REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ADVANCED WORLD SYSTEMS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9864

Members:

CASTAÑEDA, JR., *Chairperson, and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JUN 14 2019 11:30 Am

x - x

RESOLUTION

For resolution is petitioner's **Motion for Reconsideration [Re: *Resolution* dated 17 January 2019]**, filed through registered mail on February 6, 2019 and received by the Court on February 13, 2019, without respondent's comment despite notice per records verification dated March 13, 2019.

In its Resolution dated January 17, 2019, the Court granted respondent's Motion to Dismiss, having determined that the Petition for Review filed by Advanced World Systems, Inc. on June 28, 2018 was filed out of time.

Applying the rules on the prescriptive periods for claiming refund or credit of input VAT as summarized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[1], the Court found that taking into consideration the allegation of petitioner that it submitted the

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

complete documentary requirements in support of the application during the required period.

The Court determined that whether counting from the day the application was filed or from the last day allowed for the filing of additional documents, petitioner's right to file its petition before this Court ended in 2011. Accordingly, assuming that all documents were submitted on the date of filing the application, the instant petition should have been filed on or before August 8, 2011, pursuant to Revenue Memorandum Circular (RMC) No. 49-2003, conformably with *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[2]. However, petitioner filed its Petition for Review before the Court only on June 28, 2018.

Even assuming that petitioner filed additional documents after filing the administrative claim but within the 30-day period given for the submission of supporting documents, considering petitioner's allegation that it filed the supporting documents during the required period, the last day of the 30-day period would be on April 10, 2011. Counting the 120-day period from such date, the last day of the 30-day period to appeal would be on September 7, 2011. Thus, the Petition for Review would still have been filed out of time.

Petitioner submits that while it raised the effect/s of Revenue Regulations (RR) No. 1-2017, the Court did not expressly elucidate the effect of the same on the prescriptive period for filing a judicial claim and consequently, on petitioner's appeal.

Petitioner insists that the issuance of RR No. 1-2017 and the Denial Letter should allow the relaxation of the mandatory and jurisdictional 120+30-day period, relying on the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[3] as applied in the case of *Team Energy Corporation vs. Commissioner of Internal Revenue*[4]. Petitioner posits that RR No. 1-2017 and the Denial Letter are in the same nature as BIR Ruling No. DA-489-03, which was taken by the Supreme Court as a reason for allowing a relaxation of the rule.

---

[2] G.R. No. 207112, December 8, 2015.
[3] G.R. Nos. 187485, 196113, and 197156, October 8, 2013.
[4] G.R. No. 197760, January 13, 2014.

In the case of *Team Energy Corporation vs. Commissioner of Internal Revenue*[5], the Supreme Court clarified that the mandatory and jurisdictional nature of the 120-30-day rule does not apply on claims for refund that were **prematurely** filed during the interim period from the issuance of Bureau of Internal Revenue (BIR) Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the Aichi doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of the Aichi decision, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 where the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. It expounded on the matter in this wise:

> "BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.' **Prior to this ruling,** the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
>
> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The **first exception** is if the **Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA**. Such specific ruling is applicable only to such particular taxpayer. The **second exception** is where **the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA.** In these cases, the **Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction** over such claim since equitable estoppel has set in as

---

[5] G.R. No. 197760, January 13, 2014.

expressly authorized under Section 246 of the Tax Code." (underscoring and emphasis supplied)

RR No. 1-2017 does not fall within either of the exceptions abovementioned as it did not mislead petitioner to file its judicial claim prematurely, as in fact its right to bring the case to Court has already prescribed, as previously elucidated in the Court's Resolution dated January 17, 2019. Further, in the *Mindanao case,* the Supreme Court has held that late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force.[6]

In this case, the judicial claim was clearly filed out of time as petitioner's administrative claim was already deemed denied upon the lapse of the 120-day period given for the respondent to decide on the said administrative claim.

As found by the Court, whether counting of the 120-day period to decide be from the day the application was filed, or from the last day allowed for the filing of additional documents, petitioner's right to file its petition before this Court ended in 2011, following RMC No. 49-2003 and the *Pilipinas Total Gas case* (and not RMC No. 54-2014). Thus, regardless of the Denial Letter allegedly issued by respondent, the administrative claim for refund was already deemed denied in the year 2011. Therefore, the Court is correct in ruling that the instant Petition for Review filed only June 28, 2018 was already filed out of time.

Clearly, there is no reason for the Court to further elucidate on the effect of RR No. 1-2017 on the prescriptive period for filing a judicial claim and consequently, on petitioner's appeal as the same finds no application in this case, considering that there was no retroactive application of RMC No. 54-2014 in counting the 120-30-day period provided by law.

WHEREFORE, finding no cogent reason to reverse or modify the assailed Resolution promulgated on January 17, 2019, dismissing the instant Petition for Review for lack of jurisdiction, petitioner's **Motion for Reconsideration [Re: *Resolution* dated 17 January 2019]** is **DENIED** for lack of merit. On the other hand, petitioner's

[6] *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership,* G.R. No 191498, January 15, 2014.

Manifestation filed by registered mail on October 17, 2018 and received by the Court on November 8, 2018, as well as its **Manifestation** filed on October 19, 2018 and received by the Court on November 8, 2018 are **NOTED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.	**CIELITO N. MINDARO-GRULLA**
Associate Justice	Associate Justice