REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

LAPANDAY FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9950

Members:

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

Promulgated:
OCT 14 2019
9:08 a.m.

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RESOLUTION

For resolution is Petitioner's "Motion for Reconsideration (of the Resolution dated 08 August 2019)"[1] ("Motion for Reconsideration") filed on September 09, 2019, with Respondent's "Comment/Opposition Re: Petitioner's Motion for Reconsideration" filed on October 01, 2019.

The Motion for Reconsideration seeks to set aside the Resolution[2] issued on August 08, 2019 ("Assailed Resolution") granting Respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court"[3] and dismissing the instant case for lack of jurisdiction. Petitioner also prays that a new Resolution be issued giving due course to Petitioner's "Petition for Review".

On September 11, 2019, the Court issued a Resolution[4] requiring Respondent to comment on Petitioner's Motion for Reconsideration within fifteen (15) days from notice. Upon receipt thereof or the lapse of the period granted, the incident shall be deemed submitted for the resolution of the Court.

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1 Docket, pp. 492-512.
2 *Id.* pp. 486-491.
3 *Id.* pp. 396-403.
4 *Id.* p. 514.

In response thereto, Respondent filed his "Comment/Opposition Re: Petitioner's Motion for Reconsideration" on October 01, 2019. Consequently, pursuant to the Resolution issued on September 11, 2019, the incident is now deemed submitted for resolution.

In its Motion for Reconsideration, Petitioner avers that the "120+30 day period" under Revenue Memorandum Circular (RMC) No. 54-2014 does not apply to cases where the Commissioner of Internal Revenue ("CIR") issues a decision on the Value-Added Tax ("VAT") refund after the 120-day period. Petitioner posits that the cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*[5] ("*San Roque*") and *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[6] ("*Mindanao II*") only dealt with the premature filing of a judicial claim, and as such are of a different factual milieu and should not be applied in the instant case.

Petitioner argues that Section 112 (C) of the National Internal Revenue Code ("NIRC") of 1997 shall be interpreted to mean that taxpayers may opt to wait for the decision of the CIR even beyond the 120-day period before it elevates the same to the Court of Tax Appeals (CTA); and that CTA is not deprived of its jurisdiction as long as the matter was brought within thirty (30) days from receipt of CIR's decision.

Lastly, Petitioner contends that there is a distinction between "claim processing rules" and rules governing "subject-matter jurisdiction". The "120+30 day period" under Section 112(C) of the NIRC of 1997, as amended, is a claim-processing rule which does not restrict the subject-matter jurisdiction of the CTA. The taxpayer's failure to comply with the "120+30 day period" does not deprive the CTA of its jurisdiction to adjudicate on the assailed Letter Denial[7] dated February 13, 2018 issued by the BIR denying Petitioner's claim for VAT refund/tax credit.

Respondents on the other hand asserts that Petitioner did not raise new grounds that would warrant the reversal of the Assailed Resolution.

After a careful consideration, this Court finds no new matters or arguments which were not considered in the Assailed Resolution. Petitioner's arguments are mere reiterations and constitute neither compelling nor cogent reason to modify, much less reverse Our Resolution dated August 08, 2019.

The pronouncement of the Supreme Court in *San Roque* and *Mindanao II* is plain, clear and leaves no room for interpretation. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty (30) days after the CIR denies the claim <u>within the 120-day period</u>, or (2) file the judicial claim within thirty (30)

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5 G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
6 G.R. No. 191498, January 15, 2014.
7 *Id.*, Joint Stipulation of Facts and Issues, Summary of Admitted Facts, par. 3, p. 389.

days from the expiration of the 120-day period <u>if the CIR does not act within the 120-day period</u>.

As We have pointed out in the Assailed Resolution, in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[8], it was emphasized that the lapse of the 120-day period constitutes a denial by the BIR, and an appeal within thirty (30) days therefrom must already be made by the taxpayer.

This is consistent with Section 3(a)(2), Rule 4 of the Revised Rules of the CTA (RRCTA)[9], the pertinent portion of which states:

> "**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:
>
> 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, 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: xxx"

Again, the CIR is given one hundred twenty (120) days to decide on the application for refund or a tax credit certificate. If he does not decide within that period, taxpayers must elevate the matter to the CTA within thirty (30) days after the lapse thereof. Otherwise, the Court will be deprived of jurisdiction to hear and determine the case.

To rule the contrary would be to go against jurisprudential precedents which this Court cannot allow.

Regrettably, Petitioner's non-compliance with the said mandatory period of "120+30 days" is fatal to its claim for refund for the first quarter of taxable year 2006, resulting in this Court's lack of jurisdiction over the said judicial claim.

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8 G.R. No. 168950, January 14, 2015.

9 A.M. No. 05-11-07-CTA, November 22, 2005.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration (of the Resolution dated 08 August 2019)" is **DENIED** for lack of merit. The Resolution dated August 08, 2019 dismissing the instant case for lack of jurisdiction is **UPHELD**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice