REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEDCOR, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8967

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
OCT 12 2017 8:49 Am

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RESOLUTION

CASANOVA, *J.*:

For the Court's resolution is petitioner's **Motion for Reconsideration**, filed through registered mail, on June 23, 2017 and received by the Court on June 30, 2017, with respondent's **Opposition (Re: Motion for Partial Reconsideration)**, filed on July 21, 2017.

Petitioner moves for the reconsideration of the Decision promulgated on June 7, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

In essence, petitioner asserts that its case is beyond the application of the 120+30-day period rule. It argues that the issuance of respondent's Denial Letter dated December 1, 2014, which was received by petitioner on December 11, 2014, places the case outside those that are classified as "deemed denied" due to "inaction". The applicable rule, therefore, is that petitioner has thirty (30) days from its receipt of respondent's denial, within which to file its judicial claim, which it was able to do.

Respondent, on the other hand, claims that the Court correctly ruled that it has no jurisdiction over the Petition for Review for the same was filed out of time.

Petitioner's motion lacks merit.

It is worthy to note that upon the lapse of the 120-day period, the only remedy available to petitioner is to file a Petition for Review to the Court within thirty (30) days from said period.

In the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[1], the Supreme Court laid down the summary of rules on prescriptive periods for claiming refund or credit of input VAT, as follows:

> "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***
>
> > 1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)
> >
> > 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

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

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*)" (*Emphasis supplied*)

In the case of *Commissioner of Internal Revenue vs. Dash Engineering Philippines, Inc.*,[2] the Supreme Court ruled that:

"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:

xxx 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

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

> 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. xxx"

Clearly, respondent is given a period of 120 days from submission of complete documents, in support of its administrative claim, within which to act on claims for refund or issuance of tax credit certificate. In this regard, petitioner can file an appeal in one of two (2) ways: (1) file the judicial claim within thirty (30) days after the respondent denies the claim **within the 120-day period**, or (2) file the judicial claim within thirty (30) days from the expiration of the 120-day period **if the respondent does not act within the 120-day period**. Corollary thereto, the 'decision' contemplated by Section 112 is a decision issued by the respondent before the lapse of the 120-day period within which the latter may act on petitioner's claim. The inaction of the respondent on petitioner's claim during the 120-day period is, by express provision of law, 'deemed a denial' of the latter's claim. Petitioner had, therefore, thirty (30) days from the expiration of the 120-day period to file its judicial claim with the Court.

Thus, it has been held by the Court in the assailed Decision that when the 120-day period lapses and there is inaction on the part of the CIR, the taxpayer may no longer wait for the CIR to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already deemed a denial of the refund claim. The taxpayer must, therefore, file an appeal within thirty (30) days from the lapse of the 120-day waiting period.

Counting from May 15, 2013, July 31, 2013, January 30, 2014 and March 8, 2014, the end of the 120-day waiting period for petitioner's claims covering the first, second, third and fourth quarters of 2011, it had thirty (30) days or until June 14, 2013, August 30, 2013, March 1, 2014 and April 7, 2014, respectively, to file its Petition for Review before the Court.[3] Consequently, the Petition for Review filed only on January 9, 2015 was way beyond the thirty (30)-day prescriptive period.

It bears stressing 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.[4]

To reiterate, the 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the CIR is both mandatory and jurisdictional, and noncompliance therewith precludes the CTA from acquiring jurisdiction over the case.

Accordingly, the Court finds no compelling reason to justify the reversal of the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

CATHERINE T. MANAHAN
Associate Justice

[3] Decision dated June 7, 2017, Docket (Vol. II), p. 21.
[4] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, *Taganito Mining Corporation vs. CIR*, G.R. No. 196113, and *Philex Mining Corporation vs. CIR*, G.R. No. 197156, February 12, 2013.