REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CHEVRON HOLDINGS, INC., Petitioner,	**CTA EB No. 1895** (CTA Case Nos. 8790 & 8835)
- **versus** -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1896** (CTA Case Nos. 8790 & 8835)
	Present:
- **versus** -	Del Rosario, *PJ*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
CHEVRON HOLDINGS, INC., Respondent.	Promulgated: MAR 0 9 2020 4:05 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

These consolidated Petitions for Review seek to reverse and set aside the Decision[1] dated January 18, 2018 and the Resolution[2] dated July 10, 2018, respectively, of the CTA First (1^{st}) Division.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review in CTA Case No. 8790 is **DENIED** for lack of jurisdiction, while the Petition for Review in CTA Case No. 8835 is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱3,806,549.13** representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the second quarter of CY 2012.
>
> **SO ORDERED.**"[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration Re: Decision dated 18 January 2018**, and petitioner's **Motion for Partial Reconsideration (Re: Decision dated January 18, 2018)** are **DENIED** for lack of merit.
>
> **SO ORDERED.**"[4]

THE FACTS

The following are the facts as found by the Court in Division:

> "Petitioner Chevron Holdings, Inc. is a corporation organized and existing under the laws of the State of Delaware, United States of America. It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as a Regional Operating Headquarters (ROHQ) under SEC Registration No. A199802486 dated June 3, 1998, with registered office address at the 35^{th} Floor,

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1 Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy concurring, Court *En Banc* Docket in CTA EB No. 1895, pp. 58-103.
2 Court *En Banc* Docket in CTA EB No. 1895, pp. 104-118.
3 See Note 1, p. 103.
4 See Note 2, p. 118.

Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Makati City. Petitioner is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer and was issued a Certificate of Registration with Taxpayer Identification Number (TIN) 201-056-391-000.

Petitioner's purpose, as ROHQ in the Philippines, is limited to general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication; and business development.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for the first and second quarters of CY 2012 on the following dates:

CASE NO.	CY 2013	VAT RETURN	DATE FILED
8790	First Quarter	Original	April 24, 2012
		Amended	May 28, 2012
8835	Second Quarter	Original	July 25, 2012

On October 31, 2013, petitioner filed with the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center ('DOF-OSS' for brevity) an administrative claim for refund or issuance of TCC for unutilized input VAT for the first quarter of CY 2012 in the total amount of ₱16,165,791.62. It submitted all relevant documents in support of its claim when it filed its administrative claim for refund.

On January 16, 2014, petitioner filed with the DOF-OSS an administrative claim for refund or issuance of TCC for unutilized input VAT for the second quarter of CY 2012 in the total amount of ₱19,739,044.98. Petitioner likewise submitted all the relevant supporting documents when it filed its administrative claim. ge

Thereafter, petitioner received Letter of Authority (LOA) No. LOA-311-2013-00000176 (eLA201000050327) dated November 28, 2013, with attached First Notice dated February 7, 2014 (the "Notice").

On February 17, 2014, petitioner submitted the first batch of additional documents required under the Notice. Then on February 27, 2014, petitioner submitted the final batch of the documents required under the Notice.

On March 14, 2014, petitioner received Letter of Authority No. LOA-411-2014-00000015 (eLA201000050364) dated March 10, 2014.

Due to respondent's inaction on petitioner's administrative claims for refund petitioner filed the instant Petitions for Review on March 28, 2014 for CTA Case No. 8790 and on June 13, 2014 for CTA Case No. 8835.

Within the extended time granted by the Court, 20 respondent filed his Answer in CTA Case No. 8790 on June 6, 2014, interposing the following special and affirmative defenses:

> **'SPECIAL AND AFFIRMATIVE DEFENSES**
>
> xxx xxx xxx
>
> ***THE INSTANT PETITION WAS PREMATURELY FILED***
>
> xxx xxx xxx
>
> 6. In relation thereto, petitioner's premature filing is duly admitted on its very own Petition for Review. These judicial admissions are bolstered under paragraphs 5 and 6 under the heading 'III. JURISDICTIONAL ALLEGATIONS,' to wit:
>
> 6.1 'On February 17, 2014, Petitioner submitted the first batch of additional documents required under the Notice. **On February 27, 2014. Petitioner submitted the final batch of the documents** required under the Notice' ℊ𝓇

6.2 '**<u>The 120-day period within which Respondent is required to act on the claim for refund had lapsed on March 20, 2014</u>** xxx'

7. Petitioner alleged that it submitted the final batch of documents on **February 27, 2014**. Thereafter, it filed the Petition for Review on **March 28, 2014**. It is clear then that only **29 days** had lapsed from the purported submission of final batch of documents vis-a-vis the filing of its Petition for Review.

8. Going to the tenor of the law, the 120-day period counted from February 27, 2014 should have lapsed on June 27, 2014. Thereafter, petitioner has 30 days from June 27, 2014 or until July 27, 2014 within which to file its Petition for Review.

9. Based on the foregoing, it is apparent that petitioner failed to comply with the 120-day waiting period which is mandatory and jurisdictional thereby making the Petition for Review prematurely filed.

xxx xxx xxx

Meanwhile, for CTA Case No. 8835, respondent alleged the following special and affirmative defenses in the Answer filed on October 7, 2014:

xxx xxx xxx

CTA Case No. 8790 was set for Pre-Trial Conference on July 18, 2014. 23 Upon motion of petitioner, the Pre-Trial Conference was reset to September 18, 2014.

On August 18, 2014, petitioner filed a Motion to Consolidate CTA Case Nos. 8790 and 8835. The Motion to Consolidate in CTA Case No. 8835 was granted by the Court in the Resolution dated September 11, 2014. Subsequently, the Court issued Resolution dated October 15, 2014, granting the Motion to Consolidate in CTA Case No. 8790.

Respondent's Pre-Trial Brief was filed on November 12, 2014; while petitioner's Consolidated Pre-Trial Brief was filed on November 24, 2014. Ju

The parties filed their Joint Stipulations of Facts and Issues on December 16, 2014. This was approved by the Court in the Resolution dated December 19, 2014, which also terminated the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order on January 13, 2015.

Upon motion of petitioner, the Court commissioned Ms. Czarina R. Miranda as the Independent Certified Public Accountant (ICPA) for the case.

During trial, petitioner presented the following witnesses: Ms. Hyacinth Pacifico-Carreon, its Optimization Manager; Mr. Godofredo L. Tolores, its Acting Finance Coordinator; Ms. Czarina R. Miranda, the Court-commissioned ICPA; and Ms. Jennifer A. Valdez, its Fixed Assets Team Leader.

The Formal Offer of Evidence with Motion for Leave to Present Additional Evidence was filed on September 29, 2015. In the Resolution dated November 26, 2015, the Court granted petitioner's Motion for Leave to Present Additional Evidence while the resolution of its Formal Offer of Evidence was held in abeyance.

During the hearing held on May 17, 2016, petitioner presented Ms. Ma. Nerita C. Ferreol, its Manager-Business Analysis Support.

Thereafter, petitioner filed a Supplemental Formal Offer of Evidence on May 23, 2016. xxx

xxx xxx xxx

During the May 17, 2016 hearing, counsel for respondent manifested that she has no evidence to present.

The Memorandum (For Respondent) was filed on December 6, 2016; while petitioner's Memorandum was filed on January 19, 2017. Thus, in the Resolution dated January 30, 2017, the instant Petition for Review was declared submitted for decision."[5]

On January 18, 2018 and July 10, 2018, the CTA First (1st) Division issued the assailed Decision and Resolution, respectively.

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[5] See Note 1, pp. 59-81.

On August 14, 2018, Chevron Holdings, Inc. (Chevron) filed its Petition for Review in CTA EB No. 1895. On the same date, the Commissioner of Internal Revenue (CIR) filed his Petition for Review in CTA EB No. 1896. On August 15, 2018, the Court *En Banc* issued a Resolution[6] for the consolidation of the instant cases.

On October 15, 2018, Chevron filed its Comment (Re: Petition for Review dated August 14, 2018).[7] On the other hand, the CIR failed to file his comment.[8] On January 3, 2019, the Court *En Banc* issued a Resolution[9] requiring the parties to submit their memoranda.

On February 12, 2019, the CIR filed its Memorandum,[10] while on February 19, 2019, Chevron filed its Memorandum.[11]

On March 14, 2019,[12] the instant consolidated cases were deemed submitted for decision. Hence, this Decision.

THE ISSUES

Chevron raised the following Assignment of Errors in its Petition for Review in CTA EB No. 1895:

> "a. The CTA-Division erred in applying **Pilipinas Total Gas, Inc. (Total Gas) v. CIR ('Total')**, where it ruled that the counting of the 120-day period provided under the Tax Code should be reckoned from the time of submission of complete documents, against petitioner's claim for the refund of or the issuance of a TCC for the 1st quarter of CY 2012;
>
> b. The CTA-Division erred in holding that out of the total zero-rated receipts per Petitioner's Quarterly VAT Return for the 2nd quarter of CY 2012 in the amount of Php509,009,470.33 was not entitled to VAT zero-rating due to Petitioner's failure to prove that the entities to which the services were rendered are non-resident foreign corporations doing business outside the Philippines;
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> c. The CTA-Division erred in holding that out of the total input VAT per Petitioner's Quarterly VAT Return for the 2nd

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[6] Court *En Banc* Docket in CTA EB No. 1895, p. 129.
[7] Court *En Banc* Docket in CTA EB No. 1895, pp. 169-181.
[8] Records Verification, Court *En Banc* Docket in CTA EB No. 1895, p. 182.
[9] Court *En Banc* Docket in CTA EB No. 1895, pp. 199-201.
[10] Court *En Banc* Docket in CTA EB No. 1895, pp. 207-215.
[11] Court *En Banc* Docket in CTA EB No. 1895, pp. 217-271.
[12] Resolution, Court *En Banc* Docket in CTA EB No. 1895, pp. 273-274.

quarter of CY 2012 in the amount of Php19,589,509.40, the amount of Php2,903,420.82 was disallowed for not being properly substantiated by VAT invoices or receipts;

d. The CTA-Division erred in holding that from the amount of Php2,304,694.75 representing Petitioner's input VAT on purchases of capital goods exceeding Php1 Million from current transactions, only the amount of Php98,093.72 was considered creditable for the 2nd quarter of CY 2012;

e. The CTA-Division erred in holding that Petitioner's output VAT liability for the 2nd quarter of CY 2012 in the amount of Php3,023,241.48 shall be deducted against the valid input VAT of Php14,479,487.55 for failure to submit the VAT invoices/receipts that will prove the existence of its reported input VAT carry-over from the previous quarter in the amount of Php154,534,947.97."[13]

On the other hand, the CIR raised the lone issue in his Petition for Review in CTA EB No. 1896 that "[r]espondent's input taxes of P3,806,549.13 is not attributable to valid zero-rated receipts of P253,294,912.75. Thus, respondent is not entitled to the entire claim for refund."[14]

After considering the issues raised by the parties in their respective Petitions for Review, the same may be simplified as follows: (1) Whether the CTA has jurisdiction to rule upon Chevron's claim for refund for the 1st quarter of CY 2012; and (2) Whether Chevron is entitled to its entire refund claim.

THE RULING

Prefatorily, the Court *En Banc* notes that both parties merely rehashed their arguments in their respective motions for reconsideration which were already addressed by the Court in Division in the assailed Resolution.

Thus, after considering the arguments of both parties, the Court *En Banc* resolves to deny both Petitions for Review.

Petitioner sufficiently proved that it is entitled to refund the amount of ₱3,806,549.13 representing its gc

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[13] Assignment of Errors and Summary of Arguments in Support of the Petition for Review, Petition for Review, Court *En Banc* Docket in CTA EB No. 1895, pp. 13-14.
[14] Ground, Petition for Review, Court *En Banc* Docket in CTA EB No. 1896, p. 9.

excess and unutilized input VAT attributable to its zero-rated sales for the second quarter of CY 2012

In this regard, the CIR asserts that Chevron did not sufficiently prove that it is entitled to its claim in the amount of ₱3,806,549.13. The CIR argues that the assailed Decision failed to show that Chevron's purchases or input taxes are directly connected with its zero-rated sales of the subject finished products or services.

After careful perusal of the assailed Decision, the Court *En Banc* finds that the CIR's assertion is untenable. In fact, the assailed Decision lengthily discussed in detail how it arrived at the correct computation of Chevron's claim.

Thus, the Court in Division arrived at the following conclusion, contrary to the CIR's assertion:

> "Since petitioner did not submit VAT invoices/receipts proving the existence of its reported input VAT carry-over from previous quarter in the amount of ₱154,534,947.94, its output VAT liability for the second quarter of CY 2012 in the amount of P3,023,241.48 shall be offset against the valid input VAT of ₱14,479,487.55, resulting in an excess input VAT of ₱11,456,246.07, computed as follows:
>
> xxx xxx xxx
>
> The total excess input VAT of ₱11,456,246.07 can be attributed to the entire zero-rated receipts declared by petitioner in the amount of ₱762,320,083.93; however, only the input VAT of ₱3,806,549.13 is attributable to the valid zero-rated receipts of ₱253,294,912.75, computed as follows:

Excess Input VAT	₱ 11,456,246.07
Multiply by Valid Zero-Rated Sales/Receipts	x 253,294,912.75
Divide by Total Declared Zero-Rated Sales/Receipts	÷ 762,320,083.93
Input VAT Attributable to Valid Zero-Rated Sales/Receipts	**₱ 3,806,549.13"**

Considering the foregoing, the Court *En Banc* finds that the CIR's arguments in CTA EB No. 1896 are unmeritorious.

The CTA has no jurisdiction to rule upon Chevron's claim for refund for the 1st quarter of CY 2012

Chevron asserts that it timely filed the subject judicial claim for its excess and unutilized input VAT attributable to its zero-rated sales for the 1st quarter of CY 2012. It argues that the *Total* case is not applicable, such that the rule in counting the 120-day period should not be counted from the final submission of documents. Rather, the applicable rule is provided in Revenue Memorandum Circular (RMC) No. 29-09 and in the CIR's Notice, *i.e.*, the running of the 120-day period runs from the filing of the administrative claim for refund but is suspended from the time notice is sent for additional documents. Chevron adds that the 120-day period commences to run again from the complete submission of documents enumerated in the request for additional documents.

Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in 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."*(Emphasis supplied)*

In the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue,*[15] where it adopted the ruling in *CIR vs.* Jc

[15] G.R. Nos. 187485, 196113 and 197516, February 12, 2013.

Aichi Forging Company of Asia, Inc.,[16] the Supreme Court held that the 120-day period provided in Section 112(C) is mandatory and jurisdictional. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Thus:

> "Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**
>
> Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles."

While the 120-day waiting period was discussed by the Supreme Court in the *San Roque* case in relation to the doctrine of exhaustion of administrative remedies, the Supreme Court later added in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[17] that this period is "primarily intended for the benefit of the taxpayer, to ensure that his claim is decided judiciously and expeditiously."

Based on the foregoing, the reason for the inclusion of the 120-day waiting period in our present law is not only to ensure that the taxpayer's claim is decided judiciously and expeditiously, but also to afford the taxing authority an ample time for its evaluation and review. *In other words, the subject provision works to protect both the taxpayer and the BIR from belated resolution of the claim and from prematurity of elevating the same to the proper courts, respectively.*

[16] G.R. No. 184823, 6 October 2010, 632 SCRA 422.
[17] G.R. No. 207112, December 8, 2015.

On the other hand, the *Total* case concisely addressed the issue as to when the 120-day waiting period should be deemed to have commenced, as follows:

> "xxx 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.* xxx"

However, the Supreme Court also cautioned in the *Total* case that said declaration is subject to the caveat that: (1) there must be a request from the collecting authority to produce the complete documents; and (2) the taxpayer-claimant shall submit such documents within thirty (30) days from request of the investigating/processing office.

Meanwhile, the assailed Resolution thoroughly discussed the doctrines laid down in the *Total* case, as well as presented a summary of the rules vis-à-vis the completion of the supporting documents and the 120-day waiting period, in this wise:

> "In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court *En Banc* summarized the procedure for VAT refund claims filed prior to June 11, 2014, as in this case, to wit:
>
> > 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[al] 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.'

To be sure, 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. Nevertheless, the Supreme Court also emphasized that the foregoing benefit given to taxpayer is not unbridled and, as such, is subject to limitations. Hence, based on the above-quoted portion of *Pilipinas Total Gas*, the filing of the complete supporting documents by the taxpayer in connection with an administrative claim for VAT refund is subject to the following rules:

> 1. 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 processing unit
>
> 2. 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 the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigation/processing unit. Notice of the request for the submission of additional supporting documents is required.
>
> 3. It is only upon the submission of the documents by the taxpayer that the 120-day period would begin to run.
>
> 4. 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."[18]

In this case, a review of the records shows that Chevron filed its administrative claim on October 31, 2013. Thereafter, Chevron received

[18] Please see Note 2, pp. 111-112.

from the BIR a Letter of Authority dated November 28, 2013, with attached First Notice dated February 7, 2014. It required Chevron to submit additional documents in support of its administrative claim. Later, Petitioner submitted said additional documents on February 17, 2014 and February 27, 2014 or in two batches, respectively.

Verily, Chevron was afforded a meaningful opportunity to present supporting documents to its claim. It also complied with the thirty (30) day period from the request of the BIR dated February 7, 2014 when it submitted its last batch of supporting documents on February 27, 2014. Obviously, Chevron completed the submission of its supporting documents on said date, or on February 27, 2014.

Now, as for the BIR, the *San Roque* case requires Chevron to observe the 120-day waiting period from the date it completely submitted its supporting documents on February 27, 2014, so that the BIR may have ample time to evaluate the same. Said jurisprudence dictates that non-observance of this 120-day waiting period is **mandatory and jurisdictional**.

Interestingly, the governing law which is the above-quoted Section 112(C) of the NIRC of 1997, as amended, the *San Roque* case and the *Total* case, are all in unison that **the CIR has 120 days from the submission of complete documents** within which to decide on the claim. The law and jurisprudence made no qualification. The subject law and pronouncements by the Supreme Court plainly provides that the 120-day period commences from the taxpayer's submission of complete documents.

Here, records show that Chevron failed to observe this unqualified provision of the law regarding the 120-day period which, again, commences from the taxpayer's submission of complete documents. In other words, while Chevron's due process rights were observed following the pronouncement of the Supreme Court in the *Total* case, Chevron completely disregarded the BIR's right to be afforded ample opportunity to review its claim. Thus, Chevron's haste in elevating the instant case to the CTA is a blatant violation of the doctrine of exhaustion of administrative remedies as pronounced in the *San Roque* case.

Considering the foregoing, the Court in Division committed no error when it did not take cognizance of Chevron's claim for the first (1^{st}) quarter of CY 2012.

The CTA in Division correctly found that Chevron is only entitled to its claim in the amount of ₱3,806,549.13, representing

petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the second quarter of CY 2012

Chevron failed to sufficiently prove that its other clients are nonresident foreign corporations doing business outside the Philippines

In this regard, Chevron asserts that it duly proved that its other clients are nonresident foreign corporations doing business outside the Philippines.

Said clients are as follows: Chevron Alkhalij, Chevron Asia Pacific EP Company, Chevron Asia South Limited, Chevron Bangladesh, Chevron Business and Real Estate Service, Chevron Caltex Services Corporation, Chevron Energy Technology Co., Chevron Global Downstream, Chevron Hong Kong Ltd., Chevron International Limited, Chevron Information Technology Co., Chevron Int'l. Exploration Production, Chevron Kuo Pte. Ltd., Chevron Lubricant Oils, Chevron NA Exploration Production Co., Chevron Neftegaz, Inc., Chevron Oronite Company LLC, Chevron Oronite Pte. Ltd., Chevron Petroleum Company, Productos Chevron Mexico, Chevron Products Company, Chevron Services Company, Chevron Singapore Pte. Ltd., Chevron Texaco China Energy Co., Chevron Trading Ltd. Pte., CUSA Global Lubricants Asia Pacific, UNOCAL East China Sea Ltd., Chevron Pakistan Limited and Chevron Texaco Malampaya LLC.

Except for Chevron Pakistan Limited and Chevron Texaco Malampaya LLC for whom Chevron did not adduce any evidence, Chevron commonly presented SEC Certificates of Non-Registration and screenshots of Chevron Subsidiary governance website, to prove that the above-enumerated clients were nonresident foreign corporations doing business outside the Philippines. Likewise, Chevron presented several Service Agreements.

Under Section 22(I) of the NIRC of 1997, as amended, "[t]he term 'nonresident foreign corporation' applies to a foreign corporation not engaged in trade or business within the Philippines". Thus, to be considered as such corporation, (1) it must be a foreign corporation; **and** (2) it must not be engaged in trade or business within the Philippines.

In *Accenture, Inc. v. Commissioner of Internal Revenue*,[19] the petitioner therein asserted that:

[19] G.R. No. 190102, July 11, 2012.

"xxx based on the documentary evidence it presented, it was able to establish the following circumstances:

1. The records of the Securities and Exchange Commission (SEC) show that Accenture's clients have not established any branch office in which to do business in the Philippines.

2. For these services, Accenture bills another corporation, Accenture Participations B.V. (APB), which is likewise a foreign corporation with no "presence in the Philippines."

3. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable currency for their purchase of goods and services from the Philippines. Thus, in a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency."

In ruling that Accenture failed to prove that its clients are nonresident foreign corporations, the Supreme Court held that:

"Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:

x x x. There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'

> A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.
>
> Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines."

In the same vein, a review of the records shows that while Chevron sufficiently proved during the proceedings *a quo* that the above-enumerated clients are foreign corporations, it failed to adduce any evidence that they are doing business outside the Philippines. In other words, Chevron's presentation of its clients' (1) SEC Certificates of Non-Registration; (2) screenshots of Chevron Subsidiary governance website; and (3) Service Agreements, *may* have sufficed to prove that they were foreign corporations. However, these pieces of evidence are insufficient to prove that they are doing business outside the Philippines.

Considering the foregoing, the Court in Division committed no error when it found that Chevron failed to prove that the above-enumerated clients are nonresident foreign corporations doing business outside the Philippines.

Chevron failed to strictly comply with the requirements surrounding its VAT refund claim

Finally, Chevron asserts that: (1) it is entitled to the refund of input VAT supported by documents outside the quarter of claim but within the period of claim; (2) it sufficiently substantiated its input VAT; (3) it sufficiently proved the existence of its input VAT carry-over from previous year; and (3) claims for refund only necessitate preponderance of evidence.

As previously observed, these issues were already addressed correctly by the Court in Division in the assailed Resolution. Thus:

> "In addition, petitioner argues that it has sufficiently proved the existence of its reports input VAT carry-over from previous year. It manifests that submission of VAT invoices/receipts to prove the existence of reported input VAT carry-over from the previous year is not a requirement to prove entitlement to a claim for refund. ✓

Petitioner's argument is bereft of merit. An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.

Pursuant to Section 110(A)(1) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, any input VAT shall be creditable against the output VAT only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended.

Thus, it was proper for the Court to disallow the input VAT in the amount of ₱1,675,641.11 from petitioner's claim for non-compliance with the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-05.

Although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity [of] petitioner's claims.

Furthermore, petitioner argues that it is entitled to the refund of input VAT supported by documents dated outside the quarter of claim (out-of-period claims) but within the period of claim citing RMC No. 42-03.

The Court finds that the disallowance of the out-of-period claims in the total amount of ₱1,554,574.06 for failure to meet the substantiation requirements prescribed under the VAT law and regulations is in order.

Even if RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, as it contravenes Section 110(A)(2) of the NIRC of 1997, as amended, to wit:

> 'SEC. 110. *Tax Credits.* -
>
> (A) *Creditable Input Tax.* -
>
> xxx xxx xxx
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable: ge

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value added tax prior to the release of the goods from the custody of the Bureau of Customs.

xxx That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.'

It is clear from the foregoing provision that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty or fee, that is, upon the date of official receipt. Section 110 (A) is explicit — upon consummation, in the case of domestic purchases of goods, and upon payment, in the case of purchases of services. It does not provide any qualification.

In *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court held that the taxpayer claiming a VAT input tax credit or refund has the burden of proving that he is entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded. The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-related sales.

Finally, there is no merit to petitioner's theory that claims for refund of erroneously paid taxes are in the nature of civil cases, therefore, only preponderance of evidence is required.

The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company, (Now Bank of the Philippine Islands)*, is instructive, to wit:

> **'The burden is on the taxpayer to prove its entitlement to the refund.**
>
> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not ipso facto entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayers claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.**
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.
>
> Hence, for failing to prove its entitlement to a tax refund, respondents claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.'
>
> Moreover, substantial evidence has been construed to mean not necessarily preponderant proof as is required in ordinary civil action, but such kind of 'relevant evidence as a reasonable man might accept as adequate in support of a conclusion.'"[20]

After considering the above conclusion, the Court *En Banc* sees no cogent reason to disturb the same.

To end, both parties failed to show meritorious arguments to justify the reversal of the assailed Decision and Resolution, respectively. Hence, the dismissals of the consolidated Petitions are in order.

WHEREFORE, both Petitions for Review in CTA EB Nos. 1895 and 1896 are **DISMISSED**, for lack of merit.

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[20] See Note 2, pp. 114-118.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 consolidated cases were 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

CHEVRON HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1895
(CTA Case Nos. 8790 & 8835)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CHEVRON HOLDINGS, INC.,
Respondent.

CTA EB NO. 1896
(CTA Case Nos. 8790 & 8835)

Present:

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

Promulgated:
MAR 0 9 2020

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia*'s findings that Chevron Holdings, Inc. (Chevron) and the Commissioner of Internal Revenue (CIR) failed to present meritorious arguments that warrant the reversal of the assailed Decision and Resolution of the Court in Division.

Anent Chevron's failure to prove that a number of its clients are nonresident foreign corporations doing business outside the Philippines, I concur with the *ponencia* that Chevron's presentation of its clients' (1) SEC Certificates of Non-Registration; (2) screenshots of Chevron Subsidiary governance website; and, (3) Service Agreements, may have sufficed to prove that they were foreign corporation, but the same were insufficient to prove that Chevron's clients are doing business in the Philippines.

The Supreme Court, in no uncertain terms, declared in *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue* [1] that Service Agreements between the taxpayer-claimant and its foreign clients are not sufficient to prove that the foreign clients are doing business outside the Philippines.

Considering that Chevron failed to submit evidence to prove that a number of its foreign clients are doing business outside the Philippines, its sales thereto cannot be considered as subject to VAT at 0%.

All, I VOTE to: (i) DENY the respective Petitions for Review filed by Chevron Holdings, Inc. and the Commissioner of Internal Revenue for lack of merit; and, (ii) AFFIRM the assailed Decision and Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] G.R. No. 201326, February 8, 2017.