20-000406-0064

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10407

FRANKLIN BAKER COMPANY OF THE PHILIPPINES,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

RELATO LAW OFFICE
Unit 1112, Entrata Tower I
2609 Civic Drive, Filinvest Corporate City
Alabang, Muntinlupa City

GREETINGS:

You are hereby notified by these presents that on **October 8, 2024,**a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 9, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

FRANKLIN BAKER COMPANY OF THE PHILIPPINES, *Petitioner,*	**CTA Case No. 10407**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 0 8 2024; 3:45PM

x - x

RESOLUTION

MANAHAN, J.:

For resolution of the Court is petitioner's *Motion for Reconsideration* filed on May 21, 2024, without respondent's comment.

For easy reference, the dispositive portion of the assailed Decision[1] reads:

> "Accordingly, the instant Petition for Review is **DISMISSED**, for lack of jurisdiction.
>
> **SO ORDERED.**"[2]

Petitioner *pertinently* argues in the instant motion that: (1) The Honorable Court erred in ruling that it has no jurisdiction over the case, allegedly due to the filing of the Petition for Review beyond the mandatory thirty (30)-day period; and, (2) The Decision of the Honorable Court contravenes the plain meaning or *verba-legis* rule in Statutory Construction, insofar as its interpretation of Section 112(D) of the National Internal Revenue Code (NIRC), as further

[1] Docket, Vol. II, pp. 944-953.
[2] *Id.*, p. 953.

amended by Section 36 of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, is concerned.

Meanwhile, petitioner asserts that:

> "6. As found by the Honorable Court in the factual antecedents of its Decision, Petitioner filed its administrative claim for refund with the Respondent Commissioner of Internal Revenue (CIR) on 15 July 2020 and its judicial claim before the Honorable Court of Tax Appeals (CTA) on 20 November 2020. It must be noted however that at the time of Petitioner's filing of the administrative claim for refund with the Respondent CIR, a new law governing the input Value-Added Tax (VAT) refund process, which is Republic Act (RA) No. 10963 (RA No. 10963), otherwise known as the TRAIN Law, was **already in effect**.
>
> xxx xxx xxx
>
> 8. Unmistakably plain from the above-cited provision of the TRAIN Law is that unlike the old Section 112 [of] the NIRC, as amended, upon which the *Silicon Philippines Inc. case* was anchored, under Section 112 as further amended the TRAIN Law, **the reckoning of the thirty (30)-day period within which an appeal to the CTA may be made specifies only <u>one</u> circumstance**, that is - from **receipt of the decision of the CIR** denying the claim for tax refund. As aptly stated by the Honorable Presiding Justice Roman Del Rosario in his Dissenting Opinion, the said provision, as worded, does not give the taxpayer the privilege to **appeal the inaction** of the CIR to act on the administrative claim within the prescribed period.
>
> 9. Undoubtedly, upon Petitioner's receipt of Respondent CIR's decision or VAT refund notice on 21 October 2020, Section 36 of the TRAIN Law was already **well in effect** more than two (2) years since January 1, 2018."[3]

After careful consideration, the Court still finds petitioner's arguments untenable.

Section 7(a)(2) of the Republic Act (RA) No. 1125, as amended – **a special law**, provides for the jurisdiction of the CTA in cases of inaction by the CIR, as follows:

"SEC. 7. Jurisdiction. – The CTA shall exercise:

[3] Motion for Reconsideration, Docket, Vol. II, pp. 960-961.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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, xxx where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

The above-quoted special law *categorically* confers jurisdiction upon the CTA over cases involving *inaction* by the CIR on *refunds* of internal revenue taxes, fees or other charges, among others.

In *Commissioner of Internal Revenue v. Semirara Mining Corporation*,[4] the Supreme Court had the occasion to discuss the following elementary rule in statutory construction:

> "It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion."

The above-quoted jurisprudence provides that a subsequent general law cannot repeal or modify a special law *without any express provision* to that effect. Consequently, the special law must be interpreted as an exception to the general law.

On this score, the repealing clause of the TRAIN Law states:

> "Section 86. *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons

[4] G.R. No. 202534, December 8, 2018.

and/or transactions affected herein are made subject to the VAT provision of Title IV of the NIRC, as amended:

(a) Section 3 of Presidential Decree (P.D.). 1972, s. 1985, as amended, Sections 4 and 5 of Executive Order No. (E.O.) 1057, s. 1985, and Section 4 of E.O. 1064, s. 1985, insofar as the VAT tax exemption and tax credit is concerned;

(b) Section 10, insofar as VAT exemption is concerned, of Republic Act No. (R.A.) 6807 or An Act Converting the Mati Community College into a State College to be known as the Davao Oriental State College of Science and Technology, Providing for a Charter for this Purpose, Expanding its Curricular Offerings, Redirecting its Objectives, and Appropriating Funds Therefor;

(c) Sections 18 and 19, insofar as VAT exemption is concerned, of R.A. 6847 or The Philippine Sports Commission Act;

(d) Section 8(d), last paragraph, insofar as VAT exemption is concerned, of R.A. 7278 or An Act Amending Commonwealth Act No. 111, as Amended by P.D. 460, entitled An Act to Create a Public Corporation to be Known as the Boy Scouts of the Philippines, and to Define its Powers and Purposes, by Strengthening the Volunteer and Democratic Character of the Boy Scouts of the Philippines and for Other Purposes;

(e) Section 1, insofar as VAT exemption is concerned, of R.A. 7291 or An Act Restoring the Tax and Duty Incentives Previously Enjoyed by the Veterans Federation of the Philippines under Republic Act Numbered Twenty-Six Hundred and Forty;

(f) Section 21, insofar as VAT exemption is concerned, of R.A. 7306 or the Charter of the People's Television Network, Inc.;

(g) Section 14, insofar as VAT exemption is concerned, of R.A. 7354 or the Postal Service Act of 1992;

(h) Section 9(c), insofar as VAT exemption is concerned, of R.A. 7355 or the Manlilikha ng Bayan Act;

(i) Section 21, insofar as VAT exemption is concerned. of RA 7366 or the Law Creating the National Commission for Culture and the Arts;

(j) Section 7(f), insofar as VAT exemption is concerned, of R.A. 7371 or An Act Converting the Aklan *an*

Agricultural College into Aklan State College of Agriculture, and Appropriating Funds Therefor;

(k) Section 12, second sentence, insofar as VAT exemption is concerned, of R.A. 7373 or An Act Establishing the Eastern Visayas Science High School;

(l) Section 11(j), insofar as VAT exemption is concerned, of R.A. 7605 or the Charter of the Philippine State College of Aeronautics;

(m) Section 126, insofar as VAT exemption is concerned, of R.A. 7653 or The New Central Bank Act;

(n) Section 14, insofar as VAT exemption is concerned, of R.A. 7875 or the National Health Insurance Act of 1995;

(o) Section 18, insofar as VAT exemption is concerned, and Section 18, last paragraph of R.A. 7884 or the National Dairy Development Act of 1995;

(p) Section 8, insofar as VAT exemption is concerned, R.A. 8160 or An Act Granting the University of the Philippines a Franchise to Construct, Install, Operate and Maintain for Educational and Other Related Purposes, Radio and Television Broadcasting Stations Within the University of the Philippines and in Such Other Areas Within the Scope of its Operation;

(q) Sections 2 and 16, insofar as VAT exemption is concerned, of R.A. 8282 or The Social Security Act of 1997;

(r) Section 39, insofar as VAT exemption is concerned, of R.A. 8291 or The Government Service Insurance System Act of 1997;

(s) Section 4(c) and (f), insofar as VAT exemption is concerned, of R.A. 8292 or the Higher Education Modernization Act of 1997;

(t) Section 25, insofar as VAT exemption is concerned, of R.A. 8492 or the National Museum Act of 1998;

(u) Section 3(h), insofar as VAT exemption is concerned, of R.A. 8502 or the Jewelry Industry Development Act of 1998;

(v) Article 65, insofar as VAT exemption and zero rating is concerned, of regional or area headquarters and zero-rating of the sale or lease of goods and property and the rendition of services to regional or area headquarters, and Article 67, insofar as VAT exemption is concerned, of R.A. 8756; *Provided,* That existing RHQs and ROHQs enjoying VAT exemption and zero-rating at the time of the effectivity of TRAIN shall not be affected;

(w) Section 7(c), insofar as VAT exemption is concerned, of R.A. 9045 or An Act Creating the Batangas State University;

(x) Section 7(c), insofar as VAT exemption is concerned, of R.A. 9055 or An Act Converting the A1tlan State College of Agriculture into the Aldan State University;

(y) Section 13, insofar as VAT exemption is concerned of R.A. 9083 or An Act Establishing the Sta. Rosa Science and Technology High School in Sta. Rosa Laguna;

(z) Section 7(c) and (f), insofar as VAT exemption is concerned, of RA 9138 or An Act Establishing the Guimaras State College;

(aa) Section 7(c), insofar as VAT exemption is concerned, of R.A. 9141 or An Act Converting the Negros Occidental Agricultural College into State College to be known as the Negros Occidental Agricultural College;

(bb) Section 16, insofar as VAT exemption is concerned, of R.A. 9497 or The Civil Aviation Authority Act of 2008;

(cc) Section 25(b) and (c), insofar as VAT exemption is concerned, and (d), insofar as VAT zero rating is concerned, of R.A. 9500 or the University of the Philippines Charter of 2008;

(dd) Section 25(b) and (c), insofar as VAT exemption is concerned, and (d) insofar as VAT zero-rating is concerned, of R.A. 9519 or An Act Converting Mindanao Polytechnic State College into a State University to be Known as the Mindanao University of Science and Technology;

(ee) Section 17(c), insofar as VAT exemption is concerned, of R.A. 3591, otherwise known as the PDIC Charter, as amended by Section 8 of R.A. 9576, otherwise known as An Act Increasing the Maximum Deposit Insurance Coverage, and in Connection Therewith, to Strengthen the Regulatory and Administrative Authority, and Financial Capability of the Philippine Deposit Insurance Corporation (PDIC), Amending for this Purpose Republic Act Numbered Three Thousand Five Hundred

Ninety-One, as Amended, Otherwise Known as the PDIC Charter, and for Other Purposes;

(ff) Sections 2 and 19, insofar as VAT exemption is concerned, of R.A. 9679 or An Act Further Strengthening the Home Development Mutual Fund, and for Other Purposes;

(gg) Section 23, insofar as VAT exemption is concerned of the National Historical Commission of the Philippines, of R.A. 10086, or the Strengthening Peoples' Nationalism Through Philippine History Act;

(hh) Section 7(b) and (c), insofar as VAT exemption is concerned, and (d), insofar as VAT zero-rating is concerned, of R.A. 9647 or the Philippine Normal University Modernization Act of 2009;

(ii) Section 17, insofar as VAT exemption is concerned, of R.A. 7898, as amended by R.A. 10349, Establishing the Revised AFP Modernization Program and for Other Purposes;

(jj) Section 56, insofar as VAT exemption is concerned, of R.A. 10801 or the Overseas Workers Welfare Administration Act;

(kk) Section 9(e)(2) and (j), with respect to VAT, of R.A. 7900 or the High-Value Crops Development Act of 1995;

(ll) Section 24(e) of R.A. 10068 or the Organic Agriculture Act of 2010;

(mm) Section 14(b), with respect to VAT, R.A. 7308 or the Seed Industry Development Act of 1992;

(nn) Section 35 (b)(c), with respect to VAT, of R.A. 8550 or The Philippine Fisheries Code of 1998;

(oo) Section 13, second paragraph, with respect to VAT, of R.A. 10817 or the Philippine Halal Export Development and Promotion Act of 2016;

(pp) Section 9(3), (4), and (8), with respect to VAT, of R.A. 8479 or the Downstream Oil Industry Deregulation Act of 1998;

(qq) Section 6(c) and (d), with respect to VAT, of R.A. 7103 or the Iron and Steel Industry Act;

(rr)Section 10, with respect to VAT, of R.A. 7718 or An Act Amending R.A. No. 6957;

(ss) Section 26(B)(3), with respect to VAT, of R.A. 9275 or the Philippine Clean Water Act of 2004;

(tt) Section 20(d)(3) of R.A. 7279 or the Urban Development and Housing Act of 1992;

(uu) Section 20(d)(3) of R.A. 10884 or An Act Strengthening the Balanced Housing Development Program, Amending for the Purpose RA 7279, as Amended, Otherwise Known as the Urban Development and Housing Act of 1992;

(vv) Section 14, with respect to VAT, of R.A. 8423 or the Traditional and Alternative Medicine Act (TAMA) of 1997;

(ww) Section 22(b) of R.A. 10747 or the Rare Diseases of the Philippines;

(xx) Section 45(a), (b), and (c), with respect to VAT, of R.A. 9003 or the Ecological Solid Waste Management Act of 2000;

(yy) Section 5(b), with respect to VAT, of R.A. 10771 or the Philippine Green Jobs Act of 2016;

(zz) Section 6, with respect to VAT, of R.A. 7459 or the Investors and Inventions Incentives Act of the Philippines;

(aaa) Section 24, insofar as VAT exemption of foundations for scientific advancements is concerned, of R.A. 2067, as amended, or the Science Act of 1958; and

(bbb) Section 9, with respect to VAT, of R.A. 9511 or the National Grid Corporation of the Philippines Act.

Provided, That the VAT obligations of government owned and-controlled corporations, state universities and colleges, and other government instrumentalities whose VAT exemption has been repealed under this Act shall be chargeable to the Tax Expenditure Fund (TEF) provided for in the annual General Appropriations Act: *Provided, further,* That VAT exemption, VAT zero-rating, and VAT credit granted to state universities and colleges on their purchases and importations are hereby repealed and the transactions affected herein are made subject to the VAT provisions of Title IV of the NIRC, as amended.

Provided, That, with respect to income tax, the following laws or provisions of laws are hereby repealed or amended: *am*

(a) Section 33(A) of R.A. 7277, as amended by R.A. 10754 or the Magna Carta for Persons with Disability;

(b) Section 22(B) of R.A. 10165 or the Foster Care Act of 2012;

(c) Section 4 of R.A. 1169 or An Act Providing for Charity Sweepstakes, Horse Races and Lotteries:

> 'Sec. 4. *Holding of sweepstakes.*— The Office shall bold charity horse race sweepstakes under such regulations as shall be promulgated by the Board in accordance with Republic Act Numbered Three hundred and nine: *Provided, however,* That when the holding of a sweepstakes race to determine prizes is impossible due to war, public calamity, or other unforeseen or fortuitous event or when there is no sufficient number of horses to determine the major prizes, the Board of Directors may determine the procedure to be followed in the distribution of prizes in the most just, equitable and expeditious manner. The horse races and the sale of tickets in the said sweepstakes shall be exempt from all taxes, except that each ticket shall bear a twelve-centavo internal revenue stamp. The tickets shall be printed by the Government and shall be considered government securities for the purposes of penalizing forgery or alteration.'

(d) Section 5 of R.A. 8756 or An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, An;tending for the Purpose Certain Provisions of Executive Order No. 226 or The Omnibus Investments Code of 1987: *Provided,* That existing Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies enjoying the preferential income tax rate at the time of the effectivity of the TRAIN shall not be affected;

(e) Section 2 of P.D. 1354, s. 1978 or Imposing Final Income Tax on Subcontractors and Alien Employees of Service Contractors and Subcontractors Engaged in Petroleum Operations in the Philippines under Presidential Decree No. 87: *Provided,* That service contractors and subcontractors enjoying the preferential income tax rate at the time of the effectivity of the TRAIN shall not be affected; and

(f) Section 7 of P.D. 1034, s. 1976, or Authorizing the Establishment of an Offshore Banking System in the Philippines: *Provided,* That service contractors and subcontractors enjoying the preferential income tax rate at the time of the effectivity of the TRAIN shall not be affected."

A reading of the above-quoted repealing clause of the TRAIN Law readily reveals that Section 7(a)(2) of RA No. 1125, as amended, is not included in the list of provisions that was expressly repealed by the former.

Simply stated, the TRAIN Law did not expressly deprive the CTA of its jurisdiction over inaction on refund cases. Hence, the Court reiterates its conclusion in the assailed Decision, as follows:

> "In the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing Inc.) v. Commissioner of Internal Revenue (Silicon Case)*, the Supreme Court emphasized the mandatory and jurisdictional nature of the 120 (now 90) + 30 day period to elevate an appeal with the Court. It says:
>
> > 'The judicial claim shall be filed within a period of 30 days after the receipt of the respondent's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**.
>
> Aside from the specific exception to the mandatory and jurisdictional nature of the periods provided by the 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**.'
>
> The ruling in *Silicon* is in accord with the provisions of Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA No. 9282, thus:
>
> 'SEC. 7. Jurisdiction. – The Court shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of 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;

(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 provides a specific period for action, in which case the inaction shall be deemed a denial**;'

Meanwhile, in *Ceamsa Asia, Inc. vs. Commissioner of Internal Revenue*, the Court had the occasion to rule on a similar issue, as follows:

'In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, the Supreme Court summarized the rules regarding the prescriptive periods for filing of the administrative and judicial claims for refund or tax credit of input VAT. The pertinent rules for the judicial claim are quoted below:

'B. 120(now 90) + 30-Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within 120-day (now 90-day) period, or (2) file the judicial claim within thirty days from the expiration of the 120-day (now 90-day) period if the Commissioner does not act within the 120-day (now 90-day) period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)

4. As an exemption to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)

> In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, the Supreme Court stated:
>
> > 'A final note, the taxpayers are reminded that when the 120-day (now 90-day) period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. 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 (now 90-day) waiting period.'
>
> The Supreme Court has also stated that 'any claim filed in a period less than or beyond the 120+30 (now 90+30) days provided by the NIRC is outside the jurisdiction of the CTA.'"
>
> Applying the above-quoted provisions and jurisprudence to the case at hand, Franklin Baker filed its administrative claim on July 15, 2020. Counting 90 days therefrom, the CIR had until October 13, 2020 to decide on the refund claim. Consequently, counting 30 days from the expiration of the 90-day period within which to decide on the refund claim, or until October 13, 2020, Franklin Baker had until November 12, 2020 to file its judicial claim. Considering that the instant *Petition for Review* was only filed on November 20, 2020, the Court has no jurisdiction over the case."[5]

Considering the foregoing, the Court finds no reason to deviate from its earlier ruling that the CTA has no jurisdiction over the instant case on the ground of petitioner's belated filing of its Petition for Review. Hence, the denial of the instant motion is in order.

FOR THESE REASONS, the instant Motion for Reconsideration is **DENIED**, for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

[5] Decision, Docket, Vol. II, pp. 949-952.

WE CONCUR:

(With due respect, I reiterate my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice