REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

LAPANDAY AGRICULTURAL & DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9965

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

Promulgated:

OCT 15 2019
9:36 a.m.

x - x

RESOLUTION

For resolution of the Court is Petitioner's "Motion for Reconsideration (Of the Resolution dated 30 July 2019)" filed on August 29, 2019, with Respondent's "Comment/Opposition Re: Petitioner's Motion for Reconsideration" filed on September 24, 2019.

Petitioner prays for the reversal of the Resolution dated July 30, 2019 which dismissed its Petition for Review for lack of jurisdiction, and that another one be rendered giving due course to the Petition.

In its motion, Petitioner argues that the 120+30 day period under RMC No. 54-2014 does not apply in cases where the CIR issues a decision on the VAT refund after the 120-day period, and that Revenue Memorandum Circular (RMC) No. 54-2014 does not apply to it. Furthermore, Section 112(C) of the NIRC gives the taxpayer two options to file an appeal with the Court, and not filing a judicial claim after the period of inaction does not preclude it from waiting for a decision and appealing the same. Petitioner cites the case of *Lascona Land Co. Inc. v. Commissioner of Internal Revenue*[1] to support its contention that the taxpayer cannot be prejudiced if he or she 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.

Additionally, Petitioner argues that the 120+30-day period is a claim-processing rule which does not restrict the subject-matter jurisdiction of the Court. A study of the legislative history of Section 112 or the 1997 NIRC, as amended by Republic Act (RA) No. 8424 will show that the 120+30-day provision is non-jurisdictional. Since the CIR actually issued a decision in its administrative claim despite the lapse of the 120+30-day period, the CIR is estopped from claiming prescription.

The CIR, on the other hand, opposes Petitioner's motion on the ground that both RMC No. 54-2014 and Section 112 of the 1997 NIRC, as amended, are both clear that if the claim for VAT refund or credit is not acted upon by the Commissioner within 120-day period as required by law, such 'inaction shall be deemed a denial' of the application for tax refund or credit and the taxpayer has thirty (30) days to appeal to this Court.

We deny Petitioner's motion.

Petitioner's arguments are not new to the Court. They are the very same arguments propounded in its "Comment/Opposition" to Respondent's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court" which the Court granted. They have previously been considered and weighed. Suffice it to say that Petitioner has not raised any point of contention which warrant the reversal of *Our* previous ruling.

However, the observation of Petitioner regarding the dispositive in the Resolution dated July 30, 2019 is **NOTED**, and shall duly be corrected.

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*

[1] G.R. No. 171251, March 5, 2012.

<u>Corporation</u> v. Commissioner of Internal Revenue is **DISMISSED** for lack of jurisdiction.

SO ORDERED."

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice