REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LANTRO PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 9436**
	Members:
-*versus*-	**DEL ROSARIO**, *P.J., Chairperson,* *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 26 2020 ;00am

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DECISION

MANAHAN, *J.:*

The instant *Petition for Review* prays for a tax refund/credit of its unutilized input tax credits in the amount of ₱11,866,867.83, allegedly representing validated and duly supported unutilized input taxes attributable to petitioner's zero-rated sales for the 1st, 2nd, 3rd, and 4th quarters of taxable year (TY) ending December 31, 2014.[1]

THE PARTIES

Petitioner Lantro Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at No. 420, D. Francisco Legaspi St., Maybunga, Pasig City.[2] It is a registered taxpayer with the Bureau of Internal Revenue (BIR), with Taxpayer Identification Number (TIN) 202-950-644-000.[3]

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[1] Summary of the Case, Pre-Trial Order dated April 6, 2017, Docket – Vol. 1, p. 391.
[2] Exhibits "P-1", Docket – Vol. 2, pp. 706 to 715.
[3] Exhibit "P-2", Docket – Vol. 1, p. 211.

Respondent is the duly appointed Commissioner of Internal Revenue, who holds office at the 5th Floor BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 10, 2015, the BIR issued the *Letter of Authority* (LOA) No. LOA-43B-2015-00000471 (SN: eLA 201200022032), authorizing the examination of petitioner's books of accounts for all internal revenue taxes, including documentary stamp tax and other miscellaneous taxes, for the period from January 1, 2014 to December 31, 2014.[5]

On January 7, 2016, petitioner filed with the BIR its administrative claim for Value-Added Tax (VAT) refund covering the period of TY 2014 via the letter dated January 5, 2016,[6] and *Applications for Tax Credits /Refunds* (BIR Form No. 1914).[7] Petitioner prepared the *Transmittal Sheet* dated February 26, 2016,[8] indicating therein that it is submitting certain documents / requirements needed for its application of VAT refund for the year 2014.

Respondent denied petitioner's application for refund/issuance of tax credit certificate (TCC) in the letter dated June 24, 2016,[9] a copy thereof was received by petitioner on July 26, 2016.[10]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review* on August 23, 2016.[11] This case was originally raffled to this Court's Third Division.

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[4] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 367.
[5] Par. 4, Admitted Facts, JSFI, Docket – Vol. 1, p. 367; Exhibit "P-3", Docket – Vol. 1, p. 212.
[6] Exhibit "P-4-4", Docket – Vol. 2, p. 722.
[7] Exhibits "P-4", "P-4-1", "P-4-2", and "P-4-3", Docket – Vol. 2, pp. 718 to 721.
[8] Exhibit "P-6", Docket – Vol. 2, pp. 724 to 725; BIR Records (Exhibit "R-1"), pp. 120 to 121.
[9] Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, p. 367.
[10] Exhibit "P-9", Docket – Vol. 2, pp. 728 to 730.
[11] Docket – Vol. 1, pp. 10 to 26.

In his *Answer* filed on September 26, 2016,[12] respondent raised the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

She reiterates and re-pleads the foregoing paragraphs of this Answer as part of her Special and Affirmative Defenses:

17. Petitioner failed to substantiate its claim for refund. The documents submitted were incomplete. Some of the documents submitted do not tally with schedules provided while some were invalid;

18. Petitioner's claim for issuance of tax refund/tax credit certificate is subject to administrative investigation/examination by Respondent's Bureau;

19. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

20. It is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, particularly Sections 112, 113, and 114 to validly claim for tax a credit/refund;

21. Taxpayer must establish by sufficient and competent evidence that it is entitled to a tax refund/credit;

22. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;

23. The Petitioner should prove its legal basis for claiming the amount to be refunded."

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[12] Docket – Vol. 1, pp. 154 to 157.

The pre-trial conference was set and held on February 21, 2017.[13] On February 16, 2017, both *Pre-Trial Brief for the Petitioner* and *Respondent's Pre-Trial Brief* were filed.[14]

The parties submitted their *Joint Stipulation of Facts and Issues* on March 7, 2017.[15] The Court then issued the Pre-Trial Order dated April 6, 2017,[16] deeming the termination of the Pre-Trial Conference.

On May 15, 2017, respondent transmitted the *BIR Records* of this case.[17]

Trial then ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Janyca Evi B. Goring,[18] petitioner's Finance Executive; and (2) Mr. John Christian B. Sabal,[19] the Court's duly commissioned Independent Certified Public Accountant (ICPA).[20]

The *Report* of the ICPA was submitted to the Court on July 18, 2017,[21] and the amendment thereto on January 11, 2018.[22]

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[13] *Notice of Pre-Trial Conference* dated November 14, 2016, Docket – Vol. 1, pp. 171 to 172; Minutes of the hearing held on, and Order dated, February 21, 2017, Docket – Vol. 1, pp. 340, and 342 to 343, respectively.

[14] Docket – Vol. 1, pp. 180 to 185, and 334 to 336, respectively.

[15] Docket – Vol. 1, pp. 367 to 371.

[16] Docket – Vol. 1, pp. 391 to 396.

[17] *Compliance*, Docket – Vol. 1, pp. 559 to 560.

[18] Exhibit "P-14", Docket – Vol. 1, pp. 405 to 418; Minutes of the hearing held on, and Order dated, May 16, 2017, Docket – Vol. 2, pp. 561, and 563 to 564, respectively.

[19] Exhibit "P-23", Docket – Vol. 2, pp. 631 to 648; Minutes of the hearing held on, and Order dated, September 19, 2017, Docket – Vol. 2, pp. 669 to 671; Minutes of the hearing held on, and Order dated, November 21, 2017, Docket – Vol. 2, pp. 682 to 683.

[20] *Oath of Commission* dated May 16, 2017, Docket – Vol. 2, p. 562; Minutes of the hearing held on, and Order dated, May 16, 2017, Docket – Vol. 2, pp. 561, and 563 to 564, respectively; Exhibit "P-16", Docket – Vol. 1, pp. 346 to 351.

[21] Docket – Vol. 2, pp. 576 to 596.

[22] Docket – Vol. 2, pp. 815 to 834; Refer also to Exhibit "P-24", Docket – Vol. 2, pp. 649 to 667.

On December 11, 2017, the *Formal Offer of Evidence for the Petitioner with Omnibus Motion for Leave [(a) to withdraw and re-mark documentary exhibits examined and submitted by the ICPA; (b) to allow the ICPA to submit a USB containing the re-marked documents and be recalled as witness; and (c) to submit Supplemental Formal Offer of Evidence on the re-marked documents]* was filed.[23] In the Resolution dated February 27, 2018,[24] the Court, *inter alia*, allowed: (1) petitioner to withdraw and re-marked Exhibits "P-2", "P-3", "P-5" to "P-15", and "P-23" and series, previously examined and submitted by the ICPA; (2) petitioner to submit *Supplemental Formal Offer of Evidence* of the re-marked documentary exhibits; and (3) the ICPA to submit a USB containing the re-marked documentary exhibits.

The *Supplemental Formal Offer of Evidence for the Petitioner* was submitted on March 22, 2018.[25] Respondent, however, failed to file any comment to the same, and to petitioner's *Formal Offer of Evidence*.[26]

In the Resolution dated May 30, 2018,[27] the Court, *inter alia*, admitted petitioner's Exhibits, *except* for the following:

1) Exhibit "P-12", for failure to present the original for comparison;
2) Exhibits "P-21-16", "P-21-21", "P-20-1197", "P-20-1199", and "P-20-1204", as they are not in the record of the case;
3) Exhibit "P-35", for failure to correspond with the document pre-marked by the ICPA.

In accordance with the Order dated October 1, 2018,[28] the instant case was transferred to this Court's First Division.

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[23] Docket – Vol. 2, pp. 690 to 704.
[24] Resolution dated February 27, 2018, Docket – Vol. 2, pp. 838 to 840.
[25] Docket – Vol. 2, pp. 841 to 848.
[26] Records Verification dated May 10, 2018 issued by the Judicial Records Division of the Court, Docket – Vol. 2, p. 856.
[27] Docket – Vol. 2, pp. 858 to 861.
[28] Docket – Vol. 2, p. 869.

Respondent likewise presented his documentary and testimonial evidence. He proffered the sole testimony of Ms. Anna Lorraine P. Peralta,[29] a Revenue Officer of the BIR.

Thereafter, respondent's *Formal Offer of Evidence* was filed on May 20, 2019.[30] Petitioner submitted its *Comment (On the Respondent's Formal Offer of Evidence)* on June 7, 2019.[31]

In the Resolution dated July 9, 2019,[32] the Court admitted respondent's Exhibits.

The *Memorandum for the Petitioner* was filed on August 20, 2019.[33] Respondent, however, failed to file his memorandum.[34]

On September 9, 2019, the instant case was submitted for decision.[35]

THE ISSUE

The parties submitted the following issue for this Court's resolution, to wit:

> "Whether or not Petitioner is entitled to a refund or issuance of tax credit certificate amounting to Eleven Million Eight Hundred Sixty-Six Thousand, Eight Hundred Sixty-Seven and 83/100 Pesos (₱11,866,867.83), representing unutilized input taxes attributable to Petitioner's zero-rated sales for the period from January 1 to December 31, 2014."[36]

Petitioner's arguments:

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[29] Exhibit "R-6", Docket – Vol. 2, pp. 882 to 885; Order dated March 26, 2019, Docket – Vol. 2, pp. 901 to 902.
[30] Docket – Vol. 2, pp. 907 to 909.
[31] Docket – Vol. 2, pp. 910 to 914.
[32] Docket – Vol. 2, pp. 917 to 918.
[33] Docket – Vol. 2, pp. 919 to 940.
[34] Records Verification dated August 22, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 2, pp. 941.
[35] Resolution dated September 9, 2019, Docket – Vol. 2, p. 943.
[36] Issues, JSFI, Docket – Vol. 1, p. 368.

Petitioner argues that it complied with the mandatory requirements for a claim for VAT refund; that its claim for VAT refund/TCC was timely filed; and that it is entitled to file the claim for refund.

Respondent's counter-arguments:

In his *Answer*, respondent contends that petitioner failed to substantiate its claim for refund, and the documents submitted were incomplete; that some of the documents submitted do not tally with schedules provided while some were invalid; that petitioner's claim for issuance of tax refund/tax credit certificate is subject to administrative investigation/examination by the BIR; that taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable; that it is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the National Internal Revenue Code (NIRC), particularly Sections 112, 113, and 114, to validly claim for tax a credit/refund; that taxpayer must establish by sufficient and competent evidence that it is entitled to a tax refund/credit; that the claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption; and that petitioner should prove its legal basis for claiming the amount to be refunded.

RULING OF THE COURT

The instant *Petition for Review* must be dismissed.

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[37] provides as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax.*

[37] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

(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 of 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: xxx.

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 a 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."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

> <u>As to the timeliness of the filing of the administrative and judicial claims:</u>
>
> 1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[38]
> 2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days from the submission of complete documents, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[39]
>
> <u>In relation to the taxpayer's output VAT:</u>
>
> 3. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[40]
> 4. for 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 have been duly accounted for in accordance with BSP rules and regulations;[41]

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[38] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[39] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019; and *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

[40] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

[41] *Id.*

With reference to the taxpayer's registration with the BIR:

5. the taxpayer is a VAT-registered person;[42]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[43]
7. the input taxes are due or paid;[44]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[45] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[46]

In cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[47] Thus, it behooves petitioner to show compliance with each of the foregoing requisites.

Out of the above-enumerated nine (9) requisites, it is paramount to show compliance with the *second* requisite.

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[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

[47] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

This is so because the text of the law is clear that resort to an appeal with this Court should be made within thirty (30) days either from receipt of the decision denying the claim or the expiration of the 120-day period given the respondent to decide the claim.[48] Furthermore, it is settled that the 120+30-day periods in Section 112 is not a mere procedural technicality that can be set aside if the claim is otherwise meritorious. **It is a mandatory and jurisdictional condition imposed by law.**[49]

Needless to state, jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[50]

To be sure, strict compliance with the 120+30-day periods is necessary for a refund claim of input VAT to prosper.[51]

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[52] the Supreme Court clarified as to when should the 30-day period commence, to wit:

> **"Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete**

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[48] *Team Energy Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[49] *Id.*
[50] *AT&T Communication Services Philippines, Inc. vs. Commissioner of Internal Revenue, etseq.*, G.R. No. 185969, November 19, 2014.
[51] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. No. 187485, 196113, 197156, February 12, 2013.
[52] G.R. No. 182737, March 2, 2016.

> **documents, the taxpayer may resort to a judicial claim before the CTA.**
>
> xxx xxx xxx
>
> **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, <u>whichever is sooner</u>.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law,[53] **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is <u>outside the jurisdiction of the CTA</u>.**" *(Emphases and underlining added)*

On the basis of the foregoing jurisprudence, the 30-day period provided by law should be reckoned from the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **<u>whichever is sooner</u>**. Moreover, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day periods is outside the jurisdiction of this Court.

In turn, concerning the commencement of the 120-day period, the Supreme Court *En Banc*, in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case"),[54] held:

> "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

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[53] In *CIR vs. San Roque Power Corporation, etseq.* (G.R. Nos. 187485, 196113 & 197156, February 12, 2013, the Supreme Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal in *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on October 6, 2010 need not wait for the lapse of the 120+30-day period.

[54] G.R. No. 207112, December 8, 2015.

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 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. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

> The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex 'A' hereof. In addition, the taxpayer shall attach **a statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
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> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the

> Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.'

Thus, **under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.**

On this score, the Court finds that the foregoing issuance cannot be applied retroactively to the case at bar since *it imposes **new obligations** upon taxpayers in order to perfect their administrative claim*, that is, [1] compliance with the mandate to submit the 'supporting documents' enumerated under RMC 54-2014 under its 'Annex A'; and [2] the filing of 'a statement under oath attesting to the completeness of the submitted documents,' referred to in RMC 54-2014 as 'Annex B.' This should not prejudice taxpayers who have every right to pursue their claims in the manner provided by existing regulations at the time it was filed."

Based on the foregoing Supreme Court ruling, for purposes of determining as to when the 120-day period commences, the High Court established a dichotomy between administrative claims filed before June 11, 2014, and those filed after the said date. To summarize, the pertinent rules concerning the said 120-day period, **prior to June 11, 2014**, are the following:

1) the concerned taxpayer is given thirty (30) days within which to submit the documentary requirements

sufficient to support the claim, unless given further extension by respondent;

2) upon the filing by the complete documents to support the application, or expiration of the period given, respondent has 120 days within which to decide the claim for tax credit or refund; and
3) should the taxpayer, on the date of filing the refund claim, manifest that no additional documents will be submitted to complete the said claim, the 120-day period allowed to respondent begins to run from the date of filing.

In contrast, the rules regarding the same 120-day period, **beginning June 11, 2014**, on the basis of Revenue Memorandum Circular (RMC) No. 54-2014,[55] are as follows, to wit:

1) At the time of filing the administrative claim, the taxpayer is already required to complete his supporting documents, and to attest (*i.e.*, to give a statement under oath) that no other document will be submitted to prove his claim; and
2) The taxpayer is barred from submitting additional documents after he has filed his administrative claim.

Parenthetically, it must be emphasized that all the foregoing rules are based on the assumption that the administrative claim was timely filed, *i.e.*, within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made, in fulfillment of the *first* requisite under Section 112(A) of the NIRC of 1997, as amended.

The present claim covers the 1st, 2nd, 3rd and 4th quarters of TY 2014. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim for the said four (4) quarters, to wit:

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[55] SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st quarter of TY 2014 (January 1, 2014 to March 31, 2014)	March 31, 2014	March 31, 2016
2nd quarter of TY 2014 (April 1, 2014 to May 31, 2014)	June 30, 2014	June 30, 2016
3rd quarter of TY 2014 (June 1, 2014 to September 30, 2014)	September 30, 2014	September 30, 2016
4th quarter of TY 2014 (October 1, 2017 to December 31, 2014)	December 31, 2014	December 31, 2016

Clearly, petitioner's administrative claim for refund/TCC for the subject period was timely filed on January 7, 2016 for the four (4) quarters of TY 2014.[56]

Considering that the subject administrative claim was filed subsequent to June 11, 2014, the rules, as above-stated, under RMC No. 54-2014, must govern in this case. As a corollary, petitioner is no longer entitled to a thirty (30)-day period after the filing of the administrative claim to submit the documentary requirements sufficient to support the said claim, which entitlement prevailed before the said administrative issuance, as enunciated in the *Pilipinas Total Gas* case. As such, the 120-day period shall already be reckoned from the actual date of filing of the said administrative claim.

At this juncture, however, it must already be stated that this Court does not agree with petitioner that the filing of its administrative claim was done on February 26, 2016. The reasons therefor will be stated momentarily.

In any event, petitioner's judicial claim was belatedly filed, and thus, this Court has no jurisdiction to entertain the present appeal.

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[56] Exhibits "P-4", "P-4-1", "P-4-2", "P-4-3", and "P-4-4", Docket – Vol. 2, pp. 718 to 722.

In arguing that it timely filed the instant *Petition for Review* on August 23, 2016, petitioner therein stated the following:

> "**TIMELINESS OF THE PETITION**
>
> 3. **<u>On February 26, 2016</u>, Petitioner filed its Administrative Claim for refund / tax credit certificate (TCC) of its excess input tax amounting to ₱11,866,867.83 covering the period from January 01, 2014 to December 31, 2014** with the Revenue District No. 43-B, West Pasig at BIR Building, Pasig City Hall Complex, Caruncho Ave., Brgy. Malinao, Pasig City.
>
> xxx xxx xxx
>
> 5. In accordance with [Section 112(A) of the NIRC], Petitioner's administrative claims were filed within the prescribed period.
>
> 6. On July 26, 2016, Petitioner received from the Bureau of Internal Revenue (BIR) the letter dated June 25, 2016 denying Petitioner's application for VAT refund / TCC.
>
> 7. Pursuant to Section 112(C) of the NIRC, as amended, the Petitioner has thirty (30) days from receipt of the denial of the BIR, or until August 25, 2016, to file its appeal to the Court of Tax Appeals. xxx." [57] *(Emphasis added)*

To bolster the foregoing averments, petitioner, in its *Memorandum*, argues as follows:

> "***Petitioner's claim for VAT refund/TCC was timely filed.***
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>
> 33) The BIR claims that the Petitioner has filed its application for VAT refund/credit on January 7, 2016 without having submitted the

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[57] Docket – Vol. 1, pp. 10 to 11.

documents as prescribed under RMC No. 54-2014. As stated in its policies, failure to submit said requirements will cause the denial of the claim. Granting that this was the case, the Petitioner is not precluded from re-filling its application provided the same is still within the period prescribed under Section 112(A) of the NIRC, as amended, xxx

34) At the time of Petitioner's submission of the documents on February 26, 2016, as mentioned by the BIR in its denial letter, Petitioner submitted new application forms (Form 1914) as can be seen in item No. 4 of the Transmittal Sheet received by the BIR on said date.

35) While the said BIR Forms did not bear the stamp of the BIR, however, it is evident that these were submitted and received by the Revenue Officer assigned to the case. In fact, the Transmittal Letter evidencing the submission is found in the BIR Records, specifically 120-122.

36) Inasmuch as the new application forms for VAT refund/credit were filed within the prescribed periods and that the documents required in the Checklist of BIR for VAT refund/credit claims were submitted, Petitioner's filing of its claim was still effective.

37) The first quarter of calendar year 2014 ends in March 31, 2014. Counting two (2) years after the close of the taxable quarter when the sales were made, the last day for the filing of the administrative claim for VAT refund/credit was until March 31, 2016. Since the claim of Petitioner was filed with the BIR on February 26, 2016, for the four (4) quarters of 2014, it is apparent that the claim was timely filed and in accordance with the policies set forth under RMC No. 54-2014." [58]

Petitioner is clearly in error. The Court is not convinced that petitioner filed or re-filed its administrative claim or applications for VAT refund on February 26, 2016, since there

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[58] Docket – Vol. 2, pp. 929 to 930.

is no indication thereon of such fact. Said subsequent filing failed to state categorically that it supersedes the earlier administrative claim filed on January 7, 2016.

Petitioner's bare allegation that there was a filing or re-filing of its administrative claim specifically on February 26, 2016 cannot simply be admitted as a matter of fact, albeit that the application forms are found in the *BIR Records*. Knowing precisely the actual date of filing is crucial, since this is ultimately determinative of whether this Court has jurisdiction to entertain the present appeal. 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.[59]

Hence, without any sufficient basis to support the fact of filing or re-filing of petitioner's administrative claim on February 26, 2016, it cannot be said that the same was indeed filed on the said date. As earlier observed, the second filing was not stamped received by the BIR and may well be construed to be additional submissions for the first filing.

Indeed, nothing prevents petitioner from re-filing its refund application provided it is still within the stated prescriptive periods. Thus, We entertain serious doubts that a re-filing of the administrative claim was done, or at the very least, was petitioner's real intention.

Nevertheless, regardless of whether the administrative claim was filed on January 7, 2016 or on February 26, 2016, the same is of no moment, since the instant *Petition for Review* is still belatedly filed.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*,[60] the Supreme Court reminded taxpayers that when the one hundred and twenty (120)-day period lapses and there is inaction on the part of the respondent within the said period, the taxpayer must no

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[59] *Government Service Insurance System vs. Prudential Guarantee and Assurance, Inc., et al., etseq.*, G.R. Nos. 165585 and 176982, November 20, 2013.
[60] G.R. No. 168950, January 14, 2015.

longer wait for the respondent to come up with a decision, to wit:

> "A final note, the taxpayers are reminded that when the 120-day period lapses and there is inaction on the part of the CIR, **they must no longer wait for it to come up with a decision thereafter**. **The CIR's inaction is the decision itself. It is already a denial of the refund claim.** Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period." (*Emphasis supplied*)

Based on the foregoing doctrinal pronouncements, in case respondent fails to act on the taxpayer's administrative claim for tax credit or refund within the 120-day prescribed period, the taxpayer may treat such inaction as a denial of its claim. Thus, the taxpayer must no longer wait for respondent to come up with a decision before it files an appeal to this Court. Consequently, the taxpayer must already file an appeal within thirty (30) days from the lapse of the 120-day waiting period.

In this case, petitioner erroneously waited for respondent's decision, despite the lapse of the 120-day period.

The following table shows that the instant *Petition for Review* was indeed ***not*** filed on time, regardless of whether this Court reckons the filing of the administrative claim on January 7, 2016 or February 26, 2016, to wit:

Date of filing and alleged re-filing of the administrative claim	**End of the 120-day period**	**End of the 30-day period to file the judicial claim**	**Actual date of filing of the judicial claim**
January 7, 2016	May 6, 2016	June 5, 2016	August 23, 2016
February 26, 2016	June 25, 2016	July 25, 2016	

Since the filing of petitioner's judicial claim on August 23, 2016 was made beyond the 120+30-day periods under Section 112(C) of the NIRC of 1997, as amended, the same is outside the jurisdiction of the Court in Division.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice