REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10072

Members:

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

Promulgated:
JAN 28 2020 : 8:46am

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RESOLUTION

For resolution are the following:

a. *Manifestation* dated December 14, 2019, filed by counsel for petitioner; and

b. respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* dated November 14, 2019, with petitioner's Comment/Opposition dated December 6, 2019.

Petitioner's Manifestation dated December 14, 2019, stating that participation of Attorney Romelia J. Ongayo in the present case was only for the purpose of presenting its witness Terencio R. Tangaran and that its Counsel of record remains to be Zambrano Gruba Caganda & Advincula, is **NOTED.**

On the second incident, respondent moves for the dismissal of the present case on jurisdictional ground citing

Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. Allegedly, the invoked provision expressly allows him a period of 120 days to act on a taxpayer's administrative claim for refund of value-added tax (VAT). In the event that he failed to act within the said 120-day period, the taxpayer has thirty (30) days from the lapse of the 120-day period to seek judicial redress, lest the Court has no jurisdiction to entertain the same.

Petitioner's administrative claims for VAT refund for the 1st, 2nd, 3rd, and 4th quarters of taxable year (TY) 2010 were respectively filed on June 9, 2011, June 10, 2011, September 9, 2011, and September 16, 2011. Hence, he had until October 7, 2011 for the 1st Quarter, October 8, 2011 for the 2nd Quarter, January 7, 2012 for the 3rd Quarter, and January 14, 2012 for the 4th Quarter to act on the said administrative claims, but failed. As there was inaction on his part within the prescribed 120-day period, petitioner had 30 days from the lapse thereof, or until November 6, 2011 for the 1st Quarter, November 7, 2011 for the 2nd Quarter, February 6, 2012 for the 3rd Quarter, and February 13, 2012 for the 4th Quarter, to elevate the respective claims with the Court. In fine, the instant Petition for Review was belatedly filed on April 16, 2019 depriving the Court of jurisdiction to entertain the same.

Taking an opposite view,[1] petitioner retorts that the Court has the required legal competence to adjudicate the present refund claim. It argues that a reading of Section 112(C) of the NIRC of 1997, as amended shows that the law confers upon the aggrieved taxpayer a period of 30 days from receipt of respondent's adverse decision to seek judicial review with the Court in Division. With its receipt of respondent's adverse Decision[2] on its administrative claim for VAT refund for the four (4) quarters of TY 2010 on March 20, 2019, it had thirty (30) days, or until April 19, 2019 to appeal to the Court. In other words, its Petition for Review was seasonably filed with the Court on April 16, 2019, vesting the Court legal authority to hear and determine its case.

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1 Petitioner's Comment/Opposition dated July 4, 2019.
2 Denial Letter dated January 28, 2019.

The fact that respondent's Denial Letter of January 28, 2019 was rendered beyond the prescribed 120-day period to act on its administrative claim for VAT refund for TY 2010 is of no moment, considering that Section 112(C) of the NIRC of 1997, as amended, merely requires that such adverse decision be appealed by the taxpayer to the Court within 30 days from receipt thereof, irrespective of whether it was decided within or outside the prescribed 120-day period. To hold otherwise is reading into the law what was not provided therein which should not be countenanced, concludes petitioner.

The present claim for refund must be dismissed.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.[3] On the other hand, jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong. It is conferred by law and an objection based on this ground cannot be waived by the parties.[4] Perforce, it is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[5]

Significantly, for the Court to legally entertain the present case, it is imperative that the taxpayer sternly adhere with Section 112(C) of the NIRC of 1997, as amended which reads as follows:

> **SEC. 112.*Refunds or Tax Credits of Input Tax.-***
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> xxx xxx xxx

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3 *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs,* G.R. No. 209830, June 17, 2015.

4 See *Heirs of Concha, Sr. vs. Spouses Lumocso,* G.R. No. 158121, December 12, 2007.

5 *Bilag vs. Ay-Ay,* G.R. No. 189950, April 24, 2017.

> (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.
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> 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.

Per the foregoing applicable provision, respondent has a period of 120 days from date of submission of complete documents to act on the taxpayer's application for input tax refund. When respondent renders an adverse Decision *within* the 120-day period; or the administrative claim remains unacted upon within the 120-day period, only then the taxpayer is permitted to appeal with the CTA within 30 days either, from receipt of such adverse Decision; or from lapse of the prescribed 120-day period. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the respondent renders a decision (which must be made within 120 days) or there was inaction on his part, the period of 120 days is material.[6]

As admitted by petitioner, its administrative claim for input VAT refund for the first,[7] second,[8] third,[9] and fourth[10] Quarters of TY 2010 were respectively filed on June 9, 2011, June 10, 2011, September 9, 2011, and September 16, 2011.[11] Counting 120-days from each of the said dates, respondent had until October 7, 2011 for the 1st Quarter, October 8, 2011 for the 2nd Quarter, January 7, 2012 for the 3rd Quarter, and January 14, 2012 for the 4th quarter, to

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6 See *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 184266, November 11, 2013.
7 Annex P-12, petition for review.
8 Annex P-13, petition for review.
9 Annex P-14, petition for review.
10 Annex P-15, petition for review.
11 Paragraph 17, petition for review, docket, p. 13.

take action on the foregoing administrative claims for VAT refund, but failed.

Considering respondent's inaction on the said administrative claims for refund for TY 2010 within the said 120-day period, petitioner had 30-days from the lapse thereof, or until November 8, 2011[12] for the 1st Quarter, November 8, 2011[13] for the 2nd Quarter, February 6, 2012 for the 3rd Quarter, and February 13, 2012 for the 4th Quarter to go to the Court for review. Undeniably, its Petition for Review was filed beyond the prescribed 30-day period to appeal on April 16, 2019, thereby depriving the Court of jurisdiction to hear and determine the same.

Petitioner further argues that Section 112(C) of the NIRC of 1997, as amended, does not require that adverse decision be rendered by respondent within the said 120-day period for it to be appealable with the Court.

Section 112(C) of the NIRC of 1997, as amended, is clear. Respondent has a period of 120 days to grant or deny a taxpayer's claim for refund or issuance of tax credit certificate for creditable input taxes counting from the date of submission of complete supporting documents. In case of denial within the 120-day period, or the lapse of the 120-day period without any action on the part of respondent, the taxpayer concerned has 30 days from receipt of said adverse decision, or from the expiration of the 120-day period without any action from him.

Slew of cases[14] teaches us that the Court may only take cognizance of claims falling under Section 112(C) of the NIRC, as amended, only on two (2) instances, specifically: a) when respondent's adverse decision rendered *within* the

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[12] November 5 and 6, 2011 fell on a Saturday and Sunday, respectively. November 7, 2011 was officially declared a regular holiday (Eid al-Adha) pursuant to Proclamation No. 276, s. 2011.

[13] See Note 12.

[14] *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 203249, July 23, 2018; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 182737, March 2, 2016; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015; *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership,* G.R. No. 191498, January 15, 2014; and *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.

120-day period is appealed by the taxpayer within 30 days from receipt thereof; or b) when respondent failed to act within the 120-day period, and such inaction is appealed by the taxpayer within 30 days from the lapse of the 120-day period. The High Tribunal has spoken. On matters of input VAT refund, only respondent's adverse decision rendered *within* the subject 120-day period may be elevated with the Court in Division. In other words, respondent's Letter Denial of January 28, 2019, which was rendered beyond the prescribed 120-day period to act, at most[15] on January 14, 2012 [16] is not a decision contemplated by law and jurisprudence, hence, may not be the proper subject of an appeal before the Court.

Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law.[17] It requires our courts to follow a rule already established in a final decision of the Supreme Court.[18] What it says then should be definitive and authoritative, binding on those occupying the lower ranks in the judicial hierarchy, as this Court. They have to defer and to submit,[19] for [t]here is only one Supreme Court from whose decision all other courts should take their bearings.[20]

On a final note, in refund cases, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and judicial claims would result in the denial of the claim.[21] The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right

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15 The 120-day period for respondent to decide petitioner's administrative claim ended on October 7, 2011 for the 1st Quarter, October 8, 2011 for the 2nd Quarter, January 7, 2012 for the 3rd Quarter, all of TY 2010.

16 This date is the lapse of the 120-day period for respondent to decide petitioner's administrative claim for the 4th Quarter of TY 2010.

17 *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.

18 *United Coconut Planters Bank vs. Spouses Uy*, G.R. No. 204039, January 10, 2018.

19 See *Ang Ping vs. Regional Trial Court of Manila, Branch 40*, G.R. No. 75860, September 17, 1987.

20 *Commission on Higher Education vs. Dasig*, G.R. No. 172776, December 17, 2008.

21 *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

of appeal may be lost or squandered.[22] Let is emphasized that the 120+30 day periods are mandatory and jurisdictional. Non-adherence therewith, such as the instant case renders the petition before the CTA void.[23]

WHEREFORE, this case is **DISMISSED**, on jurisdictional ground.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[22] *Herarc Realty Corporation vs. The Provincial Treasurer of Batangas*, G.R. No. 210736, September 25, 2018.

[23] See *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 203249, July 23, 2018.