REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LAPANDAY FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9938

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JUL 18 2019 10:03 Am

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RESOLUTION

For resolution of the Court is the petitioner's **Motion for Reconsideration (Of the Resolution dated 2 May 2019)**, filed on May 17, 2019, with respondent's Opposition **(Re: Petitioner's Motion for Reconsideration)**, filed on June 7, 2019.

Petitioner's motion assails the May 2, 2019 Resolution 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**, premises considered, respondent's **Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court** is **GRANTED**. Accordingly, the instant **Petition for Review** is hereby **DISMISSED** due to lack of jurisdiction.
>
> xxx xxx xxx.
>
> **SO ORDERED**."

Petitioner again avers that Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, actually imposes an alternative qualification as to when a taxpayer may appeal to the CTA. Petitioner states that while this Court was correct in ruling that if the 120-day period expires without any decision from the CIR the taxpayer may appeal to the CTA, it is respectfully submitted that it failed to consider the fact that Section 112 of the NIRC also provides that, in case of an adverse decision, a taxpayer still has thirty (30) days from receipt of the denial within which to appeal to the CTA.

It again contends that the 120+30 day period under Section 112 (C) is a claim-processing rule which does not restrict the subject-matter jurisdiction of this Court.

Petitioner argues that respondent is deemed estopped from claiming prescription considering that the BIR still acted on its claim despite the lapse of the 120-day period. It cited the case of *Procter and Gamble Asia PTE LTD. vs. Commissioner of Internal Revenue*[1], where the Supreme Court explicitly held that, through its actions, the BIR was estopped from denying claims for having been prematurely filed contrary to the law on the 120+30 day period.

On the other hand, respondent states that this Court is correct in ruling that it has no jurisdiction over the case.

The Court finds the instant motion bereft of merit.

First, it must be noted that the case cited by petitioner finds no application in this case considering that the portion quoted by petitioner concerns the premature filing of the judicial claim. Unlike in the instant case, petitioner belatedly filed the instant Petition for Review.

To reiterate, the 120+30 days are mandatory and jurisdictional periods. This is also the pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[2], to wit:

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[1] G.R. No. 204277, May 30, 2016.
[2] G.R. No. 183421, October 22, 2014.

"To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional."

Relevantly, in the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue*,[3] the Supreme Court held that:

"Hence, from the effectivity of the 1997 NIRC on 1 January 1998, the procedure has always been definite: the 120-day period is mandatory and jurisdictional. Accordingly, a taxpayer can file a judicial claim (1) only within thirty days after the Commissioner **partially or fully denies the claim within the 120-day period**, or (2) **only within thirty days from the expiration of the 120- day period if the Commissioner does not act within such period**." (Emphasis supplied)

It is clear from the foregoing that an appeal may only be made within 30 days from the denial of the Commissioner before the 120-day period lapsed, or from the lapse of the 120 day in case of inaction of the CIR. Considering that petitioner filed the instant Petition for Review only on September 28, 2018, or more than nine years after the prescribed period, the same was clearly barred by prescription.

The Court again stresses that the 120+30 day prescriptive periods are mandatory and jurisdictional, and are not mere technical requirements. The Court should not establish the precedent that noncompliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless

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

compliance with mandatory and jurisdictional requirements.[4] To reiterate, the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise.[5]

In view of the foregoing, the Court finds no reason to reverse the dismissal of the petition for review.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Of the Resolution dated 2 May 2019)** is **DENIED** for lack of merit.

SO ORDERED.

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(Took no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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4 *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 173241, March 25, 2015.

5 *Hedcor Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207575, July 15, 2015.