REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2329
(CTA Case No. 10153)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

Promulgated:

JUN 0 1 2022 1:10 pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

This resolves petitioner's Motion for Reconsideration *(of the Honorable Court's Decision dated 05 January 2022)* filed on February 24, 2022. On March 28, 2022, respondent, by counsel, filed his Opposition (Re: Motion for Reconsideration of the Decision dated 5 January 2022). On March 29, 2022, petitioner's motion was submitted for resolution.

The dispositive portion of the January 5, 2022 Decision states:

> "**WHEREFORE,** premises considered, the Petition for Review is **DENIED**. Accordingly, the assailed Resolutions

promulgated on December 13, 2019 and on June 16, 2020, respectively, by the CTA Third Division are **AFFIRMED**.

SO ORDERED."

Petitioner's motion was based on the following grounds:

I. Petitioner's Value-added Tax (VAT) refund claim cannot be deemed to have been denied as the 29 March 2019 letter of denial issued by the Bureau of Internal Revenue (BIR) clearly states that the petitioner's claim was continuously processed administratively and that it is solely due to the purported non-submission of mandatory requirements that the claim was denied;

II. The Honorable Court should have applied the principle of equitable estoppel against the respondent Commissioner of Internal Revenue (CIR), whose disavowal of Section 3, Revenue Regulations No. 1-2017, the 29 March 2019 letter (which the BIR itself issued), and their legal implications runs counter to the principles of equity and fair play; and,

III. The denial of the right to appeal, once granted by statute, would be a violation of due process.

This Court finds no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated January 5, 2022, thus, the motion is denied.

This Court reiterates that the 120+30 day periods in Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, are mandatory and jurisdictional.[1]

"The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material."[2]

In this case, the CIR had until September 19, 2009, within which to decide the administrative claim. To recall, petitioner filed its application for

[1] *Commissioner of Internal Revenue (CIR) v. San Roque Power Corporation, Taganito Mining Corporation v. CIR, and Philex Mining Corporation v. CIR*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013 citing *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.
[2] *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 184266, November 11, 2013.

tax credit/refund of input VAT for the four (4) quarters of 2008 on May 22, 2009. The "29 March 2019 letter of denial issued by the BIR" was already beyond the 120-day period, thus, there was inaction or deemed a denial in this case.

"Counting 30 days from the expiration of the 120-day period, petitioner had until October 19, 2009 within which to appeal the inaction of the CIR to the CTA. However, it was only on August 20, 2019 that petitioner filed the Petition for Review to the CTA Division. The petition is, therefore, filed out of time."[3]

For failure of the petitioner to file an appeal within 30 days after the lapse of the 120th day, this Court maintains the dismissal of the case for lack of jurisdiction.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration *(of the Honorable Court's Decision dated 05 January 2022)* is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[3] *Rollo*, p. 153.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice