REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAPANDAY FOODS CORPORATION, *Petitioner,*	**CTA *EB* NO. 2117** (CTA Case No. 9938)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 09 2020 11:31 a.m.

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review (Re: Resolution dated 02 May 2019 and Resolution dated 18 July 20190)*[1] filed by petitioner Lapanday Foods Corporation (LFC) on August 8, 2019 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the reversal and setting aside of Resolutions dated May 2, 2019[3] and July 18, 2019[4] (assailed Resolutions) promulgated by the Second Division of the Court of Tax Appeals (CTA) in CTA Case No. 9938 entitled "*Lapanday Foods Corporation vs. Commissioner of Internal Revenue*", and the rendition instead

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[1] *Rollo*, CTA EB No. 2117, pp. 1-31.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 37-42.
[4] *Id.*, pp. 45-48.

of a new judgment granting petitioner's claim for tax credit certificate for its input taxes for the third (3rd) quarter of taxable year (TY) 2006.

The dispositive portions of the assailed Resolutions read:

Resolution dated May 2, 2019:[5]

> "**WHEREFORE**, premises considered, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, the instant **Petition for Review** is hereby **DISMISSED** due to lack of jurisdiction.
>
> In view of the foregoing, the resolution of petitioner's **Urgent Motion for More Time (To Submit Report of the Independent Certified Public Accountant)** is considered **MOOT**.
>
> **SO ORDERED**."

Resolution dated July 18, 2019:[6]

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration (Of the Resolution dated 2 May 2019)** is **DENIED** for lack of merit.
>
> **SO ORDERED**."

The Facts

As culled from the records of this case, petitioner LFC filed a Petition for Review[7] on September 28, 2018 to appeal the Letter dated April 16, 2018[8] from the Assistant Commissioner of Internal Revenue Assessment Service, Bureau of Internal Revenue (BIR) denying its application for tax credit certificates of its input taxes for the 3rd quarter of TY 2006.

In said letter, petitioner LFC was informed by the BIR that the processing of its application for value-added tax (VAT) credit for the period July 1, 2006 to September 30, 2006 in the

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] Docket, CTA Case No. 9938, Vol. I, pp. 12-25.
[8] *Id.*, Annex "P-2", pp. 31-32.

amount of Php6,668,213.60 was denied with finality for lack of factual basis.[9]

Said letter was allegedly received by petitioner LFC on August 31, 2018 which constituted as respondent's action on its application for tax credit.[10] Allegedly, such application is petitioner's administrative claim for refund of unutilized input VAT attributable to zero-rated sales for the 3rd quarter of TY 2006 which was filed on September 23, 2008.[11]

Before the trial proper of the case in the Court in Division began, respondent's counsel filed a *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court*[12] on February 19, 2019 which questioned the jurisdiction of said Court in taking cognizance of said case.

The Court in Division thereafter promulgated the assailed May 2, 2019 *Resolution* which granted respondent's motion. Subsequently, petitioner LFC moved for the reconsideration of said resolution but was denied anew by the Court in Division under the assailed July 18, 2019 *Resolution* which was received[13] by the former on July 25, 2019.

Hence, petitioner LFC filed the instant case before this Court on August 8, 2019.

On September 3, 2019, respondent was directed[14] by this Court to file his comment which the former submitted[15] on September 19, 2019. Thus, in view of such submission, this Court deemed the case submitted for decision.[16]

The Issue

The sole issue that can be deduced from the cited grounds in the instant petition is:

> Whether the Court in Division erred in dismissing the case due to its lack of jurisdiction.

[9] Docket, CTA Case No. 9938, Vol. I, Annex "P-2", p. 32.
[10] *Rollo*, Petition for Review, p. 6.
[11] Docket, CTA Case No. 9938, Vol. 1, Petition for Review, p. 15.
[12] *Id.*, Vol. II, pp. 524-534.
[13] *Rollo* at p. 3.
[14] *Id.*, Resolution dated September 3, 2019, pp. 88-89.
[15] *Id.*, Comment/Opposition Re: Petitioner's Petition for Review, pp. 90-95.
[16] *Id.*, Resolution dated October 16, 2019, pp. 98-99.

Arguments of Petitioner[17]

Petitioner LFC argues that the 120+30-day prescriptive period under Revenue Memorandum Circular (RMC) No. 54-2014 dated June 11, 2014 does not apply in cases where respondent Commissioner of Internal Revenue (CIR) issues a decision on the VAT Refund after the 120-day period and that the *San Roque* and *Mindanao II* cases apply only to similar cases because both involved premature filing of judicial claim for refund or tax credit.

Petitioner LFC also argues that Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended, allows the taxpayer the alternative remedies of filing the judicial claim either within the 30-day period from the receipt of the respondent's decision or within the 30-day period after the expiration of the 120-day waiting period citing the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[18].

Petitioner LFC also insists that it is entitled to its claim for tax credit certificate amounting to Php6,668,213.60 pertaining to the unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of TY 2006.

Argument of Respondent[19]

Respondent argues that the Court in Division was correct in its ruling that it has no jurisdiction over the case due to prescription on the filing of its judicial claim.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b) of Rule 8 of the RRCTA provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

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[17] *Id.*, pp. 12-19.
[18] G.R. No. 171251, March 5, 2012.
[19] *Rollo*, Comment, pp. 55-63.

> xxx xxx xxx
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> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
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> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated July 18, 2019. The latter was allegedly received by petitioner LFC on July 25, 2019. In accordance with the abovementioned provisions of the RRCTA, petitioner LFC had until August 9, 2019 within which to file its petition. Thus, the filing of the instant Petition for Review on August 8, 2019 was on time.

The Petition for Review in the Court in Division was filed beyond the prescriptive period.

Section 112 of the 1997 NIRC, as amended, provides for the manner of filing a taxpayer's claim for input VAT refund and the period within which the respondent should act on such claim for input VAT refund/credit as well the period when the former may appeal the action or inaction of the latter on such claim, to wit:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) (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: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had

> been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> (B) xxx xxx xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - <u>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</u> filed in accordance with Subsections (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**, <u>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</u>. (*Emphasis and underscore ours*)
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> xxx xxx xxx

As shown in the above-cited provision, petitioner LFC has two (2) years from the close of the taxable quarter when the sales were made to apply for the issuance of a tax credit certificate or refund of said input VAT.

Hence, considering that the claim for refund of petitioner LFC pertains to third quarter ending September 30 of taxable year 2006, the filing of the administrative claim for refund on September 23, 2008 was within the 2-year prescriptive period required under the abovementioned provision.

Further, the same provision also provides that respondent CIR has one hundred twenty (120) days from the date of submission of the complete supporting documents of such application or claim for refund to act on the same.

As such, the law provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.[20]

Prior to June 11, 2014, the issuance date of RMC No. 54-2014, the applicant/claimant had thirty (30) days within which to submit the complete documentary requirements sufficient to support its claim, unless given further extension by the respondent. Then, upon filing by the taxpayer of its complete documents to support its application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. If, however, the applicant/claimant manifests that it no longer wishes to submit any other additional documents to complete its administrative claim, the 120-day period shall begin to run from the date of filing.[21]

In the instant petition, petitioner LFC did not allege any other dates when it submitted its complete supporting documents. Thus, the reckoning date for the 120-day period shall be counted from the date of filing of the administrative claim for VAT refund/credit, to wit:

Quarter 2010	**Date of Filing of Administrative Claim**	**Last day of the 120-day period**
3rd	September 23, 2008	January 21, 2009

Now the question is whether the petitioner has the option either to file an appeal within 30 days after the lapse of the 120-period without action from the respondent or to wait until the latter issues a ruling on the said claims for VAT refund/credit.

We rule in the negative.

In *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of*

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[20] *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.

[21] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 08, 2015.

Internal Revenue, and *Philex Mining Corporation v. Commissioner of Internal Revenue*[22], the Supreme Court ruled that the 30-day period of filing an appeal is mandatory and jurisdictional after the expiration of the 120-day period if the applicant/claimant will opt to file an appeal, to wit:

> "When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, ...
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> xxx xxx xxx
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> 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..."

The doctrine on the mandatory and jurisdictional nature of the 120+30-day period is also reiterated in several subsequent rulings of the Supreme Court.[23]

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[24], the Supreme Court provides a summary of rules on prescriptive periods for claiming refunds or credit of input VAT, to wit:

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

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[22] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[23] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. Nos. 193301 and 194637, March 11, 2013; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 173241, March 25, 2015; *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 and 196451, December 02, 2015; *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.

[24] G.R. No. 191498, January 15, 2014.

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

B. 120+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 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.

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 exception 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)

As shown above, the only exception to the doctrine of 120+30-day period is when the claim for refund or credit of input VAT was filed between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force. The instant case is outside the coverage of the aforesaid exception because the instant petition does not involve premature filing.

Petitioner LFC was totally mistaken in relying on the *Lascona* case wherein the ruling of alternative remedies was based on Section 228 of the 1997 NIRC, as amended, and the issue pertains to a tax assessment and not on a claim for input VAT refund or credit under Section 112 of the 1997 NIRC, as amended.

In Section 228 of the 1997 NIRC, as amended, the provision for the 30-day period to appeal is worded as "the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days **from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period**." The option given to the taxpayer is to file an appeal either from the lapse of the 180-day period or from the date of the receipt of the decision, which may occur during or after the 180-day period when the respondent may take action on taxpayer's protest on a particular tax assessment.

Further, in the *Lascona* case, one of the bases of such ruling is Section 3(a)(2), Rule 4 of the RRCTA which provides:

> **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) xxx xxx
>
> (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 or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* <u>that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the</u>

> taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; (*Underscore ours*)

Unlike such provision wherein the taxpayer can wait for the decision of the respondent on disputed assessment, the RRCTA did not provide for an equivalent provision for claims of refund/credit particularly on input VAT. Hence, *Lascona* is not applicable in this case.

In the instant case, therefore, petitioner LFC had only 30 days to file its appeal from the last day of the 120-day period, January 21, 2009, or until February 20, 2009 for the third quarter of TY 2006.

The filing of the petition for review on September 28, 2018 was way beyond the 30-day period under Section 112(C) of the 1997 NIRC, as amended. Thus, the Court in Division had correctly ruled to dismiss the case due to lack of jurisdiction by reason of prescription.

In *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*[25], the Supreme Court ruled that if any court particularly the CTA determines that it has no jurisdiction to hear the case, such case must be dismissed outright, to wit:

> "It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.
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> The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, **when it appears from the pleadings or the evidence on record that the court has no jurisdiction**

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[25] G.R. No. 185666, February 04, 2015.

> **over the subject matter, the court shall dismiss the claim.**" (*Emphasis supplied*)

In the instant case, the parties' pleadings as well as their documentary evidence presented in the Court in Division clearly showed that petitioner LFC's claim for tax credit certificate was already prescribed at the time of the filing of its Petition for Review. Thus, pursuant to jurisprudential ruling, said Court is mandated to dismiss the case outright for lack of jurisdiction.

In view of the foregoing, this Court will no longer discuss the other issues raised by petitioner LFC for the same reason above-cited.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed *Resolutions* dated May 2, 2019[26] and July 18, 2019[27] are hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[26] *Supra*, Note 3.
[27] *Supra*, Note 4.

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