REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9009

Members:

Castañeda, Jr., *Chairperson,*
Casanova, *and*
Manahan, *JJ.*

Promulgated:

JUL 05 2017 3:27 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court is the Motion for Reconsideration of petitioner Hedcor Sibulan, Inc. (Hedcor) filed on March 9, 2017, without the comment of respondent Commissioner of Internal Revenue (CIR).[1]

Hedcor's motion assails the February 21, 2017 Decision of this Court which dismissed its Petition for Review for lack of jurisdiction insofar as its judicial claim for refund was barred by prescription. The dispositive portion reads:

> "**WHEREFORE**, the instant Petition for Review filed by Hedcor Sibulan, Inc. is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Petitioner does not dispute the facts as narrated in the decision. What the petitioner insists, however, as the real issue is whether its

[1] April 27, 2017 Resolution Vol. III, Docket, p. 1072.

December 12, 2012 administrative claim can be considered "unacted" or "deemed denied" for the 120+30-day period to apply.[2]

It is apparent to the Court that Hedcor is attempting to sidestep the application of the *mandatory* 120+30-day period because it can no longer dispute the tenor of its December 12, 2012 transmittal letter.[3] This transmittal letter reads:

> "December 12, 2012
>
> **Ms. Herma G. Escudero**
> The Revenue District Officer
> **Bureau of Internal Revenue**
> Digos, Davao del Sur
>
> Dear Ms. Escudero,
>
> We transmit herewith the **complete supporting documents** pursuant to Section 112(D) of the 1997 NIRC and RMO No. 53-98 in relation to Hedcor Sibulan Inc.'s VAT refund claim for the first (1^{st}) to fourth (4^{th}) quarter of 2011, as follows:
>
> 1. Three (3) Copies of Application for Tax Credit (Form 1914)
>
> xxx xxx xxx
>
> 23. Certified true copy of VAT Invoices & VAT Official Receipts for purchase of goods & services.
>
> Please notify us within five (5) days from receipt hereof regarding the additional documentary requirements not listed above. Otherwise, we will deem it that your office considered that the above submitted documents **constitute as the complete supporting documents** required for the processing of HEDCOR SIBULAN, INC.'s VAT claim pursuant to Section 112(D) of the 1997 NIRC and RMO No. 53-98." (*underscoring and emphases supplied*)

As the facts of the case also bear out, within the 5-day period given to the respondent to request additional documentary requirements, *no request came*.

Based on the clarity of petitioner's *own words and representations*, therefore, the Court cannot prudently entertain any other interpretation to suit the contradictory position of the petitioner. Neither can the Court allow the petitioner to conveniently negate the

[2] Par. 1, Motion for Reconsideration, Docket Vol. III, p. 1041.
[3] Exhibit "P-7", Docket Vol. II, pp. 642-643; Decision, Docket Vol. II, p. 999.

established fact that, on December 12, 2012, it submitted the "complete supporting documents" to the respondent on the same day that it filed its administrative claim. Estoppel effectively bars the petitioner from adopting an inconsistent position, attitude or course of conduct.[4]

Accordingly, pursuant to the directive of Section 112(C) of the 1997 NIRC as amended, from December 12, 2012, the CIR can either:

(a) *Act* within 120 days from the submission of the complete documents; or,

(b) *Fail to act* within 120 days from the submission of the complete documents.

In either of these two possibilities, that is, whether the CIR acts or fails to act on the claim, the taxpayer *must* elevate the claim before the Court within 30 days from the expiration of the 120-day period. This can be gleaned from the provisions of Section 112(C), thus:

> "**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 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." (*underscoring and emphasis supplied*)

In *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[5] the Supreme Court laid down the rule consistent with the wording of the law above and dismissed a refund claim due to late filing: Jr

[4] Consolidated *En Banc* cases of *Philippine Coconut Producers Federation, Inc. et al. v. Republic of the Philippines*, G.R. Nos. 177857-58, January 24, 2012.
[5] G.R. No. 182737, March 2, 2016.

"The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**.

Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.

As shown by the table below, the judicial claims of petitioner were filed beyond the 120+30 day period: xxx xxx xxx" (*underscoring and emphases supplied; citations omitted*)

This holding is also in accord with the interpretation of Section 112(C) in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[6] where the Supreme Court *En Banc* held:

"Section 112(C) of the NIRC provides:

xxx xxx xxx

From the above, it is apparent that the CIR has 120 days **from the date of submission of complete documents** to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA.

xxx xxx xxx

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112(D) was amended and renamed 112(C). Thus:

> (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.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the

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[6] G.R. No. 207112, December 8, 2015.

> 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.
>
> With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining when the supporting documents have been completed — **it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing**." (*underscoring and emphases supplied; citations omitted*)

Applying the law and jurisprudence on the facts of this case, We count the 120+30-day period from the "complete submission" of documents on December 12, 2012. Specifically, Hedcor was allowed to wait for any action from the CIR for 120 days from December 12, 2012 or until April 11, 2013. Thereafter, since there was "failure on the part of the Commissioner to act on the application within the period prescribed",[7] Hedcor only had 30 days from April 11, 2013, or until May 14, 2013, a Tuesday, to file its judicial claim.[8]

Wednesday, December 12, 2012	Letter transmitting complete documents, Exhibit P-7
120	Days for CIR to decide
Thursday, April 11, 2013	End of 120-days to wait for CIR action on the administrative claim
30	Days for taxpayer to appeal to the CTA
Saturday, May 11, 2013	Deadline for the filing of the judicial claim

Undoubtedly, the March 13, *2015* judicial claim was filed out of time. *gv*

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[7] Section 112(C), 1997 NIRC, as amended.
[8] May 13, 2013, Monday, was declared a special non-working day by then President Benigno S. Aquino III, Official Gazette, http://www.officialgazette.gov.ph/2013/04/25/list-of-nationwide-holidays-for-2013/, last accessed June 23, 2017.

In *Pilipinas Total Gas,*[9] the Supreme Court also cautioned that the benefit granted to the taxpayer to determine when it should complete its submission of documents is *not* unbridled. The petitioner, therefore, cannot by any means of legal maneuver indefinitely extend the window to file its judicial claim. In the case at bench, petitioner cannot escape the conclusion that the judicial claim was filed *beyond* the obligatory 120+30-day period.

After a careful evaluation of petitioner's arguments in the Motion for Reconsideration, the Court finds no valid and compelling reason to warrant a reversal of the assailed decision.

Accordingly, the motion is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[9] *Supra,* Note 6.