**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***First Division***

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| **LAPANDAY FOODS CORPORATION,** | **CTA Case No. 10122** |
| *Petitioner,* | Members: |
| *-versus-* | **DEL ROSARIO,** *P.J., Chairperson,* *and* **MANAHAN,** *J.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: OCT 14 2020 9:19 am |

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# RESOLUTION

This resolves petitioner's **Motion for Reconsideration (Of the Resolution dated 21 February 2020)**[1] filed on March 13, 2020 through registered mail and received by this Court on June 2, 2020, praying that this Court's Resolution dated February 21, 2020 be reversed and set aside and that a new resolution be issued giving due course to petitioner's petition.

Petitioner posits the following arguments:

1. that the 120-day period from submission of complete documents to file the judicial claim has not begun;

2. that the 120+30-day period as upheld in various Supreme Court decisions does not apply in cases where the CIR issues a decision on the VAT refund after the 120-day period;

3. that Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended, allows taxpayers to appeal respondent's decision denying their claim for refund/tax credit;

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[1] Docket, CTA Case No. 10122, pp. 482.

4. that the 120+30-day period under Section 112(C) is a claim-processing rule which does not restrict the jurisdiction of this Court; and

5. that respondent is deemed estopped from claiming prescription considering that it acted on petitioner's claim despite lapse of the 120-day period.

On the other hand, respondent, in his **Comment/ Opposition Re: Petitioner's Motion for Reconsideration**[2], argues that this Court properly dismissed the instant case due to lack of jurisdiction.

As to petitioner's first argument, it submits that the 120-day period did not commence at the time it filed its administrative claim for refund.

Petitioner should be aware that prior to June 11, 2014, the issuance date of Revenue Memorandum Circular (RMC) No. 54-2014[3], the prevailing rules and regulations on the application for value-added tax (VAT) refund was RMC No. 49-2003 wherein the applicant for VAT refund or credit is given a thirty (30)-day period within which to submit the documentary requirements sufficient to support such claim, and upon submission thereof within the said 30-day period, the 120-day period under Section 112(C) of the 1997 NIRC, as amended, shall start to run. In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[4], such codal provision was re-affirmed and extrapolated, to wit:

> "To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, **a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund**. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the

[2] Docket, CTA Case No. 9985, pp. 472-476.
[3] Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.
[4] G.R. No. 207112, December 08, 2015.

> 120-day period allowed to the CIR begins to run from the date of filing.
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> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.
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> It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*, such as the claim at bench." (*Emphasis supplied*)

In the earlier case of *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[5], the Supreme Court ruled:

> "A final note, the taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. **The CIR's inaction is the decision itself. It is already a denial of the refund claim.** Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period." (*Emphasis supplied*)

Thus, any judicial claim filed beyond the 30-day period from the lapse of the 120-day period without any action from respondent falls outside the jurisdiction of this Court as held in the later case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[6], to wit:

> "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**." (*Emphasis supplied*)

The factual antecedents of this case in the assailed Resolution reveal that petitioner's administrative claims for VAT refund for its 2nd and 3rd quarters of taxable year (TY) 2006 and 4th quarter of TY 2006 were filed on April 28, 2008 and July 11, 2008, respectively.

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[5] G.R. No. 168950, January 14, 2015.
[6] G.R. No. 182737, March 02, 2016.

Further, petitioner did not allege any other dates as to when it filed its supporting documents, hence, the reckoning date for the start of the running of the 120-day period are April 28, 2006 for the 2nd and 3rd quarters of TY 2006 and July 11, 2008 for the 4th quarter of TY 2006.

Counting the 120-day period from the said dates, the last days for such period were August 26, 2008 for the 2nd and 3rd quarters of TY 2006 and November 8, 2008 for the 4th quarter of TY 2006, as cited in the assailed Resolution.

Thus, petitioner had thirty (30) days from the abovementioned expiry dates, or until September 25, 2008 for the 2nd and 3rd quarters of TY 2006 and December 8, 2008 for the 4th quarter of TY 2006, to file its judicial claims for refund. However, petitioner only filed its judicial claim for refund for all said quarters on July 19, 2018 which is after the lapse of the said dates. Hence, the judicial claim was filed out of time and therefore, outside the jurisdiction of this Court.

As to the second argument pertaining to the applicability of the cases on the mandatory and jurisdictional 120+30-day period cited in the assailed Resolution, it pointed out that, unlike the factual antecedents of said cases, the instant case is not one of premature filing.

We reiterate our disquisitions as to the summary of rules laid down by the Supreme Court in cases of claim for refund as cited in the assailed Resolution, to wit:

> "In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[7] (*Mindanao II case*), the Supreme Court provides a summary of rules on prescriptive periods for claiming refunds or credit of input VAT, to wit:
>
> **SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT**
>
> The lessons of this case may be summed up as follows:
>
> ***A. Two-Year Prescriptive Period***
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> 1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)

[7] G.R. No. 191498, January 15, 2014.

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)

3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008**. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

***B. 120+30 Day Period***

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (San Roque)

As shown above, the only exception to the doctrine of 120+30-day period is when the claim for refund or credit of input VAT was filed between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force.

Although the instant case is within the period covered by the aforesaid ruling, the period for the submission of the complete documents to support the applications or claims for refund is not an issue in the instant case, hence, the application of the exception is not relevant."

Based on the aforequoted summary of rules on the application of 120+30-day prescriptive period, unlike the case of premature filing which is relative in nature, the late filing of judicial claims for refund beyond the 30-day period after the lapse of the 120-day period is **absolutely prohibited** even during the period of exception.

It means that, notwithstanding any action from the respondent after or beyond the lapse of 120-day period, the claimant should file the judicial claim for refund within the 30-day period after the lapse of said 120-day period.

Thus, such rules apply in the instant case where the filing of the judicial claim for refund was way beyond the 120+30-day prescriptive period.

As to the third argument that Section 112(C) of the 1997 NIRC, as amended, also applies to the processing of the claims for refund and that the ruling in the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[8], can be applied in this case, we reiterate our ruling in the assailed Resolution to wit:

> "Likewise, petitioner is totally mistaken in relying on the *Lascona case* wherein the ruling was based on Section 228 of the 1997 NIRC, as amended, and the issue pertains to a tax assessment and not an input VAT refund or credit claim.
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> In Section 228, the provision for the 30-day period to appeal is worded as "the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days **from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period**." The option given to the taxpayer is to file an appeal either from the lapse of the 180-day period or from the date of the receipt of the decision, which may occur during or after the 180-day period when the respondent may take action on taxpayer's protest on a particular tax assessment.
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> Further, in *Lascona* case, one of the bases of such ruling is Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) which provides:
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>> **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>>
>> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>>
>> (1) xxx xxx
>>
>> (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

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[8] G.R. No. 171251, March 05, 2012.

> Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; (*Underscore ours*)

> **Unlike such provision wherein the taxpayer can wait for the decision of the respondent on disputed assessment, the RRCTA did not provide for an equivalent provision for claims of refund/credit particularly on input VAT**. Hence, *Lascona* is not applicable in this case." (*Additional boldfacing supplied*)

As to petitioner's fourth argument that the 120+30-day period under Section 112(C) of 1997 NIRC, as amended, is a claim-processing rule which does not restrict the jurisdiction of this Court, petitioner should be aware that although Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, provides the subject matters which are within the jurisdiction of this Court, there are other factors that determine the exercise of the court's jurisdiction in said cases.

One of such factors is prescription of action which precludes the courts from acquiring jurisdiction over the cases brought before it.

Thus, when petitioner filed its petition for review after receipt of respondent's denial letter beyond the 120+30-day prescriptive period, this Court is devoid of any jurisdiction to hear the case.

Finally, as to petitioner's argument that respondent was already estopped from raising the defense of prescription since it continued to act on its claim for refund despite the lapse of the 120+30-day period, petitioner is totally mistaken. The lapse of the 120+30-day period has rendered all actions of either petitioner or respondent moot and academic, hence, without binding effect.

There being no other new issues or matters raised by the petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed Resolution.

**WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration (Of the Resolution dated 21 February 2020)* is hereby **DENIED**. Accordingly, the assailed Resolution dated February 21, 2020 is **AFFIRMED**.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**CATHERINE T. MANAHAN**
Associate Justice