REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

LAPANDAY FOODS CORPORATION (formerly merged with MALALAG VENTURES PLANTATION, INC.),
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2181
(CTA Case No. 9976)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 21 2020
1:35 p.m.

x -- x

<u>DECISION</u>

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW (Re: Resolution dated 25 July 2019 and Resolution dated 23 October 2019) ("Petition")** filed last 26 November 2019[1] with respondents' **OPPOSITION (Re: Petitioner's Petition for Review) ("Opposition")** filed on 2 January 2020.[2]

---

1 See Petition, Records, Vol. 1, pp. 1-33.
2 See Opposition, Records, Vol. 1, pp. 93-98.

The Parties

Petitioner **LAPANDAY FOODS CORPORATION** is a duly registered domestic corporation with principal address at Maryknoll Road, Barangay Pampanga, Lanang, Davao City.[3] It previously merged with Malalag Holdings Corporation, Malalag Ventures Plantation, Inc., and Mindanao Fresh Produce Services Corporation in 2008.[4]

Respondent **COMMISSIONER OF INTERNAL REVENUE** is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously paid taxes, as provided by law. He may be served summons, pleadings and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

The Facts

Petitioner alleges that it filed before respondent administrative claims for issuance of tax credit certificates ("TCC") for its excess and unutilized input taxes on account of zero-rated sales for the 1st, 2nd, and 3rd quarters of taxable year ("TY") 2007, as follows:[6]

Period Covered	Administrative Claim Filed On
1st Quarter – TY 2007	27 August 2008
2nd Quarter – TY 2007	08 September 2008
3rd Quarter – TY 2007	17 October 2008

Respondent did not act upon the said administrative claims until 04 October 2018 when it issued a Denial Letter denying all three (3) administrative claims based on the following grounds:[7]

1. Failure to substantiate the subject zero-rated transactions for non-submission of proofs of actual shipment of goods from Philippines to a foreign country; and

2. Failure to submit the Authority to Print Invoices pursuant to ***Section 238 of the National Internal Revenue Code ("NIRC").***

---

3 See Petition, Records, Vol. 1, p. 2.
4 See Petition, Records, Vol. 1, p. 4.
5 See Petition, Records, Vol. 1, p. 2.
6 See Petition, Records, Vol. 1, pp. 5-6.
7 See Petition, Records, Vol. 1, p. 6.

Upon receipt of the **Denial Letter** on 22 October 2018, petitioner filed a **Petition for Review** before the Court in Division on 20 November 2018[8] to appeal the denial of its administrative claims.[9]

On 7 March 2019, respondent filed a **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** assailing the Court in Division's jurisdiction on the basis that the judicial claim was filed out of time.[10] Petitioner filed its Comment/Opposition thereon on 15 April 2019.[11]

Thereafter, the Court in Division issued a **Resolution dated 25 July 2019** dismissing the judicial claim for lack of jurisdiction.[12] Following receipt of the **Resolution dated 25 July 2019** on 1 August 2019,[13] petitioner filed a **Motion for Reconsideration (Of the Resolution dated 25 July 2019)** on 16 August 2019.[14] Respondent responded by filing an **Opposition Re: Petitioner's Motion for Reconsideration** on 19 September 2019.[15]

The Court in Division then issued a **Resolution dated 23 October 2019** denying petitioner's **Motion for Reconsideration (Of the Resolution dated 25 July 2019),**[16] which was received by petitioner on 11 November 2019.[17]

Thus, the instant **Petition** filed on 26 November 2019.[18]

On **12 December 2019, the Court issued a Resolution** requiring respondent to file a Comment on the **Petition** within ten (10) days from notice,[19] which was complied with by respondent with its **Opposition** filed on 2 January 2020.[20]

Following the filing of the **Opposition,** this Court issued a **Resolution dated 22 January 2020** submitting the **Petition** for decision.[21]

---

8 In the Petition, petitioner erroneously stated that the date of filing of the Petition for Review before the Court in Division was 20 November 2019. A perusal of the Petition for Review before the Court in Division, which was attached as Annex "D" of the Petition, show that the actual date of filing was 20 November 2018.

9 See Petition, Records, Vol. 1, p. 6 in relation to Annex "D", Petition, Records, Vol. 1, p. 39.

10 See Resolution dated 25 July 2019, Annex "B", Petition, Records, Vol. 1, pp. 39-41.

11 See Resolution dated 25 July 2019, Annex "B", Petition, Records, Vol. 1, p. 39.

12 See Resolution dated 25 July 2019, Annex "B", Petition, Records, Vol. 1, pp. 37-45.

13 See Resolution dated 25 July 2019, Annex "B", Petition, Records, Vol. 1, p. 38.

14 See Motion for Reconsideration (Of the Resolution dated 25 July 2019), Annex "E", Petition, Records, Vol. 1, p. 69.

15 See Resolution dated 23 October 2019, Annex "C", Petition, Records, Vol. 1, p. 48.

16 See Resolution dated 23 October 2019, Annex "C", Petition, Records, Vol. 1, pp. 46-50.

17 See Resolution dated 23 October 2019, Annex "C", Petition, Records, Vol. 1, p. 47.

18 See Petition, Records, Vol. 1, p. 1.

19 See Resolution dated 12 December 2019, Records, Vol. 1, pp. 90-92.

20 See Opposition, Records, Vol. 1, pp. 93-98.

21 See Resolution dated 22 January 2020, Records, Vol. 1, pp. 99-101.

The Assigned Errors

In the **Petition,** petitioner raised the following issues: [22]

"(A)

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

(B)

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

Arguments of the Parties

Petitioners posed the following arguments:

1. ***Section 112 (C) of the NIRC*** allows the taxpayer the alternative remedies of filing the judicial claim (1) within the 30-day period from the receipt of decision of respondent, or (2) within the 30-day period after the expiration of the 120-day waiting period."[23]

    a. Under ***Revenue Regulations No. 01-2017 ("RR 1-17"), Revenue Memorandum Circular No. 54-2014 ("RMC 54-14")*** does not apply in cases where the administrative claim was filed before the effectivity of ***RMC 54-14.***[24]

[22] See Petition, Records, Vol. 1, p. 7.
[23] See Petition, Records, Vol. 1, pp. 7-26.
[24] See Petition, Records, Vol. 1, pp. 8-9.

b. The mandatory and jurisdictional nature of the 120+30 day period upheld in various Supreme Court decisions and ***RMC 54-14*** does not apply in cases where respondent issues a decision on a input tax refund after the 120-day period.[25]

c. ***Section 112 (C) of the NIRC*** clearly provides two (2) options to the taxpayer on how to appeal the decision of respondent denying the claim for refund/TCC.[26]

d. The assailed interpretation of the mandatory and jurisdictional nature of the 120+30 day period will result in the **Denial Letter** being void itself, and ***RR 1-17*** on continuing the processing of claims prior to the issuance of ***RMC 54-14*** being without effect.[27]

e. This Court's jurisdiction, as established by law, clearly makes a distinction between the two (2) causes of action: (a) cases on respondent's decision, and (b) the inaction of respondent beyond a period specified in the *NIRC*.[28]

f. Even the current ***TRAIN Law*** reinforces the intention that the 30-day period is for the benefit of the taxpayer, and now is clearly reckoned from receipt of respondent's decision.[29]

g. Following legislative intent, as manifested in the ***TRAIN Law,*** it is respondent, and not the taxpayer, who is accountable for the mandatory nature of the 120-day period to process the input tax refund/TCC. Under the ***TRAIN Law***, failure to comply with the 120-day period is a criminal offense of the responsible officer/agent.[30]

2. Petitioner is entitled to its claim for TCC amounting to Php10,460,421.72 pertaining to unutilized input taxes for TY 2007 attributable to its zero-rated export sales.[31]

In the **Opposition,** respondent alleged that this Court is correct in ruling that it has no jurisdiction over the case.[32]

25 See Petition, Records, Vol. 1, pp. 9-13.
26 See Petition, Records, Vol. 1, pp. 13-19.
27 See Petition, Records, Vol. 1, pp. 20-21.
28 See Petition, Records, Vol. 1, pp. 22-23.
29 See Petition, Records, Vol. 1, pp. 23-25.
30 See Petition, Records, Vol. 1, pp. 25-26.
31 See Petition, Records, Vol. 1, pp. 26-30.
32 See Opposition, Records, Vol. 1, pp. 93-96.

The Ruling of the Court En Banc

*This Court resolves to **DENY** the **Petition** for lack of merit.*

Section 112 (C) of the NIRC does not provide alternative remedies to the taxpayer. Petitioner belatedly filed its judicial claim.

Petitioner's main contention is that ***Section 112 (C) of the NIRC*** provides two (2) remedies for a taxpayer to appeal an unfavorable action on its request for input tax refund/TCC, namely, file a judicial claim within thirty (30) days from: a) receipt of respondent's adverse decision, or b) upon expiration of the one hundred twenty (120)-day period given to respondent to act upon requests for input tax refunds/TCC. For petitioner, these remedies are alternative in nature, hence, it cannot be deprived of its right to appeal an adverse decision issued beyond the one hundred twenty (120)-day period given to respondent to decide.

This is misplaced.

Section 112 (C) of the NIRC provides, as follows:

> "**SEC. 112. Refunds or Tax Credits of Input Tax.** -
>
> xxx xxx xxx
>
> **(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 Subsections (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."

While the said provision provides two (2) starting points within which the thirty (30) day period to file a judicial claim may be tacked upon, namely: a) upon expiration of the one hundred twenty (120)-day mandatory period for respondent to act on a request for input tax refund/TCC, and b) upon receipt of respondent's adverse decision, the same are not alternative in nature.

The thirty (30) day period given to a taxpayer to file a judicial claim for input tax refund/TCC shall start from whichever starting point comes first. Taxpayers cannot opt to wait for an actual adverse decision by respondent despite the lapse of the one hundred twenty (120)-day mandatory period given to respondent to act before filing a judicial claim before this Court. Otherwise, such judicial action is belatedly filed, which results in this Court losing its jurisdiction to try the judicial claim for input tax refund/TCC. This is known as the mandatory and jurisdictional one hundred twenty plus thirty (120+30)-day period as enunciated in ***Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue.***[33]

The rationale for the mandatory and jurisdictional one hundred twenty plus thirty (120+30)-day period is the fact that respondent's inaction within the one hundred twenty (120)-day mandatory period given him to decide a request for input tax refund/TCC is treated as a denial itself. Hence, a taxpayer need not await an actual denial as its request for input tax refund/TCC has been deemed denied, by express provision of law.[34]

In ***Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,***[35] the Supreme Court had a chance to categorically declare that a judicial appeal must be instituted immediately within thirty (30) days from the expiration of the mandatory one hundred twenty (120)-day period given to respondent to decide claims for input tax refund/TCC considering that such inaction of respondent is already considered a denial of such claims, *viz:*

> "A final note, the taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer **<u>must file an appeal within 30 days from the lapse of the 120-day waiting period."</u>**
>
> (Emphasis and underscoring, Ours)

Moreover in ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,***[36] the High

[33] **G.R. No. 187485, G.R. No. 196113 and G.R. No. 197156, 12 February 2013.**
[34] ***Commissioner of Internal Revenue v. San Roque Power Corporation,*** G.R. No. 187485, 12 February 2013.
[35] G.R. No. 168950, 14 January 2015.
[36] G.R. No. 182737, 02 March 2016.

Court ruled that "**<u>any claim filed in a period</u>** less than or **<u>beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.</u>**"[37]

It is undisputed that petitioner filed its administrative claims for TCC for the 1st, 2nd, and 3rd quarters of TY 2007 on 27 August 2008, 08 September 2008, and 17 October 2008, respectively. Applying the mandatory one hundred twenty (120)-day period, respondent had until 25 December 2008, 06 January 2009, and 14 February 2009, respectively, within which to decide said requests for TCC. On this note, considering that respondent did not act upon said administrative claims within the mandatory one hundred twenty (120)-day period, petitioner should have filed its judicial claims to this Court on or before 24 January 2009, 05 February 2009, and 16 March 2009, respectively, following the thirty (30)-day period within which to file a judicial claim. As petitioner filed the present **Petition** only on 20 November 2018, the same is undeniably belatedly filed.

Thus, the Court in Division had no jurisdiction to entertain the **Petition** as petitioner failed to comply with the mandatory and jurisdictional one hundred twenty plus thirty (120+30)-day period.

<u>RR 1-17 does not provide an exception to the mandatory and jurisdictional one hundred twenty plus thirty (120+30)-day period.</u>

Petitioner argues that the assailed interpretation of the mandatory and jurisdictional nature of the one hundred twenty plus thirty (120+30)-day period will result in the **Denial Letter** being void itself, and ***RR 1-17*** on continuing the processing of claims prior to the issuance of ***RMC 54-14*** being without effect.

We do not agree.

A perusal of ***Section 2 of RR 1-17*** shows that claims filed prior to ***RMC 54-14*** were merely ordered to be continuously processed administratively but not judicially. It did not create an exception to the mandatory and jurisdictional one hundred twenty plus thirty (120+30)-day period, which is mandated by law. A mere regulation cannot create an exception not provided by the law it seeks to implement. Implementing rules and regulations may not enlarge, alter, or restrict the provisions of the law they seek to implement.[38]

---

37 Emphasis and Underscoring, Ours.

38 ***Pilipinas Kao, Inc. v. Honorable Court of Appeals and Board of Investments,*** G.R. No. 105014, 18 December 2001.

RR 1-17 was merely issued to restart the processing of the administrative claims for refund/TCC which were deemed denied due to erroneous application of ***RMC 54-14.***[39] However, this is solely confined to the BIR level and does not extend to the judiciary.

The provisions of the TRAIN Law are inapplicable to the present case.

Petitioner argues that legislature intended to allow taxpayers to have a right to judicially appeal decisions on its claims for refund/TCC issued beyond the mandatory one hundred twenty (120)-day period. According to petitioner, this is manifest under the ***TRAIN Law*** wherein the thirty (30)-day period to appeal a denial of a claim for input tax refund/TCC is now reckoned only from receipt of respondent's decision.

We are not swayed.

The ***TRAIN Law*** is inapplicable to the **Petition** considering that the former took effect only on 1 January 2018[40] while the latter involved claims for input taxes incurred during TY 2007. Hence, whatever legislature intended during its deliberations and eventual passage of the ***TRAIN Law*** is wholly irrelevant to the **Petition**. Tax laws are applied prospectively unless otherwise expressly provided for.[41]

From the foregoing discussions, this Court deems it unnecessary to resolve the remaining issues.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolution dated 25 July 2019 and Resolution dated 23 October 2019 promulgated by the Court in Division are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

---

39 Section 2, RR 1-17.
40 Section 87, Republic Act No. 10963.
41 ***Commissioner of Internal Revenue v. Acosta,*** G.R. No. 154068, 3 August 2007.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen SL
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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