REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, Petitioner,	CTA EB No. 1795 (CTA Case No. 9055)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 2 2 2019 3:55 p.m.

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DECISION

Fabon-Victorino, J.:

Impugned in this Appeal[1] filed by Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ before the Court *En Banc* are the Decision[2] dated October 3, 2017 of the Court in Division, dismissing its Petition for Review on jurisdictional ground, and the Resolution[3] dated February 7, 2018, denying its Motion for Reconsideration, for lack of merit.

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1 *Rollo,* pp. 6-27.
2 Ibid. at pp. 35-53.
3 Id. at pp. 54-59.

The following facts of the case remain unchallenged.

Petitioner is a VAT-registered[4] regional operating headquarters (ROHQ) of Zuellig Pharma Asia Pacific Ltd., a foreign corporation organized and existing under the laws of Hong Kong. It is duly licensed by the Securities and Exchange Commission (SEC) to engage in business development, general administration and planning, sourcing of information technology (IT) components and services, marketing control, sales promotion, training, technical support and maintenance in the Philippines.[5] It holds office at 27th Floor Philippine AXA Life Centre, Sen. Gil Puyat Avenue corner Tindalo Street, Makati City.[6]

Respondent is the Commissioner of the Internal Revenue (CIR) vested with authority to carry out all the functions, duties, and responsibilities of said office, including *inter alia,* the power to decide, approve, and grant claims of refund of, or issuance of tax credit certificate (TCC) for overpaid, or collected internal revenue taxes such as excess and unutilized VAT. He may be served with court notices and processes at the Legal Division of the Bureau of Internal Revenue (BIR), Revenue Region No. 8 located at 2nd Floor BIR Building, 313 Gil Puyat Avenue, Makati City.

For the 1st quarter of CY 2012, petitioner filed its Quarterly VAT Return via electronic filing and payment system (eFPS), on the following dates:

Return	Date of Filing
Original	April 19, 2012[7]
First Amendment	January 22, 2013[8]
Second Amendment	January 25, 2013[9]
Third Amendment	January 27, 2014[10]

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4 Exhibit P-3.
5 Exhibit P-1.
6 Exhibits P-1 and P-2.
7 Exhibit P-4.
8 Exhibit P-5.
9 Exhibit P-6.
10 Exhibit P-7.

On January 28, 2014, petitioner filed its administrative claim for refund of its alleged excess and unutilized input VAT covering the four (4) quarters of CY 2012 with the BIR Revenue District Office (RDO) No. 49 – North Makati.[11]

On February 12, 2014, respondent issued a Letter of Authority (LOA) authorizing Revenue Officer (RO) Roberto Delos Santos and Group Supervisor (GS) Joriz Saldajeno to validate the propriety of petitioner's claim for input VAT refund covering CY 2012.[12]

In a Letter dated March 4, 2014, RO Delos Santos requested petitioner to submit supporting documents to substantiate its refund claim.[13]

On March 18, 2014[14] and June 24, 2014,[15] petitioner submitted documents as requested by the BIR.

In the Letter dated April 21, 2015, petitioner informed respondent that it opted to reduce its administrative claim for refund and that it has submitted complete documents to substantiate the subject refund claim.[16]

On April 23, 2015, petitioner received respondent's undated Letter, denying its administrative claim for VAT refund.[17] This prompted petitioner to lodge a Petition for Review before the Court in Division on May 22, 2015.[18]

In the impugned Decision dated October 3, 2017, the Court in Division ruled that petitioner's judicial claim for refund suffers from jurisdictional infirmity as it belatedly filed its judicial claim for refund, having failed to observe the mandatory 120 and 30 day periods in seeking judicial

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11 Exhibits P-12 and P-12-A.
12 Exhibit P-13. Issued by respondent's authorized representative Regional Director Nestor S. Valeroso.
13 Ibid., docket (CTA Case No. 9055), at p. 458.
14 Exhibit P-13.
15 Exhibit P-14.
16 Exhibit P-17.
17 Exhibit P-18.
18 Docket (CTA Case No. 9055), pp. 10-23.

intervention thereby divesting the Court in Division of the required competence to entertain the same.

On October 23, 2017, petitioner filed a Motion for Reconsideration of the adverse Decision of October 3, 2017, but was denied for lack of merit by the Court in Division in the equally impugned Resolution of February 7, 2018. Hence, the present recourse.

In this Appeal, petitioner maintains that the Court in Division has the requisite legal competence to adjudicate its claim for refund. It argues that under Section 112(C) of the NIRC, as amended, the taxpayer dissatisfied with the decision of respondent on a VAT refund claim, has a period of thirty (30) days from receipt of the adverse Decision to elevate the matter with the Court in Division. Thus, petitioner had 30 days from receipt of the adverse Decision on April 23, 2015, or until May 23, 2015 to file its Petition for Review with Court in Division, for which reason its claim for refund was seasonably instituted on May 22, 2015.

The fact that respondent's adverse Decision of April 23, 2015 was rendered beyond the mandated 120-day period within which to act on administrative claim for VAT refund is of no consequence as Section 112(C) of the NIRC, as amended merely requires that such adverse decision be appealed by the taxpayer within 30 days from receipt thereof. To hold otherwise would be reading into the law what was not provided therein which should not be tolerated, says petitioner.

Petitioner further imputes error to the Court in Division in relying on the twin cases of *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue (Rohm* case*)*[19] and *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue (Silicon* case),[20] to justify the dismissal of the subject refund claim as these tenets are allegedly *obiter dicta*, hence, not binding precedents in the context of jurisprudence. And granting that the *Rohm* and *Silicon* cases are binding precedents, on account of variance in

[19] G.R. No. 168950, January 14, 2015.
[20] G.R. No. 182737, March 2, 2016.

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factual milieu between the foregoing cases and the present controversy, the *Rohm* and *Silicon* cases may not be applicable. Besides, respondent is precluded from invoking lack of jurisdiction of the Court in Division to determine the case since it relied in good faith that its administrative claim for VAT refund would be granted given the repeated requests for presentation of supporting documents by RO Delos Santos and GS Saldajeno.

In closing, petitioner insists that it is entitled for the refund/tax credit of its excess and unutilized input taxes imputable to its zero-rated sales for the 1st Quarter of CY 2012 in the aggregate amount of ₱38,697,566.07.

Despite directive,[21] respondent failed to file his comment/opposition to the instant Petition for Review.

THE RULING OF THE COURT

The petition is devoid of merit.

Section 112(C) of the NIRC, as amended draws the roadmap to follow for the Court in Division to attain the requisite legal competence to adjudicate claims for refund of input taxes, thus:

> **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

[21] Records verification report dated May 22, 2018, *rollo,* p. 63.

> (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.

Clearly, the CIR has a period of 120 days from date of submission of complete documents to act on the taxpayer's application for input tax refund. When respondent renders an adverse Decision within the 120-day period; or the administrative claim remains unacted upon within the 120-day period, only then will the taxpayer be allowed to appeal with the CTA within 30 days either, from receipt of such adverse Decision, or from lapse of the said 120-day period. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material.[22]

Significantly, petitioner does not deny that the subject 120-day period for respondent to act on its administrative claim for VAT refund ended on August 15, 2014. Thus, only respondent's decision rendered before or until the latter date may be elevated to the Court in Division. *A fortiori,* any adjudicatory action handed down by respondent <u>*after*</u> the subject 120-day period had lapsed is <u>*not*</u> a decision contemplated by the Tax Code and jurisprudence appealable with the Court in Division. Given that petitioner opted to elevate respondent's adverse decision it received on April 23, 2015, or long after the 120-day period expired on August 15, 2014, there is no valid decision that may be a proper subject of review by the Court in Division, precisely the dismissal of its judicial claim for input VAT refund is in order.

Petitioner posits that the above interpretation is flawed since no such condition, i.e., that respondent's adverse decision must be rendered within the subject 120-day period, is required under Section 112(C) of the NIRC, as amended.

The submission is specious.

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22 See *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 184266, November 11, 2013.

Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law.[23] It requires our courts to follow a rule already established in a final decision of the Supreme Court.[24] What it says then should be definitive and authoritative, binding on those occupying the lower ranks in the judicial hierarchy. They have to defer and to submit,[25] for [t]here is only one Supreme Court from whose decision all other courts should take their bearings.[26]

To stress, beginning with *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[27] followed by plethora of cases,[28] it has been consistently ruled that the Court in Division may only entertain claims falling under Section 112(C) of the NIRC, as amended, only on two (2) occasions, namely: a) when respondent's adverse decision rendered *within* the 120-day period was appealed by the taxpayer within 30 days from receipt thereof; or b) when respondent failed to act within the 120-day period, and such inaction was appealed by the taxpayer within 30 days from the lapse of the 120-day period. The High Tribunal has spoken. On matters of input VAT refund, only respondent's adverse decision rendered *within* the subject 120-day period may be elevated with the Court in Division. The Court cannot rule otherwise.

Equally unavailing is petitioner's posture that the doctrines laid down in the *Rohm* and *Silicon* cases are mere

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23 *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue,* G.R. No. 197525, June 4, 2014.

24 *United Coconut Planters Bank vs. Spouses Uy,* G.R. No. 204039, January 10, 2018.

25 See *Ang Ping vs. Regional Trial Court of Manila, Branch 40,* G.R. No. 75860, September 17, 1987.

26 *Commission on Higher Education vs. Dasig,* G.R. No. 172776, December 17, 2008.

27 G.R. No. 184823, October 6, 2010.

28 *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 203249, July 23, 2018; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 182737, March 2, 2016; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015; *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership,* G.R. No. 191498, January 15, 2014; and *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. No. 187485, February 12, 2013.

obiter dicta which the Court in Division erroneously applied in deciding this case.

An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it.[29] It is a remark made, or opinion expressed, by a judge, in his decision upon a 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.[30]

Conversely, xxx an <u>adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*</u>, and this rule applies to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated.[31] Thus, to determine whether the twin rulings in *Rohm* and *Silicon* cases are *obiter dicta*, an examination of the issues raised and the corresponding rulings therein are in order.

Among the issues posed and matters addressed in the *Rohm*[32] and *Silicon*[33] cases was the propriety of therein claimants' judicial claim for refund as provided for in Section 112(C) of the NIRC, as amended.

Note that both the 120-day period to decide an administrative claim for VAT refund and the 30-day period to file a judicial claim with the Court in Division under Section 112(C) of the NIRC, as amended, were inextricably interwoven, hence, the need to determine the

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29 *Auyong Hian (Hong Hua Hang) vs. Court of Tax Appeals, et al.,* G.R. No. L-28782, September 12, 1974, citing *Bouvier's Law Dictionary, Third Revision,* Vol. I, p. 863.

30 *Land Bank of the Philippines vs. Federico Suntay, as represented by his assignee, Josefina Lubrica,* G.R. No. 188376, December 14, 2011.

31 See *Villanueva, Jr. vs. The Hon. Court of Appeals,* G.R. No. 142947, March 19, 2002. Underscoring supplied.

32 Statement of issue, *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

33 Roman numeral II, statement of issues, *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 182737, March 2, 2016.

commencement and lapse of both periods. Precisely, the Supreme Court forged the tenet that in cases of input VAT refund, an appeal may be taken with the Court in Division within 30 days, from receipt of respondent's adverse decision rendered within the 120-day period; or from the lapse of such 120-day period. *Ergo,* these are not mere *obiter dicta* and in fact, are binding precedents which the Court in Division correctly applied in the given controversy.

Finally, the lack of legal competence by the Court in Division to adjudicate this case may not be swept under the rug as petitioner would have it. Basic is the rule that jurisdiction over the subject matter is conferred by law and <u>an objection based on this ground cannot be waived by the parties</u>.[34] The *rationale* for this is not that difficult to perceive - To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.[35] Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void.[36]

All told, the Court *En Banc* is one with the Court in Division in ruling that it has no competence to entertain and determine the belatedly filed Petition for Review as petitioner failed to observe the 120 and 30 days mandatory and jurisdictional periods to seek judicial intervention in its claim for VAT refund.

Note that a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.[37]

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[34] See *Heirs of Concha, Sr. vs. Spouses Lumocso,* G.R. No. 158121, December 12, 2007 (underscoring supplied).

[35] See *Commissioner of Internal Revenue vs. Villa,* G.R. No. L-23988, January 2, 1968.

[36] See *Mitsubishi Motors Philippines Corporation vs. Commissioner of Customs,* G.R. No. 209830, June 17, 2015.

[37] See *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,* G.R. No. 184823, October 6, 2010.

WHEREFORE, the Petition for Review dated March 14, 2018 filed by Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ is **DENIED**. The impugned Decision dated October 3, 2017 and Resolution dated February 7, 2018, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(With due respect, please see my Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ZUELLIG PHARMA ASIA PACIFIC LTD., PHILS. ROHQ,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1795
(CTA Case No. 9055)

Present:

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

Promulgated:

OCT 2 2 2019

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CONCURRING AND DISSENTING OPINION

MANAHAN, *J.*:

My distinguished colleagues denied the Petition for Review filed by Zuellig Pharma Asia Pacific Ltd., Phils. ROHQ (Zuellig) thereby affirming the decision of the Court in Division dated October 3, 2017, dismissing the Petition for Review for lack of jurisdiction.

The issue of lack of jurisdiction stems from the alleged failure of Zuellig to file the appropriate appeal with the Court of Tax Appeals (Court) within the thirty (30)-day period upon the lapse of the 120-day period provided in Section 112 (c) of the 1997 National Internal Revenue Code (NIRC) quoted as follows:

"Section 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

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."

Based on the foregoing, the law mandates that claims for refund of alleged excess or unutilized input value-added tax (VAT) should be filed within two (2) years after the close of the taxable quarter when the sales were made and that the 120-day period shall commence to run from the time of submission of the complete documents in support of the application for refund.

Records show that Zuellig filed its claims for refund with the Bureau of Internal Revenue (BIR) pertaining to the second quarter of 2012 on January 28, 2014 which the Court in Division astutely observed to be timely filed, and we quote:

"The present claim involves the first quarter of CY 2012 which closed on March 31, 2012. Counting two (2) years from the said date, petitioner had until March 31, 2014 within which to file its administrative claim for the said quarter. Thus, petitioner's administrative claim filed on January 28, 2014 is well within the two-year prescriptive period."

The controversy lies in the counting of the 120-day period which, according to the afore-quoted Section 112 (C), should be reckoned from the date of submission of complete supporting documents and consequently upon its lapse must file an appeal with the Court within a thirty-day period.

The decision of the Court in Division cites several Supreme Court rulings that mandate that the 120+30 day period to appeal is jurisdictional and failure to appeal to the Court within the thirty-day period is fatal to the claim for refund (in cases of inaction).

I wholly subscribe to the Court in Division's adherence to the various Supreme Court decisions which tackle the mandatory nature of the 120 +30 day rule[1] and I am not inclined to present an opposing view on this well-established precedent. My dissent centers on the circumstances surrounding the period of the 120 days which the law clearly states to be reckoned from the "submission of complete documents in support of the application", especially in a situation where the revenue officers (evaluating the claims for refund) continuously request for documents from the claimant/taxpayer even beyond the 120-day period which the latter, in its effort to successfully prove its claim in the administrative level, assiduously complies with and continues to submit the documents requested.[2]

In the case of *Pilipinas Total vs. Commissioner of Internal Revenue*[3], the Supreme Court ruled thus:

> "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 expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected."

I have already elaborated on my theory with regard to the aforquoted *Pilipinas Total* ruling in my Dissenting Opinion in the previous cases involving the same petitioner and issues[4] and I find it apt to quote the relevant portions, thus:

> The ruling of the Supreme Court in the *Pilipinas Total* case gives rise to two (2) critical periods as far as the processing of claim for refund of input taxes attributable to zero-rated sales is concerned, namely:

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[1] CIR vs. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013; Rohm Apollo Semiconductor Philippines vs. CIR, G.R. No. 168950, January 14, 2015.
[2] Exhibits "P-14","P-16" and"P-17".
[3] G.R. No. 207112, December 8, 2015.
[4] Zuellig Pharma Asia Pacific Ltd., Phils. ROHQ, CTA Case No. 9025, May 23, 2018; Zuellig Pharma Asia Pacific Ltd., Phils, ROHQ, CTA Case No. 8899, March 9, 2017.

a) the two-year period to file the claim with the Bureau of Internal Revenue (BIR) and,
b) the 30-day period from denial of the claim or expiration of the 120-day period to elevate the claim to the CTA.

An incisive analysis of this jurisprudential guideline is that the 30-day period from the expiration of the 120-day may fall outside the ambit of the 2-year period to file and must constitute an exception to this general rule.

The wide latitude given to interpret the relevant provisions of the NIRC is due to the silence of the law itself as to the period within which to submit the supporting documents. The law makes mention of the 120-day period to decide the application for refund counted from the submission of the supporting documents but is quiet on the counting of the latter period.

The overriding question in this case is who has the prerogative to determine the sufficiency or completeness of the documents to support the claim for refund.

The *Pilipinas Total* case in the course of its resolution of the issue stated that "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" but then in another statement, it goes on to say that "whether these documents are actually complete as required by law – is for the CIR and the courts to determine."

There are various stages of submission of supporting documents in the administrative level to support a claim for refund of unutilized or excess input VAT. It is clear that the taxpayer, at the time of filing his application for refund, is guided by the law and its implementing revenue issuances as to the documents that must be submitted to the BIR in support of its claim for refund. At this stage, taxpayer has no idea on how the assigned revenue examiner will appreciate the sufficiency of the documentation submitted. This is the first stage. Upon assignment of the refund claim to an examiner, the latter will now study the application and thereby communicate his or her findings to the taxpayer. The assigned examiner may or may not ask for additional documents or may not even communicate with the taxpayer at all. This is the second stage.

Considering the length of time that the respondent had spent evaluating the claim for refund, petitioner, finally in its November 11, 2014 letter to the BIR stated that they have already submitted the complete documents. Following the *Pilipinas Total* ruling that it is the taxpayer who ultimately determines when complete documents have been submitted, the petitioner in this case counted the 120 days from the date of such submission and within the 30-day period *from* its expiration, filed the petition for review with the CTA on April 8, 2015.

The cited ruling in the *Pilipinas Total* case that the submission of the complete documents must be within the two-year period is true only in the first stage, that is, upon the filing of the application for the issuance of a tax credit certificate (TCC) or refund of unutilized input taxes. This is consistent with the two-year prescriptive period to file the claim for refund because certainly the claimant has to file documents in support of said claim as directed under section 112(C) of the NIRC which clearly specifies that the documents are in support of the application filed in accordance with Section 112 (A). At this stage, it is really the taxpayer who will determine the completeness of its documents. After the application is filed, then this prerogative is shifted to the BIR which will now determine if the documents submitted in support of the application for refund or TCC are sufficient to warrant a favorable grant.

In the instant case, the revenue examiner continued to request for documents even beyond the two- year period so the exception to the two-year period should apply. The case of *Pilipinas Total* case seems to recognize and confirm this conclusion when it ruled thus:

> "xxx *Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms of what additional documents must be presented in support of a claim for tax credit or refund-* it is the taxpayer who has the right and burden of providing any and all documents that would support his claim for tax credit or refund (italics ours)."

In view of the foregoing, I dissent with the majority opinion and vote to **GIVE DUE COURSE** to the petition for review.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice