REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LANTRO PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9436

Members:

DEL ROSARIO, *P.J., Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:

DEC 11 2020 2:17 pm

x- x

RESOLUTION

MANAHAN, *J.*:

This resolves petitioner's *Motion for Reconsideration* filed online on September 15, 2020, without respondent's comment, per Records Verification dated September 28, 2020. Petitioner requests reconsideration of the Decision dated August 26, 2020, which disposed of the case, as follows:

> Since the filing of petitioner's judicial claim on August 23, 2016 was made beyond the 120+30-day periods under Section 112(C) of the NIRC of 1997, as amended, the same is outside the jurisdiction of the Court in Division.
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**[1]

In its *Motion*, petitioner argues that Section 112(C) of the 1997 National Internal Revenue Code, as amended (NIRC), provides for the taxpayer's remedies, as follows:

[1] Decision dated August 26, 2020, p. 21.

a. In case of an adverse decision from the Commissioner within the 120-day period, to appeal the decision judicially within thirty days from receipt of the adverse decision.
b. If there was inaction on the part of the Commissioner within the 120-day period; to consider the inaction a deemed decision and thus apply the 120+30-day rule.
c. If the Commissioner nevertheless chose to make a decision within the 120-day period, but serves the Notice of Denial to the taxpayer after the 120-day period, the latter can appeal such denial within 30 days from its receipt thereof; because from a plain reading of Section 112(C) there is no bar in appealing the decision within thirty (30) days from the receipt of the decision denying the claim.

Petitioner further relies on the ruling in *Lascona Land Co., Inc. V. Commissioner of Internal Revenue,*[2] (*Lascona* case) wherein the taxpayer is allowed to await the decision of the CIR on a protest, even outside the 180-day period for the CIR's action.

Petitioner also contends that in the instant case, its application for refund was re-filed on February 26, 2016, that the CIR issued the denial on June 24, 2016, which is the last day of the 120-day period if counted from June 24, 2016; and that the receipt of said decision on July 26, 2016 granted petitioner a fresh 30-day period to file it judicial appeal, or until August 25, 2016. Thus, petitioner argues that its Petition for Review filed on August 23, 2016 was timely filed.

We disagree.

As discussed in the Decision, the Court cannot consider that the filing on February 26, 2016 was a new or re-filing of petitioner's administrative claim for refund. There is no indication therein that it supersedes the earlier administrative claim filed on January 7, 2016. At best, the filing on February 26, 2016 may be construed only as additional submissions to support the first filing.

---

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

That being said, the 120-day period from January 7, 2016 expired on May 6, 2016, during which period, petitioner did not receive any denial of its claim for refund. Thus, petitioner had only until June 5, 2016, or thirty (30) days from May 6, 2016, within which to file its judicial claim.

There are two scenarios before a judicial claim 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 of unutilized input VAT.

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[3] *(Mindanao II case)*, the Supreme Court summarized the rules on prescriptive periods for claiming refunds or credit of input VAT, as follows:

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

[3] G.R. 191498, January 15, 2014.

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

Petitioner is also mistaken in relying on the *Lascona case* wherein the ruling was based on Section 228 of the NIRC, and the issue pertains to a tax assessment and not an 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 thirty (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 receipt of the decision, which may occur during or after the 180-day period when the respondent may take action on the taxpayer's protest on a particular tax assessment.

Further, in the *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 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 the 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,* 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; 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*)

While the taxpayer can wait for the decision of the respondent on a disputed assessment, the RRCTA did not provide for an equivalent provision for claims of refund/credit, whether for erroneously or illegally collected taxes or for unutilized creditable input VAT. Hence, the *Lascona case* is not applicable to the instant case.

Based on the foregoing, there is no cogent reason to reverse our findings that the judicial claim filed on August 23, 2016 was filed out of time and therefore outside of this Court's jurisdiction.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice