REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

CTA EB No. 1926
(CTA Case No. 9080)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ*.

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 24 2020 at 1:18 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J*.:

Before this Court is a Petition for Review filed by petitioner Hedcor Sibulan, Inc. ("Petitioner", for brevity) on September 21, 2018 assailing the Decision[1] and Resolution[2] promulgated on February 20, 2018 and on August 7, 2018, respectively, by the then CTA First Division (CTA Division) in the

[1] *Rollo*, pp. 53-80, with Concurring Opinion of Presiding Justice Roman G. Del Rosario; Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and by Associate Justice Cielito N. Mindaro-Grulla.

[2] *Rollo*, pp. 82-88; Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and by Associate Justice Cielito N. Mindaro-Grulla.

case *Hedcor Sibulan, Inc. v. Commissioner of Internal Revenue,* docketed as CTA Case No. 9080.

The dispositive portion of the February 20, 2018 Decision ("Assailed Decision") reads:

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

The dispositive portion of the August 7, 2018 Resolution ("Assailed Resolution") reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE FACTS

The facts of this case as found by the then CTA First Division[3] are as follows:

> 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. It is registered with 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.
>
> 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

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[3] *Rollo*, pp. 53-62 ; Citations omitted.

venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations.

xxx xxx xxx

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. 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 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.

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	April 25, 2012
	Amended Quarterly VAT Return	February 11, 2013
2nd Quarter 2012	Original Quarterly VAT Return	July 20, 2012
	Amended Quarterly VAT Return	February 11, 2013
3rd Quarter 2012	Original Quarterly VAT Return	October 22, 2012
	Amended Quarterly VAT Return	February 11, 2013
4th Quarter 2012	Original Quarterly VAT Return	January 21, 2013
	Amended Quarterly VAT Return	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 P30,969,782.94. Je

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, 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.

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."*

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.

On July 3, 2014 RDO Tang replied to petitioner's letter dated June 24, 2014. 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. *fc*

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;

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

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

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

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

Deficiency Expanded Withholding Tax	P37,481.53
Deficiency Documentary Stamp Tax	269,256.83
Total Amount	P306,738.36

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

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 P30,969,782.94 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.

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

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

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

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

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

In the Resolution dated December 13, 2016, the Court admitted petitioner's evidence, and deemed petitioner to have rested its case. In the same Resolution, the Court gave the parties thirty (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.* On February 20, 2017, petitioner filed its *Memorandum.* Thus, the case was submitted for decision on March 20, 2017.

On February 20, 2018, the CTA Division dismissed the Petition for Review for lack of jurisdiction.

On August 7, 2018, the CTA Division denied petitioner's Motion for Reconsideration for lack of merit.

On September 10, 2018, the CTA *En Banc* granted the Motion for Extension of Time to File Petition for Review filed by petitioner on September 6, 2018.

Within the period of extension granted, petitioner filed its Petition for Review. Jr

On October 12, 2018, the CTA En Banc ordered petitioner to submit proof of service of its petition.

On December 4, 2018, this Court noted petitioner's Compliance (Re: Resolution dated October 12, 2018, and ordered respondent to file a Comment.

On December 12, 2018, respondent filed a Comment (Re: Petition for Review).

On January 3, 2019, the CTA *En Banc* granted the Motion for Extension of Time To File Reply filed by petitioner on December 27, 2018.[4] Petitioner filed its Reply within the period of extension granted.

In a Resolution dated January 3, 2019, this Court required the parties to file their Memoranda within thirty (30) days from receipt of the resolution.[5]

On January 31, 2019, respondent filed a Manifestation stating that he is adopting the arguments raised in the Comment to the Petition for Review as his Memorandum.

On February 14, 2019, petitioner filed its Memorandum.

On February 28, 2019, this case was submitted for decision.

ISSUES

I. Whether or not the Honorable First Division erred when it ruled that it has no jurisdiction over the Petition for Review.

II. Whether or not RMC 54-2014 can be applied retroactively.

III. Whether or not Petitioner has legal bases to claim for input VAT refund or tax credit. gr

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[4] *Rollo*, p. 156.
[5] *Id.*, pp. 158-159.

Petitioner submits that the provision of Section 112 (C) of the Tax Code was erroneously applied by the CTA Division. For the purpose of counting the 120+30-day period under the said provision, petitioner alleges that it is incorrect to say that there was no action on respondent's part. Petitioner states that respondent "acted" on its claim before the lapse and even way beyond the 120+30-day period. Petitioner alleges that its claim was acted upon and expressly denied precluding the application of the "deemed denied" doctrine. Petitioner also avers it had 30 days from the issuance of a decision denying the claim to appeal before the Honorable Court. Petitioner alleges that the May 7, 2015 Denial Letter issued by RD Geraldino of BIR Region No. 19-Davao City is a decision of respondent which grants petitioner the right to appeal before this Court pursuant to the provisions of the Tax Code, as well as the provisions under Section 7 (a) (1) of RA No. 1125, as amended by RA No. 9282. Petitioner concludes that there is no "inaction" which would mandate the application of the 120+30-day rule.

Petitioner alleges that RMC No. 54-2014 cannot retroactively apply to petitioner's present claim. It alleges 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. Petitioner alleges that respondent continued to have jurisdiction to act on petitioner's administrative claim for tax refund/credit after the lapse of the 120+30-day period because of the general rule against non-retroactivity as confirmed by RR No. 1-2017. Petitioner alleges that the interpretation of the purpose of the 120+30-day period should be consistent with the legislative intent behind the amendment to Section 112 (C) of the Tax Code.

Petitioner alleges that it has legal and factual bases to claim for input VAT refund.

Respondent states in the Comment (Re: Petition for Review) that the Decision of the CTA Division should not be disturbed; and that the petition for review must be dismissed for lack of jurisdiction.

Respondent contends that petitioner must not only prove its entitlement to a refund but also for its strict compliance with the periods provided by Section 112 (C); and that non-observance of the prescriptive periods would result in the denial of its claim.

THIS COURT'S RULING

The petition is denied.

Pertinent to this is Section 112(C) of the NIRC of 1997, as amended, provides:

> "(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)*

In the case of *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue,*[6] the Supreme Court categorically stated that, "Based on the plain language of the foregoing provision [Section 112 (C) of the NIRC, as amended], **the CIR is given 120 days within which to grant or deny a claim for refund.** Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA." (*Emphasis Supplied)*

In the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue,*[7] Supreme Court *En Banc* discussed that:

> xxx **The application of the 120+30 day periods was first raised in *Aichi,*[8] which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional.** The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of

[6] G.R. No. 201326, February 8, 2017.
[7] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[8] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

> complete documents," **the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim**. xxx
>
> When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from 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," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner. *(Emphases Supplied)*

In the case of *Pilipinas Total Gas v. Commissioner of Internal Revenue,*[9] *("Pilipinas Total Gas" case),* the Supreme Court *En Banc* emphasized that, "From the above [Sec. 112 (C) of the NIRC, as amended], 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." *(Emphases Supplied)*

Based on the foregoing jurisprudence, it is clear that the 120+30 day periods are mandatory and jurisdictional.

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." *Pilipinas Total Gas case* is instructive when taxpayer should complete its submission of documents to support its application:

> "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)** gr

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

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.

To summarize, for the just disposition of the subject controversy, **the rule is that from the date an 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:

xxx xxx xxx

> 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 Supplied)*

The *Pilipinas Total Gas case* is clear that for claims for tax credit or refund filed prior to June 11, 2014, such as this case which was filed on February 4, 2014, taxpayer should have submitted the documentary requirements sufficient to support its claim within 30 days from the date its administrative claim was filed, unless given further extension by the CIR. "[N]otice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential."[10] Upon filing by the taxpayer of the complete documents to support its claim, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund.

We reiterate with approval the following discussions of the CTA Division in the assailed Decision, as follows:

> 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. Jc

[10] *Pilipinas Total Gas v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

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, it was required to submit all required documents, books and records to the assigned Revenue Officer. 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, 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.

Considering that the 120+30 day periods are mandatory and jurisdictional, the CTA Division is correct in dismissing the judicial claim for lack of jurisdiction.

The other issues will no longer be discussed in this case.

Based on the foregoing discussions, the Court *En Banc* finds no reversible error to disturb the assailed Decision and Resolution rendered by the then First Division of this Court.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. Accordingly, the assailed Decision and the Resolution promulgated on February 20, 2018 and on August 7, 2018, respectively, by the then CTA First Division are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(With Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join PJ's Separate Opinion.)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1926
(CTA Case No. 9080)

Present:

DEL ROSARIO, *P.J.,*
CASTANEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

Promulgated:

FEB 24 2020 1:18 p.m.

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SEPARATE OPINION

DEL ROSARIO, P.J.:

I wish to expound the position I have taken in my Concurring Opinion on the assailed Decision of the Court in Division.

In holding that petitioner failed to file its judicial claim within thirty (30) days from the lapse of the 120-day period, the *ponencia* affirms the Court in Division's findings that the 120-day period should be reckoned 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.

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**.
>
> xxx xxx xxx
>
> 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**.
>
> xxx xxx xxx
>
> To summarize, for the just disposition of the subject controversy, the rule is that from the date an 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

[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.

> period allowed to the CIR begins to run from the date of filing." *(Additional boldfacing and underscoring 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, 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 filing of the Petition for Review on **June 30, 2015** was patently beyond the reglementary period to appeal.

Incidentally, it may be that petitioner submitted more supporting documents to the BIR on September 29, 2014; 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 required 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 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 March 2, 2015 - - the 30th day from the lapse of the 120-day period on January 27, 2015.

In fine, the *"deemed a denial"* decision of the CIR already attained finality for petitioner's failure to make a timely appeal before the Court, within thirty (30) days from the lapse of the 120-day period.

All told, I VOTE to: (i) DENY the present Petition for Review for lack of merit; and, (ii) DISMISS the Petition for Review in CTA Case No. 9080 for lack of jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice