24-000159-0044

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11453

KEYENCE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
A TTY. ANGELINA RAYANNA O. MAPAGU
ATTY. FAUSTINO B. LUMABAO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CABRERA & COMPANY
29th Floor, AIA Tower (formerly Philamlife Tower)
8767 Paseo de Roxas
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **April 15, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 21, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

KEYENCE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **11453**

Members:

DEL ROSARIO, P.J., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

Promulgated:
APR 15 2025; 9:35AM

x - x

RESOLUTION

At bar is petitioner Keyence Philippines, Inc.'s (**petitioner**'s/**KPI**'s) Petition for Review[1] filed on 27 March 2024, where petitioner seeks the refund of its excess or unutilized input value-added tax (**VAT**) attributable to its zero-rated sales for the 3rd and 4th quarters of the fiscal year (**FY**) ended 28 February 2022 amounting to ₱4,053,352.55.[2] Petitioner declares that it appealed its claim due to respondent's inaction over the same.[3]

Also for the Court's resolution are: (**1**) respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) *Motion to Dismiss* embodied in his or her "Answer with Manifestation"[4] filed on 21 June 2024; and, (**2**) petitioner's "Urgent Motion for the Issuance of *Subpoena Duces Tecum* and Extension of Time to Submit the [Independent Certified Public Accountant] (**ICPA**) Report"[5] (**Motion for SDT**), with respondent's "Comment/Opposition (to petitioner's Urgent Motion for the Issuance of *Subpoena Duces Tecum* and Extension of Time to Sumit ICPA Report filed on November 19, 2024)"[6] (**Comment/Opposition**) thereto.

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1 Division Docket, pp. 6-24.
2 Prayer, Petition for Review, id., p. 21.
3 Paragraph 4, II. Statement of the Case, id., p. 7.
4 Division Docket, pp. 156-163.
5 Id., pp. 273-276.
6 Id., pp. 321-323.

As further stated in the Petition, during the subject FY, petitioner represents to have accrued excess or unutilized input VAT attributable to zero-rated sales that it made during the period.[7] Petitioner explains that it decided to file a refund claim upon realizing that it would not be able to generate sufficient VAT-able sales upon which it could apply its excess input VAT.[8]

Accordingly, beginning 30 November 2023, it kickstarted efforts towards the refund of its input VAT. Its supposed interactions[9] with the Bureau of Internal Revenue's (**BIR**'s) offices, until it eventually filed the instant Petition for Review, are reproduced below:

> ...
>
> 13. On 30 November 2023, which is within two (2) years from the close of the taxable quarter when the sales were made (30 November 2021 for the 3rd quarter zero rated sales), the Petitioner, through its external tax consultant, attempted to file an administrative claim for refund of its excess/unutilized input tax amounting to Pesos: **Four Million Fifty Three Thousand Three Hundred Fifty Two and 55/100 (Php 4,053,352.55)** with the BIR Revenue District Office No. 57- Biñan City, West Laguna (hereinafter referred to as "BIR RDO No. 57").
>
> 14. However, despite the completeness of the documents supporting the claim for refund, as required under Revenue Memorandum Circular No. 71-2023 ("RMC No, 71-2023") and Revenue Memorandum Order No. 23-2023 ("RMO No. 23-2023"), the BIR RDO No. 57 refused to receive and process the Petitioner's application for refund of excess input VAT based on its allegations that the Petitioner currently has "open cases" in the BIR's system which pertains to the filing of its other tax returns.
>
> 15. Due to the impending lapse of the prescriptive period to file the administrative claim for refund under Section 112 (A) of the Tax Code, Petitioner, through its external tax consultant, filed the administrative claim for refund together with the complete supporting documents via registered mail on the same day, 30 November 2023 which was received by the BIR RDO No. 57 on 13 December 2024.
>
> > 15.1 A copy of the Registered Mail Return Card of the filing of the administrative claim for refund via registered mail is attached as **Annex "H"**.
>
> 16. The present recourse by the Petitioner is pursuant to Section 112 (A) in relation to Section 112 (C) of the Tax Code, as amended by the Tax Reform for Acceleration and Inclusion

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[7] Par, 11, III. Statement of Facts and Timeliness of the Petition, id., pp. 8-9.
[8] Par. 12, id., p. 9.
[9] Pars. 13-17, id., pp. 9-10; Emphasis in the original text.

("TRAIN") and Ease of Paying Taxes (EOPT), which provides that "in case of full or partial denial of the claim for tax refund, 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 ninety (90)-day period**, appeal the decision with the Court of Tax Appeals: xxx"

17. Counting thirty (30) days from the expiration of the ninety (90)-day period given to the Commissioner to act on the Petitioner's claim for refund of its excess/unutilized input VAT on **28 February 2024** (90 days from 30 November 2023), the Petitioner has until **29 March 2024** to file the Petition for Review with the Court of Tax Appeals. Since 29 March 2024 falls on a holiday (Good Friday) and 30 March and 31 March 2024 both fall on weekends, the Petitioner has until **1 April 2024**, the next business day, to file the Petition for Review. Hence, the timely filing of the present petition.

...

On 18 April 2024, the Court served Summons[10] upon respondent. Respondent received the said Summons on 24 April 2024.[11] Accordingly, on 22 May 2024, he or she filed a "Motion for Extension of Time to File Answer".[12] The Court granted the same in its Minute Resolution dated 27 May 2024.[13] It gave respondent thirty (30) days from 24 May 2024, or until 24 June 2024[14], to file an Answer.

The same Minute Resolution included a directive to transmit the BIR Records for the present case, to wit:

...

3. **ORDER** respondent to certify and elevate to this Court within ten (10) days from filing an Answer, the entire BIR records of this case, pursuant to Section 5(b) of Rule 6 of the Revised Rules of the Court of Tax Appeals, as amended.

...

On 21 June 2024, within the extension that the Court granted to respondent, the latter filed his or her "Answer with Manifestation".[15]

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10 Id., p. 147.
11 Id., p. 148.
12 Id., pp. 150-152.
13 Id., p. 154.
14 23 June 2024 fell on a Sunday; hence, the Court gave respondent until Monday, 24 June 2024, or the next working day, to file an Answer.
15 Supra at note 4.

In the Answer, respondent specifically denied, among others, petitioner's allegations in the Petition pertaining to its timeliness, stating that he or she had not received any application for VAT refund for the 3rd and 4th quarters of the FY ended 28 February 2022.[16] Further, respondent pointed out that the return card that petitioner proffered as proof of receipt bears a "RECEIVED" stamp from Isla Lipana & Co., not the BIR's office.

As part of respondent's Special and Affirmative Defenses, he or she stressed that an administrative claim for refund is a condition *sine qua non* before the Court can acquire jurisdiction over a case.[17] For respondent, the fact that there had been no valid administrative claim filed meant that this Court could not have acquired jurisdiction over the instant Petition.[18] In line with this contention, respondent manifested that the BIR has no records of the present claim.[19] Accordingly, on the basis of the foregoing argument, respondent included in the Answer a prayer for the Court to dismiss the case for lack of jurisdiction.[20]

Pursuant to the directive in the Minute Resolution dated 27 May 2024[21] to transmit the BIR Records, the Court took note that respondent had not delivered the same.[22] Accordingly, in its Resolution dated 20 August 2024[23], the Court ordered respondent's counsel to explain the lapse.

Later into the proceedings, on 05 November 2024, the Court commissioned an ICPA to evaluate and verify petitioner's supporting documentation pertaining to its refund claim and make a corresponding recommendation.[24]

As part of the procedures to be performed, the ICPA needed to examine and mark the originals of petitioner's documents. On 19 November 2024, to address this exigency, petitioner filed its Motion for SDT. Therein, petitioner manifested that it had yet to retrieve the original documents it filed *via* registered mail on 30 November 2023

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16 Pars. 2 and 4. Respondent's Answer with Manifestation, id., p. 156.
17 Special and Affirmative Defenses, id., pp. 157-160.
18 Id.
19 Par. 24, id., p. 161.
20 Prayer, id.
21 Supra at note 13.
22 See Records Verification dated 30 July 2024, id., p. 171.
23 Id., p. 172.
24 See Order dated 05 November 2024, id., pp. 268-270.

with the BIR Revenue District Office No. 57 (**RDO 57**), which the latter supposedly received on 13 December 2023.[25]

As petitioner represents, it had been coordinating with BIR – RDO 57 to expedite the retrieval, and in a phone call on 12 November 2024, it was informed that RDO 57 noted receipt of the batch of documents but it had yet to locate the same in its warehouse. Acknowledging the urgency of the retrieval *vis-à-vis* the ICPA's deadline to submit a recommendation and Report, petitioner sought assistance from this Court to issue an SDT for the production of the documents. Petitioner likewise asked that the ICPA be allowed to defer her report's submission until after ample time (to examine the documents yet to be retrieved) has passed.[26]

On 04 December 2024, the ICPA filed a partial Report[27], with a notation that a substantial portion of the procedures intended to be performed had not been carried out as the original supporting documents that petitioner submitted to BIR – RDO 57 had not been retrieved and presented to the ICPA.[28]

Meanwhile, respondent had been consistently denying the existence of any BIR Records (upon the premise that petitioner had not actually filed an administrative claim) in the: (**1**) "Answer with Manifestation" filed on 21 June 2024[29]; (**2**) Manifestation dated 30 August 2024 filed on 25 November 2024[30]; (**3**) Compliance filed on 05 December 2024[31]; (**4**) declarations by respondent's counsel in open court in the hearing of 22 January 2025[32]; and most recently, in the (**5**) Comment/Opposition filed on 12 February 2025[33] in response to petitioner's Urgent Motion for SDT.

Notably, in the aforementioned Comment/Opposition, respondent opposes the issuance of an SDT, echoing Rule 21[34] of the

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25 Par. 2, id., p. 273.
26 Supra at note 5.
27 ICPA Report dated 04 December 2024, id., pp. 296-302.
28 Id., p. 297.
29 Supra at note 4.
30 Id., pp. 291-293.
31 Id., pp. 306-308.
32 See Order dated 22 January 2025, id., pp. 318-319.
33 Supra at note 6.
34

RULE 21
SUBPOENA

Rules of Court, as amended, and stating that the process for its issuance must be "directed to a person requiring him or her to bring with him or her any books, documents, or other things under his or her control". As respondent exclaims, he or she is not in control nor possession of any document relative to petitioner's supposed refund claim for the 3rd and 4th quarters of the FY ended 28 February 2022, rendering it impossible for the former to produce the original documents petitioner supposedly filed *via* registered mail.

We resolve.

Following an assiduous review of the allegations in the instant Petition for Review *vis-à-vis* the records of the proceedings that ensued, the Court notes that it was filed **out of time**. Consequently, the Court lacks jurisdiction to take cognizance of the case.

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with the legal requirements is fatal to a party's cause.[35]

Petitioner anchors its claim on Sections 110(B)[36], 112(A) and (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended by Republic Act (**RA**) No. 10963 or Tax Reform for Acceleration and Inclusion (**TRAIN**), the relevant portions of which are all quoted hereunder:

> . . .
> **SEC. 110**. *Tax Credits.* —
> . . .
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be

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Section 1. *Subpoena and subpoena duces tecum.* – Subpoena is a process directed to a person requiring him or her to attend and to testify at the hearing or the trial of an action, or at any investigation conducted by competent authority, or for the taking of his or her deposition. It may also require him to bring with him or her any books, documents, or other things under his or her control, in which case it is called a subpoena duces tecum.

35 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

36 As amended by Republic Act No. 9361, "AN ACT AMENDING SECTION 110(B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES"

refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

...

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 or 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.

...

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[37], the Supreme Court laid down the requisites for the

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[37] G.R. No. 234445, 15 July 2020; Citations omitted and emphasis supplied.

entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

> . . .
>
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; **(3) the claim must be filed within two years after the close of the taxable quarter when such sales were made**; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
>
> . . .

Guided by the foregoing principles, the Court is bound to evaluate whether petitioner complied with the aforementioned requisites to establish the latter's entitlement to the refund being claimed. Pertinently, the timeliness of the claim is covered in the third *(3rd) requisite.*

In accordance with Section 112(A) and (C)[38] of the NIRC of 1997, as amended by TRAIN, the administrative claim for refund of unutilized 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 are made.

Petitioner's present claim covers the 3rd and 4th quarters of the FY ended 28 February 2022. Counting two (2) years from the respective close of the said quarters, the last day for the filing of the administrative claim for the said two (2) quarters, *vis-à-vis* the date of filing of the administrative claim by petitioner, pursuant to Section 112(A) of the NIRC of 1997, as amended, are summarized below, *viz*:

Quarter	**Close of taxable quarter**	**Last day for filing an administrative claim**	**Date of filing of claim for refund**
3rd Quarter	30 November 2021	30 November 2023	30 November 2023
4th Quarter	28 February 2022	28 February 2024	

38 Supra at p. 7.

As petitioner alleged, it attempted to file its administrative claim with the BIR – RDO 57 on 30 November 2023. It maintained that the documents accompanying its application for refund were complete, yet the BIR refused to receive and process the said application.[39] According to petitioner, the BIR's refusal was grounded upon allegations of "open cases" (or, in this case, as petitioner contends, supposed gaps in its required regular filings of its tax returns) flagged in the latter's system.

To prove that it did not have any outstanding *delinquent* tax liabilities (which would bar it from applying for a refund) and that the BIR's supposed denial was thus unwarranted, petitioner presented a copy of its Delinquency Verification Certificate (**DVC**)[40] issued on 22 November 2023 by the Accounts Receivable Monitoring Division (**ARMD**). Petitioner represents that, after interposing that petitioner had "open cases", the receiving officer did not bother to check the completeness and sufficiency of the documents petitioner attempted to file. It attests that the said DVC, being part of the refund application's documentary requirements, was included in the docket it attempted to file.

Revenue Memorandum Order (**RMO**) No. 47-2020[41] expounds on the relevance of a DVC in VAT refund claims:

> ...
> 4. **One of the documentary requirements is the Delinquency Verification Certificate** (DVC) prescribed in Revenue Memorandum Circular No. 64-2019 (Annex "B") **showing that the taxpayer has no outstanding (final and executory) tax liabilities** as defined under Section II (1) of Revenue Memorandum Order No. 11-2014. Hence, **the application shall not be accepted if such tax liabilities appear on the DVC, except for outstanding VAT liability which may be deducted from the approved BIR portion of the claim**.
>
> **Applications where the DVC shows delinquent accounts other than VAT shall not be received.** The claimant has to settle first the tax liabilities so that a DVC with no tax liabilities can be issued by the concerned DVC-issuing office. If the delinquent accounts pertain to VAT liability and the amount is lower than the amount of claim on local purchases, the application shall be accepted.
>
> ...

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39 Supra at note 9.
40 Annex "I" to the Petition for Review, Division Docket, p. 45.
41 Consolidated and Updated Guidelines and Procedures on the Processing of Claims for Value-Added Tax Credit/ Refund Except Those Under the Authority and Jurisdiction of the Legal Group.

Anent thereto, RMO No. 11-2014[42] defines delinquent accounts as follows:

> . . .
>
> II. DEFINITIONS OF TERMS. — ...
>
> . . .
>
> 1. Accounts Receivable/**Delinquent Account** (AR/DA) — **refers to the amount of tax due from a taxpayer who failed to pay the same within the time prescribed for its payment**.
>
> This unpaid amount may arise from:
>
> a. self-assessed tax liability, as defined under Item II.20 hereof; or
> b. deficiency assessment issued by the Bureau, which became final and executory due to any of the following applicable instances:
>
> b.1 Failure to file a request for reinvestigation/ reconsideration within thirty (30) days from receipt of the Final Assessment Notice (FAN);
>
> b.2 Failure to submit documents in support of the request for reinvestigation within sixty (60) days from filing of the request;
>
> b.3 Failure to appeal to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the decision denying the request for reinvestigation/reconsideration or in case of inaction on the part of the Bureau, from the lapse of the one hundred eighty (180) days from the submission of the required documents;
>
> b.4 Failure to appeal CTA's decision on the case with the higher court as a result of which the decision became final and executory; and
>
> b.5 Decision/Resolution by the CTA/Supreme Court (SC) in favor of the BIR which became final and executory.[43]
>
> . . .

Revenue Memorandum Circular (**RMC**) No. 64-2019[44] further clarifies, to wit:

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[42] Policies, Guidelines and Procedures in the Periodic Clean-Up of Accounts Receivable/Delinquent Accounts.

[43] Emphasis and underscoring supplied.

[44] Clarifying the Issuance of Delinquency Verification Certificate for Claims for Value-Added Tax (VAT) Credit/Refund Pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997, as Amended.

> . . .
> II. CLARIFICATIONS
> . . .
>
> Based on the foregoing definition of AR/DA in RMO No. 11-2014, "**open stop-filer cases**" and deficiency tax assessments which are timely protested, subject of reconsideration/ re-investigation, or pending appeal with the Appellate Division or CTA/SC **shall not be considered as AR/DA and, therefore, existence of which shall not prevent the processing of VAT refund**.[45]
>
> . . .

A plain reading of the copy of petitioner's DVC[46] attached to its Petition reveals that at the time of its issuance on 22 November 2023 (or a week before petitioner attempted to file its refund application on 30 November 2023), petitioner had, *in fact*, no delinquent tax liability (which could have barred petitioner from applying for a refund). Moreover, as clarified above, "open cases" should not have hindered the processing of a VAT refund claim either.

Even assuming *arguendo* that petitioner did not actually submit the required DVC, such lapse would not have been fatal.

As petitioner aptly argued in its Petition, as claimant, it is presumed to have submitted complete documents in support of its application for refund. Jurisprudence is clear in stating that for purposes of Section 112(C)[47] of the NIRC of 1997, as amended, the completeness of the documents to support a claim for refund rests with the taxpayer and not with the BIR.[48] Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[49]

Clearly, guided by the foregoing, strictly for purposes of determining the completeness of the supporting documents accompanying the application for refund at the administrative level based on petitioner's allegations, there does not appear to be a roadblock that would have warranted the outright denial of its receipt.

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45 Emphasis and underscoring supplied.

46 Supra at note 40.

47 Supra at p. 7.

48 See *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, 01 February 2023, citing *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal of Internal Revenue*, G.R. Nos. 201225-26, 201132 & 201133, 18 April 2018.

49 Id.

Thus, when petitioner personally filed its administrative claim for refund on 30 November 2023, such filing is deemed complete for all intents and purposes. Consequently, it is **deemed filed** as of that date (regardless of respondent's refusal to accept it).

Thus, as to the timeliness of petitioner's judicial claim, respondent's unjust refusal to accept petitioner's "complete" administrative claim on 30 November 2023 effectively constitutes an **outright denial** of its claim.

Accordingly, petitioner had thirty (30) days thereafter, or until **02 January 2024**[50] within which to file the judicial claim. As the present Petition for Review was only filed on 27 March 2024[51], the same was then already belatedly filed. Such being the case, the Court finds that petitioner failed to satisfy the above-stated *3rd requisite*. In the same light, this Court **did not acquire jurisdiction** over the Petition for Review.

Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint.[52] Thus, **the limits of this Court's jurisdiction is unaffected by petitioner's erroneous interpretation of the law**. In *Glynna Foronda-Crystal v. Aniana Lawas Son*[53], the Supreme Court aptly stated - "[i]**n law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution**". In thus losing Our authority to review the instant petition for being premature, this Court deems it proper to *motu proprio* dismiss the case for lack of jurisdiction.

Apart from its alleged personal filing, petitioner also maintains that, on the same day of its outright denial, petitioner attempted to re-file the same claim *via* registered mail. This type of filing of a VAT refund claim is **not** sanctioned nor proscribed by either the NIRC nor its implementing rules and regulations.

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50 The original deadline of thirty (30) days from 30 November 2023 fell on 30 December 2023. As 30 and 31 December 2023 and 01 January 2024 are holidays, petitioner's deadline to file its Petition for Review instead fell on 02 January 2024, the next working day.
51 Supra at note 1.
52 *Editha Padlan v. Elenita Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.
53 G.R. No. 221815, 29 November 2017.

Accordingly, if the CIR would opt to act upon the instant claim based on the documentation the BIR received through registered mail, provided the same had been timely filed, the Court finds no reason to not honor the filing. However, respondent had consistently denied ever acting upon a refund application from petitioner for the subject quarters.[54] Most recently, respondent likewise denies that the packet of documents petitioner had supposedly mailed came into his or her possession (despite manifestations from petitioner that it had been coordinating with the BIR for its retrieval).[55] As such, in this instance, petitioner's alternative approach to filing cannot be entertained.

For argument's sake, assuming registered mail would be outright considered a valid mode of filing a VAT refund claim, petitioner fell short of establishing the fact of its filing. Thus, in determining the timeliness thereof, Section 3[56], Rule 13[57] of the Rules of Court, as amended, is the most instructive. It provides that a submission filed through registered mail is deemed filed on the date the same is mailed. Meanwhile, Section 16[58] of the same Rule outlines the required proof of service, which consists of: (**1**) the registry receipt; and, (**2**) the affidavit of the person who mailed it.

At the outset, it has been observed from the case's records that petitioner had failed to meet these requirements, only offering the registry return receipt[59], the veracity of which has also been put into question. An examination of the return receipt discloses that the article

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54 Supra at notes 29-33.

55 Supra at note 6.

56 Sec. 3. *Manner of filing*. – The filing of pleadings and other court submissions shall be made by:
(a) Submitting personally the original thereof, plainly indicated as such, to the court;
(b) **Sending them by registered mail;**
(c) Sending them by accredited courier; or
(d) Transmitting them by electronic mail or other electronic means as may be authorized by the [c]ourt in places where the court is electronically equipped.

In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. **In the second** and third **cases**, **the date of the mailing** of motions, pleadings, [and other court submissions, and] payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, **shall be considered as the date of their filing**, payment, or deposit in court. The envelope shall be attached to the record of the case. In the fourth case, the date of electronic transmission shall be considered as the date of filing. (Emphasis supplied.)

57 FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS.

58 Sec. 16. *Proof of filing*. – The filing of a pleading or any other court submission shall be proved by its existence in the record of the case.

...

(b) If the pleading or any other court submission was filed by registered mail, the filing shall be proven by the registry receipt and by the affidavit of the person who mailed it, containing a full statement of the date and place of deposit of the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) calendar days if not delivered.

59 Annex "H" to the Petition for Review, Division Docket, p. 44.

it covered was received by an unnamed receiver (only indicating their signature on the field provided therein), though petitioner's witness maintains that the same was duly received:

> . . .
> ATTY. ANGELINA RAYANNA O. MAPAGU:
> Q. Good morning, Ms. Witness. Just a few questions. You mentioned in your answer to Question No. 13 that you filed for a request for refund with the BIR, RDO 57, through registered mail. Correct?
>
> MS. EDELWEISS Y. CHUA:
> A. (Witness nods.)
>
> ATTY. ANGELINA RAYANNA O. MAPAGU:
> Q. And you also attached therein a registry receipt as evidence. Correct?
>
> MS. EDELWEISS Y. CHUA:
> A. (Witness nods.)
>
> ATTY. ANGELINA RAYANNA O. MAPAGU:
> Q. Can you please show where in that registry receipt indicates that it was received by the BIR?
>
> MS. EDELWEISS Y. CHUA:
> A. All right. In the registry receipt card, in the upper right corner, there seems to be a signature that was received and it was also dated December 13 although the name was not indicated but the filing through Registry Receipt was addressed to them, Revenue District Officer, Mr. Moranda.
> . . .
>
> ATTY. ANGELINA RAYANNA O. MAPAGU:
> Q. Thank you, Your Honors. There appearing no name. Ms. Witness, will you be able to identify any BIR Officer without signature indicated therein.
>
> MS. EDELWEISS Y. CHUA:
> A. I have no personal knowledge of the BIR personnel who received the documents but then, it was addressed to Revenue District Officer, Mr. Murado.
>
> ATTY. ANGELINA RAYANNA O. MAPAGU:
> Q. Other than the signature and the date, Ms. Witness, would you be able to identify any mark that would indicate that it was received by the BIR in that Registry Receipt, Ms. Witness?
>
> ATTY. KENNETH PAOLO M. LUGTU:
> Objection, Your Honors.

PRESIDING JUSTICE ROMAN G. DEL ROSARIO:
Sustained. The document would just speak for itself.[60]

. . .

After this point, the representatives of petitioner that it intended to present as witnesses had already concluded their respective testimonies, with only that of the Court-commissioned ICPA remaining. As it stands, with what is available in the records, petitioner has not compellingly demonstrated the validity of its filing.

Incidentally, in filing his or her Answer, respondent included a prayer asking the Court to dismiss the case for lack of jurisdiction.[61] In evaluating the said Answer, it can be gleaned that respondent's preferred course of action is premised on his or her counter-argument that petitioner failed to prove that it actually filed an administrative claim and that there is no proof supporting that the CIR's issued a decision (or denied a claim by inaction). For respondent, the instant Petition for Review should be dismissed considering its **premature filing**.

Based on Our pronouncements thus far, while the end result is similarly the dismissal of the instant Petition for lack of jurisdiction, the basis thereof differs in that the Petition for Review is actually **filed out of time**. As enunciated further above, We do not share respondent's view that petitioner failed to file its administrative claim when the BIR allegedly refused to receive the same. Instead, its outright denial became immediately appealable to this Court. To clarify, the dismissal of the instant case stems from petitioner's own allegations in its Petition for Review, and not from petitioner's failure to sufficiently establish that it duly filed its administrative claim.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Keyence Philippines, Inc. on 27 March 2024 is hereby **DISMISSED** for lack of jurisdiction.

Meanwhile, the *Motion to Dismiss* embodied in respondent's Answer is **DENIED** for lack of merit.

Finally, with the dismissal of the Petition, the resolution of petitioner's "Urgent Motion for the Issuance of *Subpoena Duces*

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[60] TSN dated 29 October 2024, pp. 17-18.

[61] Supra at note 20.

Tecum and Extension of Time to Submit the ICPA Report" has become **MOOT** and **ACADEMIC**.

SO ORDERED.

(*With Concurring Opinion*)
ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(*I join PJ's Concurring Opinion*)
LANEE S. CUI-DAVID
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

KEYENCE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11453

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

APR 15 2025 9:35AM

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in the dismissal of the Petition for Review filed by Keyence Philippines, Inc., albeit on a different ground.

A perusal of the Petition for Review[1] reveals that petitioner allegedly attempted to file an administrative claim for refund of its excess/unutilized input value-added tax (VAT) on November 30, 2023 but the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 57 refused to receive and process the same due to petitioner's "open cases" in the BIR's system.

A review of the records, however, shows that aside from its bare allegation, petitioner failed to present any proof of the alleged attempt to personally file an administrative claim for refund on November 30, 2023. No copy of the alleged application for administrative claim for refund can be found in the case docket. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[2]

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[1] CTA Docket, pp. 6-22.
[2] *Celia R. Atienza vs. Noel Sacramento Saluta,* G.R. No. 233413, June 17, 2019.

Anent petitioner's allegation that its external tax consultant also filed its administrative claim for refund (with the complete supporting documents) via registered mail on November 30, 2023, assuming the same is allowed, petitioner still failed to prove the fact of filing of the administrative claim for refund through registered mail. While petitioner presented a copy of the Registry Return Receipt,[3] it was not established that the mail matter referred to in the said Registry Return Receipt is petitioner's alleged administrative claim for refund.

Meanwhile, respondent, in the Motion to Dismiss incorporated in his Answer with Manifestation filed on June 21, 2024, manifests that the BIR has no records of the case at bar considering that there was no application for VAT refund actually received with respect to the 3rd and 4th quarters of fiscal year ending February 28, 2022.

Respondent argues that an administrative claim for refund is a condition *sine qua non* before the Court can acquire jurisdiction over the case. Respondent insists that since petitioner failed to show clear and convincing proof that it actually filed an administrative claim for refund and there is neither a decision nor denial by inaction by respondent for petitioner to seek intervention of the Court, the premature filing of the present Petition for Review warrants a dismissal thereof.

Considering that petitioner failed to establish that an administrative claim for refund was filed before the filing of the present Petition for Review, the case should be dismissed.

All told, I VOTE for the Court to: (i) dismiss the Petition for Review filed on March 27, 2024; (ii) grant respondent's Motion to Dismiss embodied in the Answer with Manifestation filed on June 21, 2024; and, (iii) deem as moot and academic the resolution of petitioner's Urgent Motion for the Issuance of Subpoena Duces Tecum and Extension of Time to Submit the ICPA Report filed personally on November 19, 2024 and via email on November 20, 2024.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] Annex "H", Petition for Review, Docket, p. 44.