**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***First Division***

**LAPANDAY DIVERSIFIED PRODUCTS CORP.,**
*Petitioner,*

*-versus-*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA Case No. 9989**

Members:

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

Promulgated:
AUG 15 2019 - 9:30a

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# RESOLUTION

This resolves respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court**[1] filed on May 31, 2019, and petitioner's **Motion to Admit Attached Comment/ Opposition (To Respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated 24 May 2019)** filed on July 29, 2019.

Respondent argues that the filing of petitioner's Petition for Review on December 20, 2018 was beyond the mandatory and jurisdictional 120+30-day period under Section 112(D) of the 1997 National Internal Revenue Code (NIRC), as amended, based on the following relevant dates cited by him in the said motion, to wit:

| Quarter | Date of Filing of Administrative Claim | 120-day period (Deemed Denied) | 30-days after the denial | Date of Filing of Petition for Review |
|---|---|---|---|---|
| 1st | 22 August 2013 | 20 December 2013 | 19 January 2014 | 20 December 2018 |
| 2nd | 22 August 2013 | 20 December 2013 | 19 January 2014 | |
| 3rd | 30 August 2013 | 28 December 2012 | 27 January 2014 | |
| 4th | 30 August 2013 | 28 December 2012 | 27 January 2014 | |

[1] Docket, CTA Case No. 9989, pp. 407-413.

In its Comment/Opposition, petitioner argues that that the 120+30-day period under RMC No. 54-2014 does not apply in cases where the respondent issues a decision on the value-added tax (VAT) refund after the lapse of the 120-day period.

Petitioner also insists that Section 112(C) of the 1997 NIRC, as amended, clearly provides two options to the taxpayer on how to appeal the decision of the respondent denying the claim for refund or tax credit just like the latter's decision in tax assessment cases citing the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[2]. It claims the right to await the decision of the respondent and subsequently appeal the same to the Court of Tax Appeals in case the latter renders an adverse decision against such claim for refund.

Petitioner further argues that the failure of the taxpayer to comply with the "120+30-day period" does not deprive the CTA of its jurisdiction to adjudicate the assailed Letter of Denial dated October 29, 2018 and that the respondent is already estopped from claiming prescription considering that the latter still acted on the claim for refund despite the lapse of the 120-day period.

In its Petition for Review, petitioner alleged that it filed an administrative claim for refund of input value-added tax (VAT) covering the period January 1, 2012 to December 31, 2012 on the following dates with the corresponding amount of claim, to wit:

| **Quarter 2012** | **Date of Filing of Administrative Claim** | **Amount** |
|---|---|---|
| 1st | August 22, 2013 | Php 5,175,303.63 |
| 2nd | August 22, 2013 | 3,977,189.00 |
| 3rd | August 30, 2013 | 2,043,635.32 |
| 4th | August 30, 2013 | 1,956,667.51 |
| **Total** | | **Php 13,152,795.46** |

On November 26, 2018, petitioner received a Letter of Denial dated October 29, 2018 on such administrative claim for refund. The denial was based on petitioner's failure to prove entitlement to such claim.

[2] G.R. No. 171251, March 05, 2012.

Hence, petitioner filed the instant petition on December 20, 2018.

Section 112(C) of the 1997 NIRC, as amended, provides for the period when the respondent should act on taxpayer's claim for input VAT refund/credit as well as the period when the latter may appeal the action or inaction of the former on such claim, to wit:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> (A) xxx xxx xxx
>
> (B) xxx xxx xxx
>
> (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 Subsections (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 underscore ours*)
>
> xxx xxx xxx

As shown in the above-cited provision, the respondent has 120 days from the date of submission of the complete supporting documents of such application to take action of the same.

As such, the law provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.[3]

Prior to June 11, 2014, the issuance date of RMC No. 54-2014, the applicant/claimant had thirty (30) days within which to submit the complete documentary requirements sufficient to support his claim, unless given further extension by the respondent. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. If, however, the applicant/claimant manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120-day period shall begin to run from the date of filing.[4]

Considering that the petitioner is deemed to have submitted its complete supporting documents upon filing of the claim, the reckoning date for the 120-day period, therefore, shall be counted from the date of filing of the administrative claim for VAT refund/credit. Thus, the 120-day period had lapsed on the following dates, to wit:

| **Quarter 2012** | **Date of Filing of Administrative Claim** | **Last day of the 120-day period** |
|---|---|---|
| 1st | August 22, 2013 | December 20, 2013 |
| 2nd | August 22, 2013 | December 20, 2013 |
| 3rd | August 30, 2013 | December 28, 2013 |
| 4th | August 30, 2013 | December 28, 2013 |

Considering that respondent did not act on petitioner's claim for refund or credit, the latter has the following last day to appeal the former's inaction on the same, to wit:

| **Quarter 2012** | **Last day of the 120-day period** | **Last day of the 30-day period** |
|---|---|---|
| 1st | December 20, 2013 | January 19, 2014 |
| 2nd | December 20, 2013 | January 19, 2014 |
| 3rd | December 28, 2013 | January 27, 2014 |
| 4th | December 28, 2013 | January 27, 2014 |

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[3] *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.

[4] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 08, 2015.

Now the question is whether petitioner can wait for the respondent to issue a ruling on the said claims for input VAT refund or credit after the lapse of the 120+30-day period before it can elevate the case to this Court?

We rule in the negative.

In *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue,* and *Philex Mining Corporation v. Commissioner of Internal Revenue*[5], the Supreme Court ruled that the 30-day period of filing an appeal is mandatory and jurisdictional after the expiration of the 120-day period if the applicant/claimant will opt to file an appeal, to wit:

> "When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, ...
>
> xxx xxx xxx
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods..."

The doctrine on the mandatory and jurisdictional nature of the 120+30-day period is also reiterated in several subsequent rulings of the Supreme Court.[6]

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[7], the Supreme Court provides a

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[5] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[6] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. Nos. 193301 and 194637, March 11, 2013; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 173241, March 25, 2015; *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 and 196451, December 02, 2015; *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018.

summary of rules on prescriptive periods for claiming refunds or credit of input VAT, to wit:

**SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING
REFUND OR CREDIT OF INPUT VAT**

The lessons of this case may be summed up as follows:

***A. Two-Year Prescriptive Period***

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

***B. 120+30 Day Period***

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (San Roque)

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[7] G.R. No. 191498, January 15, 2014.

As shown above, the only exception to the doctrine of 120+30-day period is when the claim for refund or credit of input VAT was filed between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force.

Petitioner's administrative claim for refund or credit was not filed in the said period, hence, outside the coverage of the aforesaid exception.

Petitioner is totally mistaken in relying on the *Lascona* case wherein the ruling was based on Section 228 of the 1997 NIRC, as amended, and the issue pertains to a tax assessment and not on input VAT refund or credit claim.

In Section 228, the provision for the 30-day period to appeal is worded as "the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days **from receipt of the said decision**, **or from the lapse of the one hundred eighty (180)-day period**." The option given to the taxpayer is to file an appeal either from the lapse of the 180-day period or from the date of the receipt of the decision, which may occur during or after the 180-day period when the respondent may take action on taxpayer's protest on a particular tax assessment.

Further, in *Lascona* case, one of the bases of such ruling is Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) which provides:

> **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) xxx xxx
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the

> National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* <u>that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules</u>; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; (*Underscore ours*)

Unlike such provision wherein the taxpayer can wait for the decision of the respondent on disputed assessment, the RRCTA did not provide for an equivalent provision for claims of refund/credit particularly on input VAT. Hence, *Lascona* is not applicable in this case.

The filing of the petition for review on December 20, 2018 is beyond the 30-day period under Section 112(C) of the 1997 NIRC, as amended. Thus, the Court has no jurisdiction to continue hearing the instant case.

This Court will no longer discuss other issues raised by the petitioner for the same reason above-cited.

**WHEREFORE**, premises considered, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is hereby **GRANTED**, while petitioner's Motion to Admit Attached Comment/ Opposition (To Respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated 24 May 2019) is **NOTED**. Finding merits in respondent's disquisition, the Petition for Review under CTA Case No. 9989 is hereby **DISMISSED** for lack of jurisdiction.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

ON LEAVE

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice