REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

IBEX PHILIPPINES, INC.,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1850
(CTA Case No. 8849)

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

Promulgated:
AUG 28 2019 4:40 pm

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Ibex Philippines, Inc. seeking nullification of the Decision[2] dated September 13, 2017 (Assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by Ibex Philippines, Inc. (Formerly TRG Philippines, Inc.) is **DENIED** for lack of jurisdiction.
>
> **SO ORDERED**."

[1] Rollo, CTA EB NO. 1850, pp. 9-24, with annexes.
[2] Ibid., pp. 30-49.

and Resolution[3] dated April 11, 2018 (Assailed Resolution), of the same First Division of the Court (Court in Division) denying Ibex Philippines, Inc.'s Motion for Reconsideration, the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED**."

PARTIES

Petitioner Ibex Philippines Inc. (Formerly TRG Philippines, Inc.) is a domestic corporation, duly organized and existing under the laws of the Philippines, with registered address at 8th Floor, Hanston Building, Don Francisco Ortigas, Jr. Road, Ortigas Center, Pasig City, 1605. It is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration No. OCN3RC0000595484 issued on August 4, 2005 by Revenue Region No. 7, Revenue District Office (RDO) No. 43A. Moreover, petitioner is registered with the Board of Investments (BOI) as a New Information Technology Export Services under BOI Certificate of Registration No. 2006-005. Petitioner is engaged in the business of providing contact center services and other facilities to its foreign clients, such as TRG Holdings, LLC ("TRG Holdings" for brevity) and Square Trade, which are non-resident foreign corporations doing business in the United States of America.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS

The facts of the case as found by the Court in Division read as follows:

> "On the following dates, petitioner filed an application for VAT refund of the alleged unutilized and excess creditable input taxes attributable to its zero-rated sales with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF-OSS" for brevity):

[3] Ibid., pp. 51-58.

DATE FILED	QUARTERLY RETURN	AMOUNT OF CLAIM
September 30, 2010	3rd Quarter 2008	P2,615,356.25
December 30, 2010	4th Quarter 2008	792,889.02
March 31, 2011	1st Quarter 2009	1,082,122.39
June 28, 2011	2nd Quarter 2009	1,435,577.68
September 28, 2011	3rd Quarter 2009	1,288,262.66
December 12, 2011	4th Quarter 2009	1,186,693.13
March 29, 2012	1st Quarter 2010	940,775.92
June 27, 2012	2nd Quarter 2010	1,026,255.72
September 26, 2012	3rd Quarter 2010	1,510,890.25
December 10, 2012	4th Quarter 2010	1,506,353.29
March 22, 2013	1st Quarter 2011	1,478,519.87
June 28, 2013	2nd Quarter 2011	2,162,858.74
September 27, 2013	3rd Quarter 2011	1,539,647.83
December 3, 2013	4th Quarter 2011	1,486,834.61

Thereafter, the DOF-OSS issued Letters of Authority authorizing the examination of petitioner's books of accounts and other accounting records in connection with the claims for VAT Refund, dated as follows:

DATE FILED	QUARTERLY RETURN	DATE OF LOA
September 30, 2010	3rd Quarter 2008	February 22, 2011
December 30, 2010	4th Quarter 2008	February 22, 2011
March 31, 2011	1st Quarter 2009	May 9, 2011
June 28, 2011	2nd Quarter 2009	July 20, 2011
September 28, 2011	3rd Quarter 2009	October 27,2011
December 12, 2011	4th Quarter 2009	January 27, 2012
March 29, 2012	1st Quarter 2010	April 24, 2012
June 27, 2012	2nd Quarter 2010	July 4, 2012
September 26, 2012	3rd Quarter 2010	October 4, 2012
December 10, 2012	4th Quarter 2010	January 31, 2013
March 22, 2013	1st Quarter 2011	April 19, 2013
June 28, 2013	2nd Quarter 2011	July 15, 2013
September 27, 2013	3rd Quarter 2011	October 23, 2013
December 3, 2013	4th Quarter 2011	December 26, 2013

Petitioner filed the instant Petition for Review on July 23, 2014. Respondent then filed his Answer on October 15, 2014.

The case was set for pre-trial conference on January 15, 2015 but was reset to March 19, 2015. Petitioner and respondent filed their respective Pre-Trial Briefs on March 16, 2015.

The parties filed Joint Stipulation of Facts and Issues on April 8, 2015, which was adopted by the Court in the Pre-Trial Order dated May 11, 2015.

During trial, the following witnesses testified for petitioner: (1) Mr. Joel S. Aldaya – petitioner's accountant; and (2) Mr. Edwin F. Ramos – Independent Certified Public Accountant (ICPA). Petitioner also formally offered its evidence on September 7, 2015, which were subsequently admitted by the Court.

xxx xxx xxx

On the other hand, respondent presented Revenue Officer Estela G. Buenviaje as his lone witness. He formally offered his evidence on June 28, 2016, which were all admitted by the Court as respondent's evidence.

xxx xxx xxx

As directed by the Court, petitioner filed its Memorandum on October 21, 2016, while respondent filed his Memorandum on October 25, 2016. Hence, on November 2, 2016, the case was declared submitted for decision."[4]

On September 13, 2017, the Court in Division rendered its Decision dismissing the Petition for Review for lack of jurisdiction.

On October 2, 2017,[5] petitioner filed its "Motion for Reconsideration," praying that the decision be reconsidered and set aside.

On April 11, 2018, the Court in Division rendered the questioned Resolution.

Aggrieved, petitioner filed before the Court *En Banc* this Petition for Review.

In the Resolution[6] dated July 6, 2018, respondent was directed by the Court *En Banc* to file his comment in this case. On August 15, 2018, the Judicial Records Division of this Court issued a Records Verification Report stating that respondent failed to file his Comment on the Petition for Review.

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[4] Docket, CTA Case No. 8849, pp. 910-916.
[5] Ibid., pp. 929-942.
[6] Rollo, CTA EB No. 1850, pp. 62-63.

In the Resolution dated September 5, 2018,[7] the Court issued a Resolution submitting the case for decision.

ASSIGNMENT OF ERRORS

Whether the Court in Division erred in dismissing petitioner's claim for refund or issuance of a tax credit certificate in the amount of Php20,053,037.36, representing alleged unutilized and excess input VAT attributable to zero-rated sales for the third and fourth quarters of 2008, the first, second, third and fourth quarters of the taxable years 2009, 2010 and 2011.

ARGUMENTS

Petitioner argues that the Court has jurisdiction over the instant Petition for Review since the same was timely filed within 30 days from denial by respondent of petitioner's VAT Refund Claim; that in Revenue Regulations No. 1-2017 (Prescribing the regulations Governing Applications for Value-Added Tax [VAT] Credit/Refund filed under Section 112 of the Tax Code0, respondent recognized the prejudicial effect of RMC No. 54-2014, hence, the Court should, in accordance with Section 112 (C) of the NIRC, of 1997, also recognize the right of petitioner to appeal the denial of the VAT Refund Claims in the Court; and that taxpayers have every right to pursue their claims in the manner provided by existing regulations at the time the claims were filed.

RULING OF THE COURT

The Petition for Review before the Court in Division was anchored on the petitioner's claim for tax refund pursuant to Section 112 (A)(C) of the NIRC of 1997, as amended.

> "Section 112(A) of the NIRC of 1997 provides:
>
> *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

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[7] Ibid pp. 66-67.

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.

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 (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."

Pursuant to the above-quoted provision and as laid down by the Supreme Court in a number of cases[8], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund or tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

1. That the taxpayer must be VAT-registered;

[8] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 and 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

2. That the claim for refund was filed within the two-year prescriptive period;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales; and
6. That the input VAT payments were not applied against any output VAT liability.

JURISDICTION OF THE COURT

Petitioner insists that the Petition for Review was timely filed within thirty (30) days counted from June 30, 2014 or the date when it was notified by respondent's revenue officers of the issuance of RMC No. 54-2014 which denied all pending VAT refund claims. Thus, allegedly it had until July 30, 2014 to file the Petition for Review.

After a careful evaluation of the facts, issue and arguments raised by petitioner, the Court *En Banc* finds that the arguments presented by petitioner are mere reiterations of the arguments or matters which have already been judiciously considered, discussed and passed upon by the Court in Division in the assailed Decision and Resolution.

The Court *En Banc* agrees with the findings of the Court in Division that the Petition for Review was filed out of time. Petitioner should have filed a judicial claim before this Court within thirty (30) days from the time the Commissioner failed to act on its administrative claim within one hundred twenty (120) days from submission of complete documents in support of its claim.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*[9], Section 112(C) of the 1997 NIRC was interpreted as follows –

> "The taxpayer can file the judicial claim (1) only within thirty days after the Commissioner partially or fully denies the claim within the 120-day period, or (2) only within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period."[10]

As can be gleaned from above, the Supreme Court categorically declared that an appeal to a denial of a taxpayer's administrative claim may only be made if such denial was issued within the 120-day period.

[9] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[10] *Emphasis and underscoring supplied.*

The pronouncement in *San Roque* was echoed in *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[11], to wit:

> "The San Roque pronouncement is clear. The taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period."[12]

Thus, when the High Court provided a summary of rules on prescriptive periods for claiming refund or credit of Input VAT in *Mindanao II*, it was reiterated that in order to appeal the denial by respondent, such denial must be within the 120-day period:

> "SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT
>
> The lessons of this case may be summed up as follows:
>
> A. Two-Year Prescriptive Period
>
>> 1. It is only the administrative claim that must be filed within the two-year prescriptive period. (Aichi) 2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (San Roque)
>>
>> 3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. (San Roque)
>
> B. 120+30 Day Period
>
>> 1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

[11] G.R. No. 191498, January 15, 2014.
[12] *Emphasis and underscoring supplied.*

> 2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> 3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (Aichi and San Roque)
>
> 4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (San Roque)
>
> 5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (San Roque)"[13]

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[14], taxpayers were even reminded that the lapse of the 120-day period constitutes a denial by respondent, and an appeal within thirty (30) days therefrom must already be made:

> "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."[15]

Applying the disquisition above, in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*[16], it was held that "the judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling <u>or</u> after the expiration of the 120-day period, whichever is sooner."[17]

From the foregoing, it was repeatedly emphasized that **an appeal to a denial of a taxpayer's administrative claim may only be made if such denial was issued within the 120-day period. And when the 120-day period lapses without any decision issued by Respondent, only an appeal to the inaction of respondent may be made.**

The Court likewise finds erroneous the petitioner's reliance on the case of *Lascona Land Co. Inc. v. Commissioner of Internal Revenue*[18] regarding the

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[13] *Emphasis and underscoring supplied.*
[14] G.R. No. 168950, January 14, 2015.
[15] *Emphasis and underscoring supplied.*
[16] G.R. No. 182737, March 02, 2016.
[17] *Underscoring supplied.*
[18] G.R. No. 171251, March 5, 2012.

remedies of a taxpayer for judicial appeal since the *Lascona* case pertains to disputed assessments and not to claims for refund, as in this case.

The pronouncements made in RMC No. 54-2014 applies to administrative cases filed after June 11, 2014 only. In the present case, the administrative claims for refund were filed on the following dates: September 30, 2010, December 30, 2010, March 31, 2011, June 28, 2011, September 28, 2011, December 12, 2011, March 29, 2012, June 27, 2012, September 26, 2012, December 10, 2012, March 22, 2012, June 28, 2013, September 27, 2012, and December 3, 2013.

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[19] the Supreme Court *En Banc* held that in claims for tax credit or refund filed prior to June 11, 2014, or the issuance of RMC No. 54-2014, the reckoning point in counting the 120-day period is the date of submission of complete documents. The Supreme Court held:

> "Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under the present law, when should the submission of documents be deemed "completed" for purposes of determining the running of the 120-day period?*
>
> Ideally, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, *ideally,* the CIR has a period of 120 days from the date an administrative claim if filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.
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> xxx
>
> Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the

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

application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was "officially received" as provided under RMC No. 49-2003.

To summarize, for the just disposition of the subject controversy, 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 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 addition *(sic)* 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 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. xxx

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 document" 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."

As aptly discussed in the assailed Decision:[20]

[20] Decision, pp. 18-20. Citations omitted.

"Petitioner alleges that the claims for VAT Refund were pending investigation and evaluation by respondent when, on June 30, 2014, the assigned Revenue Officers informed petitioner that the BIR will no longer process the claims but the BIR will not issue a written denial because pursuant to RMC No. 54-14, the claims for VAT refund were deemed denied after the lapse of 120 days.

It must be noted, however, that in the instant case, all administrative claims for refund were filed prior to June 11, 2014, the date of issuance of RMC No. 54-14. Hence, from the foregoing jurisprudence, what is applicable to the instant case is the following rule:

> 'xxx 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 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 additional documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.'

In this case, there was no evidence showing that respondent gave petitioner further extension to submit documentary requirements to support its claim. Nevertheless, petitioner did not manifest that it no longer wishes to submit any other additional documents to complete its claim. The 30-day period for petitioner to file its Petition for Review should be counted from the expiration of the 120-day waiting period that is on the following dates:

Quarterly Return	**Date Filed**	**Expiration of the 120-day period**	**Expiration of the 30-day period**
3rd Quarter 2008	September 30, 2010	June 28, 2011	February 28, 2011
4th Quarter 2008	December 30, 2010	April 29, 200	May 30, 2011
1st Quarter 2009	March 31, 2011	July 29, 2011	August 30, 2011
2nd Quarter 2009	June 28, 2011	October 26, 2011	November 25, 2011
3rd Quarter 2009	September 28, 2011	January 26, 2012	February 27, 2012
4th Quarter 2009	December 12, 2011	April 10, 2012	May 10, 2012
1st Quarter 2010	March 29, 2011	July 27, 2011	August 26, 2011
2nd Quarter 2010	June 27, 2012	October 25, 2012	November 26, 2012
3rd Quarter 2010	September 26, 2012	January 24, 2013	February 25, 2013

4th Quarter 2010	December 10, 2012	April 9, 2013	May 9, 2013
1st Quarter 2011	March 22, 2013	July 20, 2013	August 19, 2013
2nd Quarter 2011	June 28, 2013	October 26, 2013	November 25, 2013
3rd Quarter 2011	September 27, 2013	January 25, 2014	February 24, 2014
4th Quarter 2011	December 3, 2013	April 2, 2014	May 2, 2014

The petitioner's non-compliance with the mandatory period of 120+30 days is fatal to its claim for refund on the ground of prescription. Accordingly, the Court in Division has no jurisdiction over the petitioner's judicial claim for refund.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[21]

There being no new matters or issues raised in the Petition for Review before this Court and there being no reversible error committed by the Court in Division, the Court *En Banc* finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DISMISSED** for lack of jurisdiction. Accordingly, the Decision dated September 13, 2017 and Resolution dated April 11, 2018 are affirmed.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[21] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

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Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:

AUG 28 2019 4:10 pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the dismissal of the Petition for Review for lack of jurisdiction, albeit I differ in so far as the reckoning dates for the computation of the 120-day period are concerned.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[1] the Supreme Court *En Banc* summarized or laid down the guidelines on the procedure for VAT refund claims filed **prior to June 11, 2014**, as in this case, *viz.*:

> "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**

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

> **requirements sufficient to support his claim, unless given further extension by the CIR.** Then, upon filing by the taxpayer of his 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[al] 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 <u>applicable to those claims for tax credit or refund</u> filed prior to June 11, 2014**, such as the claim at bench." (Boldfacing and underscoring supplied)

Pursuant to the summary laid down in *Pilipinas Total*, the 120-day period may be **reckoned** from any of the following dates, whichever may be applicable:

1. **Date of filing** of the administrative claim in cases where submission of complete documents was made upon such filing, or when the taxpayer plainly manifests that he no longer wishes to submit any other additional documents to complete his administrative claim; or

2. **Date of submission** of documents, which may be made within 30 days from the date of filing of the taxpayer's administrative claim, unless given further extension by the CIR; or

3. **Date of expiration of 30 days** from filing of the administrative claim, when complete documents did not accompany the administrative claim.

Following the doctrine of *stare decisis*,[2] the Court should be guided by the summation of procedure for VAT refund claims laid down in *Pilipinas Total* in resolving the present controversy. Strict

[2] *Stare decisis et non quieta movere* which means "to adhere to precedents, and not to unsettle things which are established."

adherence to said procedure is therefore necessary and unavoidable in determining whether or not the judicial claim for VAT refund was timely filed.

Applying the doctrinal pronouncement in *Pilipinas Total*, I submit that the Court in Division aptly reckoned the 120-day period from the **date of expiration of 30 days** from filing of the administrative claims as complete documents did not accompany the administrative claim. Thus, I quote hereunder the pertinent pronouncement of the Court in Division in the assailed Decision, *viz.*:

> "In the instant case, there was no evidence showing that respondent gave petitioner further extension to submit documentary requirements to support its claim. Nonetheless, petitioner also did not manifest that it no longer wishes to submit any other additional documents to complete its claim. Hence, the 120-day period began after the expiration of the 30-day period within which petitioner was allowed to submit its supporting documents. Petitioner then had until the following dates, to file the judicial claims:

Quarterly Return	Date Filed	Expiration of 30-day period to submit additional documents	Expiration of the 120-day period
3rd Quarter 2008	September 30, 2010	October 30, 2010	February 27, 2011
4th Quarter 2008	December 30, 2010	January 29, 2011	May 29, 2011
1st Quarter 2009	March 31, 2011	April 30, 2011	August 28, 2011
2nd Quarter 2009	June 28, 2011	July 28, 2011	November 25, 2011
3rd Quarter 2009	September 28, 2011	October 28, 2011	February 25, 2012
4th Quarter 2009	December 12, 2011	January 11, 2012	May 10, 2012
1st Quarter 2010	March 29, 2012	April 28, 2012	August 26, 2012
2nd Quarter 2010	June 27, 2012	July 27, 2012	November 24, 2012
3rd Quarter 2010	September 26, 2012	October 26, 2012	February 23, 2012
4th Quarter 2010	December 10, 2012	January 9, 2013	May 9, 2013
1st Quarter 2011	March 22, 2013	April 22, 2013	August 20, 2013
2nd Quarter 2011	June 28, 2013	July 28, 2013	November 25, 2013
3rd Quarter 2011	September 27, 2013	October 27, 2013	February 24, 2013
4th Quarter 2011	December 3, 2013	January 2, 2013	May 2, 2013

> Considering that the instant case was filed only on July 23, 2014, the judicial claim was filed out of time. Hence, the Court has no jurisdiction over the instant case."

The filing of its Petition for Review only on July 23, 2014, or way beyond the lapse of the 30-day period counted from the expiration of the 120-day period as indicated in the aforequoted table, was clearly out of time, thereby resulting in the finality of respondent's "deemed denial decisions" on petitioner's administrative claims for refund.[3]

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] CIR vs. Dash Engineering Philippines, Inc., G.R. No. 184145, December 11, 2013.