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:
SEP 19 2017
10:15 a.m.

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RESOLUTION

Records show that the instant Petition for Review was filed on September 4, 2017, as an appeal from the denial of the claim for refund of unutilized input tax in the amount of Php2,054,084.06 for taxable year 2015.

Petitioner counted 30 days from its receipt of the alleged denial of the claim for refund, which was on August 2, 2017.[1] However, a perusal of the petition reveals that the instant petition has been filed out of time for the reasons discussed below.

Section 112(C) of the 1997 National Internal Revenue Code, as amended (NIRC), provides the following periods in a judicial claim for tax credit/refund:

> Sec. 112. Refunds or Tax Credits of Input Tax. –
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[1] Docket, CTA Case No. 9677, Petition for Review (PFR), p. 11.

> (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.
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> 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.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[2] 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.

This was recently reiterated in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[3] which stated:

> 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.[4] It made no averment as to the submission of additional documents on a separate date.[5]

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

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[2] G.R. Nos. 187485, 196113, and 197156, February 12, 2013; also, recently cited in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[3] G.R. No. 182737, March 2, 2016.
[4] Docket, PFR, p. 12.
[5] Annex "P" of the PFR is the BIR checklist of mandatory requirements for claims for VAT credit refund with BIR stamp dated November 29, 2016.

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 after 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.[6]

Here, petitioner's Petition for Review was filed only on September 4, 2017, or 129 days after the lapse of the 120+30 day period to file a judicial claim. The receipt and issuance of the denial after the 120 day period is inconsequential. Therefore, petitioner's judicial claim was belatedly filed.

It has been emphasized repeatedly that compliance with the 120+30 day periods prescribed under Section 112(C) of the NIRC is mandatory and jurisdictional. Accordingly, petitioner's belated filing of its judicial claim or failure to observe the mandatory 120+30 day periods is fatal to its claim and rendered the Court devoid of jurisdiction over petitioner's claim. Thus, the dismissal of the instant Petition for Review is in order.

WHEREFORE, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Juanito 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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[6] *Chemrez, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 1448, May 30, 2016.