REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

KURIMOTO (PHILIPPINES) CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10156

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUL 18 2023 1:30PM

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RESOLUTION

MANAHAN, *J.:*

This resolves petitioner's *Motion for Reconsideration*,[1] filed via registered mail on February 27, 2023 and received by the Court on March 2, 2023, with respondent's *Comment and Opposition (Re: Petitioner's Motion for Reconsideration dated 27 February 2023)* filed on March 17, 2023.

Petitioner's *Motion* seeks reconsideration of the Court's Decision dated January 30, 2023, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the present Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**[2]

In its *Motion*, petitioner insists that the Court has jurisdiction over the Petition for Review. It maintains that its judicial claim for refund was timely filed considering that Section 112(C) of the National Internal Revenue Code of 1997, as amended, does not provide that the thirty (30)-day period to appeal must be reckoned from the lapse of the ninety (90)-day

[1] Docket, Vol. II., pp. 713-719.
[2] Docket, Vol. II, p. 711.

period for the Commissioner of Internal Revenue (CIR) to act on the administrative claim. Petitioner argues that the doctrines laid down by the Supreme Court in the cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, et seq. (San Roque)*[3] and *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue (Silicon)*[4] are inapplicable considering that they were decided by the Supreme Court prior to the enactment of the Tax Reform for Acceleration and Inclusion (TRAIN) Law and that the factual antecedents of said cases are not on all fours with the present case.

Respondent, on the other hand, reiterates the Court's disquisition in the assailed Decision that the latter is bereft of jurisdiction to decide this case.

The *Motion* is without merit.

After a review of the arguments, the Court finds no compelling reason to warrant a reversal of the assailed Decision.

By express provision of Section 7(a)(2) of Republic Act (RA) No. 1125, as amended, the inaction of the CIR on a claim for refund during the 90-day period is "deemed a denial" of the claim, and the taxpayer has thirty (30) days from the expiration of the 90-day period to file its judicial claim in Court; otherwise, its failure to do so renders the "deemed a denial" decision of the CIR final and unappealable.[5]

To reiterate, the 90-day period for the CIR to decide on the refund claim, and the 30-day period for the filing of the judicial claim with the Court, are both mandatory and jurisdictional.[6]

In this case, the administrative claim and its supporting documents were submitted on March 14, 2019. The end of the 90-day period for the CIR to decide was on June 13, 2019, thereby giving petitioner until July 13, 2019 within which to

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[3] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[4] G.R. No. 182737, March 2, 2016.
[5] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 186116 & 197156, February 12, 2013.
[6] *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 203249, July 23, 2018. *am*

file its judicial claim. Unfortunately, the instant judicial claim was filed only on August 30, 2019, thus this Court is bereft of jurisdiction.

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With due respect, please see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With utmost respect, and after a thorough review of the arguments raised by the parties and exhaustive re-examination of the pertinent provisions of applicable laws, I am constrained to grant petitioner's Motion for Reconsideration.

I submit that the Court has jurisdiction over the present Petition for Review.

Prior to the enactment of Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, reads:

> "Sec. 112. *Refunds or Tax Credits of Input Tax.* – xxx
>
> (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** from the date of submission of complete documents in support of the application filed in accordance with Subsection (A).

> 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**." *(Boldfacing and undescoring supplied)*

In construing the aforequoted provision, the Supreme Court opined that the thirty (30)-day period within which an appeal may be made commences either from receipt of the **denial** of the claim for refund or tax credit **OR** after the **expiration** of the 120-day period within which the Commissioner of Internal Revenue (CIR) is mandated to act on the claim, whichever comes first. Said the Supreme Court:

> "The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling[,] or after the expiration of the 120-day period, **whichever is sooner**."[1] (*Boldfacing supplied*)

With the enactment of the TRAIN Law, Section 112(C) of the NIRC of 1997, as amended, now reads:

> "Sec. 112. *Refunds or Tax Credits of Input Tax.* - xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund for creditable input taxes within **ninety (90) days** from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the **receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however*, That **failure** on the part of any official, agent, or employee of the BIR **to act on** the application within ninety (90) days period shall be punishable under Section 269 of this Code." *(Boldfacing and underscoring supplied)*

At once glaring is the fact that under the TRAIN Law, the reckoning of the thirty (30)-day period within which an appeal to the Court of Tax Appeals (CTA) may be made specifies only **one circumstance**, that is – from **receipt** of the decision of the CIR denying

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[1] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

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the claim for tax refund. The provision, as worded, does not give the taxpayer the privilege to appeal the inaction of the CIR to act on the administrative claim within the prescribed period.

In this case, a careful perusal of the records reveals that petitioner timely appealed the decision denying its administrative claim for refund.

From the submission of petitioner's official receipts, invoices and supporting documents on **March 14, 2019**, respondent had ninety (90) days therefrom, or until **June 13, 2019** (since June 12, 2019 is a regular holiday), within which to decide the refund claim. The failure of the concerned BIR official to act on the claim up until July 13, 2019 simply exposed said official to criminal liability under Section 269 of the NIRC of 1997, as amended. But such omission on the part of the BIR did not give petitioner the privilege to appeal to the CTA.

On **July 31, 2019**, **petitioner received a Letter dated June 7, 2019** from BIR Regional Director Glen A. Geraldino, which denied the administrative claim. Thus, it had thirty (30) days from receipt of said Letter, or until **August 30, 2019**, within which to file the judicial claim.

Considering that the present Petition for Review was filed on **August 30, 2019**, the same was filed within the prescribed period and the Court has jurisdiction to decide this case.

I am not unaware of Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, which reads as follows:

> "SEC. 7. *Jurisdiction*. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> x x x
>
> 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 provides a <u>specific period of action</u>, in which case the inaction shall be <u>deemed a denial</u>**; x x x" (*Boldfacing and underscoring supplied*)

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The above-cited provision of RA No. 1125, as amended, grants jurisdiction to the CTA when: (i) there is a "specific period of action" given to the CIR within which to decide an administrative claim for refund; **and**, (ii) the CIR fails to act on the refund claim within the said period. The inaction of the CIR shall be deemed a denial of the refund claim, and the taxpayer may appeal said inaction within the thirty (30)-day period reckoned from the lapse of the specific period.

Section 7(a)(2) of RA No. 1125, as amended, is a **general provision** on modes of appeal applicable to inactions of the CIR, including: (a) refunds of taxes, fees and charges, as provided in Section 229 of the NIRC of 1997, as amended; (b) assessment cases under Section 228 of the NIRC of 1997, as amended; and, (c) "other matters" arising from the NIRC of 1997, as amended, and laws administered by the BIR.

On the other hand, the procedure on appeal under **Section 112(C) of the NIRC of 1997**, as amended, is confined solely to cases involving claims for refund of unutilized input VAT attributable to **zero-rated sales**.

In *Department of Energy vs. Court of Tax Appeals*,[2] the Supreme Court elucidated on the difference between a special law and general law, and the interpretative rule when faced with such statutes, *viz.*:

> "The Court has defined a general law as 'a law which applies to all of the people of the state or to all of a particular class of persons in the state, with equal force and obligation.' x x x [I]t was also described as 'one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.' On the other hand, a special law is one which 'applies to particular individuals in the state or to a particular section or portion of the state only' and which 'relates to particular persons or things of a class.' As the Court has consistently held, **where there are two laws which appear to apply to the same subject and where one law is general and the other special, the law specially designed for the particular subject must prevail over the other. Stated more simply, the special law prevails over the general law**. *Generalia specialibus non derogant*." (*Boldfacing supplied*)

At any rate, even assuming that an appeal upon the expiration of the ninety (90)-day period may be allowed, still, **such legal scenario does not preclude a taxpayer from interposing an appeal from receipt of the decision of the CIR, which is clearly consistent with Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law**.

[2] G.R. No. 260192, August 17, 2022.

ALL TOLD, I *VOTE*: (1) to grant petitioner's Motion for Reconsideration; (2) to reverse and set aside the assailed Decision dated January 30, 2023; and, (3) for the Court to assume jurisdiction and proceed with the determination of petitioner's claim for refund of unutilized input tax.

ROMAN G. DEL ROSARIO
Presiding Justice