REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1665** (CTA Case No. 8960)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
DOHLE SHIPMANAGEMENT PHILIPPINES, CORP., Respondent.	***Promulgated:*** APR 01 2019 2:45 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on September 6, 2018, with respondent's **"COMMENT (on Petitioner's Motion for Reconsideration)"** filed on November 13, 2018, praying for the reconsideration and setting aside of the Court *En Banc*'s Decision dated July 26, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated December 16, 2016 and the Resolution dated May 22, 2017, both rendered by the Court of Division in CTA Case No. 8960 are **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In petitioner's *Motion for Reconsideration*, petitioner argues that the *Petition for Review,* CTA Case No. 8960, filed by herein respondent before the Court in Division on December 23, 2014, was belatedly filed and deprived the Court in Division of its jurisdiction to take cognizance of the instant case, pursuant to the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (the "*Pilipinas Total Gas* case")[1].

Furthermore, petitioner points out that settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognized the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings; and thus, 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.

Finally, petitioner avers that respondent's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

Respondent's counter-arguments:

On the other hand, in its *Comment*, respondent submits that to count the 120-day period from the expiration of 30 days from the filing of the application for value-added tax (VAT) refund (if the submission of complete documents was made more than 30 days after the filing of the application for VAT refund), is to deviate from, and to unjustifiably add to, what the law provides. According to respondent, the law clearly provides that the 120-day period is reckoned from the submission of complete supporting documents by the taxpayer and the 30-day period to appeal to this Court is counted from the lapse of such 120-day period, in case of inaction on the part of petitioner.

Furthermore, respondent asserts that the law is clear; that the Bureau of Internal Revenue (BIR) cannot promulgate issuances that add more requirements to, or detract from, the requirements already set out in Section 112 of the Tax Code; that applying the plain

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

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meaning of the said provision in this case, respondent timely filed its judicial claim on December 23, 2014. Even if the ruling in the *Pilipinas Total Gas* case were applied in this case, the conclusion would still allegedly be the same, *i.e.*, respondent's appeal was timely filed on December 23, 2014, and accordingly, the Court *a quo* had jurisdiction over respondent's appeal.

Lastly, respondent stresses that petitioner actively participated in the proceedings in the Court *a quo*, moved for reconsideration of the latter's Decision (not on the ground of lack of jurisdiction, but on the same grounds relied upon in petitioner's appeal), and appealed the said Decision to this Court *En Banc* (again not on the ground of lack of jurisdiction). Allegedly, it was only in moving for a reconsideration of the Court *En Banc*'s Decision that petitioner raised for the first time the allegation of lack of jurisdiction. Based on the proceedings had and petitioner's active participation therein, the principle of estoppel by laches should allegedly apply and petitioner should not be permitted to invoke lack of jurisdiction, even if such allegation is completely without basis.

THE COURT *EN BANC*'S RULING

The instant *Motion for Reconsideration* lacks merit.

In strongly arguing that the Court in Division is without jurisdiction to take cognizance of CTA Case No. 8960, petitioner heavily relies on the supposed ruling in the *Pilipinas Total Gas* case. However, upon a careful examination of the said Supreme Court case, the inevitable conclusion is that the same case even supports the ruling of the Court in Division that respondent timely filed its judicial claim, and thus, the latter Court is vested with jurisdiction to entertain such claim.

As stated in the *Pilipinas Total Gas* case, the established facts relating to the filing of the administrative and judicial claims therein are as follows:

> "On **May 15, 2008**, Total Gas filed an administrative claim for refund of unutilized input VAT for the first two quarters of taxable year 2007, inclusive of supporting documents.

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On **August 28, 2008**, Total Gas submitted additional supporting documents to the BIR.

On January 23, 2009, Total Gas elevated the matter to the CTA in view of the inaction of the Commissioner of Internal Revenue." *(Underscoring supplied)*

Based on the foregoing findings of fact, it can be deduced: (1) that when Total Gas filed its administrative claim on May 15, 2008, it also attached supporting documents thereto; (2) that after such date, Total Gas *"submitted additional supporting documents"* on August 28, 2008; (3) that the interval between the filing of the said administrative claim and the submission of additional supporting documents is 105 days; and (4) that after the said submission of additional supporting documents, Total Gas only elevated its judicial claim on January 23, 2009, or within 30 days after the lapse of the 120-day period, which was reckoned from the said date of submission of additional supporting documents, *i.e.*, on August 28, 2008.

With the foregoing factual circumstances and considering the issues raised in the *Pilipinas Total Gas* case, the Supreme Court ruled therein as follows:

"**ISSUES**

(a) whether the judicial claim for refund was belatedly filed on 23 January 2009, or way beyond the 30-day period to appeal as provided in Section 112(c) of the Tax Code, as amended; and

(b) whether the submission of incomplete documents at the administrative level (BIR) renders the judicial claim premature and dismissible for lack of jurisdiction.

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Ruling of the Court

The petition has merit.

Judicial claim timely filed.

Section 112 (C) of the NIRC provides:

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 (120) days **from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) 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. –
x x x x

[Emphasis and Underscoring Supplied]

From the above, it is apparent that the CIR has 120 days **from the date of submission of complete documents** to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a 'denial due to inaction,' appeal the decision or unacted claim to the CTA.

To be clear, Section 112(C) categorically provides that the 120-day period is counted '**from the date of submission of complete documents** in support of the application.' Contrary to this mandate, the CTA En Banc counted the running of the period from the date the application for refund was filed or May 15, 2008, and thus, ruled that the judicial claim was belatedly filed.

This should be corrected.

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Applying the foregoing precepts to the case at bench, it is observed that the CIR made no effort to question the inadequacy of the documents submitted by Total Gas. It neither gave notice to Total Gas that its documents were inadequate, nor ruled to deny its claim for failure to adequately substantiate its claim. Thus, for

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purposes of counting the 120-day period, it should be reckoned from August 28, 2008, the date when Total Gas made its 'submission of complete documents to support its application' for refund of excess unutilized input VAT. Consequently, counting from this later date, the BIR had 120 days to decide the claim or until December 26, 2008. With absolutely no action or notice on the part of the BIR for 120 days, Total Gas had 30 days or until January 25, 2009 to file its judicial claim.

Total Gas, thus, timely filed its judicial claim on January 23, 2009.

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Judicial claim not prematurely filed

The CTA *En Banc* curiously ruled in the assailed decision that the judicial claim of Total Gas was not only belatedly filed, but prematurely filed as well, for failure of Total Gas to prove that it had submitted the complete supporting documents to warrant the grant of the tax refund and to reckon the commencement of the 120-day period. It asserted that Total Gas had failed to submit all the required documents to the CIR and, thus, the 120-day period for the CIR to decide the claim had not yet begun to run, resulting in the premature filing of the judicial claim. It wrote that the taxpayer must first submit the complete supporting documents before the 120-day period could commence, and that the CIR could not decide the claim for refund without the complete supporting documents.

The Court disagrees.

The alleged failure of Total Gas to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction. *First*, the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. It must again be pointed out that *this is in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even*

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> *denying the claim if the taxpayer fails to submit the addition documents requested.*
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> *Second*, the CIR sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents. As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents." *(Underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, the Supreme Court held that Total Gas timely filed its judicial claim before this Court; and that the 120+30 day period was, in fact, complied with. This, notwithstanding the fact that there was gap (*i.e.*, 105 days) between the filing of the administrative claim and the later submission of additional documents. Moreover, worthy of note is that the Supreme Court reckoned the 120-day period from the submission of additional documents, and not on the day of the filing of the administrative claim, nor on any day thereafter before such submission—this is for the simple reason that petitioner did not give notice to Total Gas that its documents were inadequate, nor ruled to deny its claim for failure to adequately substantiate its claim.

Simply put, in ruling that the judicial claim was timely filed in the *Pilipinas Total Gas* case, the Supreme Court applied the 120+30 day period under Section 112 of the National Internal Revenue Code of 1997, as amended, in this wise:

Date of Filing of Administrative Claim	Date of Submission of Complete Documents	End of 120 days	End of 30 days	Date of Filing of Petition for Review
May 15, 2008	August 28, 2008	December 26, 2008	January 25, 2009	January 23, 2009

The facts of the instant case relative to the filing of the administrative and judicial claims are similar to the *Pilipinas Total Gas* case.

In this case, it is clear that: (1) respondent filed its administrative claim on March 31, 2014,[2] and it attached supporting documents thereto;[3] (2) after such date, respondent submitted additional supporting documents on July 28, 2014;[4] (3) there is an interval between the filing of the said administrative claim and the submission of additional supporting documents, *i.e.*, 119 days; and (4) after the said submission of additional supporting documents, respondent only elevated its judicial claim on December 23, 2014,[5] or within 30 days after the lapse of the 120-day period, which was reckoned from the said date of submission of additional supporting documents, *i.e.*, on July 28, 2014.

To summarize, insofar as the filing of the administrative and judicial claims in this case are concerned, the following events happened, to wit:

Date of Filing of Administrative Claim	Date of Submission of Complete Documents	End of 120 days	End of 30 days	Date of Filing of Petition for Review
March 31, 2014	July 28, 2014	November 25, 2014	December 25, 2014	December 23, 2014

It is also worthy of note that just as in the *Pilipinas Total Gas* case, there is no indication herein that petitioner gave notice to respondent that its documents were inadequate; nor did he rule to deny its claim for failure to adequately substantiate its claim.

Considering that the factual milieu in the *Pilipinas Total Gas* case are similar to the instant case, the conclusion reached in the former case of the timely filing of the judicial claim may also be applied herein.

Correspondingly, contrary to the assertion of petitioner, respondent's judicial claim was timely filed. Such being the case, the Court in Division had jurisdiction to take cognizance of respondent's *Petition for Review* in CTA Case No. 8960.

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[2] Exhibits "P-5" to "P-8", Division Docket (CTA Case No. 8960) – Vol. II, pp. 564 to 567.
[3] Exhibit "P-9", Division Docket (CTA Case No. 8960) – Vol. II, p. 568.
[4] Exhibit "P-10", Division Docket (CTA Case No. 8960) – Vol. II, pp. 571 to 572.
[5] Respondent's *Petition for Review*, Division Docket (CTA Case No. 8960) – Vol. I, pp. 14 to 26.

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However, it must be noted that during the deliberation of the instant *Motion for Reconsideration*, the members of the Court *En Banc* consisting of seven (7) members only: the Presiding Justice and 6 Associate Justices, were equally divided in the resolution of the instant motion, as Associate Justice Ma. Belen M. Ringpis-Liban inhibited herein. Associate Justices Juanito C. Castañeda, Jr. and Catherine T. Manahan concurred with the *ponente* that the said *Motion for Reconsideration* must be denied, based on the foregoing disquisitions.

On the other hand, Presiding Justice Roman G. Del Rosario, and Associate Justices Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla, voted to grant the same *Motion for Reconsideration* and to reverse and set aside the Decision dated December 16, 2016 and Resolution dated May 22, 2017 of the Court in Division in CTA Case No. 8960.

Relative thereto, Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides as follows:

> "SEC. 3. *Court en banc; quorum and voting.* — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but **only a simple majority of the justices present to promulgate a resolution or decision in all other cases. Where the necessary majority vote cannot be had,** the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; **and on all incidental matters, the petition or motion shall be denied.**"

Based on the foregoing, as a general rule, the Court *En Banc* may promulgate a resolution or decision by a simple majority of the Justices present. An exception thereto is, when an assailed decision of a Division of this Court is reversed, the presence at the deliberation and the affirmative vote of five (5) members of the Court *En Banc* shall be necessary. And where the necessary majority vote cannot

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be had, the petition or motion shall be denied, on all incidental matters.

In this case, considering that the necessary vote was not garnered, the instant *Motion for Reconsideration* must be denied, in accordance with Section 3, Rule 2 of the RRCTA.

WHEREFORE, in light of the foregoing considerations, the *Motion for Reconsideration* is **DENIED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

See Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my position as indicated in the assailed Decision)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(I maintain the position to grant the Motion for Reconsideration)
CIELITO N. MINDARO-GRULLA
Associate Justice

(Inhibited)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

DOHLE SHIPMANAGEMENT PHILIPPINES, CORP.,
Respondent.

CTA EB No. 1665
(CTA Case No. 8960)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
APR 01 2019

x- 2:45 p.m. - - - - -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I reiterate the position I have taken in my Dissenting Opinion on the assailed Decision that the Petition for Review filed by respondent before the Court in Division was belatedly filed, thus, depriving the Court in Division of jurisdiction to take cognizance of the same.

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 requirements sufficient to support his claim, unless given**

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

> **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.**
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> 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.
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> 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 adherence to said procedure is therefore necessary and unavoidable

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

in determining whether or not the judicial claim for VAT refund was timely filed.

I am not unaware that the factual milieu of the present case is similar to that obtaining in *Pilipinas Total*, that is, the additional supporting documents were submitted by the taxpayer beyond the thirty (30)-day period from the filing of the administrative claim, *sans* any indication that the Bureau of Internal Revenue (BIR) made a prior request to the taxpayer to submit additional supporting documents or that such submission was made within the extended time allowed by the BIR. **Notwithstanding said similarity, I submit that what is significant in resolving the present controversy is the procedure that was laid down by the Supreme Court in *Pilipinas Total*, although the same was not ultimately applied in resolving *Pilipinas Total*. To disregard the procedure laid down in *Pilipinas Total* in resolving the present controversy would render said procedure futile, ineffectual and meaningless as the "summary" or guidelines declared therein would not thereby come within the context of *stare decisis*.**

The final disposition in *Pilipinas Total* (which departed from its own doctrinal pronouncement anent the procedure for VAT refund claims) is, at most, governed by the doctrine of *res judicata*[3] and, thus, should exclusively govern the parties therein.

Applying the doctrinal pronouncement in *Pilipinas Total* anent the procedure for VAT refund claims, respondent should have filed the additional supporting documents within thirty (30) days from **March 31, 2014** (date of filing of the administrative claim) or until **April 30, 2014**. Petitioner had until **August 28, 2014** to act on the application for refund of respondent, and the latter, in turn, had thirty (30) days, or until **September 27, 2014** to elevate the "deemed denial decision" of petitioner with the Court in Division. The filing of its Petition for Review only on **December 23, 2014** with the Court in Division is clearly out of time, thereby resulting in the finality of the "deemed denial decision" of petitioner on respondent's claim for refund.[4]

All told, I **VOTE** to: (i) **GRANT** the Motion for Reconsideration filed by petitioner; (ii) **REVERSE** and **SET ASIDE** the Decision dated

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[3] *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit.

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

December 16, 2016 and Resolution dated May 22, 2017 of the Court in Division in CTA Case No. 8960; and, (iii) **DENY** the claim for refund of respondent representing unutilized input VAT for the four (4) quarters of calendar year 2012.

ROMAN G. DEL ROSARIO
Presiding Justice