REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

REGUS SERVICE CENTRE PHILIPPINES B.V.-ROHQ,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9907

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
OCT 25 2023 9:00AM

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RESOLUTION

MANAHAN, *J.*:

For resolution is petitioner's *Motion for Reconsideration* filed on May 12, 2023 without respondent's comment.[1]

Petitioner seeks reconsideration of the Court's Decision promulgated on April 19, 2023, the dispositive portion of which reads as follows:

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

Petitioner presents the following grounds to warrant the reconsideration of the assailed Decision:

I.

> The judicial appeal for VAT refund for the 1st quarter of CY 2016 was filed within the prescriptive period provided under the pertinent provisions of the Tax Code and its implementing rules and regulations.

[1] Records Verification dated July 25, 2023.

II.

> The applicable law at the time of the filing of the administrative and judicial claims for refund is Section 112 (C) of the Tax Code, as amended by the TRAIN Law.

III.

> The provisions of Section 112 (C) of the Tax Code and RR 13-2018 are clear, hence, there is no room for interpretation.

IV.

> There is irreconciliable inconsistency and repugnancy between Section 112 (C) of the Tax Code and Section 7 (a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282.

V.

> The Court of Tax Appeals has jurisdiction over the present Petition for Review.

Petitioner disagrees with the conclusion of the Court and maintains that it timely filed its judicial claim for value-added tax (VAT) refund pursuant to the provisions of Section 112 (C) of the 1997 National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law. Finding significance in the wordings of the TRAIN Law which provides that the taxpayer affected, may, within thirty (30) days from the receipt of the decision denying the claim, file an appeal to the Court of Tax Appeals, petitioner contends that it faithfully complied when it correspondingly filed its Petition for Review with this Court on August 13, 2018.

To elaborate, petitioner narrates that it filed its administrative claim for refund of excess/unutilized VAT for the first quarter of calendar year (CY) 2016 on April 2, 2018 and upon receipt of the letter denying its claim on July 13, 2018, filed its judicial appeal with the Court on August 13, 2018 which is within thirty (30) days from receipt of the letter denying its claim. Petitioner differs from the Court's application of the case of *San Roque Power Corporation vs. CIR*,[2] to the instant case as it was decided before the amendments under the TRAIN Law which clearly considers the "inaction" of the Commissioner of Internal Revenue (CIR) as a "deemed denial" appealable to this Court. Petitioner believes that the deletion of the phrase, "or the failure on the part of

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[2] G.R. No. 203249, July 23, 2018.

the Commissioner to act on the application within the period prescribed above", under the TRAIN Law, and the addition of the phrase, "failure on the part of any official, agent, or employee of the Bureau of Internal Revenue (BIR) to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code", shows the intention of the lawmakers to compel the CIR to act on the taxpayer's administrative claim for refund.

Petitioner further mentions that even the denial letter issued by the BIR on July 13, 2018 contains a statement that the company has the judicial remedy to appeal to the Court of Tax Appeals (CTA) within thirty (30) days upon receipt of the decision on the administrative claim.

Petitioner offers a different perspective in looking at the issue of jurisdiction as it contends that it was appealing the decision of the CIR on its administrative claim for refund which is cognizable by the Court under Section 7 (a)(2) of RA No. 1125, and is not an appeal on the CIR's inaction as viewed by the Court in the assailed Decision. As there was clearly a decision by the CIR on the VAT refund, petitioner accordingly maintains that the appeal made within thirty (30) days from receipt of the decision falls within the exclusive appellate jurisdiction of the Cout under the afore-cited Section 7 (a)(2) of RA No. 1125, as amended by RA No. 9282.

RULING OF THE COURT

We find petitioner's arguments without merit.

To afford a better perspective on the subsequent discussion, we quote Section 112 (A) and (C) of the 1997 NIRC, as amended by the TRAIN Law, to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable

> foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals:** *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code." (emphasis supplied)

The Court in the assailed Decision considers the filing of the judicial appeal on August 13, 2018 beyond the period provided by law, thus, depriving the Court of its jurisdiction, and we quote:

> "From the filing of petitioner's administrative claim on April 2, 2018, respondent had ninety (90) days or until July 1, 2018, to act on the said claim. In case of *inaction* within the said ninety (90)-day period, petitioner has thirty (30) days from the expiration of such period to file its judicial claim, or until July 31, 2018.
>
> In the present case, the BIR issued the letter denying petitioner's entire claim for refund on June 7, 2018 but was received by petitioner only on July 13, 2018. Records show that petitioner filed its judicial claim, via the present Petition for Review, on August 13, 2018.

Based on the foregoing timeline, this Court finds that the privilege of petitioner to file a judicial appeal has already lapsed."

Petitioner maintains that the Court failed to consider the amendments introduced by the TRAIN Law on Section 112 (C) of the 1997 NIRC, as amended, particularly the deletion of the phrase, "or the failure on the part of the Commissioner to act on the application within the period prescribed above", which it construes as focusing on the partial or full denial of the claim for tax refund as the primary basis for filing a judicial appeal within thirty (30) days from receipt of the decision denying the claim.

The Court disagrees with petitioner.

Applying a basic rule in statutory construction that endeavor should be made to harmonize the provisions of a law or of two laws,[3] the Court, in the assailed Decision, gave effect to the provisions of Section 112 (C) of the 1997 NIRC, as amended by the TRAIN Law and its own charter particularly Section 7 (a)(2) of RA No. 1125, as amended by RA No. 9282 and showed that the two laws are not "repugnant" nor inconsistent with each other.

The imposition of a mandatory ninety (90)-day period to act upon the administrative claims for refund under the TRAIN Law did not operate to repeal the jurisdiction of the Court over the "inaction" of the CIR which is considered as a "deemed denial" appealable under Section 7 (a)(2) of RA No. 1125, as amended by RA No. 9282, and we quote:

"SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation

[3] *Valera vs. Tuason, Jr.*, G.R. No. L-1276, April 30, 1948.

> thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**;" (emphasis supplied)

Thus, if respondent fails to act within the ninety (90)-day period under Section 112 (C) of the 1997 NIRC, as amended by the TRAIN Law, such inaction should already be considered a denial appealable to the Court.

The 120 + 30 mandatory period to appeal to this Court under pre-TRAIN Law provisions has not been abandoned by the onset of the TRAIN law, albeit replaced by a shorter period of 90 + 30 days. As succinctly put by the Court in the assailed Decision, if respondent fails to act within the ninety (90)-day period provided under Section 112 (C) of the 1997 NIRC, as amended by the TRAIN Law, such inaction should already be deemed a denial of the administrative claim appealable to the Court.

Based on the foregoing, we find no cogent reason to depart from the Court's original position of lack of jurisdiction.

WHEREFORE, premises considered, the *Motion for Reconsideration* filed by petitioner is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 25 2023; 9:00AM

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DISSENTING OPINION

DEL ROSARIO, P.J.:

After a second hard look, and upon thorough examination of the applicable law and jurisprudence, I am constrained to grant petitioner's **Motion for Reconsideration**. I submit that the Court has jurisdiction over the present Petition for Review.

Prior to the enactment of Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, reads:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* – x x x
>
> (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).
>
> 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**." (*Boldfacing supplied*)

In construing the aforequoted provision, the Supreme Court opined that the thirty (30)-day period within which an appeal may be made commences **either** from receipt of the denial of the claim for refund or tax credit **OR** after the expiration of the 120-day period within which the Commissioner of Internal Revenue (CIR) is mandated to act on the claim, whichever comes first. Said the Supreme Court in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue* ("*Silicon*"):[1]

> "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." (*Boldfacing supplied*)

With the enactment of the TRAIN Law, Section 112(C) of the NIRC of 1997, as amended, now reads:

> "SEC. 112. *Refunds or Tax Credits of Input Tax*. – x x x
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. - In proper cases, the Commissioner shall grant a refund for creditable input taxes within **ninety (90) days** from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code." (*Boldfacing supplied*)

At once glaring is the fact that under the TRAIN Law, **the reckoning of the thirty (30)-day period within which an appeal to the Court of Tax Appeals (CTA) may be made specifies only one circumstance**, that is – from receipt of the decision of the CIR denying the claim for tax refund. The provision, as worded, does not give the taxpayer the privilege to appeal the inaction of the CIR to act on the administrative claim within the prescribed period.

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[1] G.R. No. No. 182737, March 2, 2016.

In this case, a careful perusal of the records reveals that petitioner timely appealed the decision denying its administrative claim for refund.

The two (2)-year period for filing of the administrative claim reckoned from the close of the 1st Quarter of calendar year (CY) 2016 ended on **March 31, 2018**. However, March 31, 2018 and April 1, 2018 fell on a Saturday and Sunday, respectively. Thus, petitioner timely filed its administrative claim on **April 2, 2018**. Respondent had ninety (90) days therefrom, or until **July 1, 2018**, within which to decide the refund claim. The failure of the concerned official of the Bureau of Internal Revenue (BIR) to act on the claim simply exposed said official to criminal liability under Section 269 of the NIRC of 1997, as amended.

On **July 13, 2018**, petitioner received a Letter dated June 7, 2018, which denied the administrative claim. Thus, it had thirty (30) days from receipt of said Letter, or until **August 12, 2018**, within which to file the judicial claim.

Considering that August 12, 2018 fell on a Sunday, and that the present Petition for Review was filed on **August 13, 2018** or the next working day, the same was filed within the prescribed period and the Court has jurisdiction to decide this case.

I am not unaware of Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, which reads as follows:

> "SEC. 7. *Jurisdiction*. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> x x x
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a <u>specific period of action</u>, in which case the inaction shall be <u>deemed a denial</u>**; x x x" (*Boldfacing and underscoring supplied*)

The above-cited provision of RA No. 1125, as amended, grants jurisdiction to the CTA when: (i) there is a "specific period of action" given to the CIR within which to decide an administrative claim for refund; and, (ii) the CIR fails to act on the refund claim within the said period. The inaction of the CIR shall be deemed a denial of the refund claim, and the taxpayer may appeal said inaction within the thirty (30)-day period reckoned from the lapse of the specific period.

Section 7(a)(2) of RA No. 1125, as amended, is a **general provision** on modes of appeal applicable to inactions of the CIR, including: (a) refunds of taxes, fees and charges, as provided in Section 229 of the NIRC of 1997, as amended; (b) assessment cases under Section 228 of the NIRC of 1997, as amended; and, (c) "other matters" arising from the NIRC of 1997, as amended, and laws administered by the BIR.

On the other hand, the procedure on appeal under Section 112(C) of the NIRC of 1997, as amended, is confined solely to cases involving claims for refund of unutilized input VAT attributable to zero-rated sales.

In *Department of Energy vs. Court of Tax Appeals*,[2] the Supreme Court elucidated on the difference between a special law and general law, and the interpretative rule when faced with such statutes, *viz.*:

> "The Court has defined a general law as 'a law which applies to all of the people of the state or to all of a particular class of persons in the state, with equal force and obligation.' x x x [I]t was also described as 'one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.' On the other hand, a special law is one which 'applies to particular individuals in the state or to a particular section or portion of the state only' and which 'relates to particular persons or things of a class.' As the Court has consistently held, **where there are two laws which appear to apply to the same subject and where one law is general and the other special, the law specially designed for the particular subject must prevail over the other. Stated more simply, the special law prevails over the general law**. *Generalia specialibus non derogant*." (*Boldfacing supplied*)

At any rate, even assuming that an appeal upon the expiration of the ninety (90)-day period may be allowed, still, such legal scenario **does not preclude a taxpayer from interposing an appeal from receipt of the decision of the CIR, which is clearly consistent with Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law**.

Section 7(a)(2) of RA No. 1125, as amended, only grants upon this Court jurisdiction over inactions by the CIR involving refund claims

[2] G.R. No. 260192, August 17, 2022.

when the latter fails to observe the ninety (90)-day period, albeit there is nothing in said provision that mandates the taxpayer to file an appeal within said period lest it loses the right to appeal. **An appeal upon the lapse of the ninety (90)-day period is thus a mere option on the part of the taxpayer. In this case, such option was not exercised by petitioner, as it elected to file the judicial claim before this Court within thirty (30) days from receipt of the ruling on the administrative claim** pursuant to Section 112(C) of the NIRC of 1997, as amended.

ALL TOLD, I *VOTE* to PARTIALLY GRANT petitioner's **Motion for Reconsideration**, and for the Court to assume jurisdiction and proceed with the determination on the merits of petitioner's claim for refund of unutilized input tax for the 1st Quarter of CY 2016.

ROMAN G. DEL ROSARIO
Presiding Justice