REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

NICKELBASE, INC., Petitioner,	**CTA CASE NO. 9632**
	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson*, **MINDARO-GRULLA** *and* **BACORRO-VILLENA**, *<u>JJ.</u>*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 1 6 2020 1:35 pm

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RESOLUTION

CASTAÑEDA, JR., <u>J.</u>:

Submitted before this Court's is petitioner's **Motion for Reconsideration (of the Decision promulgated on November 18, 2019)** filed on December 5, 2019, with respondent's **Comment/Opposition (on Petitioner's Motion for Reconsideration)** filed on January 10, 2020.

On November 18, 2019, a Decision was promulgated by this Court, denying petitioner's claim for refund of creditable input value-added tax (VAT) for filing its judicial claim beyond the reglementary period provided for by law, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for this Court's lack of jurisdiction.
>
> **SO ORDERED**.

In its Motion, petitioner primarily claims that the 120+30-day periods provided under Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, pertain only in cases of inaction by respondent. In the present case, there was actually a decision rendered by the Assistance Commissioner of Internal Revenue on June 14, 2017, thereby making the 30-day period within which to file a judicial appeal be reckoned from the date of receipt of the said decision, which is June 22, 2017. By counting the 30-day period from June 22, 2017, petitioner timely filed its Petition for Review on July 21, 2017.

On the other hand in his Comment, respondent argues that the reason why the period of 120 days is provided under Section 112 (C) of the NIRC of 1997, as amended, is so that the taxpayer will no longer wait for the Commissioner of Internal Revenue to come up with a decision when the 120-day period has already expired. The taxpayer must file an appeal within 30 days from the lapse of the 120-period.

After due consideration, the petitioner's Motion is bereft of merit. As already extensively passed upon by this Court in the Decision being assailed by petitioner:

> "In this case, the determination of the 120+30-day periods is shown as follows:

Date of Filing of Administrative Claim	End of the 120 days for the BIR to decide the claim	End of the 30 days from the expiration of the 120 days
February 15, 2017	June 15, 2017	July 15, 2017

> Since the instant *Petition for Review* was filed only on July 21, 2017, it is apparent that the same was belatedly filed, since the 30-day period after the expiration of 120-day period, ended on July 15, 2017. To reiterate, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of this Court.
>
> The letter dated June 14, 2017 of the BIR, denying petitioner's administrative claim, is of no moment, simply because there is no evidence showing when the same was received by petitioner. And even granting that the petitioner received the said letter on June 22, 2017, as alleged in paragraph 4 of instant *Petition for Review* and in paragraph 12 of petitioner's *Memorandum*, the same shall still have no effect, <u>since the 30-day period after the expiration of the 120-</u>

> day period came sooner than the 30-day period from the said alleged date of receipt. Thus, this Court indeed has no jurisdiction to entertain the present appeal." *(Citations omitted and underscoring supplied)*

Again, the judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or after the expiration of the 120-day period, whichever is sooner. Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by 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 Court of Tax Appeals.[1]

Accordingly, since petitioner failed to convince the Court that its judicial claim was filed within the reglementary period set by law, the dismissal of the same for lack of jurisdiction is in order.

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

SO ORDERED.

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

We Concur:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[1] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.