REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

LUZON HYDRO CORPORATION, *Petitioner,*	**CTA CASE NO. 9183**
	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 16 2016 11:00 a.m.

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RESOLUTION

For resolution is petitioner's Motion for Reconsideration filed on October 20, 2016, with respondent's Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated 20 October 2016) ("Comment"), filed on November 17, 2016.

On September 1, 2016, the Court promulgated a Resolution (the "Assailed Resolution") dismissing the instant case for lack of jurisdiction. The dispositive portion of said Resolution reads as follows:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction of the Court. Consequently, the Resolution dated June 20, 2016 setting the case for Pre-trial is **RECALLED** and **SET ASIDE.**
>
> **SO ORDERED.**

In its Motion for Reconsideration, petitioner seeks reconsideration of the Assailed Resolution on the following grounds:

a. Section 112 (C) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC") was erroneously applied since there were "actions" on the part of respondent in this case, which led petitioner to believe that respondent was acting on its claim;

b. Contrary to Revenue Memorandum Circular ("RMC") No. 54-2014, respondent is not deprived of jurisdiction to act on the administrative claim for tax refund/credit after the lapse of the 120+30 day period, and despite appeal to the Court;

c. The issue on the prescription of the period to appeal involves questions of fact that requires a full-blown trial.

Petitioner avers that the "deemed denial" doctrine does not apply since respondent has taken actions after it filed its administrative appeal; that it had reasonable basis to believe that its claim will continue to be acted upon administratively. It argues that Section 112 (C) 1997 NIRC grants the taxpayer the option to file its judicial appeal within thirty (30) days either from receipt of a decision by respondent denying its appeal, or from the lapse of the 120 days from the date of submission of complete documents if there was inaction on the part of respondent. Petitioner argues that what the law requires is inaction or unacted claim and not "undecided claim".

Moreover, petitioner insists that the following action or respondent gave it the expectation that respondent will continue acting on its claim, to wit:

a) the issuance of Letters of Authority ("LOA") dated December 11, 2009 and February 8, 2011;

b) the conduct of audit proceedings in connection with its administrative claims for VAT refund/credit for calendar year 2009;

c) the issuance of a request for presentation of records containing a checklist of additional requirements on December 15, 2009; and

d) the actual denial of its administrative claims through two (2) letters dated September 15, 2015 which were both received by petitioner on October 8, 2015.

Thus, when it received the letters of denial on October 8, 2015, it had thirty (30) days or until November 7, 2015, within which to file its appeal before the Court of Tax Appeals. It claims therefore, that the instant Petition for Review filed on November 6, 2015, was filed within the period prescribed by law.

Petitioner also alleges that pursuant to *Revenue Memorandum Circular No. 49-2003*, respondent does not lose jurisdiction over the administrative claim until the Court renders a final decision or until respondent has rendered a decision at the administrative level; that prior to *Republic Act No. 7716*, taxpayers were constrained to wait for a decision denying the refund/tax credit application before they may appeal to the Court of Tax Appeal; ant that it was never the intention of the legislators to deprive the taxpayer of its right and remedy of continuously pursue its claim at the administrative level.

Lastly, petitioner avers that the issue on prescription of the period to appeal involves questions of fact that requires a full-blown trial.

On the other hand, respondent counter-argues that the judicial claim for refund was filed beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the 120-day period. Citing *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*, respondent posits that if the 120-day period expires without any decision from him, then the administrative claim may be considered to be denied by inaction. Respondent claims that the issue of jurisdiction is not an evidentiary matter that will require trial to resolve the same; that it may be resolved on the face of the petition alone.

Appeal is an essential part of our judicial process. As such, courts should proceed with caution so as not to deprive a party of the right to appeal, particularly if the appeal is meritorious. However, the right to appeal is merely a statutory right. For this reason, it should be exercised only in the manner and in accordance with the provisions of the law.[1]

In the case at bar, petitioner made allegations that the Court believes involve questions of fact that can only be proven during a full blown trial.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **GRANTED**. Consequently, the Assailed Resolution dated September 1, 2016 is **RECALLED** and **SET ASIDE**. Accordingly, let the case be set for pre-trial.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[1] *Republic vs. Spouses Luriz,* G.R. No. 158992, January 26, 2007, 513 SCRA 140.