REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAPANDAY FOODS CORPORATION, Petitioner,	**CTA EB NO. 2200** (CTA Case No. 9985)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 03 2021 3:31 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Lapanday Foods Corporation (**petitioner/LFC**), seeking to nullify the Resolution

[1] Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —
. . .
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

dated 06 August 2019[2] of this Court's First Division[3], dismissing CTA Case No. 9985, entitled *Lapanday Foods Corporation v. Commissioner of Internal Revenue,* for lack of jurisdiction. Likewise, its Resolution dated 22 November 2019[4] denying petitioner's Motion for Reconsideration[5] (**MR**).

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (**SEC**). It is also a Value-Added Tax (**VAT**)-registered entity engaged in the production and export of fruits and other agricultural products; the sales of which are classified as zero-rated, in accordance with Section 106(A)(2)(a)(1)[6] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[7]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**CIR/respondent**) 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 (**TCC**), as provided by law.

The antecedent facts follow.

In 2011, petitioner filed successive administrative claims for the issuance of TCCs pursuant to Section 112(C)[8] of the NIRC of 1997, as

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2 *Rollo*, pp. 37-44.

3 Signed by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan, with Associate Justice Esperanza R. Fabon-Victorino on leave.

4 Id., pp. 45-48.

5 Division Docket, pp. 441-468.

6 **Sec. 106.** *Value-added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* – ...
...
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* – The term *"export sales"* means:
(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)[.]
...

7 Paragraphs 14 and 15, Statement of Facts, Petition for Review, *Rollo*, p. 5.

8 **Sec. 112.** *Refunds or Tax Credit of Input Tax.* –
...
(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) hereof.

amended, for the excess and unutilized input VAT from zero-rated sales for the four (4) quarters of taxable year (**TY**) 2010 summarized as follows:

Period of Sales	Date of Administrative Claim	Amount of Claim
1st Quarter (January to March)	06 June 2011	₱22,682,346.75
2nd Quarter (April to June)	06 June 2011	21,821,486.57
3rd Quarter (July to September)	16 September 2011	20,836,893.39
4th Quarter (October to December)	24 October 2011	11,589,438.90
Total Amount of Claim		**₱76,930,165.61**

On 18 October 2018, the Bureau of Internal Revenue (**BIR**) denied all of petitioner's four (4) administrative claims in a letter (**Denial Letter**) which the latter received on 13 November 2018. Within thirty (30) days from receipt thereof, petitioner then filed CTA Case No. 9985 before the Court in Division on 12 December 2018.

In the assailed Resolution dated 06 August 2019[9], the Court's First Division granted respondent's motion for the early resolution of the issue against the Court's jurisdiction and accordingly dismissed the case for lack of jurisdiction. The dispositive portion of the assailed Resolution reads:

> ...
>
> **WHEREFORE**, premises considered, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is hereby **GRANTED**. Accordingly, the Petition for Review under CTA Case No. 9985 is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**
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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.

...

[9] Supra at note 2.

Petitioner filed its MR to the above resolution and the same was denied by the First Division, as earlier stated.

In the present petition before the Court *En Banc*, petitioner assigns the following errors to the First Division:

I.

THE FIRST DIVISION ERRED IN DECIDING THAT IT HAS NO JURISDICTION TO RULE ON THE DENIAL LETTER OF THE BUREAU OF INTERNAL REVENUE, AS APPEALED BY THE PETITIONER WITHIN THIRTY (30) DAYS FROM RECEIPT THEREOF;

II.

THE FIRST DIVISION ERRED IN UPHOLDING THE FIRST RESOLUTION BASED ON THE PRINCIPLE OF *STARE DECISIS*; and,

III.

THE FIRST DIVISION ERRONEOUSLY DENIED PETITIONER'S CLAIM FOR TAX CREDIT CERTIFICATE, WHEN SUCH CLAIM CAN BE FULLY SUPPORTED WHEN IT RULED THAT IT HAS NO JURISDICTION OVER THE CASE.

In support of the above, petitioner belabors on its alleged right to wait for respondent's decision on its administrative claim before filing the judicial claim before this Court. It insists that Section 112(C)[10] of the NIRC of 1997, as amended, provides for alternative options, namely: (1) to file the judicial claim within 30 days from receipt of the decision; and, (2) to file within 30 days from the lapse of the 120-day waiting period. Petitioner opted for the first option hence, it maintains that the 120+30-day only means that if respondent fails to act on its claim, it must wait for the 120-day period to lapse before filing a judicial claim.

Petitioner likewise holds the view that the series of doctrines relating to the 120+30-day period revolve around premature filing of the judicial claim during the 120-day waiting period. According to it, the 120+30-day period should not be interpreted to limit the alternative statutory remedy of filing a judicial claim within the 30-day filing period from actual receipt of denial of the administrative claim,

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[10] Supra at note 8.

considering that respondent had finally resolved the claim even if already beyond the 120-day period.

Additionally, petitioner construes Section 112(C) of the NIRC of 1997, as amended, as a directive for respondent to take action. To rule that respondent should only decide within the 120-day period follows that the Denial Letter he issued on 18 October 2018 would be void as it was issued beyond the supposed mandatory period. The prescribed 120-day period then is intended only to allow respondent to act before the taxpayer may deem such inaction as denial. It is petitioner's firm view that it does not preclude the taxpayer from awaiting respondent's denial (even if the denial comes after the waiting period lapses).

Lastly, petitioner contends that it is clearly entitled to its claim for issuance of TCC arising from its excess input VAT from zero-rated sales and should have been afforded an opportunity to prove its claim.

In refutation, respondent agrees that the Court has no jurisdiction over petitioner's claim as it was filed out of time. The Petition for Review filed belatedly was properly dismissed and the "deemed a denial" decision has become final and unappealable.

The Court *En Banc's* ruling follows below.

The issues that petitioner presents before Us are not novel. In a long line of cases, the Supreme Court has ruled consistently that the 120+30-day reglementary period in refund cases pursuant to Section 112(C) of the NIRC of 1997, as amended, are both mandatory and jurisdictional.[11]

Section 112(C) of the NIRC of 1997, as amended, reads:

> ...
> **SEC. 112.** *Refunds or Tax Credit of Input Tax.* -
> ...
>
> (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

[11] *CE Luzon Geothermal Power Company, Inc. v. CIR*, G.R. No. 197526, 26 July 2017.

> 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.
>
> 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.
>
> ...

The above-quoted provision provides two (2) possible scenarios. First, when the CIR denies the administrative claim for refund *within* 120 days; and, second, when the CIR fails to act within 120 days. Taxpayers must await either for the decision of the CIR or for the lapse of the 120 days before filing their judicial claims with this Court.[12]

Pertinently, Republic Act (**RA**) No. 1125[13], as amended, expressly provides that when the CIR fails to take action on the administrative claim, the "inaction shall be deemed a denial" of the application for tax refund or credit. The taxpayer-claimant must thus strictly comply with the mandatory period by filing an appeal with this Court within 30 days from such inaction, otherwise the court cannot validly acquire jurisdiction over it.[14]

Petitioner's contention that it has the right to wait for respondent's decision and to appeal within 30 days from said decision is specious. Respondent's decision appealable to this Court is one issued within the 120-day period. The absence of the decision issued within the 120-day period should have already prompted petitioner to deem respondent's inaction as denial of its claim. Correspondingly, its right to file a judicial claim before this Court has likewise ripened accordingly. Contrary to its claim, there is clearly no available option for it to await respondent's decision beyond the 120-day period.

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12 Id.

13 AN ACT CREATING THE COURT OF TAX APPEALS.

14 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495 23 July 2018.

As the records so yield, petitioner timely filed the successive administrative claims within two (2) years from the close of the taxable quarters when sales were made. Applying the 120+30-day rule provided by law and jurisprudence, petititioner should have observed the following timelines for the filing of its judicial claim before this Court:

Taxable Quarter for 2010	**Date of Filing of Administrative Claim**	**End of 120-day period**	**End of 30-day period**
1st Quarter	06 June 2011	04 October 2011	3 November 2011
2nd Quarter	06 June 2011	04 October 2011	3 November 2011
3rd Quarter	16 September 2011	14 January 2012	13 February 2012
4th Quarter	24 October 2011	21 February 2012	22 March 2012

Considering that petitioner's judicial claim in CTA Case No. 9985 (covering the four [4] quarters of TY 2010) was only filed on <u>12 December 2018, or six (6) years thereafter</u>, the Court could not, without violating the law and settled rules, take cognizance of the said judicial claim.

Petitioner also argues that the series of doctrines relating to the 120+30-day period revolve around premature filing of the judicial claim within the 120-day waiting period.

We disagree.

In *Team Energy Corporation (formerly: Mirant Pagbilao Corporation, et al.) v. Commissioner of Internal Revenue*[15] (**Team Energy**), citing the ruling on *Philex Mining Corporation v. Commissioner of Internal Revenue*, the Supreme Court held:

> ...
>
> In this case, Team Energy's judicial claim was filed beyond the 30-day period required in Section 112(D). The administrative claim for refund was filed on December 17, 2004. Thus, BIR had 120 days to act on the claim, or until April 16, 2005. Team Energy, in turn, had until May 16, 2005 to file a petition with the Court of Tax Appeals but filed its appeal only on July 22, 2005, or 67 days late. Thus, the Court of Tax Appeals En Banc correctly denied its claim for refund due to prescription.

[15] G.R No. 197663, 14 March 2018; Citations omitted and emphasis in the original text.

...

When Team Energy filed its refund claim in 2004, the 1997 NIRC was already in effect, which clearly provided for: (a) 120 days for the Commissioner to act on a taxpayer's claim; and (b) 30 days for the taxpayer to appeal either from the Commissioner's decision or from the expiration of the 120-day period, in case of the Commissioner's inaction.

...

San Roque dealt with judicial claims which were either prematurely filed or had already prescribed. That case, specifically in G.R. No. 197156, *Philex Mining Corporation v. Commissioner of Internal Revenue,* involved the filing of a judicial claim beyond the 30-day period to appeal as in this case. Then and there, this Court rejected Philex Mining Corporation's (Philex) judicial claim because of late filing:

> 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. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
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> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. **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
>
> ...
>
> Further, the Commissioner's inaction on Team Energy's claim during the 120-day period is "deemed a denial", pursuant to Section 7(a)(2) of Republic Act No. 1125, as amended by Section 7 of Republic Act No. 9282. Team Energy had 30 days from the expiration of the 120-day period to file its judicial claim with the Court of Tax Appeals. Its failure to do so rendered the Commissioner's "deemed a denial" decision as final and inappealable.
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> ...

Courts are bound by prior decisions thus, once a case has been decided one way, the only option left is to resolve subsequent similar cases in the same manner.[16]

Petitioner's contention that it should be given an opportunity to prove its claim for issuance of TCCs as it is clearly entitled thereto is likewise misplaced.

Time and again, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. Non-compliance with the mandatory periods, non-observance of the prescriptive periods, and non-adherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit, whether or not the CIR questions the numerical correctness of the claim of the taxpayer.[17]

All told, the Court *En Banc* finds no cogent reason to reverse the assailed Resolutions of the Court's First Division in dismissing

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16 *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*; G.R. Nos. 184360 & 184361, 19 February 2014.

17 Id.

petitioner's prior Petition for Review (in CTA Case No. 9985) for lack of jurisdiction.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Lapanday Foods Corporation is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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