REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KODEC PRECISION, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, represented by Revenue District Officer Erlinda V. Victorino of the Bureau of Internal Revenue, Revenue District No. 21-B, South Pampanga, City of San Fernando, Pampanga,
Respondent.

CTA Case No. 9677

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
NOV 2 8 2017 4:00 pm

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RESOLUTION

On September 19, 2017, the Court dismissed the Petition for Review, filed on September 4, 2017, on the ground of lack of jurisdiction. The Court found that the petition was filed out of time. The Court reasoned:

> In *Commissioner of Internal Revenue v. San Roque Power Corporation*, the Supreme Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the BIR Commissioner 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 BIR Commissioner does not act within that period.
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> This was recently reiterated in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue* which stated:
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>> 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.

> In this case, petitioner avers that it filed its administrative claim on November 29, 2016. It made no averment as to the submission of additional documents on a separate date. Counting 120 days from November 29, 2016, the CIR had until March 29, 2017 within which to act on petitioner's claim for refund. Considering that respondent CIR failed to act thereon, petitioner had 30 days after the lapse of the 120-day period or until April 28, 2017 within which to file a judicial appeal before this Court. It should be noted that a decision made by the BIR <u>after</u> the 120+30 day period is not considered in counting the period for judicial appeal since the inaction of the CIR during the 120-day period is "deemed a denial", and without a timely appeal, said "deemed a denial" becomes final and unappealable.
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> Here, petitioner's Petition for Review was filed only on September 4, 2017, or 129 days after the lapse of the 120+30 days period to file a judicial claim. The receipt and issuance of the denial <u>after</u> the 120-day period is inconsequential. Therefore, petitioner's judicial claim is belatedly filed.[1] (*Citations omitted*)

Petitioner filed the instant Motion for Reconsideration on October 6, 2017 praying for the reconsideration of the resolution dated September 19, 2017 and praying for the reinstatement of the subject Petition for Review. Petitioner states it its motion that although the claim for refund was filed on November 29, 2016, it was only on May 9, 2017 that all the complete documents requested by the BIR were submitted by petitioner. Petitioner attached a copy of the transmittal letter.

In respondent's Opposition (re: Petitioner's Motion for Reconsideration) filed on November 7, 2017, respondent states that the Court correctly ruled that it has no jurisdiction over the instant petition as the same was belatedly filed. Respondent also stated that petitioner cannot belatedly raise its alleged submission of documents on separate dates to argue that its petition was not belatedly filed.

The Court finds no merit in the motion for reconsideration.

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[1] Docket, pp. 135-136.

At the outset, a perusal of the attached transmittal letter[2] will show that it cannot be determined on its face whether the transmittal letter refers to the subject claim for refund. The Court notes that in the instant case, petitioner is claiming for refund of its input VAT for taxable year 2015. On the other hand, the transmittal letter does not specify which year the submission of documents is being made. This is especially important considering that the transmittal letter submits documents relating to taxable year 2016.

The Court also notes that even if the said transmittal letter relates to taxable year 2015, the Court cannot determine, and petitioner made no allegation, when the request for additional documents was made by the BIR. Thus, this Court cannot determine if the submission of additional documents was made within 30-days from the date the additional documents were requested by the BIR.

Considering the foregoing, the Court finds no reason to reverse the dismissal of the petition for review.

WHEREFORE, the instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[2] Docket, p. 141.