REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR, INC., Petitioner,	**CTA EB No. 1745 (CTA Case No. 9218)**
	Present:
-versus-	Del Rosario, *PJ*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 10 2019 4:13 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is a Petition for Review filed by petitioner Hedcor, Inc. ("Hedcor", for brevity) on December 8, 2017. Hedcor assails the Resolution[1] dated December 22, 2016 and Resolution[2] dated November 3, 2017 issued by the then CTA First Division[3] ("CTA Division", for brevity) in *Hedcor, Inc. v. Commissioner of Internal Revenue,* docketed as CTA Case No. 9218.

The dispositive portion of the December 22, 2016 Resolution reads:

> **WHEREFORE,** respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable**

[1] *Rollo*, pp. 147-154.
[2] *Rollo*, pp. 157-162.
[3] Composed of Presiding Justice Roman G. Del Rosario, Associate Justice Erlinda P. Uy, and Associate Justice Cielito N. Mindaro-Grulla.

Court is **GRANTED.** Accordingly, **Petition for Review** filed on December 10, 2015 is **DISMISSED** for lack of jurisdiction.

The presentation of petitioner's witness Richard S. Querido set on February 7, 2017 at 9:00 a.m. is **CANCELLED**.

SO ORDERED.

The dispositive portion of the November 3, 2017 Resolution states:

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

SO ORDERED.

THE FACTS

Petitioner Hedcor, Inc. ("Hedcor") is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 214 Ambuclao Road, Obulam, Beckel, La Trinidad, Benguet.[4]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Chief of the Bureau of Internal Revenue (BIR). CIR is vested by law with power to decide, approve and grant refund internal revenue taxes or issue tax credit certificates of input tax due or paid, by a VAT-registered person, whose sales are zero-rated, as provided by law. CIR may be served summons, pleadings and other processes at her office at BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

Hedcor filed before the BIR its final amended quarterly VAT return for the 3rd quarter of 2006 on July 21, 2008 and declared Php10,556,034.07 as the total VAT credit it is entitled for such period.[6]

On August 20, 2008, or within two years from the taxable quarter when the sale was made, Hedcor filed an administrative claim for input VAT refund or issuance of TCC with the BIR through RDO NO. 09, La Trinidad, Benguet.[7]

---

[4] Joint Stipulation of Facts and Issues (JSFI), Stipulation of Facts, Division Docket, p. 370.
[5] JSFI, Summary of Admitted Facts, Division Docket, p. 369.
[6] JSFI, Summary of Admitted Facts, Division Docket, p. 370.
[7] *Id.*

Hedcor participated in the audit proceedings conducted by RDO No. 09 and submitted its supporting documents to such office.[8]

Hedcor was optimistic that it was able to fully support and substantiate by competent evidence that it is entitled to a VAT refund/credit in the amount of Php10,556,034.07 for the 3rd quarter of 2006 and opted to wait for the favorable decision from the BIR through its Commissioner.[9]

BIR served Letter of Authority No. 5932 (LOA 5932) on October 23, 2008, authorizing the audit and investigation of Hedcor's applications for refund/tax credit.[10]

On June 17, 2014, however, CIR issued RMC No. 54-2014.[11]

On December 10, 2015, Hedcor filed its Petition for Review with the CTA Division.

CIR filed a "Motion for Extension of Time to File Answer" on January 20, 2016 and a "Motion for Additional Time to File Answer" on February 19, 2016. The CTA Division granted these motions in the interest of justice.

Within the period of extension granted, CIR filed an Answer to the Petition for Review on March 21, 2016.[12] As part of her Special and Affirmative Defenses, CIR raised that: the Honorable Court has no jurisdiction over the instant petition, and that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim.

On August 11, 2016, pre-trial was conducted.[13]

On August 22, 2016, CIR filed a "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court."[14]

On August 31, 2016, the parties filed their Joint Stipulation of Facts and Issues,[15] which the CTA Division approved on September 19, 2016.[16]

---

[8] JSFI, Summary of Admitted Facts, Division Docket, p. 370.
[9] *Id.*
[10] JSFI, Stipulation of Facts, Division Docket, p. 370.
[11] JSFI, Summary of Admitted Facts, Division Docket, p. 370.
[12] Division Docket, pp. 112-126.
[13] Division Docket, pp. 342-344.
[14] Division Docket, pp. 353-368.
[15] Division Docket, pp. 369-375.
[16] Division Docket, p. 381.

Within the period of extension granted, Hedcor filed its "Comment/Opposition (Re: Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated August 22, 2016)" on October 4, 2016.[17]

On December 22, 2016, CIR's "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court" was granted and the Petition for Review filed on December 10, 2015 was dismissed for lack of jurisdiction.

On January 19, 2017, Hedcor filed its Motion for Reconsideration. On February 10, 2017, CIR filed its "Comment (Re: Petitioner's Motion for Reconsideration)." On February 27, 2017, Hedcor filed its "Reply (Re: Respondent's Comment/Opposition dated February 10, 2017)."

On November 3, 2017, the CTA Division denied Hedcor's Motion for Reconsideration. A copy of the said resolution was received by Hedcor on November 8, 2017.[18]

On November 22, 2017, Hedcor filed a "Motion for Extension of Time to File Petition for Review." This Court granted this motion and gave Hedcor an additional period of time to file its petition.

Within the period of extension, Hedcor filed its Petition for Review on December 8, 2017 *via* registed mail. CIR failed to file Comment on the Petition for Review.[19]

On March 19, 2018, the CTA *En Banc* granted the parties a period of thirty (30) days from notice within which to file their respective memoranda. On May 2, 2018, Hedcor filed its Memorandum. On June 4, 2018, CIR filed a Memorandum.

On July 12, 2018, this case was submitted for decision.

ISSUES[20]

I. Whether the CTA First Division erred when it ruled that it has no jurisdiction over the petition for review 9c

[17] Division Docket, pp. 400-419.
[18] Division Docket, p. 541.
[19] Records Verification dated February 22, 2018, *Rollo*, p. 167.
[20] *Rollo*, pp. 29-30.

dated December 10, 2015 for being filed beyond the statutory period.

II. Whether Petitioner has legal bases to claim for input VAT refund or tax credit.

THIS COURT'S RULING

The petition is denied.

This case involves a claim for the issuance of a tax credit certificate or refund of Hedcor's unutilized input VAT allegedly paid and incurred from its domestic purchases of goods and services mostly attributable to its zero-rated sales of electricity for the Third (3rd) Quarter of 2006 in the amount of P10,556,034.07.

Anent the timeliness of the administrative claim of Hedcor, it is an admitted fact that its claim for the issuance of a tax credit certificate or refund was filed on August 20, 2008,[21] which is within the two-year prescriptive period after the close of the taxable quarter (*i.e.,* September 30, 2006) when the alleged zero-rated or effectively zero-rated sales were made.[22]

The crux of this case is the timeliness of the filing of the judicial claim, which was filed on December 10, 2015.

Pertinent to this is Section 112(C) of the NIRC of 1997, as amended, provides:

> "(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**

---

[21] JSFI, Summary of Admitted Facts, Division Docket, p. 370.
[22] Section 112 (A) of the National Internal Revenue Code, as amended.

"SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. *(Emphasis Supplied)*

> **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." *(Emphases supplied)*

"Based on the plain language of the foregoing provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA."[23]

In *Sitel Philippines v. Commissioner of Internal Revenue,*[24] the Supreme Court emphasized that, "In *Aichi,*[25] the Court ruled that the 120-day period granted to the CIR was mandatory and jurisdictional, the non-observance of which was fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertained only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within thirty (30) days from the receipt of the decision of the CIR or the expiration of the 120-day period of the CIR to act on the claim." Pertinent portion of the *Aichi* case provides:

> The second paragraph of Section 112(D)[26] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

In the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner*

---

[23] *Sitel Philippines Corporation (Formerly Clientologic Phils., Inc.) v. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017.
[24] G.R. No. 201326, February 8, 2017.
[25] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,* G.R. No. 184823, October 6, 2010.
[26] Now Section 112 (C) of the NIRC of 1997, as amended.

of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue,[27] Supreme Court *En Banc* stated that:

> Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. **If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).**
>
> xxx xxx xxx
>
> xxx **The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional.** The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. xxx
>
> 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, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner. *(Emphases Supplied)*

In the case of *Pilipinas Total Gas v. Commissioner of Internal Revenue,*[28] *("Pilipinas Total Gas" case),* the Supreme Court *En Banc* ruled

[27] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[28] G.R. No. 207112, December 8, 2015.

that, "From the above [Sec. 112 (C) of the NIRC, as amended], it is apparent that the CIR has 120 days from the date of submission of complete documents to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA."

Based on the foregoing jurisprudence, it is clear that the 120+30 day periods are mandatory and jurisdictional.

As to timeliness of the Petition for Review before the CTA Division, Hedcor reckoned the thirty (30)-day-period in filing an appeal to the CTA from the date of receipt of the alleged denial of its administrative claim. Hedcor filed its Petition for Review before the CTA Division on December 10, 2015. Hedcor alleged that on November 10, 2015, it received from the "Respondent through RDO No. 9, La Trinidad Benguet, copy of the Resolution-Letter dated October 13, 2015, expressly denying the Application for VAT Refund/Credit for the 3rd Quarter of 2006 filed by the petitioner on August 20, 2008."[29] For easy reference, the body of the said Resolution-Letter is quoted below:

> "This has reference to your request of an administrative claim for the refund of excess and unutilized input VAT for the period July 2006 to September 2006, details of which are as follows:
>
> xxx xxx xxx
>
> Relative thereto, we regret to inform you that processing of the claim could not be pursued in line with the issuance of RMC No. 54-2014."

Applying the plain meaning of the words in the said Resolution-Letter, it is clear that there is no express denial of the claim.

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership,*[30] (*Mindanao II case*), "The 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well."

---

[29] Division Docket, p. 10.
[30] G.R. No. 191498, January 15, 2014.

In this case, considering that there is no actual denial of the claim, it should be treated as inaction. Hedcor's allegation that its claim was acted upon and expressly denied precluding the application of the "deemed denial" doctrine, is, therefore, bereft of merit.

Pertinent to this case is the reckoning point on when the counting of the 120-day period starts. Section 112(C) categorically provides that the 120-day period is counted "from the date of submission of complete documents in support of the application." *Pilipinas Total Gas case* is instructive:

> "Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. **Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office.** Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.
>
> Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, "officially received" as provided under RMC No. 49-2003.
>
> **To summarize,** for the just disposition of the subject controversy, **the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. 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.** Should the taxpayer, on the date of his filing, manifest

that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

It bears mentioning at this point that **the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014,** such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

xxx xxx xxx

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim." *(Emphases Supplied)*

Applying the *Pilipinas Total Gas case* in the instant case, Hedcor should have submitted the documentary requirements sufficient to support its claim within 30 days from the date its administrative claim was filed on August 20, 2008, unless given further extension by the CIR. "[N]otice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential."[31] 30 days from August 20, 2008 is September 19, 2008. However, considering that there was an alleged First Request for Presentation of Records dated October 29, 2008,[32] and that Hedcor transmitted the requested documents on November 12, 2008, this Court will reckon the 120-day period from the submission of the documents on November 12, 2008. CIR has 120 days from the submission of the documents to act on the claim, or until March 12, 2009. On March 12, 2009, there is no decision made by the CIR on the claim of Hedcor. Counting 30 days from the expiration of the 120-day period, Hedcor had until April 11, 2009 within which to appeal the inaction of the CIR to the CTA. However,

[31] *Pilipinas Total Gas v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[32] *Rollo*, p. 33.

Hedcor filed the Petition for Review to the CTA Division on December 10, 2015. The petition is, therefore, filed out of time. In fine, Hedcor's judicial claim cannot prosper for its failure to comply with the 30-day mandatory and jurisdictional period set forth by law.

In the Assailed Resolution dated December 22, 2016, the CTA Division determined that the judicial claim was filed beyond the mandatory 120+ 30 days. Pertinent portions of the said Resolution provide:

> Records show that petitioner allegedly filed its administrative claim for refund or issuance of TCC on August 20, 2008 and submitted its last additional documentary evidence on May 3, 2011. Counting 120 days from May 3, 2011, the BIR then had until August 31, 2011, within which to decide the claim. Petitioner had 30 days from the lapse of 120 days on August 31, 2011 or until September 30, 2011 to file it judicial claim.
>
> xxx xxx xxx Petitioner's judicial claim filed on December 10, 2015 was, however, filed beyond the 30-day prescriptive period.

Although the CTA Division reckoned the counting of 120 days from May 3, 2011 instead from November 12, 2008 as determined by this Court after applying the *Pilipinas Total Gas case*, this Court still agrees with the CTA Division's findings and conclusions that the filing of the Petition for Review on December 10, 2015 was way beyond the 30-day prescriptive period, thus, should be dismissed for lack of jurisdiction.

Hedcor alleges that the CTA Division erred when it applied the provisions of RMC No. 54-2014 retroactively. This contention is bereft of merit. A mere reading of the Assailed Resolutions reveal that the CTA Division did not even mention or used as basis in its discussion the said RMC.

Hedcor alleges that the issue on the prescription of the period to appeal involves questions of fact that requires a full-blown trial. The allegation is untenable. It is worthy to emphasize that Hedcor itself admitted on its pleadings the relevant dates necessary in the determination of the timeliness of the filing of the petition for review.

The other issue will no longer be discussed in this case.

Based on the foregoing discussions, the Court *En Banc* finds no reversible error to disturb the assailed Resolutions of the then CTA First Division.[33]

WHEREFORE, premises considered, the Petition for Review is **DENIED**. Accordingly, the assailed Resolutions promulgated on December 22, 2016 and on November 3, 2017, respectively, by the then CTA First Division are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[33] Composed of Presiding Justice Roman G. Del Rosario, Associate Justice Erlinda P. Uy, and Associate Justice Cielito N. Mindaro-Grulla.

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice