REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LAPANDAY AGRICULTURAL & DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2174
(CTA Case No. 9965)

Present:

DEL ROSARIO, ***P.J.***,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 22 2020
4:06 p.m.

x -- x

DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner **Lapanday Agricultural & Development Corporation** on November 19, 2019 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, praying for the Court *En Banc* to reverse and set aside the assailed Resolutions dated July 30, 2019 and October 15, 2019 rendered by the Court in Division in CTA Case No. 9965, entitled *"Lapanday Agricultural & Development Corporation vs. Commissioner of Internal Revenue."*

The assailed Resolutions dated July 30, 2019 and October 15, 2019 granted respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court", and dismissed Lapanday Agricultural & Development Corporation's Petition for Review for lack of jurisdiction. The dispositive portions of the assailed Resolutions read as follows:

Resolution dated July 30, 2019[1]

"**WHEREFORE**, considering the foregoing, Respondent's motion is **GRANTED**. The Petition for Review docketed as CTA Case No. 9965, entitled *Lapanday Foods Corporation vs. Commissioner of Internal Revenue* is **DISMISSED** for lack of jurisdiction.

SO ORDERED."

Resolution dated October 15, 2019[2]

"**WHEREFORE**, considering the foregoing, Petitioner's 'Motion for Reconsideration (Of the Resolution dated 30 July 2019)' is **DENIED** for lack of merit.

Let the dispositive portion the Resolution dated July 30, 2019 be **AMENDED**, as follows:

> '**WHEREFORE**, considering the foregoing, Respondent's motion is **GRANTED**. The Petition for Review docketed as CTA Case No. 9965, entitled *Lapanday Agricultural & Development Corporation vs. Commissioner of Internal Revenue* is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**.'

SO ORDERED."

THE PARTIES

Petitioner Lapanday Agricultural & Development Corporation is a domestic corporation duly organized and registered under the laws of the Philippines with principal address at Maryknoll Road, Barangay Pampanga, Lanang, Davao City.[3]

Respondent Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit certificate, as provided by law.[4]

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[1] Annex "B", CTA *En Banc* Docket, pp. 35-41.
[2] Annex "C", CTA *En Banc* Docket, pp. 42-44.
[3] Paragraph 1, Parties, Petition for Review, CTA *En Banc* Docket, p. 2; Paragraph 8, Parties, Petition for Review, CTA Division Docket, p. 13.
[4] Paragraph 2, Petition for Review, CTA *En Banc* Docket, p. 2; Paragraph 9, Parties, Petition for Review, CTA Division Docket, p. 13.

THE FACTS

Petitioner filed its administrative claims for the issuance of tax credit certificates for excess input taxes attributable to zero-rated sales covering the four (4) quarters of the taxable year 2008, on the dates indicated hereunder: [5]

Period of Sales (2008)	Date of Administrative Claim
1st Quarter (ending March 31, 2008)	09 May 2009
2nd Quarter (ending June 30, 2008)	30 July 2008
3rd Quarter (ending September 30, 2008)	28 December 2009
4th Quarter (ending December 31, 2008)	28 December 2009

On October 2, 2018, petitioner received a Letter of Denial[6] dated April 25, 2018 denying its aforesaid administrative claims for the issuance of tax credit certificates.

According to petitioner, before the expiration of the thirty (30) day period to appeal the aforesaid Letter of Denial, it filed the Petition for Review[7] on October 28, 2018 before the Court of Tax Appeals (CTA).

In his *Answer*[8] filed on March 11, 2019, respondent interposed the following Special and Affirmative Defenses: (i) that the Petition for Review is filed out of time and as such, the Court has no jurisdiction over it; and, (ii) even assuming that the case was filed within the reglementary period, the judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level.

On May 31, 2019, respondent filed a "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court".[9] In a Resolution[10] dated July 30, 2019, the Court in Division granted respondent's Motion, and dismissed the Petition for Review for lack of jurisdiction.

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[5] Paragraph 2, Nature and Timeliness, Petition for Review, CTA Division Docket, pp. 11-12; Admitted by respondent in his Answer, CTA Division Docket, p. 72.
[6] Annex "P-5", CTA Division Docket, p. 46; The issuance of the Letter of Denial was admitted by respondent in his Answer, CTA Division Docket, p. 72.
[7] CTA Division Docket, pp. 11-25.
[8] CTA Division Docket, pp. 72-88.
[9] CTA Division Docket, pp. 98-106.
[10] CTA Division Docket, pp. 128-133.

Aggrieved, petitioner filed a Motion for Reconsideration (of the Resolution dated 30 July 2019)[11] on August 29, 2019. In a Resolution[12] dated October 15, 2019, the Court in Division denied petitioner's Motion for Reconsideration, which petitioner received on November 4, 2019.

Still undaunted, petitioner filed the present Petition for Review[13] on November 19, 2019.

After the filing of respondent's "Comment/Opposition Re: Petitioner's Petition for Review"[14] on December 18, 2019, the case was deemed submitted for decision on January 14, 2020.[15]

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner raises the following arguments in support of its Petition for Review:

(1) Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended clearly allows the taxpayer alternative remedies of filing the judicial claim within the 30-day period from the receipt of decision of the CIR, or within the 30-day period after the expiration of the 120-day waiting period. Petitioner availed of the first remedy, to await for the decision of the CIR, before it filed its judicial claim;

(2) There are four (4) scenarios contemplated by Section 112(C) of the NIRC of the 1997, as amended: (i) CIR issues a decision before/within the 120 days; (ii) CIR issues a decision on the 120th day; (iii) CIR does not issue a decision within 120 days; and, (iv) CIR issues a decision after the 120th day. Petitioner avers that the scenario in this case is the fourth one where the CIR issued the Denial Letter after the 120th day. Section 112 of the NIRC of 1997, as amended, leaves the option, to deem the inaction as a denial, to the taxpayer and it may choose to file a judicial claim within the 30-day filing period from receipt of the decision or from the end of the 120-day waiting period. The word "or" signifies that there is a choice among the present alternatives;

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[11] CTA Division Docket, pp. 134-158.
[12] CTA Division Docket, pp. 168-170.
[13] CTA *En Banc* Docket, pp. 1-31.
[14] CTA *En Banc* Docket, pp. 91-95.
[15] CTA *En Banc* Docket, pp. 98-99.

(3) Similar to a disputed assessment under Section 228 of the NIRC of 1997, as amended, in a claim for refund under Section 112 of the same Code, the taxpayer has the choice of waiting for the decision of the CIR before filing an appeal with the CTA, applying by analogy the doctrine laid down in *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue,*[16] where the Supreme Court held that a taxpayer cannot be prejudiced if it chooses to wait for the final decision of the CIR on the protested assessment instead of appealing the CIR's inaction after the lapse of the prescribed period;

(4) The history of the 120-day period shows that it was developed to support the interest of the taxpayer, by allowing it a remedy even before the CIR's decision is issued, and to force the CIR to act in a timely manner;

(5) There are two distinct causes of action over which the CTA exercises jurisdiction: (i) cases involving the denial by the CIR on claims for refund of internal revenue taxes; and, (ii) cases involving the inaction by the CIR on claims for refund of internal revenue taxes "where the NIRC provides a specific period of action, in which case the inaction shall be deemed a denial";

(6) Republic Act (RA) No. 10963 otherwise known as the Tax Reform and Acceleration and Inclusion Act (TRAIN Law) which contains the phrase "where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial," leaves only one remedy which shows that the remedies can be split, such that one becomes inoperative and the other remains. Petitioner concludes that this proves that they were separate and distinct ever since;

(7) Following the doctrine laid down in *Commissioner of Internal Revenue vs. San Roque Power Corporation*[17] where the Supreme Court allowed the taxpayers to file their judicial claims before the lapse of the 120-day waiting period, petitioner should be allowed to file its judicial claim beyond the mandated two-year period;

(8) The CIR, and not the taxpayer, is accountable for the mandatory nature of the period to process the VAT tax refund/credit. Hence, failure to do so is a criminal offense of the responsible officer/agent; and

(9) Petitioner is entitled to its claim for tax credit certificate amounting to P13,132,450.07 pertaining to unutilized input VAT for the taxable year of 2008 attributable to its zero-rated export sales since it complied with all the requisites under Section 106(A)(2)(a) of the NIRC of 1997, as amended.

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[16] G.R. No. 171251, March 5, 2012.
[17] G.R. No. 187485, February 12, 2013.

Respondent's counter-arguments

Respondent argues that the Court in Division is correct in ruling that it has no jurisdiction over the case since the Petition for Review before the Court in Division was filed beyond the reglementary period provided by law.

THE ISSUES[18]

1. Whether the CTA–Third Division erred in deciding that it has no jurisdiction to rule on the denial letter of the Bureau of Internal Revenue, as appealed by the petitioner within thirty (30) days from receipt thereof; and,

2. Whether the CTA–Third Division erroneously denied petitioner's entitlement to its claim for tax credit certificate, when such claim can be fully supported, when it ruled that it has no jurisdiction over the case.

THE COURT *EN BANC*'S RULING

The crux of the controversy boils down on whether or not the Court in Division has jurisdiction to take cognizance of the Petition for Review in CTA Case No. 9965, filed by petitioner on October 30, 2018, to appeal the Letter Denial dated April 25, 2018.

Section 112 of the NIRC of 1997, as amended by RA No. 9337, provides for the legal basis to claim for refund or issuance of a tax credit certificate of input VAT, including the taxpayer's remedy to appeal with the Court of Tax Appeals (CTA) the adverse decision or the inaction of the CIR, *viz.*:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *xxx*

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[18] Grounds of the Petition, Petition for Review, CTA *En Banc* Docket, p. 7.

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> (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.**" *(Boldfacing supplied)*

Section 112 (C) of the NIRC of 1997, as amended, speaks of two (2) periods:

(1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and,

(2) the 30-day period, which refers to the period for filing a judicial claim with the CTA.[19]

Contrary to petitioner's claim that the aforestated 120+30-day period is merely directory and non-jurisdictional, jurisprudence is replete with cases which hold that the 120+30-day period is mandatory and jurisdictional.[20]

Complementing Section 112 of the NIRC of 1997, as amended, is RA No. 1125, as amended by RA No. 9282, conferring exclusive appellate jurisdiction to the CTA to review on appeal decision or inaction of the CIR in cases involving refunds of internal revenue taxes, viz.:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[19] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[20] *Commissioner of Internal Revenue vs. San Roque Power Corporation* (G.R. No. 187485), *Taganito Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 196113) and *Philex Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 197156) February 12, 2013; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

> 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 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 relations 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 of action, in which case the inaction shall be deemed a denial;"

RA No. 1125, as amended by RA No. 9282, categorically states that a party adversely affected by a decision or inaction of the CIR may file an appeal before the CTA within thirty (30) days after the receipt of such decision or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2).[21]

Stated otherwise, the taxpayer may file the appeal within 30 days after the CIR denies the administrative claim within the 120-day waiting period, **<u>or</u>** it may file the appeal within 30 days from the expiration of the 120-day period if there is inaction on the part of the CIR.[22] It bears to emphasize, however, that the judicial claim must 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>**.[23]

The inaction of the CIR on a claim during the 120-day period is, by express provision of law, **"deemed a denial"** of a claim, and the taxpayer has 30 days from the expiration of the 120-day period to file its judicial claim with the CTA; otherwise, its failure to do so renders the "deemed a denial" decision of the CIR final and inappealable.[24]

When the 120-day period lapses and there is inaction on the part of the CIR, **taxpayer must no longer wait for the CIR to come up with a decision as his inaction is the decision itself**. By

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[21] Sec. 11, RA No. 1125 as amended by RA 9282.
[22] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015, *citing Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, 12 February 2013.*
[23] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 02, 2016.
[24] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

operation of law, the refund claim is deemed denied by the CIR's inaction. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.[25] Any claim filed in a period beyond the 120+30-day period provided by the NIRC is outside the jurisdiction of the CTA.[26]

Records submitted by petitioner disclose the following relevant dates showing the time when the VAT returns and administrative claims were filed, as well as the end of the two (2)- year period to file its administrative claim:

Period of Sales (2008)	End of the Quarter	Date Return was filed[27]	Date of Administrative Claim[28]	End of two (2) year period to file claim
1st Quarter	March 31, 2008	May 15, 2009	May 9, 2009	March 31, 2010
2nd Quarter	June 30, 2008	July 30, 2008	September 18, 2009	June 30, 2010
3rd Quarter	September 30, 2008	December 28, 2009	December 31, 2009	September 30, 2010
4th Quarter	December 31, 2008	December 28, 2009	December 31, 2009	December 31, 2010

As reflected above, petitioner had until March 31, 2010, June 30, 2010, September 30, 2010, and December 31, 2010 to file its administrative claims for the first, second, third, and fourth quarters of 2008, respectively, reckoned from the end of each quarter. As alleged, petitioner filed its administrative claims for refund on May 9, 2009 for the first quarter, September 18, 2009 for the second quarter, and December 28, 2009 for the third and fourth quarters. Thus, petitioner filed its administrative claims for issuance of tax credit certificates within the period prescribed by law.

With respect to the timeliness of the judicial claim, the Court needs to ascertain the expiry of the 120-day period as the said period is crucial in filing an appeal with the CTA.[29] The running of the 120-day period is reckoned from the date of submission of complete documents in support of the application for refund or issuance of tax credit pursuant to the first paragraph of Section 112(C) of the NIRC of 1997, as amended. The taxpayer, however, is not without any limitation as to the period of submission of complete documents in support of its claim. The teachings in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[30] is most enlightening, viz.:

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[25] *Supra Note 19.*
[26] *Supra Note* 23.
[27] Annexes P-6, P-7, P-8, and P-9, CTA Division Docket, pp. 47-54.
[28] Annexes P-10, P-11, P-12, and P-13, CTA Division Docket, pp. 55-58.
[29] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.
[30] G.R. No. 207112, December 8, 2015.

"With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining when the supporting documents have been completed - it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. **After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.**

The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms what additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

xxx xxx xxx

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.

<u>Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.</u>

> **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 addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing."**

In this case, petitioner alleges that it fully complied with all the necessary requirements to substantiate its claim; it never received any notice from the respondent that the documents it submitted did not fully comply with the requirements laid down under the law and pertinent regulations; and that it has been made to believe by the respondent that its submissions fully complied with the requirements and were complete and sufficient to support its VAT credit application.[31]

Considering the aforesaid allegation, and the presumption that the complete documents accompanied the claim (absent any showing that the taxpayer was required to submit or actually submitted additional documents after the filing of the administrative claim),[32] the 120-day period is reckoned from the date of filing of petitioner's administrative claims:

Taxable Quarter	**Date of Filing of Administrative Claim**	**End of 120-day Period**	**End of 30-day Period from Lapse of 120-day Period**
1st Quarter	May 9, 2009	September 6, 2009	**October 6, 2009**
2nd Quarter	September 18, 2009	January 16, 2010	**February 15, 2010**
3rd Quarter	December 31, 2009	April 30, 2010	**May 30, 2010**
4th Quarter	December 31, 2009	April 30, 2010	**May 30, 2010**

The 120-day period was computed from the time the administrative claim was filed. Due to inaction - *"deemed denial decision"*, petitioner should have filed its Petition for Review not later than **October 6, 2009** for the first quarter, **February 15, 2010** for the second quarter, and **May 30, 2010** for the third and fourth quarters. Clearly, its Petition for Review filed only **October 30, 2018** is way beyond the 120+30-day mandatory and jurisdictional period.

[31] Par. 19 and par. 20, Discussion, Petition for Review, CTA Division Docket, pp. 15-16.
[32] *Supra Note 23.*

In fact, even granting for the sake of argument that petitioner was allowed an extension by the respondent to submit complete supporting documents, and petitioner submitted documents until **March 31, 2010, June 30, 2010, September 30, 2010** and **December 31, 2010** *(the last day of the two-year prescriptive period in line with the limitation provided in the aforesaid Total Gas case)* in relation to its claims for the first, second, third and fourth quarters of 2008, the 120-day period ends on **July 29, 2010, October 28, 2010 January 28, 2011** and **April 30, 2011**, respectively; and, petitioner, therefore, had only until **August 28, 2010, November 27, 2010, February 27, 2011** and **May 30, 2011,** respectively, to elevate its claims before this Court. Since petitioner filed its Petition for Review only **October 30, 2018,** the same is clearly filed out of time and this Court has no jurisdiction over it.

As regards respondent's reliance on the amended provision of Section 112(C) of the NIRC pursuant to RA No. 10963 or the TRAIN Law, the same could not change the outcome of this case.

Suffice it to say that the TRAIN Law took effect only January 1, 2018,[33] which was long after the lapse of the 120+30-day period as discussed above. It is doctrinal that tax laws are prospective in operation, unless the language of the statute clearly provides otherwise,[34] which circumstance is wanting in this case.

WHEREFORE, premises considered, Lapanday Agricultural & Development Corporation's Petition for Review filed on November 19, 2019 is hereby **DENIED** for lack of merit. The Resolutions dated July 30, 2019 and October 15, 2019 are hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[33] Sec. 87, RA No. 10963.
[34] *Commissioner of Internal Revenue vs. Acosta*, G.R. No. 154068, August 3, 2007.

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13, of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice