REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, Petitioner,	**CTA CASE NO. 9055**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 07 2018 : 2:10 pm

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RESOLUTION

UY, *J.*:

For the Court's resolution is petitioner's **Motion for Reconsideration *(Re: Decision dated October 3, 2017)***, filed on October 23, 2017, without respondent's comment as per Records Verification dated November 29, 2017.

Petitioner moves for the reconsideration of the Decision promulgated on October 3, 2017, the dispositive portion of which is quoted as follows:

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

Petitioner raised the following grounds in its motion:

1. it has thirty (30) days from receipt of respondent's decision denying the claim within which to appeal to this Court;

2. the law does not require that taxpayers appeal the inaction of respondent over claims for refund of excess and unutilized input value added tax (VAT);

3. the ruling of the Supreme Court in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue* and *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue* are mere *obiter dicta* and not binding precedents; and

4. respondent is estopped form questioning the jurisdiction of this Court.

After a close review of the arguments raised by petitioner, the Court finds the instant motion bereft of merit.

Petitioner mainly contends that this Court has jurisdiction over decisions of respondent in cases involving refunds of internal revenue taxes. It asserts that since it received respondent's decision on the administrative claim on April 23, 2015, it therefore had thirty (30) days or until May 23, 2015 within which to file its judicial appeal before the Court. Hence, petitioner timely filed its judicial appeal on May 22, 2015. Moreover, petitioner claims that the law does not require that taxpayers appeal the inaction of respondent over claims for refund of excess and unutilized input VAT; and that the pronouncements of the Supreme Court in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue* and *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue* are mere *obiter dicta*, thus, are not binding precedents which may applied by this Court.

It is worthy to note that upon the filing of an administrative claim, respondent is given a period of 120 days within which to: (1) grant a refund or issue the tax credit certificate; or (2) make a full or partial denial of the claim for a tax refund or tax credit. In this regard, the Supreme Court in *Rohm Apollo Semiconductor Philippines* *vs. Commissioner of Internal Revenue*[1] (*Rohm Apollo* case) held that that the taxpayer can file an appeal in one of two (2) ways: (1) file the judicial claim within thirty (30) days after the respondent denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period. Moreover, in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue*[2] (*Silicon* case), the Supreme Court ruled that the failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial. Thus, it was held that 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, **whichever is sooner**.

It must be noted that these rulings in the *Rohm Apollo* and *Silicon* cases merely affirm the decision laid down by the Supreme Court in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[3], where it held that the taxpayer may appeal the decision of the respondent to this Court within 30 days from receipt of the respondent's decision, or if respondent does not act on the taxpayer's claim **within the 120-day period**, the taxpayer may appeal to this Court within 30 days from the expiration of the 120-day period.

Therefore, when the 120-day period lapses and there is inaction on the part of the respondent, petitioner must no longer wait for respondent to come up with a decision thereafter. Respondent's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within thirty (30) days from the lapse of the 120-day waiting period.

We disagree with the contention of petitioner that the pronouncements in the *Rohm Apollo* and *Silicon* cases are mere *obiter dicta*.

An *obiter dictum* is defined as follows:

> "...**an opinion** expressed by a court upon some question of law that is *not necessary* in the determination of the case before the court. It is **a remark** made, or opinion expressed, by a judge, in his decision **upon a**

[1] G.R. No. 168950, January 14, 2015.
[2] G.R. No. 182737, March 2, 2016.
[3] G.R. No. 187485, February 12, 2013.

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cause *by the way*, that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being **a mere expression of an opinion** with no binding force for purposes of *res judicata*."[4] *(Emphases supplied)*

The pronouncements of the Supreme Court in the *Rohm Apollo* and *Silicon* cases, as regards the application of the 120+30-day periods are not mere *"opinions"* or *"remarks"*; and neither are they stated *"upon a cause* by the way*"*. They are rather the interpretation of the High Court of Section 112 of the NIRC of 1997, as amended. Correspondingly, they become part of the law of the land, pursuant to Article 8 of the Civil Code of the Philippines, to wit:

"Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

Relative thereto, in *People of the Philippines vs. Jabinal*,[5] the Supreme Court ruled:

"**Decisions of this Court**, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system ...' **The interpretation upon a law by this Court** constitutes, in a way, a part of the law as of the date that law originally passed, since **this Court's construction** merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of legal maxim *'legis interpretatio legis vim obtinet'* — the interpretation placed upon the written law by a competent court has the force of law. xxx." *(Emphases and underscoring supplied)*

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[4] *Land Bank of the Philippines vs. Suntay*, G.R. No. 188376, December 14, 2011.
[5] G.R. No. L-30061, February 27, 1974, 55 SCRA 607.

Correspondingly, the interpretation of Section 112 of the NIRC of 1997, as amended, stated by the Supreme Court in the *Rohm Apollo* and *Silicon* cases, anent the application of the 120+30-day periods, cannot be simply dismissed by petitioner as a mere *obiter dictum.*

Furthermore, petitioner asserts that respondent is estopped form questioning the jurisdiction of this Court. However, it failed to support this argument in its motion. "It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence."[6] The burden of proof lies on the party who makes the allegations. Nevertheless, it must be emphasized that "lack of jurisdiction over the subject matter of the case can always be raised anytime, even for the first time on appeal, since jurisdictional issues, as a rule, cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court."[7]

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration *(Re: Decision dated October 3, 2017)***, is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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[6] *Real vs. Belo,* G.R. No. 146224, January 26, 2007.
[7] *Tumpag vs. Tumpag,* G.R. No. 199133, September 29, 2014.