**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| ASURION HONG KONG LIMITED-ROHQ, *Petitioner,* | CTA EB No. 1736 (CTA CASE No. 9593) |
| -versus- | *Present*: |
| COMMISSIONER OF INTERNAL REVENUE, *Respondent.* | DEL ROSARIO, P.J, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.* |
| | Promulgated: APR 29 2019 1:50 pm |

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## DECISION

***MINDARO-GRULLA, J.:***

Submitted for decision is the Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Resolutions dated August 10, 2017,[2] and

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[1] **SEC. 4.** *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[2] *En Banc Docket*, pp. 42-47.

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October 12, 2017,[3] both rendered by the former Third Division of this Court, the dispositive portions of which read as follows:

Resolution dated August 10, 2017:

"**WHEREFORE**, finding Respondent's Motion to Dismiss to be with merit, the same is **GRANTED**. Accordingly, the instant Petition for Review filed by Petitioner on May 19, 2017 is hereby **DISMISSED**.

In view thereof, the Court finds no need to resolve Petitioner's "Comment/Opposition (With Motion to Admit Supplemental Petition for Review)" filed on July 21, 2017 which is hereby rendered **MOOT**.

**SO ORDERED.**"

Resolution dated October 12, 2017:

"**WHEREFORE,** premises considered, Petitioner's "Motion for Reconsideration (Re: Resolution dated August 10, 2017" is hereby **DENIED** for lack of merit.

**SO ORDERED.**"

The facts of the case, as recited by the Former Third Division in its August 10, 2017 Resolution, read as follows:

"On December 16, 2016, Petitioner filed with the Bureau of Internal Revenue (BIR) its administrative claim for refund and/or issuance of tax credit certificate in the aggregate amount of Php11,527,240.19 representing its unutilized input value-added tax (VAT) for the period covering the 1st to 4th quarters of 2015.

On April 20, 2017, Petitioner received a letter dated April 05, 2017 from Assistant Commissioner

[3] *Ibid.,* pp. 48-51.

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Assessment Service Erlinda A. Simple denying its administrative claim for refund. Petitioner filed its Petition for Review before the Court on May 19, 2017.

In his Motion to Dismiss, Respondent argues that the Court has no jurisdiction over the case since the judicial claim for refund or tax credit was belatedly filed by Petitioner. According to Respondent, the prescribed period of "120+30 days" provided under Section 112(C) of the National Internal Revenue Code of 1997, as amended (NIRC) is mandatory and jurisdictional.

Respondent claims that Petitioner violated the prescribed period of "120+30 days" since it filed the instant petition before the Court only on May 19, 2017 or more than "120+ 30 days" after filing its claim for refund with the Bureau of Internal Revenue (BIR) on December 16, 2016. According to Respondent, the alleged decision by the BIR, received by Petitioner on April 20, 2017, was issued beyond the prescribed period and has no force and effect. Section 112(C) of the NIRC clearly provides that Respondent is only given a 120-day period to act on (either by granting or denying) the claim for refund. Since there was already a deemed denial of its claim on April 15, 2017 due to the lapse of the 120-day period, counted from the filing of the administrative claim for refund, Petitioner should have filed its judicial claim within thirty (30) days therefrom, or not later than May 15, 2017.

On the other hand, Petitioner insists that its judicial claim was filed within the period prescribed by law pursuant to Section 112(C) Of the NIRC, the Supreme Court's decision in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* and this Court's decision in the case of *Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ vs. Commissioner of Internal Revenue.*

Petitioner contends that the BIR requested additional documents in support of the administrative claim on March 03, 2017. In compliance with the request, Petitioner submitted

> on March 08, 2017 the additional documents requested. From the foregoing, Respondent had one hundred twenty (120) days from March 08, 2017, or until July 06, 2017 within which to act on Petitioner's administrative claim. However, prior to the lapse of the 120-day period, or on April 20, 2017, Petitioner received a copy of BIR's decision. Counting thirty (30) days therefrom, Petitioner had until May 20, 2017 to appeal the denial of its administrative claim to this Court."

The Former Third Division dismissed Asurion Hong Kong Limited- ROHQ (Asurion HK-ROHQ)'s Petition for Review since, applying the Supreme Court case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (the "Total Case"),*[4] the 120-day period given to the Commissioner of Internal Revenue (CIR) to decide shall commence to run from the time the taxpayer filed its administrative claim together with the submission of complete documents for its refund/issuance of tax credit certificate. Since it was on December 16, 2016 when Asurion HK-ROHQ filed its administrative claim for refund, the 120-day period given to the CIR will lapse after April 15, 2017. Since there was already a deemed denial of its claim on April 15, 2017 due to the lapse of the 120-day period, counted from the filing of the administrative claim for refund, Asurion HK-ROHQ should have filed its judicial claim within thirty (30) days therefrom, or not later than May 15, 2017. Asurion HK-ROHQ's Petition for Review that was filed on May 19, 2017 was clearly beyond the prescribed 30-day period, thus, the Court in Division dismissed its petition.

As *per* October 12, 2017 assailed Resolution herein, the former Third Division denied Asurion HK-ROHQ's Motion for Reconsideration, thus, Asurion HK-ROHQ filed its Petition for Review[5] before the Court *En Banc* on November 23, 2017.

As alleged in its Petition, Asurion HK-ROHQ insists that the Court in Division erred that there was an inaction on the part of the CIR since there was a request to produce additional documents and a subsequent denial of its

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[4] G.R. No. 207112, December 8, 2015.
[5] *En Banc Docket,* pp. 6-33.

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administrative claim; that there was a misapplication of the *Total Case;* that the CIR in *Total Case* did not request for additional documents therein, which is a different situation in this case, thus, the withdrawal of the rule on the reckoning point of the 120-day period does not apply in this case where the CIR asked for additional documents; and that since the CIR asked for additional documents, the 120-day period in this case shall be counted from the date of submission of documents, which is on March 8, 2017.

Moreover, Asurion HK-ROHQ contends that Revenue Memorandum Circular (RMC) No. 54-2014 cannot overturn Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended, which states that the counting of the 120-day period should be reckoned from the date of submission of the complete documents

The CIR failed to comment to the Petition for Review *per* Records Verification[6] dated February 15, 2018. Asurion HK-ROHQ filed its Memorandum[7] on May 25, 2018, while the CIR failed to file his Memorandum *per* Records Verification[8] dated May 28, 2018.

We rule.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[9] It 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 of an action.[10] 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.[11] If the court has no jurisdiction over the nature of an action, its only jurisdiction

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[6] *Ibid.,* p. 55.
[7] *Ibid.,* pp. 80-107.
[8] *Ibid.,* p. 108.
[9] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 04, 2015, citing *Commissioner of Internal Revenue vs. Villa, et al.,* 130 Phil. 3, 4 (1968), cited in *B.W. Shipping Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9115, May 7, 2018.
[10] *Ibid.*
[11] *Ibid.,* citing *Laresma v. Abellana,* 484 Phil. 766, 778 (2004).

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is to dismiss the case. The court could not decide the case on the merits.[12]

In filing for administrative claim for refund of input VAT, Section 112(C) is instructive, thus:

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

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(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 Subsections (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."

The 120-day period is said to be crucial in filing a judicial appeal.[13] In order for the Court to conclude that there is an administrative "denial due to inaction" of Respondent during the 120-day period, the correct reckoning point of the120-day period is imperative.[14]

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[12] *Ibid.*, citing *Lt. Col. De Guzman vs. Judge Escalona*, 186 Phil. 431, 437-438 (1980).
[13] *Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ vs. Commissioner of Internal Revenue*, CTA EB No. 1656, January 21, 2019
[14] *Ibid.*

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In this regard, it is relevant to refer to the pronouncement in *Total Case* where the Supreme Court went on to discuss that RMC No. 54-2014 dated June 11, 2014, which takes effect on cases where administrative claims were filed on the said date of effectivity and onwards, mandates that the application for VAT refund or tax credit must be accompanied by complete supporting documents, and a statement under oath attesting to the completeness of the submitted documents, which are the only documents the taxpayer will present to support the claim; that upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted or required from the taxpayer in the course of its evaluation; and that a decision shall be rendered by the CIR based only on the documents submitted by the taxpayer.

The Supreme Court further explained that under RMC No. 54-2014, the reckoning of the 120-day period has been withdrawn from the taxpayer, since it requires him/her/it at the time of filing of the claim to complete the supporting documents and to attest that he/she/it will no longer submit any other document to prove the claim; and that the taxpayer is barred from submitting additional documents after filing the administrative claim.

The Supreme Court discussed the provisions of RMC No. 54-2014 in this wise:

> "As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
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>> 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 are the only 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

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> 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 tax payer 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." (Underlining supplied.)

Considering that the administrative claim of Asurion HK-ROHQ was filed after June 11, 2014, the rules under RMC No. 54-2014 shall apply.

Records show that Asurion HK-ROHQ submitted its supporting documents per the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund labeled as Annex "A" upon the filing of its administrative claim on December 16, 2016 and executed a Sworn Certification attesting to the completeness of the submitted documents. As a consequence, no other documents must be accepted or required from the taxpayer from the said date. Accordingly, the CIR had 120 days from December 16, 2016, or until April 15, 2017 to decide on Asurion HK-ROHQ's claim.

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Considering that the CIR, instead of deciding on the Asurion HK-ROHQ's claim, asked for additional documents. However, any subsequent submission of supporting documents made by Asurion HK-ROHQ will not move the commencement of the 120-day period.[15] Based on this, Asurion HK-ROHQ only had until May 15, 2017, the last day of the 30-day period, within which to file its appeal before this Court. Hence, its judicial claim filed on May 19, 2017 is clearly beyond the period prescribed by law.

Also, all the cases raised in the Petition for Review such as *Philex Mining Corporation vs. Commissioner of Internal Revenue,*[16] *Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ vs. Commissioner of Internal Revenue*[17] *and CE Casecnan Water and Energy Compnay, Inc. vs. Commissioner of Internal Revenue*[18] are not applicable in this case since the administrative claims therein were filed before the effectivity of RMC No. 54-2014.

As earlier stated in the assailed Resolutions, the 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the CIR is both mandatory and jurisdictional and non-compliance therewith precludes this Court from acquiring jurisdiction over the case.

The right to appeal is neither a natural right nor a part of due process.[19] It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.[20] Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules.[21] Since Asurion HK-ROHQ failed to do so, it has consequently lost its right to appeal. The Court in Division did not acquire jurisdiction.

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[15] *B.W. Shipping,* Supra note 9, cited in *Mitsuba Phils. Technical Center Corp., vs. Commissioner of Internal Revenue,* CTA Case No. 9297, October 19, 2019.
[16] CTA Case No. 8808, May 19, 2016.
[17] CTA Case No. 8899, March 9, 2017.
[18] CTA Case No. 8788, August 16, 2016.
[19] *Neypes vs. Court of Appeals,* G.R. No. 141524, September 14, 2005, cited in *Hedcor, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 8964, May 16, 2018.
[20] *Ibid.*
[21] *Ibid.*

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Time and again, it has been held that decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[22] In this regard, this Court can only apply the law as ruled upon and/or interpreted by the High Court.[23] This Court has no other option but to abide by the ruling of the Supreme Court in the cases above-mentioned regarding the interpretation of Section 112(C) of the NIRC of 1997, as amended.[24]

All other issues raised are deemed moot and academic in view of the foregoing findings.

**WHEREFORE,** premises considered, the Petition for Review is **DISMISSED** for lack of jurisdiction. The Resolutions dated August 10, 2017 and October 12, 2017 of the former Third Division in CTA Case No. 9593 are **AFFIRMED**.

**SO ORDERED.**

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
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

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[22] *Zuellig Supra* note 13, citing *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.
[23] *Ibid.*
[24] *Ibid.*, citing *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013 citing further *The Philippine Veterans Affairs Office vs. Brigida V.Segundo,* G.R. No. L-51570, August 15, 1988.

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

**ROMAN G. DEL ROSARIO**
Presiding Justice