REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8902 & 8958

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
OCT 30 2020
8:35 Am

x - x

RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is petitioner's **Motion for Reconsideration (Re: Decision dated 16 June 2020)**, filed through registered mail on July 6, 2020 and received by the Court on July 14, 2020, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 16 June 2020)** filed through registered mail on July 30, 2020 and received by this Court on August 25, 2020.

On June 16, 2020, the Court promulgated a Decision denying petitioner's consolidated claims for refund of its alleged excess and unutilized input value-added tax (VAT) for failing to observe the 120+30-day periods in filing the Petitions for Review, the dispositive portion of which states:

> "**WHEREFORE,** premises considered, the instant Petitions for Review are **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"

In its Motion, petitioner insists that the Petitions for Review representing its judicial claims for refund for all quarters of taxable year (TY) 2012 were timely filed based on the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and existing jurisprudence. It argues that the cases of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[1] (*"Mindanao Geothermal case"* hereafter for brevity) and *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*[2] (*"Rohm case"* for brevity) as cited by the Court are not applicable herein since both cases deal with the late filing of a Petition for Review due to the inaction of the Commissioner of Internal Revenue (CIR).

Petitioner asserts that in the present case, the Petitions for Review were not based on the inaction of the CIR but were instead based on his decision of partially denying its administrative claims for refund. Petitioner explains that it received the CIR's decision on September 5, 2014 for the first and second quarters of TY 2012, and November 20, 2014 for the third and fourth quarters of TY 2012. As such, the Petitions for Review that were respectively filed on October 7, 2014 and December 22, 2014 were timely made in accordance with Section 112(C) of the NIRC of 1997, as amended.

Moreover, petitioner claims that Section 112(C) of the NIRC of 1997, as amended, does not indicate that the judicial claim *via* Petition for Review must be filed either from the receipt of respondent's decision or his inaction, whichever is earlier. It is clear therein that a taxpayer is given the option of filing its judicial claim for refund within thirty (30) days from receipt of respondent's actual decision, regardless of the lapse of the one hundred twenty (120) day period for inaction. Petitioner avers that while foregoing argument was based on disputed assessment cases under Section 228 of the NIRC of 1997, as amended, a similar interpretation however should be given to Section 112(C) due to the substantial similarity of their provisions, especially to the period within which to file its judicial appeal.

On the other hand, in his opposition, respondent reiterates the Court's ruling in the Decision assailed by petitioner, arguing that petitioner's contention bears no merit, citing that the issue has long been settled and explained under Section 112 of the NIRC, as amended. *Jr*

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[1] G.R. No. 191498, January 15, 2014.
[2] G.R. No. 168950, January 14, 2015.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

Verily, Sections 228 and 112(C) of the NIRC of 1997, as amended, cannot be similarly interpreted with regard to the period of filing of judicial appeal. The pertinent portion of Section 228 of the Tax Code states:

> "**SEC. 228.** *Protesting of Assessment.* —
>
> x x x
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, <u>the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period</u>; otherwise, the decision shall become final, executory and demandable." *(Underscoring supplied)*

While Section 228 of the NIRC of 1997, as amended, provides an option to taxpayers to await the decision of the CIR on the disputed assessment, regardless of the lapse of the one hundred eighty (180) day period, before filing of a petition for review with this Court, Section 112(C) of the same tax code clearly requires the observance of the mandatory period when to file an administrative and judicial claim for refund, to wit:

> "**SEC. 112.** *Refunds or Tax Credits ofInput Tax.* —
>
> x x x
>
> (C) *Period within which Refund or Tax Credit ofInput Taxes shall be Made.*— In proper cases, the <u>**Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days**</u> 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**." *(Emphasis and underscoring supplied)*

The law is clear. The foregoing provision indubitably states that the thirty (30) day period to file a judicial appeal commences from: (1) receipt of the full or partial denial of the claim for tax refund within the one hundred twenty (120) day period; **OR** (2) upon the lapse of the said period without action on the part of the respondent. To reiterate, the observance of the 120+30 day period is mandatory and jurisdictional. Judicial claims filed beyond the mandatory period provided under Section 112(C) of the NIRC of 1997, as amended, cannot be entertained by the Court since the same is already considered out of its jurisdiction.

As pointed out in the assailed Decision, petitioner should have filed its judicial claims within thirty (30) days upon the lapse of the 120-day period, as the inaction of the respondent is already considered a decision denying the claim for refund, and not from the receipt of the CIR's denial.

Accordingly, considering that petitioner failed to provide sufficient justification to convince the Court that its judicial claims were filed within the reglementary period provided by law, the denial of the same for lack of jurisdiction is in order.

WHEREFORE, in view of the foregoing, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice