

SECOND DIVISION

G.R. No. 258791 – TAIHEI ALLTECH CONSTRUCTION (PHIL.) INC.,
Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

Promulgated:

DEC 07 2022 

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SEPARATE CONCURRING OPINION

LEONEN, J.:

I concur, but I further clarify my position.

The Petition before this Court assails the Court of Tax Appeals' denial of the appeal on tax refund claims filed by Taihei Alltech Construction (Phil.), Inc. (Taihei) for being beyond the mandatory period under the law.

Taihei, on September 30, 2013¹ and December 23, 2013,² had originally filed administrative claims for tax credit of the unutilized input value-added tax (VAT) on local purchases of goods and services attributable to zero-rated sales for the third and fourth quarters of 2011. Almost six years later, on June 10, 2019, the commissioner of internal revenue denied Taihei's claims.³

Believing that it still had 30 days from receipt of this letter, Taihei filed a Petition for Review⁴ before the Court of Tax Appeals on July 10, 2019.⁵

In a February 3, 2020 Resolution,⁶ the Court of Tax Appeals Second Division denied Taihei's Petition because it was filed beyond the 30-day period under Section 112(C) of the Tax Code, as amended.⁷ It explained that the 30-day period should be reckoned from Taihei's receipt of the commissioner's denial or from the time the 120-day period to decide on the administrative claim expired, whichever is sooner.⁸ Once 120 days have

¹ *Rollo*, p. 58.

² *Id.*

³ *Id.* at 70.

⁴ *Id.* at 66–87.

⁵ *Id.* at 86.

⁶ *Id.* at 185–190. The Resolution was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Cielito N. Mindaro-Grulla and Jean Marie A. Bacorro-Villena of the Second Division, Court of Tax Appeals, Quezon City.

⁷ *Id.* at 184–190, 208–215.

⁸ *Id.* at 188.



lapsed, a taxpayer must no longer wait for the commissioner to issue a decision before it files a judicial claim with the Court of Tax Appeals.⁹

The Second Division said that since Taihei filed its administrative claims on September 30, 2013 and December 23, 2013, the commissioner had until January 28 and April 22, 2014 to decide on those claims;¹⁰ since this did not happen, Taihei should have elevated the case by February 27 and May 22, 2014.¹¹ Filing on July 10, 2019 was belated, the Second Division said, which meant that it had no jurisdiction over the case.¹²

The dispositive portion of the February 3, 2020 Resolution reads:

WHEREFORE, finding that the instant petition was not timely filed and therefore, the Court has no jurisdiction over the same, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court is GRANTED. Accordingly, the instant case is DISMISSED.

SO ORDERED.¹³

Taihei filed a Motion for Reconsideration,¹⁴ arguing that Revenue Memorandum Circular No. 54-2014 was given retroactive application and all then-pending applications for tax credit and refund—including those of Taihei—were deemed denied.¹⁵ However, its claims were allegedly revived when the commissioner issued Revenue Regulations No. 1-2017, giving Taihei a *new* opportunity to pursue its claims for tax credit.¹⁶

In its July 14, 2020 Resolution,¹⁷ the Court of Tax Appeals Second Division denied Taihei's Motion for lack of merit.¹⁸

Thus, Taihei filed a Petition for Review before the Court of Tax Appeals *En Banc*,¹⁹ stating that under Revenue Memorandum Circular No. 29-2009, the 120-day period is suspended in case a question of law arises when a tax credit claim is reviewed, which, in this case, arose with the issuance of Revenue Memorandum Circular No. 54-2014 and Revenue Regulations No. 1-2017.²⁰

⁹ *Id.*

¹⁰ *Id.* at 188.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 189.

¹⁴ *Id.* at 191–199.

¹⁵ *Id.* at 213.

¹⁶ *Id.* at 70

¹⁷ *Id.* at 208–214. The Resolution was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justice Jean Marie A. Bacorro-Villena of the Second Division, Court of Tax Appeals, Quezon City.

¹⁸ *Id.* at 214.

¹⁹ *Id.* at 53.

²⁰ *Id.* at 226–227.

Taihei then insisted that Revenue Memorandum Circular No. 54-2014 should not have retroactively applied to its claims, resulting in their denial. In any case, it said that under Revenue Regulations No. 1-2017, its claims were reprocessed and effectively revived.²¹ As such, its only remedy pursuant to Revenue Regulations No. 1-2017 was to appeal the denial of its administrative claims within 30 days from receipt of said denial; the 30-day period to elevate an administrative claim for tax credit that was unacted under Section 112(C) of the Tax Code, as amended, is not applicable.²² It added that Revenue Regulations No. 1-2017 creates an exception to the strict application of the 120-day and 30-day jurisdictional requirement under Section 112 of the Tax Code.²³

In its July 19, 2021 Decision,²⁴ the Court of Tax Appeals *En Banc* affirmed the Second Division's rulings. It agreed that when the 120-day period lapsed with no action by the commissioner—this inaction being deemed a denial—Taihei should have filed its judicial claims within 30 days, and its failure to do so made the denial final.²⁵ It also rejected Taihei's assertion that Revenue Regulations No. 1-2017 created an exception to the mandatory and jurisdictional periods under Section 112 of the Tax Code, this being an administrative regulation that cannot override, supplant, or modify the law it seeks to implement.²⁶ The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is DENIED for lack of merit. The Resolutions dated February 3, 2020 and July 14, 2020, both rendered by the Court in Division, are hereby AFFIRMED.

SO ORDERED.²⁷

In a February 3, 2022 Resolution,²⁸ the Court of Tax Appeals *En Banc* denied Taihei's Motion for Reconsideration for lack of merit.²⁹

²¹ *Id.* at 228–229.

²² *Id.*

²³ *Id.* at 234.

²⁴ *Id.* at 51–63. The Decision was penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro of the Court of Tax Appeals *En Banc*, Quezon City.

²⁵ *Id.* at 57–58.

²⁶ *Id.* at 62.

²⁷ *Id.* at 62–63.

²⁸ *Id.* at 65–67. The Decision was penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo, Lanee S. Cui-David of the Court of Tax Appeals *En Banc*, Quezon City.

²⁹ *Id.* at 67.

Undeterred, Taihei filed a Petition for Review³⁰ before this Court. It reiterates its claim that the issuance of Revenue Regulations No. 1-2017 and Revenue Memorandum Circular No. 54-2014 raised a question of law that effectively suspended the 120-day reglementary period under the prevailing Revenue Memorandum Circular No. 29-2009³¹ and Section 112(C) of the Tax Code, as amended.³²

For this Court's resolution is the issue of whether the Court of Tax Appeals has jurisdiction over Taihei's claims for tax credit. This issue entails an application on the law providing the period for filing judicial claims for unutilized excess value-added tax credit.

In affirming the Court of Tax Appeals *En Banc*'s rulings, the *ponencia* stated that the *post facto* denial of petitioner's administrative claims is irrelevant as the commissioner's inaction for 120 days is deemed a denial of its claims.³³ I agree.

A claim for refund is a form of tax exemption.³⁴ It cannot be allowed, unless it is granted in the most explicit language of the law.³⁵ A taxpayer must show that the Legislature intended to exempt them from the tax by words too plain to be mistaken.³⁶

Because of this, a claim for refund is construed strictly against the taxpayer.³⁷ For it to prosper, a taxpayer must comply with both the prescriptive periods and substantive requirements set by law.³⁸

Indeed, when petitioner filed its administrative claims, the applicable laws remained the 1997 Tax Code, before its amendment under Republic Act Nos. 10963 and 1125, as amended by Republic Act Nos. 9282 and 9503.

Section 112(C) of the 1997 Tax Code explicitly provides the period within which a judicial claim for tax refund or credit of input taxes must be made:

SECTION 112. Refunds or Tax Credits of Input Tax. —

³⁰ *Id.* at 16–49.

³¹ *Id.* at 29.

³² *Id.* at 27.

³³ *Ponencia*, p. 19.

³⁴ *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 342 (2005) [Per J. Panganiban, Third Division].

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Team Energy Corporation v. Commissioner of Internal Revenue*, 828 Phil. 85 (2018) [Per J. Leonen, Third Division].

³⁸ *Id.*

- (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 support of the application filed in accordance with Subsections (A) and (B) 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.

Additionally, Section 7(a) of Republic Act No. 1125, or An Act Creating the Court of Tax Appeals, as amended by Republic Act No. 9282, provides that the Court of Tax Appeals has exclusive appellate jurisdiction over decisions of, or inaction by, the commissioner of internal revenue in cases involving disputed assessments or refund of internal revenue taxes. Its pertinent portions read:

SECTION 7. Jurisdiction. — The [Court of Tax Appeals] shall exercise:

- (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
- (1) Decisions of 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;
 - (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 provides a specific period for action, in which case the inaction shall be deemed a denial[.]* (Emphasis and underscoring supplied)

In this relation, Section 11 of Republic Act No. 1125, as amended, states in part:

SECTION 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary

of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the [Court of Tax Appeals] within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Under these provisions, a taxpayer may resort to judicial action: (a) after a denial by the commissioner of internal revenue; or (b) after 120 days have lapsed from the date of submission of complete documents in support of the administrative claim for tax refund or credit, whichever is sooner.³⁹

In this regard, under Section 112(D) of the 1997 Tax Code, the commissioner, within 120 days, shall act on the administrative claim by either: (a) granting a refund or issuing the tax credit certificate for creditable input taxes; or (b) fully or partially denying the claim.

Any claim that the commissioner does not act on after the 120-day period shall be deemed a denial. This inaction may be appealed to the Court of Tax Appeals within 30 days from the lapse of the 120-day period.⁴⁰ Any premature or belated claim falls outside the jurisdiction of the Court of Tax Appeals.⁴¹

Here, petitioner timely filed on September 30 and December 23, 2013 its administrative claims for refund for the third and fourth quarters of 2011.⁴² The only issue is if it timely filed its judicial claims, following the commissioner's inaction on its administrative claims.

Here, as noted by the Court of Tax Appeals, the commissioner had 120 days from September 30 and December 23, 2013, or until January 28 and April 22, 2014, respectively, to act on petitioner's administrative claims.⁴³ The commissioner's failure to act on the claims within the 120-day period is deemed a denial on petitioner's application.⁴⁴

In reckoning the 30-day period when an aggrieved taxpayer may appeal to the Court of Appeals, the law is clear that the commissioner's inaction within the lapse of the 120-day period is deemed a denial. A letter of denial

³⁹ See *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, 727 Phil. 487, 499 - 500 (2014) [Per J. Villarama, Jr., First Division].

⁴⁰ Republic Act No. 1125 (1954), as amended by Republic Act No. 9282 (2004), sec. 7(a).

⁴¹ See *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, 727 Phil. 487 (2014) [Per J. Villarama, Jr., First Division].

⁴² See TAX CODE, sec. 112(A), which provides, in part:

SECTION 112. Refunds or Tax Credits of Input Tax. —

(A) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax[.]

⁴³ *Rollo*, p. 55.

⁴⁴ *Ponencia*, p. 19.

from the commissioner *after* the 120-day period had lapsed does *not* constitute the denial of administrative claims under Section 112(D) of the 1997 Tax Code because the commissioner should have acted on petitioner's claims *within* the 120-day period, either by granting or denying—whether fully or partially—its claims. Thus, I agree with the *ponencia* that the *post facto* denial of petitioner's administrative claims is irrelevant.

Consequently, petitioner should have appealed the “denial” of its administrative claims within 30 days from January 28 and April 22, 2014, respectively—that is, by February 27 and May 22, 2014, respectively. By the time petitioner filed its judicial claims before the Court of Tax Appeals on July 19, 2019, the 30-day period had lapsed, and it had already forgone its remaining remedy.⁴⁵

As the *ponencia* has summarized,⁴⁶ the relevant periods of petitioner's administrative and judicial claims for refund are as follows:

2011	Administrative Claims Filed	End of 120-day Period	End of 30-day Period	Judicial Claims Filed	No. of Days Late
3 rd	September 30, 2013	January 28, 2014	February 27, 2014	July 10, 2019	1,989 days
4 th	December 23, 2013	April 22, 2014	May 22, 2014	July 10, 2019	1,905 days

As I have stated in my dissent in *Commissioner of Internal Revenue v. San Roque Power Corporation*,⁴⁷ the 120+30-day period provided under Section 112(D) of the Tax Code is mandatory and jurisdictional.⁴⁸ A taxpayer's failure to elevate their claim to the Court of Tax Appeals within 30 days from the lapse of the 120-day period will bar any subsequent judicial claim as the Court of Tax Appeals cannot acquire jurisdiction over it.⁴⁹

This Court cannot disregard jurisdictional conditions mandated by law even when the commissioner denied the claim citing the wrong legal bases.

In their Letter of Denial, the Commissioner of Internal Revenue stated that petitioner's administrative claims were “deemed denied as a result of the retroactive application of [Revenue Memorandum Circular] No. 54-2014” and that claims prior to its issuance will be processed administratively, as per

⁴⁵ *Id.* at 22.

⁴⁶ *Id.* at 19.

⁴⁷ 703 Phil. 310 (2013) [Per J. Carpio, *En Banc*].

⁴⁸ See also *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue*, 750 Phil. 624 (2015) [Per J. Sereno, First Division].

⁴⁹ See *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, 727 Phil. 487 (2014) [Per J. Villarama, Jr., First Division].

Revenue Regulations No. 1-2017.⁵⁰ The commissioner appears to have based its authority on these issuances to continue processing the administrative claims and issue the Letter of Denial, which became petitioner's basis to argue that it still had 30 days from this denial to file its judicial claims.

The commissioner's power to interpret the provisions of the Tax Code and other tax laws is incontrovertible.⁵¹ However, administrative rules and regulations issued by the commissioner, such as revenue memorandum circulars⁵² and revenue regulations,⁵³ are intended to carry out, not supplant or modify, the law.⁵⁴ These issuances must remain consistent with the law they seek to apply and implement.⁵⁵ Administrative acts and regulations shall be valid only when they are not contrary to law.⁵⁶

Again, petitioner's administrative claims have already been deemed denied when the commissioner failed to act on these claims within the 120-day period. Petitioner's eventual failure to elevate the denial within 30 days from the lapse of 120 days rendered this denial final and unappealable. The Letter of Denial has, therefore, become immaterial.

Notably, Revenue Memorandum Circular No. 54-2014 was promulgated on June 17, 2014, almost a month after the denial became final and unappealable; Revenue Regulations No. 1-2017 was promulgated more than two years after, on January 18, 2017. These issuances, therefore, are totally inapplicable to petitioner's administrative claims.

The commissioner's power to interpret Section 112 of the Tax Code does not include the power to suspend or amend the mandatory and jurisdictional periods to appeal.⁵⁷ Thus, I agree with the *ponencia* that the commissioner could not effectively revive petitioner's denied claims⁵⁸ under the auspices of the administrative regulations it cited.

As in my dissent in *San Roque*,^{*} taxpayers cannot rely in good faith on administrative interpretations that clearly contravene the law they seek to implement. No rights can be vested by an administrative official's erroneous construction of the law, and the government is not estopped to correct an

⁵⁰ *Rollo*, p. 97.

⁵¹ TAX CODE, sec. 4.

⁵² *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 928-929 (1999) [Per J. Quisumbing, Second Division].

⁵³ TAX CODE, sec. 4.

⁵⁴ *Commissioner of Internal Revenue v. Court of Appeals*, 310 Phil. 392 (1995) [Per J. Vitug, Third Division].

⁵⁵ *Id.*

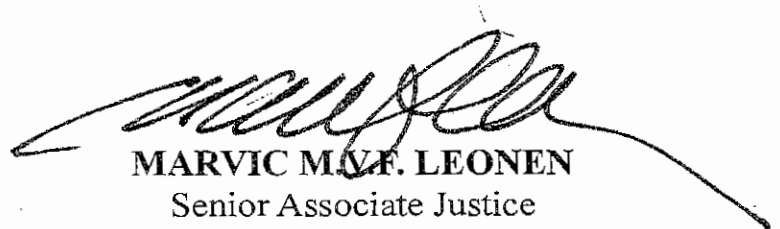
⁵⁶ CIVIL CODE, art. 7.

⁵⁷ TAX CODE, sec. 4.

⁵⁸ *Ponencia*, p. 22.

administrative official's mistake.⁵⁹ Thus, petitioner's arguments that its administrative claims were deemed denied pursuant to Revenue Memorandum Circular No. 54-2014; that Revenue Regulations No. 1-2017 revived its claims; and that it still could appeal its administrative claims pursuant to Revenue Regulations No. 1-2017, are legally untenable.

ACCORDINGLY, I vote that the Petition be **DENIED**.



MARVIC M.V.F. LEONEN
Senior Associate Justice

⁵⁹ *Commissioner of Internal Revenue v. Visayas Geothermal Power Co., Inc.*, 720 Phil. 710 (2013) [Per J. Mendoza, Third Division].