REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

HEDCOR SIBULAN INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9080

Members:

DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
AUG 07 2018 ; 3:30 pm

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on March 9, 2018,[1] with respondent's **"OPPOSITION (Re: Motion for Reconsideration)"** filed on April 10, 2018[2] and petitioner's **"REPLY (Re: Opposition dated April 6, 2018)"** filed on May 17, 2018[3], praying for the setting aside of this Court's Decision dated February 20, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

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[1] Docket – Vol. II, pp. 1164 to 1179.
[2] Docket – Vol. II, pp. 1182 to 1188.
[3] Docket – Vol. II, pp. 1219 to 1227.

Petitioner's arguments:

In its *Motion for Reconsideration*, petitioner argues that contrary to the Court's ruling in the assailed Decision, its claim was acted upon by the CIR, and thus cannot be deemed unacted or deemed denied after the lapse of the 120+30-day period. Petitioner reiterates that the CIR, through its agents, acted upon its claim, which justified petitioner's belief and reliance that its claim was being acted upon.

Allegedly, the cases of *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue* (hereinafter referred to as "*Rohm Apollo* case")[4] *and Silicon Philippines, Inc. vs Commissioner of Internal Revenue* (hereinafter referred to as "*Silicon Philippines* case")[5] are inapplicable in the case at bar since those cases contemplate inaction by respondent. Petitioner stresses that in this case, respondent has been proactively and positively deciding on its administrative claim for refund well beyond the 120+30-day period. It is petitioner's view that what the law requires is inaction or unacted claim and not "undecided claim." Thus, it was allegedly justified in waiting for respondent to act on its claim.

Further, relying on the Supreme Court case of *Surigao Electric Co., Inc. vs. The Honorable Court of Tax Appeals, et.al.,* (hereinafter referred to as "*Surigao* case")[6], petitioner contends that the action contemplated in Section 112 (C) of the Tax Code may involve steps in the assessment process other than a decision on the claim.

Petitioner asserts that respondent continued to have jurisdiction to act on its administrative claim for tax refund/credit after the lapse of the 120+30-day period because of the general rule against non-retroactivity confirmed by Revenue Regulation (RR) No. 1-2017. According to petitioner, RR No. 1-2017 recognizes that respondent has the power and jurisdiction to act continuously on the taxpayer's claims based on the available documents that were submitted.

Moreover, the interpretation of the purpose of the 120+30-day period should be consistent with the legislative intent behind the amendment to Section 112(C) of the Tax Code. Allegedly, the true intention of the 120+30-day period is to give the CIR adequate time to process a claim and not to remove CIR's jurisdiction over the administrative claim when a taxpayer makes a judicial claim. Thus, a

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[4] G.R. No. 168950, January 14, 2015.
[5] G.R. No. 182737, March 2, 2016.
[6] G.R. No. L-25289, June 28, 1974.

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restrictive interpretation of the 120+30-day rule would allegedly render the administrative claim merely *pro-forma*.

Lastly, petitioner asserts that its right to appeal the actual denial of its administrative claim for input VAT refund and/or issuance of tax credit or certificate (TCC) is granted by statute, and its unwarranted denial violates the due process clause of the Constitution.

Respondent's arguments:

In his *Opposition*, respondent counter-argues that the assailed Decision should not be disturbed. In the filing of judicial claims, the taxpayer affected, may within thirty (30) days from receipt of the decision denying the claim, or after the expiration of the 120-day period, appeal the decision or the unacted claim to the Court. This requirement is allegedly jurisdictional, failing which, the Court could not acquire jurisdiction over the instant case.

Respondent further claims that petitioner must not only prove its entitlement to a refund but also strict compliance with the periods provided by Section 112 (C) of the Tax Code. Allegedly, the claimant has the burden of proof to establish the factual basis of the claim for tax credit or refund.

Finally, respondent avers that refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and such are looked upon with disfavor.

THE COURT'S RULING

Petitioner's *Motion for Reconsideration* lacks merit.

The 120+30-day prescriptive periods are both jurisdictional and mandatory.

Petitioner reiterates in its *Motion for Reconsideration* that respondent, through its agents, acted upon its claim, and thus cannot be deemed unacted or deemed denied after the lapse of the 120+30-day period.

However, considering that no decision was issued by respondent within the 120-day prescriptive period, the alleged acts done by the CIR's agents finds no consequence in this case. As such, petitioner's claim remained unacted upon by the CIR within the said prescriptive period.

In the assailed Decision, We stressed that the 120+30-day prescriptive periods are both jurisdictional and mandatory. Thus, the taxpayer must no longer wait for respondent to come up with a decision before it files an appeal to this Court. Consequently, the taxpayer must file an appeal within thirty (30) days from the lapse of the one hundred twenty (120)-day waiting period.

Petitioner's argument that the *Rohm Apollo* case and *Silicon Philippines* case are not applicable in the instant case deserves scant consideration. The pronouncements of the Supreme Court in the said cases are clear and leaves no room for interpretation, that an inaction within a period fixed by law for action is already deemed a denial, and thus, should already be appealed after the expiration of the said prescribed period, which in this case, refers to the 120-day period under Section 112 (C) of the NIRC of 1997, as amended.

Respondent's alleged continuous jurisdiction to act on its administrative claim under RR No. 1-2017 and RMC No. 49-2003 bears no consequence to the filing of judicial claim.

Petitioner likewise argues that RMC No. 49-2003 allows concurrent actions in both the administrative and judicial level. It likewise claims that RR No. 1-2017 recognizes that respondent has the power and jurisdiction to act continuously on the taxpayer's claims based on the available documents that were submitted even after the lapse of the 120+30-day prescriptive period.

Petitioner however, fails to point out any provision from said administrative issuances that explicitly grants exemption from the mandatory prescriptive period for filing a judicial claim. In fact, the provisions of RR No. 1-2017 is explicit that petitioner's case is not covered by the said RR.

Sections 2 and 4 of RR No. 1-2017 are clear as to its scope, to wit:

> "SEC. 2. **SCOPE.** — Pursuant to the provisions of Section 244, in relation to Section 246 and Section 112 of the Tax Code, as amended, these Regulations are issued to give effect to the doctrinal rule laid down in the aforecited Pilipinas Total Gas case and to afford fair and adequate relief to taxpayer-claimants whose claims were 'deemed denied' as a result of the retroactive application of RMC No. 54-2014. For this purpose, and consistent with the judicial 'summation of rules' decreed to be 'made applicable to claims of tax credit/refund filed before June 11, 2014,' **such claims filed prior to RMC No. 54-2014 shall continue to be processed administratively.**" *(Emphases supplied)*
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> "SEC. 4. **CLAIMS NOT COVERED**. — The following claims filed and pending before the effectivity of RMC 54-2014 are not covered by these Regulations:
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> 1. Those claims filed beyond the two-year statutory prescriptive period under Section 112(A) of the Tax Code, as explained in Sec. 3 hereof;
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> 2. **Those denied in writing by the approving authority;**
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> 3. Those approved or granted fully or partially by the approving authority; and
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> 4. **Those already appealed to and pending with the CTA unless there is proof of withdrawal of the case filed with the CTA.**" *(Emphases supplied)*

Based on the foregoing, while it may be true that the general directive of RR No. 1-2017 is that the administrative processing of refund claims prior to RMC No. 54-2014 shall continue, it is clear about which claims are not covered, two (2) which are "(t)*hose denied in writing by the approving authority*" and "(t)*hose already appealed to and pending with* (this Court) *unless there is proof of withdrawal of the case filed* (therewith)."

Clearly, the instant case fall under the cases not covered by RR No. 1-2017. This is shown by the fact that not only is the instant case involves a denial in writing by the approving authority,[7] it is also glaringly appealed and pending with this Court.

Correspondingly, petitioner's reliance on RR No. 1-2017 is clearly misplaced.

We therefore reiterate that for purposes of filing a judicial claim under Section 112 (C), the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty (30) days after respondent denies the claim within the 120-day waiting period, or (2) file the judicial claim within thirty (30) days from the expiration of the 120-day period if respondent does not act within that period.[8]

Anent petitioner's reliance on the *Surigao case*, the same is clearly misplaced. The *Surigao case* involves the assessment of deficiency franchise tax and does not in any way deal with claims for tax credit or refund under Section 112 of the NIRC of 1997. It is therefore erroneous for petitioner to insist on the application of said jurisprudence in the instant case.

Lastly, it must be emphasized that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. Thus, strict compliance with the 120+30-day periods is necessary for such a claim to prosper.[9]

In sum, petitioner's belated filing of its judicial claim on June 30, 2015 is fatal to its claim for its failure to observe the mandatory 120+30-day prescriptive periods, and has therefore rendered this Court devoid of jurisdiction over the instant Petition for Review.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[7] Exhibit "P-26" and "P-26-a", Docket – Vol. I, p. 134.
[8] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[9] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I reiterate my Concurring Opinion

CIELITO N. MINDARO-GRULLA
Associate Justice