REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10163

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
NOV 07 2019 9:53 am

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RESOLUTION

On September 27, 2019, the Court dismissed the Petition for Review for lack of jurisdiction.

On October 23, 2019, petitioner filed its *Motion for Reconsideration (of the Honorable Court's Resolution dated 27 September 2019)*, praying that the Resolution dated September 27, 2019 be reversed and set aside.

Petitioner states that its Petition for Review was timely filed under Section 112(C) of the 1997 National Internal Revenue Code, as amended by Republic Act No. 10963. Petitioner states that on August 9, 2019, it received a copy of the letter denying its claim for refund, thus, the Petition for Review was timely filed on September 9, 2019.

We disagree and reiterate our findings in the assailed Resolution, *to wit*:

> Petitioner states that it filed its administrative claims on February 1, 2013 and August 1, 2013[1] with the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF-OSS). Petitioner also states that it submitted the

[1] Docket, PFR, p. 2.

complete required documents in support of its application on the same dates.[2]

Counting 120 days from February 1, 2013 and August 1, 2013, the CIR had until June 1, 2013 and November 29, 2013 within which to act on petitioner's claim for refund. Considering that respondent CIR/DOF-OSS failed to act thereon within the 120-day period, petitioner had thirty (30) days after the lapse of the 120-day period or until July 1, 2013 and December 29, 2013 within which to file its judicial appeals before this Court. It should be noted that a denial of the claim of refund made <u>after</u> the 120+30 day period is not considered in counting the period for judicial appeal. This is because the inaction of the CIR during the 120-day period is "deemed a denial", and without a timely appeal, said inaction which is "deemed a denial" becomes final and unappealable.[3]

Here, petitioner's Petition for Review was filed only on September 9, 2019, clearly, several years after the lapse of the 120+30 day period to file a judicial claim. The receipt of the denial dated July 30, 2019 of the claim for refund on August 9, 2019, which is <u>after</u> the 120-day period is inconsequential, even with the effectivity of the TRAIN law. It should be noted that the "deemed a denial" became final long before the TRAIN law became effective on January 1, 2018.

Petitioner's reliance on Revenue Regulations No. 1-2017[4] is misplaced. Nothing therein modified the periods to appeal to the Court of Tax Appeals, as it merely stated the respective jurisdictions of the CTA and the BIR in evaluating claims for refund.

WHEREFORE, petitioner's *Motion for Reconsideration (of the Honorable Court's Resolution dated 27 September 2019)* is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] Docket, PFR, p. 2.
[3] *Chemrez, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 1448, May 30, 2016.
[4] Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice