REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ADVANCED WORLD SYSTEMS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2509
(CTA Case No. 9767)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
SEP 01 2022 1:30 pm

x -x

RESOLUTION

CUI-DAVID, J.:

Submitted before this Court is petitioner's "**Motion for Reconsideration (Re: Decision dated 30 May 2022)**" (Motion) filed on June 16, 2022 *via* registered mail, and received by the Court on June 20, 2022, with respondent's "**Opposition (Re: Motion for Reconsideration of the Decision dated 30 May 2022)**" received on July 18, 2022.

In its Motion, petitioner seeks the setting aside of this Court's Decision promulgated on May 30, 2022[1] (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The assailed Resolutions dated August 26, 2020 and March 9, 2021, both

[1] *En Banc (EB)* Docket, pp. 113-135.

rendered by the Third Division of this Court in CTA Case No. 9767, are **AFFIRMED**.

SO ORDERED.

Petitioner maintains that the 120+30-day rule cannot be strictly applied in resolving the timeliness of its judicial claim because of the following issuances: (a) Revenue Memorandum Circular (RMC) No. 54-2014;[2] (b) Revenue Regulations (RR) No. 1-2017;[3] and (c) the CIR's Denial Letter dated December 17, 2017 informing petitioner that its claim was deemed denied pursuant to RMC No. 54-2014, and its processing was conducted pursuant to RR No. 1-2017. Petitioner adds that it may rely upon a ruling from the time it is issued up to the time of its reversal, which shall not be given retroactive effect, citing once more the case of *Visayas Geothermal Power Company v. CIR*[4] (Visayas Geothermal Power).

Petitioner insists that the processing of its claim under RR No. 1-2017 was made to rectify the erroneous retroactive application of RMC No. 54-2014, which in effect, reconsidered the deemed denial ruling and reinstated petitioner's claim.

Respondent counters that petitioner failed to observe the mandatory and jurisdictional 30-day period from the expiration of the 120-day period pursuant to Section 112 (D) of the Tax Code. Respondent avers that if the administrative claim was filed on time on March 16, 2012, respondent had 120 days, or until July 16, 2012, to decide. Citing the Court in Division's Resolution dated August 26, 2020, respondent stresses that since he failed to rule on the administrative claim within the 120-day period, petitioner's recourse is to file its judicial claim within 30 days after July 16, 2012, or until August 15, 2012. Considering that petitioner's Petition for Review was filed only on February 12, 2018, it was filed out of time.

After due consideration, the Court finds petitioner's Motion bereft of merit.

---

[2] Clarifying Issues Relative to the Application for Value-Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended, June 11, 2014.
[3] 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, January 3, 2017.
[4] G.R. No. 197525, June 4. 2014.

As the records show, petitioner makes no new argument that this Court has not thoroughly discussed in the assailed Decision.

Again, the Court stresses that RMC No. 54-2014 and RR No. 1-2017 could not amend the statutory 120+30-day rule, and did not give petitioner a fresh 30-day period to file its judicial claim upon its receipt of the CIR's Denial Letter on January 11, 2018. Petitioner cannot validly rely on these BIR issuances that were issued years *after* its filing of administrative claim on March 16, 2012 especially in view of the law, *i.e.*, Section 112 of the Tax Code, which expressly dictates the mandatory and jurisdictional nature of the 120+30-day period. Section 112 must prevail over all arguments based on equity.[5]

Also, when petitioner filed its administrative claim for refund on March 16, 2012, the rule on judicial claim for refund had already been settled by the Supreme Court in 2010 in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[6] where it declared that under the National Internal Revenue Code (NIRC) of 1997, as amended, the taxpayer must appeal to the CTA within 30 days from the lapse of the 120 days when the CIR fails to render a decision, *viz.*:

> Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, **if *after* the <u>120-day period</u> the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA <u>within 30 days</u>**. *(Emphasis supplied)*

In this case, petitioner failed to show compliance with the mandatory and jurisdictional periods in the filing of judicial claim, as laid down under the NIRC of 1997, as amended. Petitioner did not file a Petition for Review with the CTA within 30 days after the expiration of the 120-day period from the filing of its administrative claim on March 16, 2012. As such, the Court had no jurisdiction over its claim for refund. Ultimately, the dismissal of this case is proper.

---

[5] See *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, January 15, 2014.
[6] G.R. No. 184823, October 6, 2010.

x---x

In view of the foregoing, the Court finds no compelling reason to set aside the Decision promulgated on May 30, 2022.

WHEREFORE, in light of the foregoing considerations, petitioner's "Motion for Reconsideration (Re: Decision dated 30 May 2022)" is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice