REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MD RIO VISTA AGRI-VENTURES, INC., Petitioner,	**CTA CASE NO. 11247** Members:
- versus -	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 19 2024 4:15 pm

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RESOLUTION

For resolution is petitioner's **Motion for Reconsideration (of the Resolution dated 24 October 2023)**, filed on November 22, 2023 without respondent's comment per Records Verification dated January 30, 2024.[1]

Petitioner seeks reconsideration of this Court's Resolution, dated October 24, 2023,[2] the *fallo* of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review filed on August 3, 2023 is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

In dismissing the case, the Court pronounced that the Petition for Review was filed beyond the thirty (30)-day period from the respondent's inaction on its value-added tax (VAT) refund claim pursuant to Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, and based on the a number of jurisprudence cited therein.

Petitioner moves for reconsideration on the following grounds:

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[1] Docket.
[2] Docket, pp. 317-323. Received by petitioner on November 7, 2023 per Notice of Resolution dated October 24, 2023.

A.

The rules cited in the Resolution regarding the prescriptive period for filing of the administrative and judicial claims for refund or tax credit of input VAT as enunciated by the Supreme Court involved the inaction of the Commissioner of Internal Revenue (CIR) on a taxpayer's administrative claim in contrast with Petitioner's administrative claim which the CIR acted on within the ninety (90)-day period.

B.

The reckoning date for filing of a judicial claim for refund of input VAT under Section 112(C) of the NIRC, as amended by the Tax Reform for Acceleration and Inclusion Act ("TRAIN Act"), is from the date of receipt of the full or partial denial of the administrative claim by the CIR.

C.

The strict application of the amendment of the TRAIN Act in mandating the CIR to act on the application for refund within the ninety (90)-day period is consistent with the legislative intent.

D.

The application of Section 112 (C), as amended by the TRAIN Act, is consistent with other tax laws, rules, and regulations.

E.

Tax laws must be construed strictly against the government and in favor of the taxpayer.

After revisiting the arguments raised by petitioner, the Court finds no cogent reason to reverse or modify the assailed Resolution.

In its motion, petitioner argues that the following cases:

1. *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*;[3]

2. *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*;[4]

3. *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*;[5]

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[3] G.R. No. 191498, January 15,2014.
[4] G.R. No. 182737, March 2, 2016.
[5] G.R. No. 168950, January 14, 2015.

4. *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*;[6] and,

5. *Sitel Philippines Corp. vs. Commissioner of Internal Revenue*;[7]

cited by the Court in its assailed Resolution regarding the ruling on the prescriptive period for filing of administrative and judicial claims for refund or tax credit of input VAT, as enunciated by the Supreme Court, do not apply to the case at bar because the claims for refund in the said cases were not acted upon by the CIR within the ninety (90)-day period, in contrast with the present case.

Petitioner further posits that the cited cases were decided prior to the enactment of the Republic Act (R.A.) No. 10963 otherwise known as the TRAIN Act while the case at bar falls under the said Act. It asserts that a simple reading of Section 112(C) of the NIRC of 1997, as amended by the TRAIN Act, specifically vests jurisdiction with this Court upon filing of the appeal within thirty (30) days from taxpayer's receipt of the full or partial denial of the VAT refund of the CIR.

Petitioner is mistaken.

The crux of the instant motion is the interpretation of Section 112(C) of the NIRC of 1997, as amended by R.A. No. 10963 or TRAIN Act, to quote:

> "SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) xxx
> (B) xxx
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the **Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed** in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial."
>
> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim**, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code." (Boldfacing supplied)

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[6] G.R. No. 252821, September 2, 2020.
[7] G.R. No. 201326, February 8, 2017.

This Court firmly holds that the aforementioned Supreme Court cases are still applicable in interpreting Section 112(C) of the NIRC of 1997, as amended. In fact, the cited cases are consistently being applied by the Court, whether sitting in division or *en banc,* in resolving its jurisdiction over VAT refund claim under the TRAIN Law; and, to name a few:

1. *New York Bay Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 10417, October 4, 2023 (Special Second Division);

2. *NIIT Technologies Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 10196, August 31, 2023 (Special Third Division);

3. *Kurimoto (Philippines) Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 10156, Resolution dated July 18, 2023 and Decision dated January 30, 2023 (Special First Division)

4. *Regus Service Center Philippines B.V. –ROHQ vs. Commissioner of Internal Revenue*, CTA Case No. 9962, June 29, 2023 (Special Third Division);

5. *Rema Tip Top Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 10303, June 22, 2023 (Special Second Division);

6. *Ceamsa Asia, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 10148, Resolution dated June 21, 2023 and Decision February 3, 2023 (Special First Division);

7. *Commissioner of Internal Revenue vs. Maersk Global Services Centres (Philippines) Ltd*, CTA EB Nos. 2534 and 2554, June 7, 2023 (CTA *En Banc*);

8. *Mitsuba Philippines Technical Center corp. vs. Commissioner of Internal Revenue*, CTA EB No. 2631, May 26, 2023 (CTA *En Banc*);

9. *Regus Service Center Philippines B.V. –ROHQ vs. Commissioner of Internal Revenue*, CTA Case No. 9907, April 19, 2023 (First Division); and,

10. *Pacific Ocean Manning, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9901, November 10, 2022 (Special Third Division).

The filing of the administrative and judicial claims for refund of the foregoing enumerated cases falls within the enactment of the TRAIN Act. Nevertheless, the Court still applied the cited cases, one way or the other, in reckoning the ninety (90) + thirty (30)-day period in disposing of the issue on this Court's jurisdiction because it firmly holds that the counting of prescriptive period provided therein remains the same.

We adopt the ratiocinations of Justice Marian Ivy F. Reyes-Fajardo in her Concurring Opinion in the case of *Commissioner of Internal Revenue vs. Maersk Global Services Centres (Philippines) Ltd.*,[8] in construing the amended VAT provision, in this wise:

> "In refund of unused input Valued-Added Tax (VAT), attributable to zero-rated sales, the Court in Division may only take cognizance of a refund claimant's judicial claim, upon strict adherence with Section 112(C) of the National Internal Revenue Code (NIRC). Juxtaposed below are the then Section 112(C) of the NIRC, with Section 112(C) of the NIRC, as amended by Republic Act (RA) No. 10963, otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN):

Section 112(C) of the NIRC, prior to Amendment by TRAIN	Section 112(C) of the NIRC, as amended by TRAIN
SEC. 112. ***Refunds or Tax Credit of Input Tax.*** – .... ***(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.	SEC. 112. ***Refunds or Tax Credit of Input Tax.*** – ... ***(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.*** - **In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application** filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial. **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.

[8] CTA EB Nos. 2534 and 2554, June 7, 2023. Citations omitted.

Indeed, TRAIN introduced amendments on the then Section 112(C) of the NIRC. To be precise, the Legislature removed the phrases 'or the failure on the part of the Commissioner to act on the application within the period prescribed above,' 'or after the expiration of the one hundred twenty day-period' in the second paragraph thereof. Moreover, the same provision states that the taxpayer may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the CTA. These changes might lead one to deduce that the BIR's adverse decision in an administrative claim for input VAT refund may be elevated to the Court in Division, irrespective of whether the same was rendered within or outside the ninety (90)-day period to decide such administrative claim. Yet, *Commissioner of Internal Revenue v. Secretary of Justice, and Philippine Amusement and Gaming Corporation* taught us that:

> A law must not be read in truncated parts: its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.
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> In constructing a statute, courts have to take the thought conveyed by the statute as a whole: construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.

By reading the entirety of Section 112(C) of the NIRC, as amended by TRAIN, only the adverse decision rendered by the BIR *within* the ninety (90)-day period prescribed therein, may be the subject of an appeal before the Court in Division. Consider:

First. The first paragraph of Section 112(C) of the NIRC, as amended by TRAIN, states that '[i]n proper cases, the Commissioner **shall** grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.' Jurisprudence holds that '... the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.' Therefore, the claimant's administrative claim for input VAT refund must be decided by the BIR *within* the ninety (90)-day period under Section 112(C) of the NIRC, as amended by TRAIN.

Second. The second paragraph of Section 112(C) of the NIRC, as amended by TRAIN, penalizes the failure of any BIR official, agent, or employee to decide on an administrative claim for input VAT refund, within the ninety (90)-day period prescribed therein. This fortifies the position that indeed, BIR personnel must render an adverse decision *within* said ninety (90)-day period, lest they be punished under Section 269 of the same Code.

Third. In the second paragraph of Section 112(C) of the NIRC, as amended by TRAIN, the word 'decision' was preceded by the definite article 'the.' The definite article 'the' particularizes the subject spoken of, and refers to a certain object, as opposed to the article 'a' which refers to the indefinite. It means that the BIR adverse decision in input VAT refund cases specifically pertains to one decided within the ninety (90)-day period to decide an administrative claim, as commanded by the first paragraph of the same provision of the Code.

Additionally, the **adverse decision rendered by the BIR within the ninety (90)-day period, too, must be received by the claimant within said period. Revenue Memorandum Circular No. 17-2018** confirmed:

I. Claims for value-added tax (VAT) refund:

A. General Policies

....

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Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90- day period. The denial letter shall be signed by the Commissioner of Internal Revenue (CIR)/Deputy Commissioner - Operations Group (DCIR - OG)/ Assistant Commissioner (ACIR)/Regional Director, as the case may be.

In a nutshell, save for the modification in the period to decide an administrative claim for input VAT refund, *i.e.*, from 120 to 90 days, the pronouncement in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue* remains good case-law to date:

The judicial claim shall 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 [now 90-day] period, whichever is sooner.

Aside from a 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 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA.

On March 27, 2018, Maersk Global Services Centres (Philippines) Ltd. (Maersk) filed its administrative claim for input VAT refund covering Calendar Year 2016. Counting ninety (90) days therefrom, the BIR had until June 25, 2018 to decide on its administrative claim. No BIR adverse decision was received by Maersk as of June 25, 2018; thus, said administrative claim is considered denied pursuant to Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282. Counting another thirty (30) days from June 25, 2018, Maersk had until July 25, 2018 to seek judicial recourse. Ergo, the late filing of its Petition for Review on July 27, 2018, resulted in the Court in Division's non-acquisition of jurisdiction over CTA Case No. 9895."

In the case of *Regus Service Center Philippines B.V.-ROHQ vs. Commissioner of Internal Revenue*,[9] the Court in First Division, through the *ponencia* of Justice Catherine T. Manahan, also elucidated the amendments introduced in Section 112(C), in this manner:

> "In determining the timeliness of the filing of a judicial appeal on claims for refund or issuance of a tax credit certificate for excess input VAT, this Court holds that the afore-quoted Section 112 (C) of the 1997 NIRC, as amended, should be read in relation to Section 7 (a) (1) and (2) of RA No. 1125, as amended by RA No. 9282, quoted as follows:
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> > SEC. 7. *Jurisdiction*.- The CTA 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 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 ~ specific period of action, in which case the inaction shall be deemed a denial**;' (emphases supplied)
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> The Supreme Court, in *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq*., had the occasion to interpret the above provision as follows, to wit:
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> > 'The charter of the CTA expressly provides that its jurisdiction is to review on appeal '**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes.' When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. **The charter of the CTA also expressly provides that if the Commissioner fails to decide within 'a specific period' required by law, such 'inaction shall be deemed a denial' of the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review. Without a decision or an 'inaction x x x deemed a denial' of the**

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[9] CTA Case No. 9907, June 29, 2023. Citations omitted.

Commissioner, the CTA has no jurisdiction over a petition for review.'(emphasis supplied).

Simply put, Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282, clearly provides for this Court's jurisdiction over refunds such that the CTA has exclusive appellate jurisdiction (a) to review respondent's decisions, and (b) to review respondent's inaction "where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]." To be sure, the charter of this Court expressly provides that if respondent fails to decide within a "specific period" required by law, such ((inaction shall be deemed a denial" of the application for tax refund or credit. In other words, under this Court's Charter, respondent's inaction on a claim for refund is considered ·a "denial" of the claim, which may be appealed before this Court within thirty (30) days from the expiration of the period fixed by law for action.

The TRAIN Law still provided "a specific period of action", albeit in the reduced period of ninety (90) days, on the part of respondent. Thus, despite the deletion of the phrase "or the failure on the part of the Commissioner to act on the application within the period prescribed above" found under the former Section 112(C), it cannot be denied that the afore-quoted Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, should still be applied.

One of the well-established rules of statutory construction enjoins that endeavor should be made to harmonize the provisions of a law or of two laws so that each shall be effective. Such being the case, both Section 112(C) of the 1997 NIRC, as amended by the TRAIN Law and Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, should both be given effect.

Moreover, repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject, the congruent application of which the courts must generally presume. For this reason, it has been held that the failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws. Thus, in enacting the TRAIN Law, the legislature is presumed to know the existence of Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282. Such being the case, had Congress intended to further amend or to repeal the said Section 7(a)(2), it could have easily done the same, by adding or mentioning it, in the repealing clause or Section 86 of the TRAIN Law. Notably, Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, is not one of the provisions mentioned in the said Section 86. In addition, no irreconcilable inconsistency and repugnancy exists between Section 112(C) of the 1997 NIRC, as amended by RA No. 10963, and Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282.

Based on the above disquisition, if respondent fails to act within the 90-day period provided under Section 112(C) of the 1997 NIRC, as amended by the TRAIN Law, such inaction should already be deemed a denial of the administrative claim, in accordance with Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, and the refund-claimant must already appeal the said denial, within thirty (30) days from the expiration of the said 90-day period, otherwise, this Court shall not acquire jurisdiction." (Boldfacing supplied)

Based from the above pronouncements, it can be deduced that even if the respondent will act on a VAT claim for refund within the ninety (90)-day period but will be belatedly received by the taxpayer, the claim for refund, after the lapse of the ninety (90) day period, should be considered as unacted and a deemed denial pursuant to Section 7(a)(2) of R.A. No. 1125, as amended. The taxpayer should, thus, begin to count the thirty (30)-day period within which to file a judicial claim for refund from the lapse of the ninety (90) day period.

Applying the rule to the instance case, since petitioner filed its VAT refund claim of its excess and unutilized input VAT for the period January 1, 2021 to December 31, 2021 with the Bureau of Internal Revenue on March 31, 2023, the latter had until June 29, 2023, or ninety (90) days from petitioner's filing of administrative claim, to decide on the claim for refund. **As there was no adverse decision received by petitioner as of June 29, 2023, the administrative claim is considered denied pursuant to Section 7(a)(2) of R.A. No. 1125, as amended by R.A. No. 9282.**[10]

Counting another thirty (30) days from June 29, 2023, petitioner had until July 29, 2023 to take judicial action. Consequently, when petitioner filed its Petition for Review on August 3, 2023, the Court had already lost its jurisdiction over the case.

For emphasis, when petitioner received the VAT Refund Notice dated June 5, 2023 on July 4, 2023,[11] denying in full its claim for refund, the same was already beyond the ninety (90)-day period for respondent CIR to act which ended on June 29, 2023.

It is a settled rule that a judicial claim must be filed within a period of thirty (30) days after the receipt of respondent's decision or ruling; or, after the expiration of the ninety (90)-day period, **whichever is sooner**.

Inasmuch as the lapse of the ninety (90)-day period on June 29,2023 is sooner than the receipt of the respondent's decision on July 4, 2023, petitioner should have reckoned its counting of the thirty (30)-day period from the expiration of the ninety (90)-day period within which to file its judicial claim.

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[10] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as The Law Creating the Court of Tax Appeals, and for Other Purposes.
[11] Par. 35, Petition for Review, Docket, p. 17.

The filing, therefore, of the instant Petition for Review on August 3, 2023, or after July 29, 2023, is beyond the Court's jurisdiction.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice