REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

CARMEN COPPER CORPORATION, Petitioner,	**CTA Case No. 8834**
	Members:
- versus -	**DEL ROSARIO,** P.J., *Chairperson,* **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** APR 02 2018 : 1:15 pm

x - x

RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on November 22, 2017, without respondent's comment despite due notice, praying for reconsideration of this Court's Decision dated November 3, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the *Petition for Review* is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

In its *Motion for Reconsideration*, petitioner invokes the case of *Harte-Hanks Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Harte-Hanks* case"),[1] wherein, the Supreme Court upheld a resolution of this Court which ruled that the 30-day period to appeal

[1] G.R. No. 205721, September 14, 2016.

can be reckoned either, from the lapse of the 120-day period to decide, or upon receipt of the decision of respondent before or after the 120-day period to decide. Petitioner quotes and relies on the following ruling of the Supreme Court in the *Harte-Hanks* case, to wit:

> "This being so, '[w]hen a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA **without waiting for the decision of the [CIR], there is no 'decision' of the [CIR] to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal.**
>
> The CTA, being a court of special jurisdiction, has the judicial power to review **the decisions of the CIR**... (Emphasis supplied)."

Furthermore, petitioner likewise cites the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* ("*RCBC* case"),[2] and argues that although the decision in the *RCBC* case involves an interpretation of Section 228 of the Tax Code involving judicial remedies for assessments, Sections 112(c) and 228 of the Tax Code are substantially the same, except for the period within which the Bureau of Internal Revenue (BIR) may act on the claim. Allegedly, this is in accordance with a rule in statutory construction that *"a word or phrase repeated in a statute will bear the same meaning throughout the statute, unless a different intention appears."*[3]

THE COURT'S RULING

Petitioner's *Motion for Reconsideration* lacks merit.

Petitioner's reliance on the* Harte-Hanks *case is misplaced.

According to petitioner, the *Harte-Hanks* case supports its position that its judicial claim was filed on time because it is allowed to file its judicial claim with this Court within thirty (30) days from

---

[2] G.R. No. 168498, April 24, 2007.
[3] *Krivenko vs. Register of Deeds, City of Manila*, G.R. No. L-630, November 15, 1947, citing II Sutherland, Statutory Construction, p. 758.

receipt of respondent's decision even after the expiration of the 120-day prescriptive period.

However, petitioner's reliance on the ruling in the *Harte-Hanks* case is clearly misplaced and quoted out of its context.

To have a clear understanding of the pronouncements made by the High Court in the *Harte-Hanks* case, We quote the pertinent portions thereof:

> "It should be noted that the petition for review was filed before the CTA on March 30, 2010, or merely seven days after the administrative claim for refund was filed before the BIR on March 23, 2010. Evidently, HHPI failed to wait for the lapse of the 120-day period which is expressly provided for by law for the CIR to grant or deny the application for refund.
>
> In *San Roque*,[4] it has been held that the compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on January 1, 1988. The waiting period was extended to 120 days effective January 1, 1998 under Republic Act No. 8424 or the Tax Reform Act of 1997. **The 120-day period under Section 112(C) has been in the statute books for more than 15 years before respondent San Roque filed its judicial claim.**
>
> Moreover, <u>a taxpayer's failure to comply with the prescribed 120-day waiting period would render the petition premature</u> and is violative of the principle on exhaustion of administrative remedies. Accordingly, the CTA does not acquire jurisdiction over the same. This being so, '<u>[w]hen a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the [CIR], there is no 'decision' of the [CIR] to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal</u>.'
>
> The CTA, being a court of special jurisdiction, has the judicial power to review the decisions of the CIR.

---

[4] 703 Phil. 310 (2013).

Concomitantly, the CTA also has the power to decide an appeal because the CIR's inaction within the 120-day waiting period shall be deemed a denial of the taxpayer's application for refund or tax credit.

In the instant case, the petition for review is considered premature because the 120-day mandatory period was not observed before an appeal was elevated to the CTA. Either the CTA or this Court could legitimize such procedural infirmity because it would run counter to Article 5[5] of the Civil Code unless a law exists that would authorize the validity of said petition. Regrettably, such law is wanting in the instant case.

Tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. A refund it not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT or that such tax was admittedly illegally, erroneously or excessively collected. Corollarily, a taxpayer's non-compliance with the mandatory 120-day period is fatal to the petition even if the CIR does not assail the numerical correctness of the tax sought to be refunded. Otherwise, the mandatory and jurisdictional conditions impressed by law would be rendered useless." *(Underscoring supplied)*

A careful reading of the foregoing jurisprudential pronouncements reveals that the prevailing circumstances therein pertains to the taxpayer-claimant who **prematurely** filed a judicial claim, and said **prematurity** connotes the non-observance by the said taxpayer-claimant of the 120-day period under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, without respondent having issued a decision on the administrative claim within the said period. Based on the foregoing circumstances, the *Harte-Hanks* case clarified that this Court does not acquire jurisdiction over the said judicial claim. The Supreme Court then continued the following phrases relied upon by petitioner, to wit:

"This being so, '[w]hen a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA **without waiting for the decision of the [CIR], there is no 'decision' of the [CIR] to review and thus the CTA as a**

---

[5] ART. 5. Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

> **court of special jurisdiction has no jurisdiction over the appeal.**
>
> The CTA, being a court of special jurisdiction, has the judicial power to review **the decisions of the CIR**... (Emphasis supplied)."

Thus, it becomes apparent that the foregoing ruling does not befit petitioner's case. To reiterate, petitioner's case is one of a **belated** filing of its judicial claim, which was made beyond the 120+30 day periods prescribed under Section 112(C) of the NIRC of 1997, as amended, which thereby divested this Court of jurisdiction to entertain the same.

Furthermore, it must be emphasized that even in the *Harte-Hanks* case, the Supreme Court recognized this Court's jurisdiction as a result of respondent's inaction on the taxpayer-claimant's refund claim within the requisite 120-day period, because the same is deemed a denial of the refund claim, to wit :

> "The CTA, being a court of special jurisdiction, has the judicial power to review the decisions of the CIR. **Concomitantly, the CTA also has the power to decide an appeal because the CIR's inaction within the 120-day waiting period shall be deemed a denial of the taxpayer's application for refund or tax credit.**" *(Emphasis supplied)*

And as We have stated in the assailed Decision, respondent's *"inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period."*[6] Thus, there can be no legal basis on petitioner's argument that the 30-day period to appeal can be reckoned either from the lapse of the 120-day period to decide, or upon receipt of the decision of respondent before or after the 120-day period to decide.

To be clear, 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**.[7]

---

[6] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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

The* RCBC *case cannot be made to apply in this case.

In its motion, petitioner tries, in effect, to persuade Us to adopt the ruling made by the Supreme Court in the *RCBC* case, thereby arguing that although the decision in the *RCBC* case involves an interpretation of Section 228 of the Tax Code, involving judicial remedies for assessments, Sections 112(c) and 228 of the Tax Code are substantially the same, except for the period within which the Bureau of Internal Revenue (BIR) may act on the claim.

The argument of petitioner is untenable.

In the *RCBC* case, the Supreme Court said:

> "...it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.
>
> **In case the Commissioner failed to act on the disputed assessment within the 180-day period from the date of submission of documents, <u>a taxpayer can either</u>: 1) <u>file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period</u>; or 2) <u>await the final decision of the Commissioner on the disputed assessments and appeal such final decision of the Court of Tax Appeals within 30 days after receipt of a copy of such decision</u>. However, these options are mutually**

> **exclusive, and resort of one bars the application of the other.**" *(Emphasis and underscoring supplied)*

Indeed, the *RCBC* case primarily involves the interpretation and application of Section 228 of the NIRC of 1997, particularly as to when and how to appeal an inaction on an administrative protest filed by a taxpayer over a tax assessment. However, it is erroneous for petitioner to insist on the application of the said jurisprudence to the instant case, considering that the present case involves claims for tax credit or refund under Section 112 of the NIRC of 1997, and not a disputed assessment under the said Section 228.

The Supreme Court has already established, in a number of cases such as those cited herein and the assailed Decision, as to how Section 112 of the NIRC of 1997, as amended, ought to be interpreted and applied, notably without regard as to the interpretation it made of Section 228 of the same law in the *RCBC* case. Thus, We are duty-bound to follow the High Court's interpretations, which form a part of the legal system of the Philippines.[8]

Apropos, this Court is enjoined to adhere to the said judicial precedents. In *Commission on Higher Education vs. Dasig,*[9] the Supreme Court said:

> "...it is the duty of lower courts **to obey the decisions of the Supreme Court** and render obeisance to its status as the apex of the hierarchy of courts. 'A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation.' **'There is only one Supreme Court from whose decision all other courts should take their bearings,'** so declared Justice J. B. L. Reyes." *(Emphases supplied)*

In sum, petitioner's belated filing of its judicial claim on June 13, 2014 is fatal to its claim for its failure to observe the mandatory 120+30-day prescriptive periods, and has therefore rendered this Court devoid of jurisdiction over the instant *Petition for Review.*

---

[8] Article 8, Civil Code of the Philippines (Republic Act No. 386).
[9] G.R. No. 172776, December 17, 2008.

M

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice