REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LUZON HYDRO CORPORATION, Petitioner,	**CTA CASE NOS. 9188**
	Members: **Castañeda, Jr.,** *Chairperson,* **Mindaro-Grulla,** and, **Bacorro-Villena,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondents.	Promulgated: JUN 11 2020 2:40 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This case is a *Petition for Review* filed by the petitioner Luzon Hydro Corporation against the respondent Commissioner of Internal Revenue on November 9, 2015. Petitioner claims for the refund or issuance of a tax credit certificate of its alleged unutilized input tax for the 3rd and 4th quarters of taxable year (TY) 2008 in the total amount of ₱4,227,698.94, on its purchases of goods and/or services mainly attributable to its zero-rated sales of electricity.[1]

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Amilongan, Alilem, Ilocos Sur.[2] It is primarily engaged to act

[1] Par. I, Statement of the Case, Pre-Trial Order dated December 19, 2016, Docket, p. 360.
[2] Exhibits "P-1" and "P-1-a", Petitioner's *Formal Offer of Evidence* (FOE) – Folder 1.

as managers or managing agents of persons, firms, associations, corporation, partnerships and other entities engaged in the hydropower or related business; to provide management, investment, and technical advice for commercial, industrial, manufacturing and other kinds of enterprises engaged in the hydropower or related businesses; to undertake, carry on, participate, or assist in the formation, promotion, organization, management, liquidation or reorganization of partnerships, corporations, and other entities engaged in the hydropower business; to develop, construct, own, lease and operate a hydro powerplant; to engage in build-operate-transfer arrangements with the government, its branches, agencies, and instrumentalities, and any non-government entity; acts as consultants, contractors or principals in the business of developing, constructing, operating, repairing and maintaining of hydro powerplants and systems and other power-generating or converting stations and in the manufacture, operation and repair of associated mechanical and electrical equipment; to carry on the general business of manufacture, generation, and/or transmission of electric power in accordance with existing laws, rules and regulations, and to carry on all business necessary or incident to all the foregoing.[3]

Also, petitioner is a duly registered taxpayer with the BIR under Certificate of Registration No. OCN8RC0000058193,[4] and a registered renewable energy developer under Certificate of Registration No. HSC 2009-10-058.[5] The Energy Regulatory Commission (ERC) granted petitioner a Certificate of Compliance on July 22, 2013, which owns/operates Hydroelectric Power Plant in Ilocos Sur.[6]

Respondent Commissioner of Internal Revenue is the duly appointed Chief of the Bureau of Internal Revenue (BIR), who is vested by law with power to decide, approve and grant refund or issue tax credit certificates of input tax or paid, by a VAT (value-added tax)-registered person, whose sales are zero-rated or effectively zero-rated, with office address at BIR National Building, BIR Road, Diliman, Quezon City.[7]

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[3] *Id.*
[4] Exhibit "P-2", Petitioner's FOE – Folder 1.
[5] Exhibit "P-4", Petitioner's FOE – Folder 1.
[6] Exhibit "P-3", Petitioner's FOE – Folder 1.
[7] Par. 1, Proposed Stipulation of Facts, *Joint Stipulation of Facts* (JSF), Docket, p. 314.

ANTECEDENTS (ADMINISTRATIVE LEVEL)

For the 3rd and 4th quarters of TY 2008, petitioner filed the following VAT Returns:

Period	Returns	Date of filing
3rd Quarter – CY 2008 (July 1, 2008 to September 30, 2008)	Amended Quarterly VAT[8]	January 20, 2009
4th Quarter – CY 2008 (October 1, 2008 to December 31, 2008)	Quarterly VAT[9]	January 20, 2009

Then, petitioner filed its administrative claim for refund on the following dates representing unutilized input VAT:

Period	Date of Filing
July 2008	August 6, 2009[10]
August 2008	August 6, 2009[11]
September 2008	undated[12]
October 2008	February 16, 2009[13]
November 2008	February 16, 2009[14]
December 2008	February 16, 2009[15]

In view of the filing of the said administrative claims, respondent issued Letter of Authority (LOA) Nos. LOA 200700038949 dated February 19, 2009 and LOA 200800037125 dated September 1, 2009, authorizing the examination of petitioner's books of accounts and other accounting records covering the period of October 1, 2008 to December 31, 2008 and July 1, 2008 to September 31, 2008, respectively.[16]

On July 22, 2010, petitioner received a copy of the Notice of Informal Conference, informing that the amount of the claim for refund for July to September 2008 was reduced from ₱1,189,174.10 to ₱807,688.20.[17]

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[8] Exhibit "P-5", Petitioner's FOE – Folder 1.
[9] Exhibit "P-6", Petitioner's FOE – Folder 1.
[10] Exhibits "P-11" and "P-12", BIR Records – Folder I, pp. 20 to 21 and 19.
[11] Exhibits "P-13" and "P-14", BIR Records – Folder I, pp. 14 to 15 and 13.
[12] Exhibits "P-15" and "P-16", BIR Records – Folder I, pp. 5 to 6 and 4.
[13] Exhibits "P-17" and "P-18", BIR Records – Folder II, pp. 35 to 36 and 34.
[14] Exhibits "P-19" and "P-20", BIR Records – Folder II, pp. 25 to 26 and 24.
[15] Exhibits "P-21" and "P-22", BIR Records – Folder II, pp. 10 to 11 and 9.
[16] Exhibits "P-26" and "P-25", Petitioner's FOE – Folder 1.
[17] Exhibit "P-27", Petitioner's FOE – Folder 1.

However, petitioner's administrative claims for refund for 3rd and 4th quarters of TY 2008 were both denied on September 15, 2015, on the ground that respondent could not process the same pursuant to Revenue Memorandum Circular No. 54-2014.[18]

PROCEEDINGS BEFORE THIS COURT

Due to respondent's denial of the administrative claims for refund, petitioner filed the instant *Petition for Review* on November 9, 2015.[19] This case was initially raffled to this Court's First Division.[20]

In the *Answer* filed on February 10, 2016, respondent interposed the following special and affirmative defenses:[21]

> "4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.
>
> **THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION.**
>
> 5. A taxpayer's right to appeal to the Court of Tax Appeals (CTA) may be waived or lost as in this case.
>
> 6. With all due respect, the Honorable Court has no jurisdiction over the subject matter of the case for failure of petitioner to file its judicial claim within the period prescribed by Section 112 of the Tax Code.
>
> 7. Section 112 of the Tax Code provides:
>
>> '**SEC. 12. 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, <u>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</u>, except transitional input tax, to the extent that such input tax has not been applied

[18] Exhibits "P-23" and "P-24", Petitioner's FOE – Folder 1.
[19] Docket, pp. 12 to 22.
[20] Summons, Docket, p. 73.
[21] Docket, pp. 91 to 107.

> 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.
>
> x x x x
>
> **(D) 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) 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, <u>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</u> **<u>the unacted claim with the Court of Tax Appeals</u>**.
>
> x x x x' (Emphases supplied)

8. As alleged by petitioner, on 16 February 2009, it filed administrative claims for input value-added tax (VAT) refund or issuance of tax credit certificate for the third and fourth quarters of 2009 [sic].

9. Even assuming that the administrative claims were filed on time, it must be pointed out that the **petition for review filed on 09 November 2015** was <u>filed beyond the mandatory and jurisdictional thirty (30) day period from the expiration of the one hundred twenty (120) day period</u> pursuant to Section 112 (D) of the Tax Code.

10. The Honorable Supreme Court has expounded the mandatory and jurisdictional period of thirty (30) days within which to file judicial claim in cases of claim for refund/tax credit of unutilized input VAT attributable to zero-rated sale. The High Court

ruled in *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*, viz:

> 'Prescriptive Period for the Filing of Judicial Claims
>
> In determining whether the claims for the second, third and fourth quarters of 2003 have been properly appealed, we still see no need to refer to either Atlas or Mirant, or even to Section 229 of the 1997 Tax Code. The **second paragraph of Section 112(C) of the 1997 Tax Code** is clear: "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 mandatory and jurisdictional nature of the 120+30 day periods was explained in San Roque:**
>
> At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x the Commissioner shall grant a refund or issue the tax credit certificate for 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." Following the verbal egis doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.
>
> **Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner,** thus:

> x x x 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.
>
> This law is clear, plain, and unequivocal. Following the well-settled verbal legis doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, <u>appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision</u>, or **if the Commissioner does not act on the taxpayer's claim within the 120-day period**, the <u>taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period</u>.
>
> x x x x' (Emphases supplied)

11. To highlight the rules on prescriptive periods involving VAT refunds/credit, the *Mindanao II case* provides:

> 'We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code as follows:
>
> (1) An **administrative claim** must be filed within the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The <u>CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate.</u> The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. **If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be <u>denied by inaction.</u>**
>
> (3) A **judicial claim** must be filed with the CTA **<u>within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.</u>**
>
> (4) **All taxpayers, however, can rely on BIR Ruling No. DA-489-03** <u>from the time of its issuance on 10 December 2003 up to its reversal by this Court</u>

> in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods. (Emphases supplied)

12. Applying the same wording of the High Court in *Mindanao II* to the present case, petitioner filed its administrative claims for the third and fourth quarters of 2008 on 16 February 2009, thus counting *120 days* after filing of the administrative claim with the CIR (16 June 2009) and *30 days* after the CIR's denial by inaction, the last day for filing a judicial claim with the CTA for the third and fourth quarters of 2008 was on 16 July 2009. Since the instant petition was filed only on 09 November 2015, the Honorable Court no longer can exercise jurisdiction on the instant case.

13. Even assuming that petitioner allegedly submitted the documents in support of the administrative claim no such dates of submission were alleged in the instant Petition.

14. Since the **present petitioner was filed on 09 November 2015**, the petition for review is clearly filed out of time, and therefore, has already **prescribed**.

15. Furthermore, in consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, the Honorable Supreme Court *En Banc* explained the consequence of late filing of judicial claim:

> **'G.R. No. 197156 – Philex Mining Corporation v. CIR**
>
> Philex (1) filed on 21 October 2005 its original VAT Return for the third quarter of taxable year 2005; (2) filed on 20 March 2006 its administrative claim for refund or credit; (3) filed on 17 October 2007 its Petition for Review with the CTA. The close of the third taxable quarter in 2005 is 30 September 2005, which is the reckoning date in computing the two-year prescriptive period under Section 112(A).
>
> **Philex timely filed its administrative claim on 20 March 2006, within the two-year prescriptive period.** Even if the two-year prescriptive period is computed from the date of payment of the output VAT under Section 229, Philex still filed its administrative claim on time. Thus, the Atlas doctrine is immaterial in this case. **The Commissioner had until 17 July 2006, the last day of the 120-day period, to decide Philex's claim. Since the Commissioner did not act on Philex's claim or or before 17 July 2006, Philex had until 17 August 2006, the last day of the 30-day period, to file its judicial claim.** The CTA EB held that 17 August 2006 was indeed the last day for Philex to file its judicial claim. However,

> **Philex filed its Petition for Review with the CTA only on 17 October 2007**, or four hundred twenty six (426) days after the last day of filing. In short, Philex was late by one year and 61 days in filing its judicial claim. xxx
>
> xxx
>
> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the Atlas case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the Atlas doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the Mirant and Aichi doctrines, Philex's judicial claim was indisputably filed late.
>
> The Atlas doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, <u>"deemed a denial"</u> of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. <u>Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable [sic].</u>** The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.' (Emphases supplied)

16. Applying the foregoing discussion, since the petition for review was filed late, the 'deemed a denial' decision of the Commissioner of Internal Revenue (CIR) has become **final and unappealable**, hence, it is only but proper to <u>dismiss</u> the instant petition.

17. It must be noted that the *Mindanao II case* focused on **premature** filing of judicial claim. To scrutinize *Mindanao II*, it can be gleaned that the exception to the mandatory and jurisdictional

120+30 day period ruling **applies only to premature filing of judicial claim, not to late filing of judicial claim.**

18. For further clarification of the exception to the mandatory and jurisdictional 120+30 day period ruling in Mindanao II case, Revenue Memorandum Circular No. 54-2014 (RMC 54-2014) states that:

> **'IV. Exception to the Mandatory and Jurisdictional Nature of the 120+30 day Period (BIR Ruling No. DA-489-03 dated 10 December 2003)**
>
> As an exception to the mandatory and jurisdictional 120+30 day period, it was emphasized that from the time of issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010 (or a period of almost 7 years), taxpayers/claimant **<u>need not wait</u>** for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. **This exception, however, is limited to cases of premature filing (filing of judicial claim prior to the lapse of the 120-day period) and *does <u>not extend to late filing of a judicial claim.</u>*** '(Underscoring supplied)

19. Considering that the instant case involves late filing of judicial claim, petitioner cannot invoke the application of BIR Ruling No. DA-489-03 to its case.

20. Petitioner also argued that the case of Lascona should be applied in the instant case and that the provisions of Section 228 of the Tax Code should squarely be applied.

21. Petitioner's contention is bereft of legal basis. Section 228 of the Tax Code applies specifically to disputed tax assessments and not to a claim for refund on unutilized input tax attributable to zero rated sales. Since there exist [sic] a specific provision of the Tax Code that applies to such administrative claim for refund, Section 112 should be the legal basis for the evaluation of the claim for tax refund.

22. To reiterate under the risk of being repetitious, the letter received by petitioner is not the decision contemplated under the Tax Code which may be the subject of an appeal before the Honorable Court. Careful perusal of said letter attached as Annex 'X' to the petition reveals that it was not a decision denying the claim of petitioner. It was a letter informing petitioner of the promulgation of Revenue Memorandum Circular No. 54-2014.

23. Assuming for the sake of argument that the Revenue Memorandum Circular No. 54-2014 may be considered a decision

denying the claim of petitioner, petitioner should have already elevated the case to the Honorable Court within thirty (30) days from the time said RMC was promulgated on 11 June 2014. Clearly the petition is already filed out of time.

24. Nevertheless, the Honorable Supreme Court made it explicit in the case of *ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, viz:

> A final note, the taxpayers are reminded that 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 ours)

THE HONORABLE COURT HAS NO JURISDICTION TO PASS UPON THE VALIDITY OF THE REVENUE MEMORANDUM CIRCULAR.

25. Clearly, RMC 54-2014 was issued in accordance with Section 112 of the Tax Code and the ruling of the Honorable Supreme Court in Mindanao II and San Roque case. Pertinent portion of RMC 54-2014 states:

> 'SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended
>
> xxx xxx
>
> Clarification on issues concerning the application for VAT refund/tax credit has been made by the Supreme Court in Commissioner of Internal Revenue vs. San Roque Power Corporation and in Mindanao II Geothermal partnership vs. Commissioner of Internal Revenue. As such, this Circular is issued to summarize the rules on filing and processing of applications for VAT refund/tax credit.'

26. Petitioner cannot question the legality and validity of RMC 54-2014 in the present caser by way of collateral attack. The Honorable Court has no jurisdiction over the actions involving legality and validity of administrative issuances, such as RMC 54-2014.

27. RMC 54-2014 is an interpretation of Section 112 of the Tax Code. Hence, <u>it was issued pursuant to the power of the Commissioner to interpret the provision of the Tax Code under the **first paragraph of Section 4 of the Tax Code**, and shall be subject to review by the **Secretary of Finance (SOF).**</u>

28. As held by the Supreme Court in *The Philippine American Life and General Insurance company vs. the Secretary of Finance and the Commissioner of Internal Revenue*:

> 'Preliminarily, it bears stressing that there is no dispute that what is involved herein is the respondent Commissioner's exercise of power under the first paragraph of Sec. 4 of the NIRC--**the power to interpret tax laws.** This, in fact was recognized by the appellate court itself, but **erroneously held that her action in the exercise of such power is appealable directly to the CTA**. As correctly pointed out by petitioner, Sec. 4 of the NIRC readily provides that the Commissioner's power to interpret the provisions of this Code and other tax laws is **subject to review by the Secretary of Finance**.' (Emphases supplied)

29. RMC 54-2014 was issued in the performance of official functions of respondent. In the absence of proof of any irregularities in the performance of her official duties, such will not be disturbed.

30. Verily, administrative issuances have the force and effect of law. They benefit from the presumption of validity and constitutionality enjoyed by the statutes. *(Rufino O. Eslao vs. Commissioner of Audit, G.R. No. 108310, September 1, 1994.)*

31. Thus, in the absence of any declaration rendering the RMC 54-2014 illegal and void, its shall be valid and applicable to the present case.

32. Petitioner's contention that RMC 54-2014 cannot be given retroactive application is manifestly misplaced and improper.

33. The non-retroactivity of rulings under Section 246 of the Tax Code is not applicable in the present case considering that RMC 54-2014 is a mere clarification of Section 112 of the Tax Code. Respondent simply interpreted the law on VAT refund/tax credit.

34. RMC 54-2014 merely clarifies the application for VAT refund/credit under Section 112 of the Tax Code in relation to the rulings of the High Court in *Mindanao II* and *San Roque*. It did not expand the rules on filing and processing of applications for VAT refund/tax credit.

35. In *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*, it was held by the Honorable Supreme Court that:

> 'Moreover, **Sec. 7(c.2.2.) of RR 06-08 does not alter Sec. 100 of the NIRC but merely sets the parameters for determining the "fair market**

> **value" of a sale of stocks.** Such issuance was made pursuant to the Commissioner's power to interpret tax laws and to promulgate rules and regulations for their implementation.
>
> Lastly, petitioner is mistaken in stating that RMC 25-11, having been issued after the sale, was being applied retroactively in contravention to Sec. 246 of the NIRC. Instead, **it merely called for the strict application of Sec. 100, which was already in force the moment the NIRC was enacted.**' (Emphases supplied)

36. It must be observed that RMC 54-2014 is an administrative issuance that interprets and clarifies Section 112 of the Tax Code. **It merely called for the strict application of Section 112 of the Tax Code, which was already in force the moment the Tax Code was enacted, hence, there is no retroactive application of RMC 54- 2014 to speak of.**

37. Clearly, at the time petitioner filed its petition for review with the Honorable Court, the 120+30 day mandatory periods were already provided by law.

38. Philippine jurisprudence is replete with cases upholding and reiterating that the applicable law in cases of claim for refund/tax credit of unutilized input VAT attributable to zero-rated sale is Section 112 of the Tax Code.

39. Petitioner must comply with the mandatory and jurisdictional 120+30 day period pursuant to Section 112 of the Tax Code.

40. 'It is hornbook doctrine that **a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act.** A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." **For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.'** (Emphases supplied)

41. The thirty (30) day period contemplated by law within which to file the instant petition before the Honorable Court is an express denial of such administrative claim. The letters both dated 15 September 2015 claimed by petitioner to be the 'express denial' of administrative claim is **not the denial** pointed out in Section 112 of the Tax code. *Jc*

42. As provided by Section 112 of the Tax Code, **the denial must be made within the mandatory and jurisdictional 120 day period.** If no decision is made within the 120 day period, such inaction shall be considered as 'deemed a denial' of the administrative claim, and immediately thereafter, the mandatory and jurisdictional 30 day period to file judicial claim starts to run.

43. Moreover, such letter dated 15 September 2015 merely serves as notice to petitioner that the application for refund could no longer be processed. Pertinent portion of the letters states:

> 'Please be informed that based on the decision of the Supreme Court in the cases of "*Commissioner of Internal Revenue versus San Roque Power Corporation*" and "*Mindanao II Geothermal Partnership versus Commissioner of Internal Revenue*", processing of claims for refund or issuance of the Tax Credit Certificate for creditable input taxes within 120 days from the date of submission of complete documents had become mandatory. In view thereof, your request for refund which was filed on 24, 2009 [sic] could no longer be processed pursuant to Revenue Memorandum Circular (RMC) No. 54-2014 in relation to the aforementioned decided cases.'

44. As the present petition was filed on **06 November 2015**, clearly, the petition for review was filed out of time, and therefore has already <u>prescribed</u>.

45. It is apparent from the admissions in the petition and the reliefs sought therein as discussed in the previous arguments that the **denial by inaction of administrative claim for refund/tax credit has long become <u>final and unappealable</u>.** Hence, such denial is not subject to judicial scrutiny and beyond the jurisdiction of the Honorable Court. Jurisprudentially, **when a court has no jurisdiction over the subject matter, the only power it has is to <u>dismiss the action</u>.**

IT IS INCUMBENT UPON PETITIONER TO PROVE THAT IT IS ENTITLED TO THE REFUND SOUGHT BECAUSE A CLAIM FOR REFUND IS NOT IPSO FACTO GRANTED UPON FILING A CLAIM.

46. '**The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit.** Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to proper. Well-settled is the rule that tax

> refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.
>
> 47. **The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.'** (Emphases supplied)
>
> 48. Thus, for failure of petitioner to show that it has strictly complied with the conditions for the grant of the VAT refund/credit, petitioner is not entitled to the claimed tax refund/credit." (*Citations omitted*)

This case was initially scheduled for pre-trial conference on May 5, 2016.[22] However, the pre-trial conference was reset to and held on October 27, 2016.[23]

On February 18, 2016, respondent filed a *Motion to Defer the Transmittal of BIR Records*,[24] which the Court granted.[25]

Respondent also filed a *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* on April 8, 2016.[26] Petitioner then sent through registered mail its *Comment/Opposition on the Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court*.[27]

Balmeo and Go Law Offices entered its appearance as petitioner's counsel on April 14, 2016.[28] The Court noted the said entry of appearance.[29] However, Balmeo and Go Law Offices later withdrew its appearance as petitioner's counsel.[30]

Thereafter, Mata-Perez & Francisco, Attorneys-at-Law, filed their *Entry of Appearance and Notice of Substitution of Counsel* on May 11, 2016,[31] which the Court noted.[32]

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[22] Notice of Pre-Trial Conference dated February 11, 2016, Docket, pp. 109 to 110.
[23] Resolution dated July 27, 2016, Docket, pp. 173 to 176; Minutes of the hearing held on, and Order dated, October 27, 2016, Docket, pp. 302 to 307.
[24] Docket, pp. 113 to 116.
[25] Order dated February 22, 2016, Docket, p. 118.
[26] Docket, pp. 120 to 132.
[27] Docket, pp. 152 to 162.
[28] *Entry of Appearance*, Docket, p. 134.
[29] Minute Resolution dated April 25, 2016, Docket, p. 139.
[30] *Notice of Withdrawal of Counsel*, Docket, p. 145.
[31] Docket, pp. 147 to 149.
[32] Docket, p. 150.

On July 27, 2016, the Court denied respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* on the ground that the issue of prescription in this case involves evidentiary matters requiring a full blown trial.[33]

Respondent transmitted the *BIR Records* on September 26, 2016.[34]

Afterwards, *Respondent's Pre-Trial Brief* was submitted to this Court on September 29, 2016,[35] while petitioner's *Pre-Trial Brief* was filed on October 21, 2016.[36]

In a *Motion for Commissioning of Independent Certified Public Accountant* dated October 21, 2016, petitioner prayed for the commissioning of Mr. Emmanuel Y. Mendoza as ICPA.[37] Then, the motion to commission Mr. Mendoza as an ICPA was set for hearing on December 8, 2016.[38]

The parties submitted their *Joint Stipulation of Facts* on November 9, 2016.[39] The Court approved the same and terminated the pre-trial.[40] Consequently, the Court issued a Pre-Trial Order on December 19, 2016.[41]

During trial, petitioner presented its testimonial and documentary evidence. As part of its testimonial evidence, petitioner offered the testimony of Ms. Arazeli L. Malapad,[42] petitioner's former Assistant Vice-President for Finance; and Mr. Richard S. Querido,[43] the Court-commissioned Independent Certified Public Accountant (ICPA).

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[33] Resolution dated July 25, 2016, Docket, pp. 173 to 176.
[34] *Compliance*, Docket, pp. 177 to 179.
[35] Docket, pp. 181 to 184.
[36] Docket, pp. 193 to 205.
[37] *Motion for Commissioning of Independent CPA*, Docket, pp. 295 to 299.
[38] Minutes of the hearing held on, and Order dated, October 27, 2016, Docket, pp. 302 to 307.
[39] Docket, pp. 314 to 321.
[40] Resolution dated November 16, 2016, Docket, p. 329.
[41] Docket, pp. 360 to 367.
[42] Exhibit "P-36", Docket, pp. 266 to 286; Minutes of the hearing held on, and Order dated, February 1, 2017, Docket, pp. 374 to 378.
[43] Exhibit "P-40-1", Docket, pp. 343 to 347; Minutes of the hearing held on, and Order dated December 8, 2016, Docket, pp. 351 to 354 and 356 to 357; Exhibit "P-38", Docket, pp. 384 to 398; Minutes of the hearing held on, and Order dated, June 29, 2017, Docket, pp. 447 to 449.

Petitioner submitted its *Omnibus Motion to Replace Independent Certified Public Accountant (ICPA) and Admit Judicial Affidavit* on December 2, 2016.[44] The Court granted the same and commissioned Mr. Richard S. Querido as an ICPA in lieu of Mr. Mendoza.[45]

After the Court granted its motion for extension of time,[46] petitioner submitted its *ICPA Report* on February 21, 2017.[47] The submission of the said report was noted.[48]

On April 26, 2017, petitioner filed a *Request for Admission of Documents*[49] under Rule 26 of the Rules of Court. Respondent opposed the request,[50] to which petitioner filed a *Reply (Re: Opposition dated May 12, 2017)* on May 29, 2017.[51]

On June 23, 2017 petitioner filed by registered mail a *Motion to Resolve Objection to Request for Admission*.[52] Subsequently, the Court granted petitioner's *Request for Admission of Documents* and deemed moot the *Motion to Resolve Objection to Request for Admission*.[53] As a result, respondent was given fifteen days to file and serve on petitioner a sworn statement denying specifically the matters of which an admission is requested, otherwise, the existence and due execution of the subject documents shall be admitted.[54]

During the August 16, 2017 hearing, respondent prayed for the withdrawal and resubmission of the BIR Records together with his compliance to the request for admission.[55] The Court granted the same.[56]

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[44] Docket, pp. 339 to 342.
[45] Minutes of the hearing held on, and Order dated December 8, 2016, Docket, pp. 351 to 354 and 356 to 357; Oath of Commission dated December 8, 2016, Docket, p. 355.
[46] *Motion for Extension of Time to File ICPA Report*, Docket, pp. 368 to 371; Order dated January 17, 2017, Docket, p. 372.
[47] *Compliance*, Docket, pp. 379 to 381.
[48] Minute Resolution dated February 27, 2017, Docket, p. 399.
[49] Docket, pp. 401 to 407.
[50] *Opposition (Re: Petitioner's Request for Admission dated 20 April 2017)*, Docket, pp. 421 to 425.
[51] *Reply (Re: Opposition dated May 12, 2017)*, Docket, pp. 427 to 431.
[52] Docket, pp. 451 to 456.
[53] Resolution dated August 15, 2017, Docket, pp. 461 to 466.
[54] *Id.*
[55] Minutes of the hearing held on, and Order dated, August 16, 2017, Docket, pp. 467 to 470.
[56] *Id.*

On August 17, 2017, petitioner filed its *Opposition (To Motion to Withdraw BIR Records) with Motion to Set Case for Commissioner's Hearing* on August 23, 2017.[57]

On August 31, 2017, respondent filed a *Motion to Defer Compliance (Resolution dated 15 August 2017)*.[58]

In the Resolution dated September 20, 2017,[59] petitioner's *Opposition (To Motion to Withdraw BIR Records) with Motion to Set Case for Commissioner's Hearing* was noted and granted, respectively. The Court also granted respondent's *Motion to Defer Compliance (Resolution dated 15 August 2017)*.[60]

On November 24, 2017, within the additional time granted by the Court,[61] respondent transmitted anew the *BIR Records* as well as filed his compliance to the aforesaid Resolution by submitting the Sworn Statement dated November 24, 2017.[62]

On the other hand, petitioner filed its *Manifestation* on December 22, 2017, stating that the Sworn Statement was executed by a person not authorized under the Revised Rules of Court to sign the same, the existence and due execution of the eight documents subject of the request should be deemed admitted.[63] Respondent failed to comment thereon.[64]

The Court ruled in the Resolution dated March 13, 2018 that the due execution of the *Memorandum* dated August 4, 2010 addressed to the Regional Director of Revenue Region No. I (Calasiao, Pangasinan) and signed by Revenue Officer Ruel D. Custodio, and the Memorandum dated September 7, 2015 addressed to RDO No. 2 Officer-in-charge Trinidad A. Villamil signed by Revenue Officer Ruel D. Custodio were deemed admitted.[65]

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[57] Docket, pp. 472 to 475.
[58] Docket, pp. 476 to 479.
[59] Docket, pp. 483 to 485.
[60] *Id.*
[61] Docket, pp. 495 to 497; Order dated November 27, 2017, Docket, p. 507.
[62] *Transmittal*, Docket, pp. 500 to 501; Compliance, Docket, pp. 503 to 505.
[63] Docket, pp. 514 to 519.
[64] Records Verification dated February 1, 2018, Docket, p. 527.
[65] Docket, pp. 533 to 538.

On June 20, 2018, petitioner filed an *Omnibus Motion to Set Case for Commissioner's Hearing and for Extension of Time to file Formal Offer of Evidence*,[66] which the Court granted.[67]

Afterwards, petitioner filed its *Formal Offer of Documentary Exhibits* on August 8, 2018.[68] Respondent submitted his *Comment [Re: Petitioner's Formal Offer of Documentary Exhibits]* on August 22, 2018.[69]

Pursuant to the Order dated October 2, 2018,[70] this case was transferred to this Court's Second Division.

In the Resolution dated January 21, 2019,[71] the Court admitted petitioner's documentary exhibits, except Exhibit "844" for not being found in the records, and Exhibit "P-909" for failure of the exhibit formally offered to correspond with the document actually marked.

On the other hand, respondent's counsel manifested that respondent will not present evidence as the issues involved are purely questions of law.[72]

Petitioner filed its *Memorandum* on March 26, 2019,[73] while respondent filed his *Memorandum* on April 1, 2019.[74]

The instant case was deemed submitted for decision on April 8, 2019.[75]

THE ISSUES

The parties stipulated the following issues[76] for the Court's determination:

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[66] Docket, pp. 561 to 564.
[67] Order dated July 3, 2018, Docket, p. 572.
[68] Docket, pp. 581 to 590.
[69] Docket, pp. 592 to 593.
[70] Docket, p. 597.
[71] Docket, pp. 599 to 600.
[72] Minutes of the hearing held on, and Order dated, November 16, 2017, Docket, pp. 491 to 491-A.
[73] Docket, pp. 615 to 641.
[74] Docket, pp. 642 to 656.
[75] Docket, p. 658.
[76] Proposed Issues, JSF, Docket, p. 315.

1. Whether or not the Honorable Court has jurisdiction in this case; and

2. Whether or not the petitioner is entitled to a tax refund or issuance of tax credit certificate (TCC) for excess or unutilized input VAT in the amount of ₱4,227,698.88.

Petitioner's arguments:

Petitioner contends that it filed its judicial claim within the prescribed period. Petitioner alleges that there was action upon its claim, which precluded the application of the "deemed denial" doctrine. Allegedly, respondent continues to retain jurisdiction over the administrative claim even beyond 120+30 days and the taxpayer is not precluded from waiting for a decision from the administrative level. According to petitioner, the applicable rule in this case is that it has 30 days from the issuance of a decision denying the claim.

It is also averred by petitioner that it has legal and factual bases to claim for input VAT refund. Purportedly, petitioner is legally entitled to claim input VAT credit/refund.

Respondent's counter-arguments:

Respondent counters that this Court has no jurisdiction over the instant case and to pass upon the validity of a Revenue Memorandum Circular (RMC). According to respondent, it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of claim.

THE COURT'S RULING

Section 7 of Republic Act (RA) No. 1125,[77] as amended by RA No. 9282[78] provides:

"SEC. 7. *Jurisdiction.* — The CTA shall exercise: *fz*

[77] AN ACT CREATING THE COURT OF TAX APPEALS.
[78] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **Decisions of the Commissioner of Internal Revenue Code in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue Code in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;" *(Emphasis and underscoring ours)*

Based on the foregoing, it is clear that the jurisdiction of this Court has been expanded to include not only decisions or rulings but also inactions of respondent.[79] Under Section 7(a)(a), it is the *denial* or *inaction "deemed a denial"* which the taxpayer-claimant takes to this Court for review. Without any "decision", this Court, as a court of special jurisdiction, acquires no jurisdiction over a taxpayer-claimant's judicial claim for refund.[80]

As a corollary, the right to appeal before this Court, being a statutory right, can be invoked only under the requisites provided by law. Section 11 of RA No. 1125, as amended by RA No. 9282, provides a 30-day period of appeal *either from receipt of respondent's adverse decision* ***or from the lapse of the period fixed by law for action***.[81] Thus:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**

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[79] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007.

[80] *Team Sual Corporation (Formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue,* G.R. Nos. 201225-26, April 18, 2018.

[81] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019.

> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** xxx." (*Emphases supplied*)

On the basis thereof, respondent's inaction on a claim for refund is considered a *"denial"* of the claim, which may be appealed before this Court within thirty (30) days from the expiration of the period fixed by law for action.[82]

Relative hereto is Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides for the rules on claiming refunds of and/or the issuance of a TCC for unutilized input VAT, *viz*:

> "SEC. 112. **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 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: *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

[82] *Id.*

> 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.**" (*Emphases supplied*)

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).[83]

In this case, petitioner filed its administrative claims for refund covering the period of July 1, 2008 to September 30, 2008 (3rd quarter) and October 1, 2008 to December 31, 2008 (4th quarter) on the following dates:

Period	Date of Filing
July 2008	August 6, 2009[84]
August 2008	August 6, 2009[85]
September 2008	undated[86]
October 2008	February 16, 2009[87]
November 2008	February 16, 2009[88]
December 2008	February 16, 2009[89]

Clearly, there is no question that the administrative claims for refund were filed within the two-year prescriptive period. *gr*

[83] *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*, G.R. Nos. 193301 and 194637, March 11, 2013.
[84] Exhibits "P-11" and "P-12", BIR Records – Folder I, pp. 20 to 21 and 19.
[85] Exhibits "P-13" and "P-14", BIR Records – Folder I, pp. 14 to 15 and 13.
[86] Exhibits "P-15" and "P-16", BIR Records – Folder I, pp. 5 to 6 and 4.
[87] Exhibits "P-17" and "P-18", BIR Records – Folder II, pp. 35 to 36 and 34.
[88] Exhibits "P-19" and "P-20", BIR Records – Folder II, pp. 25 to 26 and 24.
[89] Exhibits "P-21" and "P-22", BIR Records – Folder II, pp. 10 to 11 and 9.

Notwithstanding, the judicial claims for refund were filed by petitioner only on November 9, 2015, which was beyond the 120+30 mandatory period.

At this instance, petitioner claims that the application of "deemed denial" doctrine was inapplicable to this case, because respondent acted on petitioner's administrative claims for refund through Letters, both dated September 15, 2015, by denying the same. Petitioner has even applied the ruling of the Supreme Court in the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*, where in case of respondent's inaction on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either (1) file a Petition for Review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.

The Court finds petitioner's arguments unmeritorious.

The charter of the CTA also expressly provides that **if the Commissioner fails to decide within "a specific period" required by law, such <u>"inaction shall be deemed a denial"</u> of the application for tax refund or credit.** It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. **Without** a decision or **an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.**[90] The above-mentioned "specific period" required by law refers to the 120 days within which the Commissioner should act on the tax refund or credit pursuant to Section 112(C) of the NIRC of 1997, as amended.

This Court finds the ruling on *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[91] inapplicable in this case since it was a deficiency tax assessment decided therein and not a tax refund/credit. Likewise, the legal provision involved in *Lascona* case is Section 228 of the NIRC of 1997, as amended, and not Section 112.

Rather, the Court applies the ruling in the landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation*

[90] *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*, G.R. Nos. 193301 and 194637, March 11, 2013.
[91] G.R. No. 171251, March 5, 2012.

which has interpreted Section 112(D).[92] The Court held that the **taxpayer can file an appeal in one of two ways:** (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day waiting period, **or (2) file the judicial claim <u>within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period</u>**.[93]

Considering that the instant Petition for Review was filed only on November 9, 2015, which was beyond the 120+30 day mandatory and jurisdictional periods, the Court has no jurisdiction over this case.

A final note, the taxpayers are reminded that 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 considered 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.[94]

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods.[95]

WHEREFORE, premises considered, the instant *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[92] Now Section 112(C) of the NIRC of 1997, as amended.
[93] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[94] *Id.*
[95] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016.

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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