REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LAPANDAY FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9949

Members:

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

Promulgated:

OCT 2 4 2019 3:15 pm

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RESOLUTION

For this Court's resolution is petitioner's **Motion for Reconsideration (Of the Resolution dated 13 August 2019)**, filed on August 30, 2019, with respondent's **Comment/Opposition Re: Petitioner's Motion for Reconsideration**, filed on September 26, 2019.

Petitioner claims that the Court erred in applying the cases of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[1] *(Mindanao II)* and of *San Roque Power Corp. vs. Commissioner of Internal Revenue*[2] *(San Roque)* in dismissing the instant case since the factual milieu of the said cases differ significantly from the case at bar.

According to petitioner, both cases of *San Roque* and *Mindanao II* involve premature filing of judicial claim as the taxpayers therein did not wait for the decision of the Commissioner of Internal Revenue

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[1] G.R. No. 191498, January 15, 2014.
[2] G.R. No. 203249, July 23, 2018.

(CIR) on their administrative claims for refund and filed their respective judicial claims prior to the lapse of the 120-day period for the CIR to decide on the same. Such scenario is, accordingly, in stark contrast to the case at hand since the CIR rendered a decision denying petitioner's claim for refund after the lapse of the afore-mentioned 120-day period. As such, it is petitioner's position that the 120+30 day period under RMC No. 54-2014, which is being invoked in *San Roque* and *Mindanao II cases* finds no application to the instant case.

Also, petitioner argues that Section 112 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, imposes an alternative qualification as to when a taxpayer may file an appeal with the Court of Tax Appeals (CTA). Accordingly, said provision allegedly provides four (4) legally valid scenarios:

Scenario	**Appeal to the CTA within 30 days from (a) the receipt of the decision denying the claim or (b) after the expiration of the 120-day period**
1. CIR issues decision before the lapse of 120 days from filing of administrative claim.	Taxpayer files judicial claim within 30 days from receipt of the decision without need to wait anymore for the lapse of the 120-day period.
2. CIR issues decision on the 120th day from filing of administrative claim.	Taxpayer files judicial claim within 30 days from the 120th day the decision was issued.
3. CIR does not issue decision within 120 days from filing of administrative claim.	Taxpayer files judicial claim within 30 days after the 120th day.
4. CIR issues decision after the 120th from filing of administrative claim.	Taxpayer files judicial claim within 30 days from receipt of the decision.

According to petitioner, the instant case falls under the fourth scenario.

Petitioner also submits that the 120+30-day period under Section 112 (C) of the 1997 NIRC, as amended, is only a claim processing rule which does not restrict the subject matters within the jurisdiction of the CTA; and that the legislative history of the 120+30 day would show that such rule is not mandatory or jurisdictional, but was meant only to allow the CIR more time to decide on taxpayer's claim for refund/tax credit. As such, petitioner has the right to await the decision of the CIR and to appeal the denial thereof.

Moreover, petitioner argues that respondent is deemed estopped from claiming prescription as the Bureau of Internal Revenue (BIR) still acted on petitioner's claims despite the lapse of the 120-day period, following the ruling in *Procter and Gamble Asia PTE Ltd. vs. Commissioner of Internal Revenue*[3] *(Procter and Gamble Asia case).*

On the other hand, respondent argues that the Court in Division is correct in ruling that it has no jurisdiction over the instant case since it belatedly filed its judicial claim. It points out that petitioner filed its administrative claim for refund or issuance of tax credit certificate for the second and third quarters of taxable year 2006 on April 28, 2008. Thus, counting 120 days therefrom plus 30 days after the CIR's denial by inaction, petitioner had until September 25, 2008 to file the instant petition. As such, the instant petition was belatedly filed on October 30, 2018 (sic).

Petitioner's arguments have no leg to stand on.

To subscribe to petitioner's theory that respondent can issue a decision on the administrative claim after or beyond the 120-day period would not only go against the prevailing jurisprudence on the matter, but would also be tantamount to giving respondent unlimited or indefinite period of time to decide the administrative claim, which is certainly not the intention of the law, as the CTA *En Banc* ruled in the recent case of *Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue.*[4]

As to the other arguments and counter-arguments raised by the parties, this Court notes that the same are a mere rehash or amplifications of the same facts and issues which have already been

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[3] G.R. No. 204277, May 30, 2016.
[4] Resolution, CTA EB No. 1689 (CTA Case No. 9009), September 17, 2019.

passed upon and extensively discussed in the assailed Resolution. To discuss them anew is a superfluity.

In the case of *Shangri-La International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.,*[5] the Supreme denied respondent's Motion for Reconsideration for being a mere reiteration of their previous arguments and for failure to raise matters substantially plausible or compellingly persuasive to warrant the reversal of the assailed Decision, to wit:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Of the Resolution dated 13 August 2019)** is **DENIED** for lack of merit.

SO ORDERED.

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

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[5] G.R. No. 159938, January 22, 2007.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice