REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAPANDAY FOODS CORPORATION, *Petitioner,*	**CTA *EB* NO. 2175** (CTA Case No. 9950)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 07 2020 2:45 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review filed by Lapanday Foods Corporation (Lapanday) involving its claim for tax credit arising from unutilized input taxes attributable to zero-rated sales for the 1st quarter of 2006. Said claim was denied by the Court in Division on the ground that the judicial claim was filed out of time.

The Facts

Petitioner is a domestic corporation duly organized and registered under the laws of the Philippines with principal address at Maryknoll Road, Barangay Pampanga, Lanang, Davao City. It is represented herein by its Chief Financial

Officer, Mr. Manolito B. Dagatan. It may be served with summons, notices, and other court processes at its counsel's office address at Zambrano Gruba Caganda & Advincula Law Offices, 27th Floor, 88 Corporate Center, Sedeño Street, Salcedo Village, Makati City, Metro Manila 1227.[1]

Respondent Commissioner of Internal Revenue (CIR) is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit certificate, as provided by law. He may be served with summons, notices, and other court processes in its office address at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City, Metro Manila.[2]

Petitioner is duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. A1996-05912.[3] It is also a VAT-registered entity engaged in the production and export of fruits and other agricultural products, the sales of which are classified as zero-rated, in accordance with Section 106(A)(2)(a)(1) of the 1997 National Internal Revenue Code, as amended (NIRC).[4]

Petitioner filed its Quarterly VAT Return (BIR Form No. 2550Q) for the 1st quarter of taxable year 2006.[5] Petitioner alleges that out of the total input VAT of Php25,052,911.11, the amount of Php12,624,849.66 is attributable to zero-rated export sales and remained unapplied against any output VAT.[6]

On March 18, 2008[7] (March 31, 2008,[8] as alleged in the Petition for Review before the CTA *En Banc*), petitioner filed an application for refund/tax credit of its excess/unutilized input VAT from zero-rated sales in the amount of Php12,624,849.66, allegedly representing unutilized input VAT credits attributable to zero-rated sales and local purchases for the 1st quarter of taxable year 2006.[9]

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[1] *Rollo*, Petition for Review (PFR), p. 2.
[2] *Id.*
[3] *Rollo*, PFR, p. 4.
[4] *Id.*
[5] *Id.*
[6] *Rollo*, PFR, p. 5.
[7] Docket, Joint Stipulation of Facts and Issues, Summary of Admitted Facts, par. 4, p. 389.
[8] *Rollo*, PFR, p. 4.
[9] *Rollo*, PFR, p. 4 and 5.

On September 14, 2018, petitioner received a Letter of Denial dated February 13, 2018 of its application for tax credit from the BIR.[10]

On October 15, 2018, Lapanday filed its Petition for Review with the Court of Tax Appeals.

On August 23, 2019, petitioner received the Resolution dated August 8, 2019, dismissing the Petition for Review on the ground of lack of jurisdiction. The Court in Division reasoned that the judicial claim was belatedly filed. Petitioner's motion for reconsideration was likewise denied in the Resolution dated October 14, 2019.

On November 19, 2019, the subject *Petition for Review* with the CTA *En Banc* was filed, questioning the Court in Division's Resolutions.

On January 8, 2020, respondent filed its *Opposition Re: Petitioner's Petition for Review*, [11] asserting that the CTA Division correctly ruled that it had no jurisdiction over the case.

The case was submitted for decision on January 20, 2020.[12]

ISSUES

Petitioner submits the following grounds for the petition:

(A) The Honorable Court of Tax Appeals – Third Division erred in deciding that it has no jurisdiction to rule on the BIR's Letter of Denial appealed by the petitioner within thirty (30) days from receipt thereof.

(B) In ruling that it has no jurisdiction over the case, the Court of Tax Appeals – Third Division erroneously denied petitioner's entitlement to its claim for tax credit, when such claim can be fully supported.

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[10] *Rollo*, PFR, p. 5.
[11] *Rollo*, pp. 87-91.
[12] *Rollo*, pp. 94-95.

Petitioner's arguments

Petitioner argues that it availed of the remedy to await the decision of the CIR before it filed its judicial claim. It alleges that the doctrines relating to the 120+30 days period revolve around the premature filing of the judicial claim, and should not be interpreted to limit the alternative statutory remedy of filing a judicial claim within the 30-day filing period from actual receipt of denial of the administrative claim.

Citing *Lascona Land Co., Inc. v. CIR (Lascona case),*[13] petitioner maintains that the taxpayer cannot be prejudiced if he or she chooses to wait for the final decision of the CIR, instead of appealing the CIR's inaction after the lapse of the prescribed period. If the mandatory nature of the 120-day, now 90-day, waiting period is taken to mean that the CIR must decide on the administrative claim only within said period, and the taxpayer can only file a judicial appeal following such period, then it must follow that the BIR's Letter of Denial in this case should be considered void. It would be void for being issued against a mandatory provision of law on the period to issue it.

Petitioner insists that the proper interpretation of the mandatory nature of the 120-day waiting period is only to give the CIR at least 120 days to act before the taxpayer may deem such inaction as denial. It does not, however, preclude the taxpayer from awaiting the denial of the CIR beyond this waiting period, and should not be deemed as a waiver of its right to contest the belated Letter of Denial. Thus, the petition for review was timely filed after the decision by the CIR was issued.

Petitioner further contends that it is entitled to the claimed refund considering that: (1) it is engaged in sales which are considered zero-rated or effectively zero-rated since it exports fruits and other agricultural products; (2) it is a VAT-registered person; (3) the claim for tax credit of excess input VAT was filed within two years after the close of the taxable quarter when such sales were made; (4) the subject creditable input VAT is attributable to petitioner's export sales; and (5) petitioner is engaged in zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC, the acceptable foreign currency

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

exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

Respondent's arguments

Respondent argues that the Court in Division correctly ruled that it had no jurisdiction over the case. Petitioner filed its administrative claims for input VAT refund or issuance of tax credit certificate on March 31, 2008 for the first quarter of taxable year 2006. The petition for review filed on October 15, 2018 was way beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred twenty (120)-day period provided for in the NIRC.

Respondent further states that the right to appeal is not a natural right, nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.

RULING OF THE COURT

The Petition for Review is denied.

The Court in Division correctly dismissed CTA Case No. 9950 for lack of jurisdiction.

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

> SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> (A) xxx
>
> (B) xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – <u>In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) [14] days from the date of submission of complete documents in support of the</u>

[14] Now ninety (90) days under the TRAIN Law.

> 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 underscore ours*)

Under Section 112(C), respondent has 120 days from the date of submission of the complete supporting documents within which to act on the application for refund/tax credit. As for the taxpayer, the law provides 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. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.[15]

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,*[16] the Supreme Court ruled that the 30-day period of filing its judicial appeal is mandatory and jurisdictional after the expiration of the 120-day period, as follows:

> 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

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[15] *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, G.R. Noes. 201225-26, 201132, and 201133, April 18, 2018.
[16] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

> 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.[17]

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership* [18] *(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

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[17] *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.

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

> 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.
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> 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*)

As shown above, late filing is absolutely prohibited.

Petitioner is also 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 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,* <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*)

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.

Thus, there is no reason to reverse nor modify the findings of the Court in Division that:

> Applying the jurisprudential authorities cited above to the case at bar, the expiration of the 120-day period of the administrative claim filed by Petitioner on March 18, 2008 for refund of the first quarter of 2006 fell on **July 16, 2008**. Petitioner then had until August 15, 2008 to file its judicial claim with this Court. However, the Petition for Review was belatedly filed on **October 15, 2018**.
>
> Considering all the foregoing, the Court no longer has jurisdiction over this action.[19]

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Resolutions dated August 8, 2019 and October 14, 2019 are **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[19] Resolution dated August 8, 2019.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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