REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAPANDAY AGRICULTURAL AND DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2300
(CTA Case No. 10072)

Present:

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

Promulgated:

MAR 1 6 2022
3:18 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

For review on appeal before this Court are the Resolution dated January 28, 2020[1] ("First Assailed Resolution") and the Resolution dated June 26, 2020[2] ("Second Assailed Resolution") of the CTA First Division[3] (CTA Division) in the case of *Lapanday Agricultural and Development Corporation v. Commissioner of Internal Revenue,* docketed as CTA Case No. 10072.

The dispositive portion of the First Assailed Resolution reads:

[1] *Rollo*, pp. 35-41.
[2] *Id.*, pp. 44-48.
[3] Composed of Presiding Justice Roman G. Del Rosario, Associate Justice (now Retired) Esperanza R. Fabon-Victorino, and Associate Justice Catherine T. Manahan.

"**WHEREFORE,** this case is **DISMISSED,** on jurisdictional ground.

SO ORDERED."

The dispositive portion of the Second Assailed Resolution reads:

"**WHEREFORE,** petitioner's Motion for Reconsideration dated February 13, 2020 is **DENIED.** The impugned Resolution dated January 28, 2020 is **AFFIRMED.**

SO ORDERED."

THE FACTS

Petitioner Lapanday Agricultural and Development Corporation ("LADC") is a domestic corporation duly organized and registered under the laws of the Philippines with principal address at Maryknoll Road, Barangay Pampanga, Lanang, Davao City.[4]

Respondent Commissioner of Internal Revenue ("CIR") is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit certificate as provided by law.[5]

Relying on Section 112 of the 1997 National Internal Revenue Code ("NIRC"), LADC filed with the CIR an application for tax credit of its excess/unutilized input VAT from zero-rated sales for the four (4) quarters of taxable year 2010, evidenced by the claimant sheets in the amount of Php22,656,586.92,[6] as follows:

Claimant Sheets for taxable year 2010	**Date**	**Amount Claimed**
1st Quarter	09 June 2011	5,816,565.78
2nd Quarter	10 June 2011	5,328,003.72
3rd Quarter	09 September 2011	5,809,986.84
4th Quarter	16 September 2011	5,702,030.58
TOTAL		**22,656,586.92**

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[4] *Rollo*, p. 2.
[5] *Id.*.
[6] *Id.*, p. 5; Admitted allegation in CIR's Answer (to the Petition for Review) dated 15 April 2019), Division Docket, p. 256.

On March 20, 2019, LADC received a Denial Letter dated January 28, 2019 from the Bureau of Internal Revenue (BIR).[7]

On April 16, 2019, LADC filed its Petition for Review before the CTA Division.[8]

On June 17, 2019, the CIR filed a "Motion to Admit attached Answer."[9]

On July 8, 2019, LADC filed a "Comment with Motion to Declare in Default."[10]

On September 25, 2019, the CTA Division granted the CIR's "Motion to Admit attached Answer" filed on June 17, 2019, and admitted, as part of the record of the case, the attached "Answer (to the Petition for Review dated 15 April 2019)" dated June 14, 2019. On the other hand, the said Court denied LADC's "Motion to Declare in Default" filed on July 8, 2019.[11] Also, the Pre-Trial Conference was set on November 21, 2019.

On November 13, 2019, the CIR filed a "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court."[12]

On November 21, 2019, the CTA Division directed LADC to file comment/opposition to the CIRs "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court," and cancelled until further orders of Court the Pre-Trial Conference previously scheduled on November 21, 2019.[13]

On December 5, 2019, the CTA Division noted various submissions and mooted the CIR's "Motion to Reset Pre-Trial Conference" filed on November 15, 2019.[14]

On December 9, 2019, LADC filed its Comment/Opposition.[15]

On January 28, 2020, the CTA Division dismissed the case on jurisdictional ground.[16] 92

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[7] *Id,* p. 6.
[8] Division Docket, pp. 10-21.
[9] Division Docket, pp. 251-255; Answer (to the Petition for Review dated 15 April 2019) dated June 14, 2019, Division Docket, pp. 256-267.
[10] *Id.*, pp. 270-274.
[11] *Id.*, pp. 286-289.
[12] *Id.*, pp. 294-301.
[13] *Id.*, p. 454.
[14] *Id.*, pp. 457-458.
[15] *Id.*, pp. 459-483.

On February 14, 2020, LADC filed its "Motion for Reconsideration (Of the Resolution dated 28 January 2020)."[17]

On February 20, 2020, the CTA Division ordered the CIR to file a Comment or Opposition on LADC's motion.[18] On March 9, 2020, CIR filed a "Comment/Opposition Re: Petitioner's Motion for Reconsideration."[19]

On June 26, 2020, the CTA Division denied LADC's Motion for Reconsideration dated February 13, 2020.[20]

On July 21, 2020, LADC timely filed its Petition for Review (Re: Resolution dated 28 January 2020 and Resolution dated 26 June 2020) before this Court.[21]

On October 22, 2020, the CTA *En Banc* ordered the CIR to file his Comment on the Petition for Review.[22]

On March 1, 2021, this Court granted the CIR's "Motion to Admit Attached Comment" and admitted the attached "Comment/Opposition Re: Petitioner's Petition for Review." Thus, this case was submitted for decision.[23]

Hence, this Decision.

ISSUE

In its petition, petitioner raised the following Grounds:[24]

(A)
THE HONORABLE COURT OF TAX APPEALS – FIRST DIVISION ERRED IN DECIDING THAT IT HAS NO JURISDICTION TO RULE ON THE BIR'S DENIAL LETTER APPEALED BY THE PETITIONER WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF.

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[16] Division Docket, pp. 493-499.
[17] *Id.*, pp. 400-424.
[18] *Id.*, p. 427.
[19] *Id.*, pp. 428-432.
[20] *Id.*, pp. 439-443.
[21] *Rollo*, pp. 1-30.
[22] *Id.*, pp. 109-110.
[23] *Id.*, pp. 122-123.
[24] *Rollo*, p. 7.

(B)
IN RULING THAT IT HAS NO JURISDICTION OVER THE CASE, THE COURT OF TAX APPEALS – FIRST DIVISION ERRONEOUSLY DENIED PETITIONER'S ENTITLEMENT TO ITS CLAIM FOR TAX CREDIT, WHEN SUCH CLAIM CAN BE FULLY SUPPORTED.

Based on the foregoing, the issue in this case is **WHETHER THE COURT DIVISION ERRED IN DISMISSING THE PETITION FOR REVIEW FOR LACK OF JURISDICTION.**

LADC maintains that its judicial remedy in this case was timely filed. It reiterates that the Petition for Review filed before the CTA Division on April 16, 2019 or within thirty (30) days from receipt of the Denial Letter on March 20, 2019 was in in accordance with Section 112 (C) of the National Internal Revenue Code (NIRC), as amended.[25] Succinctly, LADC alleges that when CIR issues a decision after the 120th day, judicial claim within thirty (30) days from receipt of the decision is permitted by express provision of law.[26]

On the other hand, the CIR argues that the CTA Division is correct in ruling that it has no jurisdiction over the case because LADC's petition was filed only on April 16, 2019.[27] The CIR reiterates that the Petition for Review was filed beyond the mandatory and jurisdictional thirty (30)-day period from the expiration of the one hundred twenty (120)-day period pursuant to Section 112 (D) of the Tax Code. [28]

THIS COURT'S RULING

The petition lacks merit.

Pertinent to this case is Section 112(C) of the NIRC of 1997, as amended, which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> xxx xxx xxx
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> "(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*—In proper cases, **the Commissioner** ℊ

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[25] *Rollo*, p. 12.
[26] *Id.*
[27] *Id*, p. 116.
[28] *Id.*, p. 118.

> **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) hereof.
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> "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." *(Emphases Supplied)*

In the consolidated cases of *Commissioner of Internal Revenue (CIR) v. San Roque Power Corporation, Taganito Mining Corporation v. CIR, and Philex Mining Corporation v. CIR,*[29] (*"San Roque case"),* the Supreme Court (SC) *En Banc* discussed that the 120+30 day periods are mandatory and jurisdictional, as follows:

> xxx **The application of the 120+30 day periods was first raised in *Aichi*,[30] which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous.** When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," **the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim.** xxx
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> When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a

[29] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[30] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

> judicial claim one day after filing the administrative claim with the Commissioner. *(Emphases Supplied)*

[T]he 30-day period to appeal to the CTA is dependent on the 120-day period, both periods are hereby rendered jurisdictional.[31] "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."[32]

In the *San Roque case*, *supra*, one of the aggrieved taxpayers therein filed its petition for review with the CTA after the 120+30 day periods. There is late filing of judicial claim. The SC *En Banc* discussed that:

> "Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. xxx xxx xxx
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> xxx xxx xxx The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, 'deemed a denial' of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the 'deemed a denial' decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or 'deemed a denial' decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences." yr

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[31] *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 184266. November 11, 2013.
[32] *Id.*

"Courts are bound by prior decisions. Thus, once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issue in the same manner."[33]

Applying the foregoing jurisprudence in this case, there is "deemed a denial" of LADC's administrative claim for tax credit of input VAT for failure of the CIR to decide within 120 days from filing of the administrative claims for tax credit. In this case, LADC failed to file an appeal within 30 days after the lapse of the 120th day, thus, LADC's judicial claim for the four (4) quarters of taxable year 2010, is filed late on March 16, 2019.

The following table showing pertinent dates in this case is provided:

Taxable Period (2010)	**Filing of Admin. Claim**	**120th day [Section 112 (C) NIRC]**	**30th day [Section 112 (C) NIRC]**	**Filing of Judicial claim**	**Remarks**
1st Quarter	June 9, 2011	Oct. 7, 2011	Nov. 6, 2011	April 16, 2019	Late
2nd Quarter	June 10, 2011	Oct. 8, 2011	Nov. 7, 2011	April 16, 2019	Late
3rd Quarter	Sept. 9, 2011	Jan. 7, 2012	Feb. 6, 2012	April 16, 2019	Late
4th Quarter	Sept. 16, 2011	Jan. 14, 2012	Feb. 13, 2012	April 16, 2019	Late

This Court agrees with the findings of the CTA Division that, "the Letter Denial of January 28, 2019, which was rendered beyond the prescribed 120-day period to act... is not a decision contemplated by law and jurisprudence, hence, may not be the proper subject of an appeal before the Court."[34]

Based on the foregoing, there is no reason to set aside the findings and conclusions of the CTA First Division in the assailed Resolutions. For petitioner's failure to comply with the 120+30 day mandatory periods, this Court finds that the CTA Division did not err in dismissing the case for lack of jurisdiction.

WHEREFORE, premises considered, the Petition for Review is **DENIED.** Accordingly, the assailed Resolutions promulgated on January 28, 2020 and on June 26, 2020, respectively, by the CTA First Division are **AFFIRMED.**

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[33] Consolidated cases of *Silicon Philippines, Inc., (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, and *CIR v. Silicon Philippines, Inc., (formerly Intel Philippines Manufacturing, Inc.)*, G.R. Nos. 184360 & 184361, and 184384, respectively, February 19, 2014.
[34] *Rollo*, p. 40.

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
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice