instant Petition for Review.

On the other hand, petitioner argues that under Revenue Regulations (RR) No. 1-2017, administrative claims filed prior to the effectivity of RMC No. 54-2014 shall continue to be processed administratively. Thus, it follows that such claims, including petitioner's application, were not "deemed denied". Petitioner posits that its administrative claims for VAT credit for the four (4) quarters of 2010 were all filed before the effectivity of RMC No. 54-2014, hence, the inaction of the Commissioner cannot be considered a denial. Petitioner concludes that it has the option to appeal the administrative claim to the CTA within thirty (30) days from the receipt of the denial letter, which constitutes the appealable decision to this Court. Citing the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*, petitioner argues that it had the option of waiting for respondent's decision even after the lapse of the 120-day period.

In resolving the case at hand, the Court refers to Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provide:

"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."

According to the above-cited provision, the Commissioner of Internal Revenue (CIR) has 120 days from the date of the submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the CIR. However, if the CIR fails to act on the application for tax refund/credit within the 120-day period, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[2] the Supreme Court held:

> **"Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
>
> xxx xxx xxx
>
> **The judicial claim shall 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, <u>whichever is sooner</u>.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**" *(Emphases and underscoring supplied)*

Based on the foregoing, the 30-day period provided by law should be reckoned after the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **<u>whichever is sooner</u>**. In addition, it is clear

[2] G.R. No. 182737, March 2, 2016.

that any judicial claim filed in a period less than or beyond the said 120+30-day period is outside the jurisdiction of this Court.

Hence, in *Team Energy Corporation (Formerly Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*,[3] citing the case of *Commissioner of Internal Revenue vs. Aichi Forging Company, Inc.*,[4] the Supreme Court clarified that the second paragraph of Section 112(D) [now Section 112(C)] of the NIRC envisions two scenarios: (1) **when a decision is issued by the CIR before the lapse of the 120-day period**; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA.

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[5] the Supreme Court explained that the inaction of the CIR on the claim during the 120-day period is, by express provision of law, "deemed a denial" of such claim, and the failure of the taxpayer to file its judicial claim within 30 days from the expiration of the 120-day period shall render the "deemed a denial" decision of the CIR final and inappealable. 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.

In addition, the Supreme Court reminded taxpayers in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[6] that when the 120-day period lapses and there is inaction on the part of the respondent within the said period, the taxpayer must no longer wait for respondent to come up with a decision. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.

In the instant case, the administrative claim for tax credit for taxable year 2010 were allegedly filed on June 9, 2011 for the first and second quarter, June 10, 2011 for the third quarter, and August 31, 2011 for the fourth quarter.[7] Thus, the end of the 120-day period was on October 7, 2011, October 8, 2011 and December 29, 2011, respectively. Hence, petitioner should have elevated the matter before this Court within 30 days from the lapse of the 120-day period, or until **November 6, 2011**, **November 7, 2011** and **January 28, 2012**, respectively. However, petitioner waited for respondent's decision, which it received on March 26, 2019. Following the foregoing provisions of the NIRC and the rulings of the Supreme Court, the 30-day period should have been reckoned from the expiration of the 120-day period and not on any other later date. Since the filing of the instant petition is on April 25, 2019, the judicial

[3] G.R. No. 197760, January 13, 2014.
[4] G.R. No. 184823, October 6, 2010.
[5] G.R. No. 190021, October 22, 2014.
[6] G.R. No. 168950, January 14, 2015.
[7] Par. 19, Petition for Review, docket, pp. 13-14.

claim was made beyond the 120+30 day period; the same is outside the jurisdiction of this Court.

It should be noted that the Court determined the jurisdiction of this Court based on the relevant law and jurisprudence. RMC No. 54-2014 was not applied in this case since petitioner's claim was filed prior to its issuance on June 11, 2014. In this regard, it is likewise relevant to refer to the pronouncement in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[8] where the Supreme Court summarized the rules for claims for refund made prior to the issuance of RMC No. 54-2014 on June 11, 2014, to wit:

> "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 additional documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. **The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.**" (*Emphases supplied*)

Moreover, petitioner's reliance on the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[9] *(Lascona)* is misplaced. In *Lascona*, the Supreme Court held that if the taxpayer opted to await the final decision of the Commissioner on the protested assessment, it then has the right to appeal such final decision to the CTA by filing a petition for review within thirty days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period fixed by law for the CIR to act on the disputed assessments. It should be noted that *Lascona* applies to disputed assessments and not to claims for VAT refund, where the Supreme Court has consistently ruled that the inaction of the CIR on the claim during the 120-day period is "deemed a denial" of such claim and the taxpayer must no longer wait for the CIR to come up with a decision, and failure of the taxpayer to file its judicial claim

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[8] G.R. No. 207112, December 8, 2015.
[9] G.R. No. 171251, March 5, 2012.

within 30 days from the expiration of the 120-day period shall render the "deemed a denial" decision of the CIR final and unappealable.

Accordingly, petitioner's allegation that the counting of the 30-day period within which to file a judicial claim before this court should be reckoned from the date of receipt of respondent's denial letter, when said denial was rendered beyond the 120-day period, cannot be sustained.

It has long been established that the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. Hence, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[10]

WHEREFORE, finding that the instant petition was not timely filed and therefore, the Court has no jurisdiction over the same, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, the instant Petition for Review is **DISMISSED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[10] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 185969, November 19, 2014.