

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

**NORTHWIND POWER
DEVELOPMENT CORPORATION,**

CTA Case No. 9202

Petitioners, Members:

-versus-

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

**COMMISSIONER OF INTERNAL
REVENUE,** Promulgated:

Respondent. — FFR 11 2019 — 4:02 pm 

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R E S O L U T I O N

MANAHAN, J.:

To be resolved is petitioner's **Motion for Reconsideration**¹ filed on January 4, 2019 which prays that this Court reconsiders its *Decision* dated December 18, 2018 and to order instead, the respondent to refund or issue a tax credit certificate in the amount of ₱584,453.93. The dispositive portion of the assailed decision reads as follows:

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.

SO ORDERED.

Petitioner argues that Revenue Memorandum Circular (RMC) No. 54-2014 as well as the cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*² and *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*³ as cited in the assailed decision are inapplicable in the instant case.

¹ Docket, CTA Case No. 9202, Vol. II, pp. 744-753.

² G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

³ G.R. Nos. 193301 and 194637, March 11, 2013. 

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Petitioner insists that it is entitled to its claim for refund of input value-added tax (VAT) paid or incurred in relation to or attributable to its zero-rated sales of electricity generated through renewable sources of energy.

On the other hand, respondent argues⁴ that it is a settled rule that the filing of judicial claims must be made within thirty (30) days from receipt of his decision or from the lapse of the 120-day period provided under Section 112(C) of the 1997 National Internal Revenue Code of the Philippines (NIRC), as amended citing the case of *Hedcor Sibulan v. Commissioner of Internal Revenue*⁵.

We deny said motion.

Although the issue on jurisdiction was thoroughly discussed in the assailed decision, we shall emphasize the applicability of the *San Roque* and *Mindanao* case cited in the assailed decision which ruled that the 120+30-day period is mandatory and jurisdictional.

The records of this case reveal that petitioner filed its administrative claim for refund in the Bureau of Internal Revenue (BIR) of its alleged unutilized input VAT for the first quarter of taxable year 2011 on March 25, 2013.

On October 15, 2015, petitioner received a letter from the BIR denying its claim for refund, hence, it filed its judicial claim on November 16, 2015.

Section 112(C) of the 1997 NIRC, as amended, provides that:

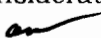
“SEC. 112. Refunds or Tax Credits of Input Tax. -

(A) xxx xxx xxx

(B) 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 submission of complete documents in

⁴ Docket, Opposition (Re: Motion for Reconsideration), pp. 756-765.

⁵ CTA Case No. 9080, February 20, 2018. 

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support of the application filed in accordance with Subsections (A) hereof.

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.” (*Underline and emphasis supplied*)

The above-mentioned provision had envisioned three (3) possible results that a taxpayer may expect from the respondent on the filing of a claim for refund or request for the issuance of tax credit certificate, namely: (1) the claim or request will be granted; (2) the claim or request will be denied; or (3) the 120-day period had lapsed without any action on the part of respondent.

As to the third result, Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282, and implemented by Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides, to wit:

Sec. 7. Jurisdiction. - The CTA shall exercise:

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

1. xxx 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 relations 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*)

Based on the aforequoted provision, the inaction of respondent is deemed a denial, hence, constitutes an appealable decision. 

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The law is absolute that in all such instances the appeal to this Court should be made within 30 days and this rule is affirmed by the Supreme Court in the *San Roque* case and *Mindanao* case as cited in the assailed decision and in the subsequent cases decided by the high court.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*⁶, the Supreme Court ruled that the 30-day period to appeal is mandatory and jurisdictional, to wit:

As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. The only exception to the general rule is when BIR Ruling No. DA-489-03 was still in force, that is, between 10 December 2003 and 5 October 2010, The BIR Ruling excused premature filing, declaring that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. In *San Roque*, the High Court explained both the general rule and the exception:

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.** (Emphases supplied)

In the recent case of *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*⁷, the high court reiterated said ruling and the remedy available to a taxpayer upon the expiration of the 120-day period, to wit:

In order for the CTA to acquire jurisdiction over a judicial claim for refund or tax credit arising from unutilized input VAT, the said claim must first comply with the mandatory 120+30-day waiting period. Any judicial claim for refund or tax credit filed in contravention of said period is rendered premature, depriving the CTA of jurisdiction to act on it.

⁶ G.R. No. 168950, January 14, 2015.

⁷ G.R. Nos. 201225-26, 201132, and 201133, April 18, 2018. 

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Pursuant to Section 112, Subsections (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, the procedure to be followed in claiming a refund or tax credit of unutilized input VAT are as follows:

xxx

xxx

xxx

It is clear from the above-quoted provisions that any taxpayer seeking a refund or tax credit arising from unutilized input VAT from zero-rated or effectively zero-rated sales should first file an initial administrative claim with the BIR. This claim for refund or tax credit must be filed within two years after the close of the taxable quarter when the sales were made.

The CIR is then given a period of 120-days from the submission of complete documents in support of the application to either grant or deny the claim. If the claim is denied by the CIR or the latter has not acted on it within the 120-day period, the taxpayer-claimant is then given a period of 30 days to file a judicial claim via petition for review with the CTA.

As such, **the law provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim.** It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT. **Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.** (*Emphasis supplied*)

The above-mentioned jurisprudence also provides when the 120-day period will not be applicable but it refers only to the early filing of an appeal before this Court and not to late filing which petitioner did as revealed by the facts and circumstances of the instant case.

It may be recalled, as cited in the assailed decision, that from the time of its filing of the administrative claim for refund on March 25, 2013 in the BIR, respondent had to act on said claim until July 23, 2013 but no action was made, not until October 15, 2015 when petitioner received a letter from the BIR denying its claim for refund. Thus, petitioner had only 30 days from July 23, 2015 to elevate its appeal to this Court or until August 22, 2013.

However, petitioner only filed its petition for review on November 16, 2015 which was beyond the prescribed period, 

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hence, rendering such petition beyond the jurisdiction of this Court for being filed out of time.

Petitioner insists that the instant case is not a case of respondent's inaction but as a result of the latter's decision, hence, the filing on November 16, 2015 was valid and this Court acquired jurisdiction on the case.

Petitioner may have relied on the rules under Section 228 of the 1997 NIRC, as amended, which was used in the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*⁸ which ruled that a taxpayer has two options, either to file a petition for review with the CTA within 30 days after the expiration of the 180-day period or **await the final decision of the Commissioner** on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision.

Such reliance is totally misplaced. First, the *Lascona case* involves disputed assessment and not a claim for refund. Second, as ruled in the said decision, the legal basis for the filing of such petition in this Court is under Section 3(a)(2), Rule 4 of the RRCTA which provides that:

"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 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 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

⁸ G.R. No. 171251, March 05, 2012. 

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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;”

The above-mentioned rule has no equivalent provision for refund cases. Thus, the option of awaiting respondent’s decision does not apply in the instant case.

Further, petitioner should be aware that the *San Roque case* and *Mindanao case* are decisions of the Supreme Court and this Court is mandated to take cognizance of such as ruled in the case of *The Heirs of Felicidad Canque v. Court of Appeals et al.*,⁹ to wit:

Clearly, the Court of Appeals committed a reversible error because it palpably failed to consider in its August 25, 1994 Decision the aforementioned ruling of the Supreme Court promulgated twenty months earlier on January 27, 1993. Unfortunately, this is not the first time for this Court to come upon such a slip. *Peltan Development vs. Court of Appeals* ruled that **every court must take cognizance of decisions this Court has rendered because they are proper subjects of mandatory judicial notice xxx [and] more importantly form part of the legal system.** We stress that **members of the bench have a responsibility to know and to apply the latest holdings of the Supreme Court.** The nature of their calling requires no less. (*Emphasis supplied*)

Such duty to follow the legal doctrine enunciated by the Supreme Court is not only pursuant to the doctrine of judicial notice but because it is the only institution which the courts should follow as pronounced in the case of *Manila Electric Company v. Philippine Consumers Foundation, Inc. et al.*,¹⁰ to wit:

⁹ G.R. No. 119184, July 21, 1997.

¹⁰ G.R. No. 101783, January 23, 2002. 

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A lower court cannot reverse or set aside decisions or orders of a superior court, especially of this Court, for to do so will negate the principle of hierarchy of courts and nullify the essence of review. A final judgment, albeit erroneous, is binding on the whole world. Thus, it is the duty of the lower courts to obey the Decisions of this Court and render obeisance to its status as the apex of the hierarchy of courts. "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." **"There is only one Supreme Court from whose decisions all other courts should take their bearings,"** as eloquently declared by Justice J. B. L. Reyes. (*Emphasis supplied*)

Further, it is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of *stare decisis* as amply explained in the case of *Amelia D. De Mesa et al. v. Pepsi Cola Products, Inc. et al.*,¹¹ to wit:

The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:

ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.** (*emphasis supplied*)

As to the issue of applicability of RMC No. 54-2014, such circular merely clarifies the rationale and disquisitions made by the Supreme Court in the *San Roque case* and *Mindanao case*. Hence, it is applicable in the instant case

This Court will not anymore rule on the other issues raised by the petitioner considering that it has no jurisdiction in the instant case.

¹¹ G.R. Nos. 153063-70, August 19, 2005. 

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WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit and the assailed DECISION is hereby **AFFIRMED**.

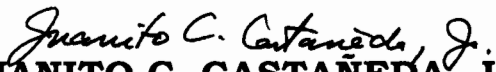
SO ORDERED.



CATHERINE T. MANAHAN

Associate Justice

I CONCUR:



JUANITO C. CASTAÑEDA, JR.

Associate Justice