REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

LUZON HYDRO CORPORATION, *Petitioner,*	**CTA CASE NO. 9183**
	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** SEP 01 2016 9:42 a.m.

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RESOLUTION

For resolution is respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court ("Motion") filed on April 8, 2016, with petitioner's Comment/Opposition (Re: Motion for Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court dated April 7, 2016) ("Comment"), filed on July 7, 2016.

On November 6, 2015, petitioner, through counsel, filed the instant Petition for Review.

On November 26, 2015, the Court issued a Summons upon respondent. Respondent thereafter filed his Answer on January 26, 2016.

On January 28, 2016, the Court issued a Notice of Pre-trial Conference setting the case for Pre-trial on April 12, 2016, at 9:00 a.m., which was received by respondent and petitioner on February 1 and 5, 2016, respectively.

Respondent, through counsel, filed Respondent's Pre-trial Brief On April 6, 2016. Thereafter, he filed the instant Motion on April 8, 2016.

In his Motion, respondent states that he questioned the jurisdiction of the Court in his Answer dated January 26, 2016; that assuming the administrative claims for refund that were filed on November 24, 2009 for the first and second quarters of 2009, and on October 29, 2010, for the third and fourth quarters of 2009 were filed on time, the petition for review filed on November 6, 2015 was filed beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred twenty (120) day period pursuant to *Section 112(D)* of the *1997 National Internal Revenue Code ("NIRC")*, as amended.

Citing the case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[1], respondent argues that counting 120 days from the filing of the administrative claims for refund on November 24, 2009 and October 29, 2010, petitioner had until April 23, 2010 and February 26, 2011, respectively, within which to file its judicial claims for refund; that the requirement that the appeal to the courts within thirty (30) days is jurisdictional and failure to comply with the period may be raised in a motion to dismiss.

In its Comment, petitioner counter-argues that the application of the "deemed denied" at the end of the 120-day period applies only when there is inaction on the part of respondent; that it does not apply to cases where the respondent has taken positive actions on the administrative claim for refund and the taxpayer has reasonable basis to believe that its claim will continue to be acted upon administratively; that the following actions of respondent after it filed its administrative claims for refund can be construed as an action, which gave petitioner the impression that it has to wait for its administrative claim for refund to be resolved:

a) the issuance of Letters of Authority ("LOA") dated December 11, 2009 and February 8, 2011;

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[1] G.R. Nos. 193301 and 194637, March 11, 2013.

b) the conduct of audit proceedings in connection with its administrative claims for VAT refund/credit for calendar year 2009;

c) the issuance of a request for presentation of records containing a checklist of additional requirements on December 15, 2009; and

d) the actual denial of its administrative claims through two (2) letters dated September 15, 2015 which were both received by petitioner on October 8, 2015.

Petitioner maintains that the Petition for Review before the Court *a quo* was timely filed because it received the denial letters only on October 8, 2015, thus, it has until November 7, 2015 within which to file its judicial claim.

Petitioner goes on to say that *Revenue Memorandum Circular ("RMC") No. 54-2014* should not be made applicable to the instant case having been issued years after it filed its first and second administrative claims for refund; that based on jurisprudence, respondent is not deprived of jurisdiction to act on the administrative claim for tax refund/credit despite the filing of the judicial claim for refund; that *RMC No. 49-2003*, the issuance that was in effect at the time it filed its claim, provides that respondent could continuously and separately act on and process a claim administratively despite the taxpayer's judicial appeal before the Court.

Petitioner posits further that the real intention of the 120+30-day period set out by *Section 112 (C) of the 1997 NIRC*, as amended, was to give respondent adequate time to process a claim; that it was not meant to remove her jurisdiction when a judicial appeal of a claim is made; that strict interpretation of the said period cannot apply to petitions filed beyond said period; the amendment by *Republic Act No. 7716* merely gave the taxpayer the option to appeal to the CTA, without need of waiting for a final decision of respondent; that it was never the intention to deprive the taxpayer from its right and remedy of continuously pursuing its claim at the administrative level or for respondent to lose its jurisdiction to continuously and separately act on the claim until a final decision of the Court or at the administrative level is reached.

Based on the foregoing, the Court is inclined to **GRANT** respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court. The Court will now proceed to resolve the issue of jurisdiciton.

Section 112(C) of the 1997 National Internal Revenue Code ("NIRC"), as amended provides for the 120+30 day period in cases of claims for refund.

Section Section 112(C) of the 1997 NIRC, as amended, reads 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 submisison of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
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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.

Pursuant to the above-quoted provision, the taxpayer affected may file its judicial appeal within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty (120) day-period.

There is no merit in petitioner's argument that the "deemed denied" decision should not be made applicable to the instant case since respondent has taken positive steps after it filed its administrtive claim for refund, according to petitioner, there was no inaction to speak of. The law gives respondent a certain period of time to act on the taxpayer's claim for refund and after that period has lapsed, the taxpayer can then proceed to seek judicial recourse.

In *Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc.*[2] the Supreme Court held that the 120+30 day period under Section 112 is mandatory and jurisdictional, *viz:*

> *Section 112(D) (now subparagraph C) of the 1997 NIRC,* as amended reads as follows:
>
> Sec. 112. *Refunds or Tax Credits of Input Tax*
>
> xxx xxx xxx
>
> (D) 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) and (B) hereof.
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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.[3]
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> Petitioner is entirely correct in its assertion that compliance with the periods provided for in the abovequoted provision is indeed mandatory and jurisdictional, as affirmed

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[2] G.R. No. 184145, December 11, 2013.
[3] Emphasis supplied.

in this Court's ruling in *San Roque,* where the Court *En Banc* settled the controversy surrounding the application of the 120+30-day period provided for in Section 112 of the NIRC and reiterated the *Aichi* doctrine that the 120+30-day period is mandatory and jurisdictional. Nonetheless, the Court took into account the issuance by the Bureau of Internal Revenue (*BIR*) of BIR Ruling No. DA-489-03 which misled taxpayers by explicitly stating that taxpayers may file a petition for review with the CTA even before the expiration of the 120-day period given to the CIR to decide the administrative claim for refund. Even though observance of the periods in Section 112 is compulsory and failure to do so will deprive the CTA of jurisdiction to hear the case, such a strict application will be made from the effectivity of the Tax Reform Act of 1997 on January 1, 1998 until the present, except for the period from December 10, 2003 (the issuance of the erroneous BIR ruling) to October 6, 2010 (the promulgation of *Aichi*), during which taxpayers need not wait for the lapse of the 120+30- day period before filing their judicial claim for refund.

The case at bench, however, does not involve the issue of premature filing of the petition for review with the CTA. Rather, this petition seeks the denial of DEPI's claim for refund for having been filed late or after the expiration of the 30-day period from the denial by the CIR or failure of the CIR to make a decision within 120 days from the submission of the documents in support of respondent's administrative claim.

In *San Roque,* one of the respondents similarly filed its petition for review with the CTA well after the 120+30-day period. In denying the taxpayer's claim for refund, this Court explained that:

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.

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.[4]

Therefore, in accordance with *San Roque*, respondent's judicial claim for refund must be denied for having been filed late. Although respondent filed its administrative claim with the BIR on August 9, 2004 before the expiration of the two-year period in Section 112(A), it undoubtedly failed to comply with the 120+ 30-day period in Section 112(D) (now subparagraph C) which requires that upon the inaction of the CIR for 120 days after the submission of the documents in support of the claim, the taxpayer has to file its judicial claim within 30 days after the lapse of the said period. The 120 days granted to the CIR to decide the case ended on December 7, 2004. Thus, DEPI had 30 days therefrom, or until January 6, 2005, to file a petition for review with the CTA. Unfortunately, DEPI only sought judicial relief on May 5, 2005 when it belatedly filed its petition to the CTA, despite having had ample time to file the same, almost four months after the period allowed by law. As a consequence of DEPI's late filing, the CTA did not properly acquire jurisdiction over the claim.

The Court has held time and again that taxes are the lifeblood of the government and, consequently, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. Hence, We are left with no other recourse but to deny respondent's judicial claim for refund for non-compliance with the provisions of Section 112 of the NIRC.

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[4] Emphasis supplied.

Applying this to the instant case, petitioner filed its administrative claims for refund for the first and second quarters of 2009 on November 24, 2009, and for the third and fourth quarters of 2009 on October 29, 2010. Following the 120+30 day period, respondent had until March 24, 2010 for the first administrative claim; and until February 26, 2011, for the second administrative claim, to act on petitioner's application for tax refund/tax credit certificate. Counting thirty (30) days from the end of the 120-day period, petitioner had until April 23, 2010 and March 28, 2011, respectively, within which to file its judicial claims for refund. However, petitioner filed the instant Petition for Review only on November 6, 2015, or more than four (4) years later.

Based on the foregoing, the Court holds that the judicial claim for refund was filed way beyond the mandatory 120+30 day period, thus depriving the Court of jurisdiction to act on the instant Petition for Review.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction of the Court. Consequently, the Resolution dated June 20, 2016 setting the case for Pre-trial is **RECALLED** and **SET ASIDE.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice