REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HEDCOR, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9218

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

NOV 03 2017 : 3:12pm

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RESOLUTION

For the Court's resolution is petitioner's **Motion for Reconsideration**, filed by registered mail on January 19, 2017 and received by the Court on February 1, 2017, with respondent's **Comment (Re: Petitioner's Motion for Reconsideration)**, filed by registered mail on February 10, 2017 and received by the Court on February 23, 2017, and petitioner's **Reply (Re: Respondent's Comment/Opposition dated February 10, 2017)**, filed by registered mail on February 27, 2017 and received by the Court on March 8, 2017.

Petitioner seeks reconsideration of the Court's Resolution dated December 22, 2016 (assailed Resolution), the dispositive portion of which states:

> **WHEREFORE**, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, **Petition**

for Review filed on December 10, 2015 is **DISMISSED** for lack of jurisdiction.

The presentation of petitioner's witness Richard S. Querido set on February 7, 2017 at 9:00 a.m. is **CANCELLED**.

SO ORDERED.

Petitioner argues that Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, was erroneously applied, as follows:

1. There is no inaction because there were "actions" on the part of respondent which led petitioner to believe that the former was acting on its administrative claim for input value-added tax (VAT) refund for the third quarter of fiscal[1] year 2006.

2. Contrary to Revenue Memorandum Circular (RMC) No. 54-2014, respondent is not deprived of jurisdiction to act on the administrative claim for tax refund/credit after the lapse of the 120+30-day period and despite appeal to this Honorable Court, and this is shown by legislative intent.

3. The issue on the prescription of the period to appeal involves questions of fact that requires a full-blown trial.

In his comment, respondent avers that the Court correctly ruled that it has no jurisdiction over the petition. Respondent maintains that the petition for review, filed on December 10, 2015, was filed beyond the mandatory and jurisdictional thirty (30)-day period from the expiration of the one hundred twenty (120)-day period. Respondent argues that petitioner's contention that a taxpayer is not precluded from waiting for respondent's decision at the administrative level like what petitioner did in the present case has no basis in law. Respondent further avers that the distinction made by petitioner between "action" and "decision" is immaterial and has no basis at all. Hence, respondent submits that if there is no decision issued within the 120-day period, the same shall be considered as unacted and equivalent to a "deemed denial" decision.

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[1] Should be calendar year.

Petitioner, in its reply, maintains that the Court erred in ruling that it has no jurisdiction over the present petition. Petitioner claims that it is both incorrect and baseless to equate "action" with "decision" since the Supreme Court has previously interpreted "action" to mean other steps in the assessment process, including the issuance of indorsements, citing *Surigao Electric Co., Inc. vs. Court of Tax Appeals*[2]. Petitioner argues that the "deemed denial" doctrine applies only to cases where there are "no actions" from or there is "inaction" by the BIR. In its case, petitioner stresses that the BIR took positive actions on its claim. Petitioner claims that it was justified in relying on these actions and wait for respondent's actual decision. Hence, petitioner has the right to appeal the Denial Letter.

The Court finds no new matters were raised in petitioner's motion which have not been considered and passed upon in the assailed Resolution. We quote the pertinent portion of the assailed Resolution:

> Furthermore, the second paragraph of Section 112(C) of the NIRC of 1997, as amended, shows that the respondent is given a 120-day period from submission of complete documents in support of the administrative claim within which to act on claims for refund/applications for issuance of TCC. Upon denial of the claim or application, or upon expiration of the 120-day period, the taxpayer only has 30 days within which to appeal said adverse decision or unacted claim before the Court. In the case of *Team Energy Corporation (formerly Mirant Pagbilao Corporation)* vs. *Commissioner of Internal Revenue*[3], the Supreme Court elaborates on this second paragraph of Section 112(C) [previously Section 112 (D)], as follows:
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>> "xxx The second paragraph of Section 112 (D) 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**. As we see

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[2] 57 SCRA 523 (1974).
[3] G.R. No. 197760, January 13, 2014.

> it then, the 120-day period is crucial in filing an appeal with the CTA." (*Emphasis supplied*)

From the foregoing, petitioner can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the respondent denies the claim **within the 120-day period**, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the respondent does not act within the 120-day period. Corollary thereto, the "decision" contemplated by Section 112 is a decision issued by the respondent before the lapse of the 120-day period within which the latter may act on petitioner's claim. The inaction of the respondent on petitioner's claim during the 120-day period is, by express provision of law, "deemed a denial" of the latter's claim. Petitioner had therefore 30 days from the expiration of the 120-day period to file its judicial claim with the Court.

xxx xxx xxx

Records show that petitioner allegedly filed its administrative claim for refund or issuance of TCC on August 20, 2008 and submitted its last additional documentary evidence on May 3, 2011. Counting 120 days from May 3, 2011, the BIR then had until August 31, 2011, within which to decide the claim. Petitioner had 30 days from the lapse of 120 days on August 31, 2011 or until September 30, 2011 to file its judicial claim.

Applying the foregoing law and jurisprudence, it is clear that petitioner had indeed complied with the required 2-year period within which to file a refund/tax credit claim with the BIR by filing its administrative claim on August 20, 2008 (within the period after the close of the third quarter of taxable year 2006 when the relevant sales or purchases were made). Petitioner's judicial claim filed on December 10, 2015 was, however, filed beyond the 30-day prescriptive period.

The Court finds that there is no need for petitioner to present evidence on the issue of jurisdiction considering that all the allegations in its pleadings, including documents attached thereto, were taken into consideration. In fact, respondent also relied on petitioner's allegations in his arguments. Letting the petition go through a full blown trial only to be dismissed later on will just be a waste of the Court's time and resources.

Petitioner has stated that its administrative claim for input VAT refund or issuance of tax credit certificate for the third quarter of 2006 was filed on August 20, 2008[4] and that it submitted additional documentary evidence on May 3, 2011[5]. Counting 120 days from May 3, 2011, the day petitioner submitted its last additional documentary evidence, respondent had until August 31, 2011 to decide the claim. Since respondent did not issue any decision on the claim within the 120-day period, petitioner had 30 days, or until September 30, 2011, to file its judicial claim for refund. Unfortunately, petitioner's judicial claim was filed only on December 10, 2015.

The Supreme Court ruled in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[6], *viz*:

> The San Roque pronouncement is clear. The taxpayer can file the appeal 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.

Considering that petitioner's claim was not denied within the 120-day period, the second option applies to petitioner, thus, petitioner should have filed its judicial claim within 30 days from the expiration of the 120-day period.

If we were to follow petitioner's argument that it is not precluded from waiting for respondent's decision even after the lapse of the 120-day period, it would lead to an incongruous situation where its claim does not fall under any of the two ways to file an appeal on a claim for tax refund/credits provided under Section 112(C) of the NIRC of 1997, as amended, and as established by jurisprudence.

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[4] Par. 12, Petition for Review, docket, p. 15; Annexes "P-20" and "P-21" of the Petition for Review, docket, pp. 90-92.
[5] Par. 18, petitioner's Pre-Trial Brief, docket, p. 210.
[6] G.R. No. 191498, January 15, 2014.

The Tax Code does not provide for any other way for petitioner to appeal its case to this Court – either he files the appeal within thirty days after the Commissioner denies the claim within the 120-day period, or 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.

Hence, since petitioner failed to appeal the case within thirty days from the expiration of the 120-day period from the date when petitioner last submitted its supporting documents, the Court has no jurisdiction to act on the petition.

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice