REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

HEDCOR SIBULAN INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9080

Members:

DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

FEB 20 2018 3:00pm

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DECISION

UY, J.:

Before this Court is a *Petition for Review*[1] filed by Hedcor Sibulan Inc., against the Commissioner of Internal Revenue on June 30, 2015, seeking the refund or the issuance of tax credit certificate (TCC) in the amount of ₱30,969,782.94, allegedly representing its excess and unutilized input value-added tax (VAT) on domestic purchases of goods and services, importation of goods, purchases of capital goods, and creditable input VAT, all of which are attributable to its zero-rated sales of generated hydro power for taxable year (TY) 2012.

THE FACTS

Petitioner is a domestic corporation duly organized and existing in accordance with the laws of the Republic of the Philippines, with address at Darong, Sta. Cruz, Davao del Sur.[2] It is registered with

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[1] Docket – Vol. I, pp. 10 to 49.
[2] Par. 1, Joint Stipulation of Facts (JSF), Docket – Vol. I, p. 524

the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, with Tax Identification Number 005-633-984-VAT.[3]

Petitioner is engaged in the business of owning, developing, constructing, operating, repairing, and maintaining of hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations.[4]

On the other hand, respondent is the duly appointed Chief of the BIR empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds of or issue TCC of input tax due or paid by a VAT-registered person, whose sales are zero-rated or effectively zero-rated, as provided by law.[5]

Petitioner's 42-megawatt (MW) Sibulan Hydro Electric Power Plant, consisting of two (2) independent hydroelectric projects namely, upstream plant A (Plant A) with an installed capacity of about 16 MW and downstream plant B (Plant B) with an installed capacity of about 26 MW, has been duly certified by the Department of Energy (DOE) as consistent with the Power Development Plan of the government.[6] Petitioner is also duly authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity as evidenced by Certificate of Compliance No. 15-05-M-56M[7] issued on May 18, 2015 covering Plant A, and Certificate of Compliance No. 15-05-M-54M issued on May 18, 2015 covering Plant B.[8]

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[3] Par. 6, JSF, Docket – Vol. I, p. 525; Exhibit "P-6", Docket – Vol. II, p. 869.
[4] Exhibit "P-1-a", Docket – Vol. II, p. 744.
[5] Par. 2, JSF, Docket – Vol. I, p. 525.
[6] Par. 4, JSF, Docket – Vol. I, p. 525; Exhibit "P-3", Docket – Vol. II, p. 856.
[7] Exhibit "P-4-a", Docket – Vol. II, p. 857 to 862.
[8] Par. 5, JSF, Docket – Vol. I, p. 525; Exhibit "P-4-b", Docket – Vol. II, pp. 863 to 868.

Petitioner filed with the BIR its Original and Amended Quarterly VAT Returns for the 1st to 4th quarters of TY 2012 on the following dates:

PERIOD	RETURN	DATE OF FILING
1st Quarter - 2012	Original Quarterly VAT Return[9]	April 25, 2012
	Amended Quarterly VAT Return[10]	February 11, 2013
2nd Quarter 2012	Original Quarterly VAT Return [11]	July 20, 2012
	Amended Quarterly VAT Return[12]	February 11, 2013
3rd Quarter 2012	Original Quarterly VAT Return[13]	October 22, 2012
	Amended Quarterly VAT Return[14]	February 11, 2013
4th Quarter 2012	Original Quarterly VAT Return[15]	January 21, 2013
	Amended Quarterly VAT Return[16]	February 11, 2013

On February 4, 2014, petitioner filed with the BIR, Revenue District Office (RDO) No. 115, an administrative claim for refund of its excess and unutilized input VAT for CY 2012 in the amount of ₱30,969,782.94.[17]

On April 3, 2014, OIC Regional Director of BIR Revenue Region No. 19 – Davao City, Glen A. Geraldino, issued a Letter of Authority (LOA) with serial number SN:eLA201000075608 / LOA-115-2014-00000034,[18] authorizing certain revenue officers to examine petitioner's book of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes (miscellaneous taxes) for the period from January 1, 2012 to December 31, 2012.

In reply to the initial audit findings and in relation to its claim for refund or tax credit, petitioner submitted additional documents which were received by the BIR on June 18, 2014.[19]

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[9] Exhibit "P-7-a", Docket – Vol. I, p. 369.
[10] Exhibit "P-7-b", Docket – Vol. I, p. 370.
[11] Exhibit "P-7-c", Docket – Vol. II, p. 872.
[12] Exhibit "P-7-d", Docket – Vol. I, p. 372.
[13] Exhibit "P-7-e", Docket – Vol. II, pp. 874 to 875.
[14] Exhibit "P-7-f", Docket – Vol. I, p. 374.
[15] Exhibit "P-7-g", Docket – Vol. II, p. 877.
[16] Exhibit "P-7-h", Docket – Vol. II, p. 878.
[17] Exhibits "P-9" and "P-9-a", Docket – Vol. I, pp. 378 to 379.
[18] Exhibit "P-11", Docket – Vol. I, p. 381.
[19] Exhibits "P-12" and "P-12-a", Docket – Vol. I, pp. 382 to 384.

On June 17, 2014, the BIR issued Revenue Memorandum Circular (RMC) No. 54-2014 dated June 11, 2014, entitled *"Clarifying Issues Relative to the Application for Value-Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended."*[20]

Following the issuance of RMC No. 54-2014, petitioner wrote a letter to Revenue District Officer Josie Lourdes Tang (RDO Tang) of RDO No. 115 on June 24, 2014, which was received by the BIR on June 26, 2014, to request confirmation on whether RMC No. 54-2014 is applicable to its claim for refund or tax credit for the four (4) quarters of TY 2012 and to request status update on the said claim.[21]

On July 3, 2014 RDO Tang replied to petitioner's letter dated June 24, 2014.[22] In her reply, RDO Tang assured petitioner that its claim for refund has been acted upon and entertained by her office as evidenced by the issuance of the LOA. RDO Tang likewise opined that RMC No. 54-2014 cannot strictly apply since the said RMC was issued only in June 2014 while petitioner's VAT claim was filed in February 4, 2014. Moreover, RDO Tang requested that petitioner submit at the soonest possible time the *Mandatory Requirements for Claims for VAT Refund* provided for in said RMC so that the denial of the claim be prevented.

In compliance with the directive of RDO Tang, petitioner submitted its duly accomplished *Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes* or BIR Form No. 1604-CF on July 9, 2014.[23] Petitioner also submitted the following documents attached to BIR Form No. 1604-CF:

a. Alphalist of employees as of December 31, 2012 with no previous employer within the year;[24]

b. Alphalist of employees terminated before December 31, 2012;[25] and

c. Summary of related party transactions for the year ended December 31, 2012.[26]

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[20] Par. 7, JSF, Docket – Vol. I, p. 526.
[21] Exhibits "P-20" and "P-20-a", Docket – Vol. I, pp. 392 to 393.
[22] Exhibits "P-21" and "P-21-a", Docket – Vol. I, p. 394.
[23] Exhibits "P-22" and "P-22-a", Docket – Vol. II, p. 897.
[24] Exhibit "P-22-b", Docket – Vol. II, p. 898.
[25] Exhibit "P-22-c", Docket – Vol. II, p. 899.
[26] Exhibit "P-22-d", Docket – Vol. II, pp. 900 to 901.

On August 18, 2014, petitioner received a copy of the *Notice of Informal Conference* dated August 13, 2014 in connection with LOA No. 201000075608.[27]

On September 17, 2014, petitioner paid the following deficiency taxes for TY 2012:

Deficiency Expanded Withholding Tax[28]	₱ 37,481.53
Deficiency Documentary Stamp Tax[29]	269,256.83
Total Amount	₱ 306,738.36

On September 29, 2014, petitioner submitted additional documents in connection with the above-stated LOA to BIR RDO 115,[30] including a sworn certification of completeness of documents dated July 9, 2014.[31]

On June 1, 2015, petitioner received the letter dated May 7, 2015, from RD Geraldino of BIR Revenue Region No. 19 – Davao City, stating that petitioner's application for VAT credit or refund covering TY 2012 in the amount of ₱30,969,782.94 can no longer be granted since the 120-day period within which respondent has to decide the claim has already lapsed on June 4, 2014.[32]

Petitioner then filed the present *Petition for Review* before this Court on June 30, 2015.

Respondent filed his *Answer* on October 6, 2015,[33] interposing the following Special and Affirmative Defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

> 5. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

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[27] Exhibits "P-23" and "P-23-a", Docket – Vol. I, pp. 401 to 402.
[28] Exhibits "P-25" and "P-25-a", Docket – Vol. I, pp. 407 to 409.
[29] Exhibits "P-24" and "P-24-a", Docket – Vol. I, pp. 403 to 405.
[30] Exhibits "P-27" and "P-27-a", Docket – Vol. I, p. 411.
[31] BIR Records, p. 36.
[32] Exhibit "P-26" and "P-26-a", Docket – Vol. I, p. 134.
[33] Docket – Vol. I, p. 156 to 161.

6. In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements thereof.

7. To support its claim, it is imperative for petitioner to prove the following, *viz*:

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply.

d. That the input taxes in the aggregate amount of P30,969,782.94 allegedly paid by petitioner on its domestic purchases of goods and services, importation of goods, purchases of capital goods not exceeding one million pesos, purchases of capital goods exceeding one million pesos and creditable input VAT for taxable year 2012, all of which were attributable to its zero-rated sales of generated hydro power and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the periods provided in sections 112 (A) and (D) of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits).

h. The requirements as enumerated under Revenue Memorandum Circular 54-2014 (Re: Clarifying Issues Relative to the Application for Value Added Tax Refund/Credit under Section 112 of the Tax Code, as amended)

8. Petitioner must prove that the aggregate amount of ₱30,969,782.94 allegedly representing excess and unutilized input VAT for taxable year 2012 are properly documented.

9. In Revenue Memorandum Circular 54-2014, the administrative claim for VAT refund or TCC must be filed within two (2) years from the close of the taxable quarter when the zero-rated sales and/or effectively zero-rated sales were made. The application for VAT refund must be accompanied by complete supporting documents as specifically enumerated in Annex "A" of the RMC. In addition, the taxpayer should attach a sworn statement/affidavit (i) attesting to the completeness of the submitted documents; (ii) stating that the attached supporting documents are the only documents which the taxpayer will present to support the claim; and additionally, (iii) in the case of corporations or other judicial persons, there should be a sworn statement that the officer signing the affidavit (which should at the very least be the Chief Finance Officer) has been authorized by the company's Board of Directors.

10. Corollary thereto, Section 112(C) provides as follows, *to wit:*

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11. Pursuant to the aforequoted provision of law, the application for tax refund must be filed within two (2) years after the close of the taxable quarter when the sales were made and the CIR has a 120-day period within which to decide whether to grant the claim. It logically follows that a taxpayer must first submit the complete

supporting documents before the 120-day period should commence. If the claim is not acted upon by respondent, within the 120-day period, such inaction shall be deemed a denial of the claim.

12. In the present case, petitioner failed to elevate the claim for refund within the period prescribed by law. Even without the issuance of Revenue Memorandum Circular No. 54-2014, the law is clear that in case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the respondent to act on the application within the period prescribed, **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.** Accordingly, petitioner failed to do so.

13. All in all, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants the dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

11. It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> 'Tax refunds are in the nature of tax exemptions, and are to be construed **strictissimi juris** against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.'

12. Taxes collected are presumed to be in accordance with laws and regulations.

13. Claims for refund are construed strictly against the claimant for the same partake of the

> nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.
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> 14. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus the instant petition should be dismissed for lack of jurisdiction and/or lack of merit."

After the Pre-Trial Conference held on January 28, 2016,[34] the parties filed their *Joint Stipulation of Facts* (JSF) on February 17, 2016.[35] The JSF was approved in the Resolution dated February 24, 2016,[36] and the Court thereafter issued the Pre-Trial Order on May 17, 2016.[37]

During trial, petitioner presented (1) Arazeli L. Malapad,[38] (2) Sonny Boy N. Salvador,[39] and (3) the Court-commissioned Independent Certified Public Accountant (ICPA), Richard S. Querido.[40]

On October 27, 2016, petitioner filed its *Formal Offer of Evidence.*[41] Thereafter, respondent filed its *Comment (Re: Petitioner's Formal Offer of Evidence)* on October 28, 2016.[42]

In the Resolution dated December 13, 2016,[43] the Court admitted petitioner's evidence, and deemed petitioner to have rested its case. In the same Resolution, the Court gave the parties thirty

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[34] Docket – Vol. I, pp. 496 to 497.
[35] Docket – Vol. I, pp. 524 to 533.
[36] Docket – Vol. I, p. 536.
[37] Docket – Vol. I, pp. 584 to 594.
[38] Minutes of the Hearing held on June 14, 2016, Docket – Vol. I, pp. 612 to 615.
[39] Minutes of the Hearing held on August 30, 2016, Docket – Vol. I, pp. 620 to 622.
[40] Minutes of the Hearing held on September 27, 2016, Docket – Vol. I, pp. 719 to 722.
[41] Docket – Vol. II, pp. 732 to 743.
[42] Docket – Vol. II, pp. 1061 to 1063.
[43] Docket – Vol. II, pp. 1074 to 1075.

(30) days from receipt thereof, within which to file their respective memoranda.

On January 3, 2017, respondent filed his *Manifestation*, stating that in lieu of filing a *Memorandum*, he is adopting his *Answer* dated October 1, 2015 as his *Memorandum*.[44] On February 20, 2017, petitioner filed its *Memorandum*.[45] Thus, the case was submitted for decision on March 20, 2017.[46]

Hence, this Decision.

THE ISSUE

The parties submitted the following issues for the Court's resolution, to wit:

> "Whether this Honorable Court has jurisdiction over the case at bar pursuant to Section 112(C) of the National Internal Revenue Code of 1997.
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> Whether Petitioner is entitled to a refund in the aggregate amount of Php30,969,782.94, allegedly representing unutilized input VAT on domestic purchases of goods and services, importation of goods, purchases of capital goods not exceeding one million pesos, and creditable input VAT for calendar year 2012."[47]

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction pursuant to Section 112(C) of the NIRC of 1997; that there was no inaction upon petitioner's claim precluding the application of the 120-day period in Section 112 of the Tax Code; that respondent continues to retain jurisdiction over the administrative claim even beyond the 120+30 days and does not preclude the taxpayer from waiting for a decision on the administrative level; that petitioner has 30 days from the issuance of a decision denying the claim to appeal before the Court; that RMC No. 54-2014 cannot be made retroactively apply to

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[44] Docket – Vol. II, pp. 1076 to 1078.
[45] Docket – Vol. II, pp. 1093 to 1127.
[46] Resolution dated March 20, 2017, Docket – Vol. II, p. 1132.
[47] Proposed Issues, JSF, Docket – Vol. I, p. 526; Issues, Pre-Trial Order dated May 17, 2016, Docket – Vol. I, pp. 585 to 586.

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petitioner's present claim; that petitioner submitted complete documentary requirements for its administrative refund claim; and that petitioner has legal and factual bases to claim for input VAT refund.

Respondent's counter-arguments:

Respondent counter-argues that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements.

According to respondent, if a claim for refund is not acted upon within the 120-day period provided under Section 112(C), such inaction shall be deemed a denial of the claim. In this case, respondent claims that petitioner failed to elevate the claim for refund within the period prescribed by law.

Even without the issuance of RMC No. 54-2014, respondent asserts that the law is clear that in case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the respondent to act on the application within the period prescribed, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with this Court.

The burden of proof is allegedly on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. It must allegedly be remembered that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

THE COURT'S RULING

The instant *Petition for Review* must be dismissed for this Court's lack of jurisdiction.

Relevant to the resolution of whether this Court has jurisdiction is Section 112(A) and (C) of the NIRC of 1997, as amended RA No. 9337, which governs the filing of administrative and judicial claims for refund or tax credit of excess and unutilized input tax attributable to zero-rated or effectively zero-rated sales. The said provision reads:

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"SEC. 112. Refunds or Tax Credits of Input Tax. —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — **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**: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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(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 Subsection (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**." *(Emphases supplied.)*

Based on the foregoing provision, the administrative claim for the issuance of TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. As regards the judicial claim, the taxpayer is given a 30-day period, either from the receipt of the adverse decision of respondent or from the lapse of the 120-day period for respondent to act on the claim, within which to file a *Petition for Review* with this Court.

In the present case, petitioner's claim for issuance of TCC or refund of input VAT covers the four quarters of TY 2012 which closed on March 31, 2012, June 30, 2012, September 30, 2012 and December 31, 2012, respectively.

Applying Section 112 (A) of the NIRC of 1997, as amended, petitioner had two (2) years from the said dates or until March 31, 2014, June 30, 2014, September 30, 2014 and December 31, 2014, respectively, within which to file its administrative claim for tax refund or tax credit for the quarter concerned. Thus, the filing of the administrative claim for refund or tax credit for the four quarters of TY 2012 with the BIR, RDO No. 115 on February 4, 2014,[48] fell within the respective two-year prescriptive period, as shown below:

Taxable Quarter	**Quarter End**	**Last day of filing Administrative Claim for Refund**	**Date of filing of administrative Claim for Refund**
1st Quarter – 2012	March 31, 2012	March 31, 2014	February 4, 2014
2nd Quarter – 2012	June 30, 2012	June 30, 2014	
3rd Quarter – 2012	September 30, 2012	September 30, 2014	
4th Quarter - 2012	December 31, 2012	December 31, 2014	

However, petitioner's judicial claim was not timely filed.

The aforequoted Section 112(C) of the NIRC of 1997, as amended, specifies the time requirement for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30

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[48] Exhibits "P-9" and Exhibit "P-9-a", Docket – Vol. I, pp. 378 to 379.

days, which refers to the period for filing a judicial claim with the CTA.[49]

Relative thereto, it must be emphasized that pursuant to the said Section 112(C), the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim.[50] As to when should the submission of supporting documents be deemed "completed" for purposes of determining the running of the 120-day period, the Supreme Court in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (hereinafter referred as "*Pilipinas Total Gas* case")[51] held as follows:

> "From the above, it is apparent that the CIR has 120 days **from the date of submission of complete documents** to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA.
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> To be clear, Section 112(C) categorically provides that the 120-day period is counted '**from the date of submission of complete documents** in support of the application.'
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> Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?*
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> *Ideally*, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess

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[49] *ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

[50] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

[51] G.R. No. 207112, December 8, 2015.

utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, *ideally*, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.

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Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> *Q-18: For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
>
> A-18: **For pending claims** which have not been acted upon by the investigating/ processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days**.
>
> For claims to be filed by claimants with the respective investigating/ processing office of the administrative agency, the same shall be **officially received** only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the same shall be processed

> within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **<u>within thirty (30) days from request</u> of the investigating/ processing office, <u>which shall be construed as within the one hundred twenty (120) day period</u>**.

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/ processing office. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112 (D) was amended and renamed 112(C). Thus:

> (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 Subsection (A) hereof.

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> 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.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed — *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are *actually* complete as required by law - is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/ processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

<u>To summarize, for the just disposition of the subject controversy, the rule is that from the date an</u>

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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 120 day period allowed to the CIR begins to run from the date of filing.

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.

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. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

> The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex 'A' hereof. In addition, the taxpayer shall attach **a statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
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> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall

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> be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.
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> Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim." *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, for claims filed before June 11, 2014, or prior to the effectivity of RMC No. 54-2014, such as the instant case, the rules provided under RMC No. 49-2003, in relation to Section 112 of the NIRC of 1997, as amended by RA No. 9337, shall apply. It must be recalled that petitioner filed its administrative claim on February 4, 2014. Consequently, petitioner had thirty (30) days from the time of filing of its administrative claim for tax credit or refund within which it should submit all the required supporting documents. If in the course of the investigation, however, additional documents are required, the BIR must inform the petitioner of the need to submit additional documents through a notice, and petitioner shall have thirty (30) days to comply thereto. Upon completion of all the required documents or the expiration of the thirty-day period, the 120-day period shall commence; but in all cases, all filings and submissions, must be completed within the two (2)-year period under Section 112(A) of the NIRC of 1997, as amended by RA No. 9337.

Records reveal that upon petitioner's receipt of the Letter of Authority (LOA) with serial number SN: eLA201000075608 / LOA-115-2014-00000034 on April 10, 2014,[52] it was required to submit all required documents, books and records to the assigned Revenue

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[52] Exhibit "P-11", Docket – Vol. I, p. 381.

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Officer.[53] Thus, petitioner had thirty (30) days from the said date or until May 10, 2014 within which to submit all pertinent supporting documents. However, it is noteworthy that petitioner begun to submit certain documents only on June 18, 2014,[54] when the said thirty-day period pursuant to RMC No. 49-2003 had already elapsed.

Thus, the 120-day period shall be reckoned from May 10, 2014 and shall run until September 7, 2014. Considering that respondent failed to act on the subject claim within the said 120-day period, petitioner had thirty (30) days from September 8, 2014 or until October 7, 2014, within which to file a judicial appeal before this Court. However, the present *Petition for Review* was filed only on June 30, 2015. Hence, it is clear that petitioner's judicial claim was belatedly filed.

Petitioner, however, insists that there was no inaction on the part of respondent, and thus, the 120-day period in Section 112 of the Tax Code, as amended, is inapplicable. It claims that its application has been acted upon by respondent as shown by his acts and the various documents issued to petitioner.

We disagree.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*,[55] the Supreme Court reminded taxpayers that when the one hundred and twenty (120)-day period lapses and there is inaction on the part of the CIR within the said period, the taxpayer must no longer wait for the CIR to come up with a decision. The Supreme Court ruled:

> "A final note, the taxpayers are reminded 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*)

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[53] Checklist of Requirements dated April 4, 2014, BIR Records, p. 116.
[54] Exhibits "P-12" and "P-12-a", Docket – Vol. I, pp. 382 to 384.
[55] G.R. No. 168950, January 14, 2015.

Furthermore, in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*,[56] the Supreme Court held that for judicial claims, it must be filed within a period of thirty (30) days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner, *to wit*:

> **"Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
>
> xxx xxx xxx
>
> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, <u>whichever is sooner</u>.**
>
> 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." (*Emphases and underscoring supplied.)*

Based on the foregoing, in case respondent fails to act on the taxpayer's administrative claim for tax credit or refund within the 120-day prescribed period, the taxpayer may treat such inaction as a denial of its claim. Thus, the taxpayer must no longer wait for respondent to come up with a decision before it files an appeal to this Court. Consequently, the taxpayer must file an appeal within thirty (30) days from the lapse of the one hundred twenty (120)-day waiting period.

It bears stressing that the 120+30-day prescriptive periods are both jurisdictional and mandatory. In *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.,*[57] the Supreme Court emphasized that strict compliance with the 120+30-day periods

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[56] G.R. No. 182737, March 2, 2016.
[57] G.R. No. 187485, 196113, 197156, February 12, 2013.

is necessary for a claim for refund or tax credit to prosper. The Court ruled as follows:

> "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 compliance 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." *(Emphasis supplied)*

Applying the foregoing jurisprudence, for purposes of claiming tax credit or refund of input VAT, the 120+30 day periods must be strictly complied with. Hence, it was erroneous on the part of petitioner to have waited for the decision of respondent. Respondent's failure to act on petitioner's claim within the 120-day prescribed period is deemed a denial of the claim. Accordingly, petitioner should have filed an appeal within thirty (30) days from the lapse of the 120-day period.

Nevertheless, petitioner submits that even assuming that there was inaction on the part of respondent, the taxpayer may elect to await an actual decision from respondent before appealing to the CTA. Relying on Section 228, which according to petitioner contains languages similar to Section 112(C) and the ruling of the Supreme Court in the case of *Lascona Land Co., Inc. v. Commissioner of Internal Revenue* ("*Lascona* case"),[58] petitioner claims that respondent does not lose jurisdiction over administrative claim despite judicial appeal, and that the taxpayer may elect to await an actual decision of respondent.

Petitioner's reliance on the *Lascona* case is untenable.

The *Lascona case* involves the interpretation and application of Section 228 of the NIRC of 1997, particularly it pertains to the period for respondent to decide a taxpayer's disputed assessment. It is

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[58] G.R. No. 171251, March 5, 2012.

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therefore erroneous for petitioner to insist on the application of said jurisprudence in the instant case, considering that the present case involves claims for tax credit or refund under Section 112 of the NIRC of 1997, and not a disputed assessment under the said Section 228.

In sum, taking the foregoing into consideration, petitioner's belated filing of its judicial claim on June 30, 2015 is fatal to its claim for its failure to observe the mandatory 120+30-day prescriptive periods, and has therefore rendered this Court devoid of jurisdiction over the instant *Petition for Review*.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

with concurring opinion

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HEDCOR SIBULAN INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9080

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 20 2018 : 3:00 pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in dismissing the Petition for Review filed by petitioner Hedcor Sibulan Inc. for lack of jurisdiction. Indeed, petitioner's failure to file its judicial claim within thirty (30) days from the lapse of the one hundred twenty (120)-day period from its submission of relevant documents in support of its claim for refund of input VAT attributable to zero-rated sales for the year 2012 has deprived this Court of its jurisdiction to take cognizance of the present Petition for Review.

As eloquently discussed in the *ponencia*, the taxpayer must file its judicial claim within a period of thirty (30) days from receipt of the Commissioner of Internal Revenue's (CIR) decision or after the expiration of the one hundred twenty (120)-day period within which the CIR must decide on the claim, **whichever is earlier**. In other words, a decision made by the CIR **after** the 120+30 day period is inconsequential in determining the timeliness of a petition for review with the Court of Tax Appeals (CTA) as the CIR's failure to render a decision during the 120-day period is *"deemed a denial"* of the taxpayer's claim for refund. Hence, the taxpayer must appeal said *"deemed a denial"* decision within thirty (30) days from the lapse of the 120-day period for without a timely appeal filed before the CTA, the *"deemed a denial"* decision of the CIR becomes final and unappealable.

In holding that petitioner failed to file its judicial claim within thirty (30) days from the lapse of the 120-day period, the *ponencia* reckoned the 120-day period from May 10, 2014 or thirty (30) days from April 10, 2014 which is the date of petitioner's receipt of the Letter of Authority (LOA) requiring petitioner to submit all required documents, books and records to the assigned revenue officer.

On this point, I differ with the *ponencia*. It is my humble view that the 120-day period should be reckoned from **July 9, 2014**, **the date when petitioner submitted additional supporting documents to the BIR**, in response to the directive of Revenue District Officer Josie Lourdes Tang as per her **Letter dated July 3, 2014**.[1] This is consistent with the pronouncement in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[2] pertinent parts of which state:

> "With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed — *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.
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> Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. **Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the**

[1] Exhibits "P-22", "P-22-a" to "P-22-d", Division Docket, Vol. II, pp. 897 – 901.
[2] G.R. No. 207112, December 8, 2015.

> **investigating/processing office. Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**" (Additional boldfacing supplied)

Here, the BIR had 120 days from July 9, 2014 or until November 6, 2014 within which to act on petitioner's administrative claim for refund. In view of respondent's inaction within the said period, which inaction is tantamount to "deemed a denial" decision on petitioner's administrative claim, petitioner had thirty (30) days from lapse of the 120-day period on November 6, 2014 or until **December 6, 2014** within which to file an appeal before the Court. The Petition for Review, which was filed on **June 30, 2015**, was filed out of time.

Incidentally, it may be that petitioner submitted more documents to the BIR on September 29, 2014 in support of its claim for refund; but such date could not be the reckoning point of the 120-day period. There was no admission, stipulation or evidence that would show that petitioner was constrained to submit more documents other than those submitted on July 9, 2014, pursuant to a request of the BIR. Failure to prove that the BIR made a subsequent request is fatal to petitioner's cause as it is settled that the taxpayer is allowed to **submit additional documents only within thirty (30) days from receipt of the request** of the investigating or processing office of the BIR pursuant to Revenue Memorandum Circular (RMC) No. 40-2003.

Moreover, even assuming that the 120-day period may be reckoned from September 29, 2014, the Petition for Review filed on June 30, 2015 would still be dismissed for having been filed beyond thirty (30) days from the lapse of the 120-day period on January 27, 2015 or beyond March 2, 2015.

In fine, I submit that the present Petition for Review should appropriately be denied as the *"deemed a denial"* decision of the CIR already attained finality for petitioner's failure to make a timely appeal before the Court.

All told, I VOTE to DISMISS the Petition for Review filed by Hedcor Sibulan, Inc. for lack of jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice