REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NICKELBASE, INC., *Petitioner,*	**CTA *EB* NO. 2268** (CTA Case No. 9632)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 16 2021 3:58PM

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D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* filed by Nickelbase, Inc. praying that the Decision and Resolution, dated November 18, 2019 and June 16, 2020, respectively, of the Court's 2nd Division be vacated; and, that respondent be directed to issue a tax credit certificate (TCC) representing petitioner's unutilized input taxes attributable to its zero-rated sales for the period January 1, 2015 to December 31, 2015, in the total amount of Php90,666,827.96.

FACTS

The CTA 2nd Division narrated the facts, as follows:

> Petitioner Nickel Base, Inc. is a domestic corporation registered with the Securities and Exchange Commission. It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer under Certificate of

> Registration Number OCN2RC0000840376, with TIN 007-773-770-000.
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> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue who holds office at the 5th Floor BIR National Office Building, Agham Road, Diliman, Quezon City.
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> On February 15, 2017, petitioner filed an *Application for Tax Credits/Refunds* (BIR Form No. 1914) with the BIR, covering the period from January 1, 2015 to December 31, 2015 in the amount of P90,666,827.96, with the corresponding *Checklist of Mandatory Requirements for Claims for VAT Credit/Refund* duly checked by Mr. Eddie L. Felicilda, Chief of the Administrative Section of the BIR.
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> In response to the said *Application*, Ms. Erlinda A. Simple, Assistant Commissioner for the Assessment Service of the BIR, issued the letter dated June 14, 2017, denying, in effect, petitioner's claim for refund/credit for the said period, representing unutilized input taxes on local purchases of goods and services, for lack of factual basis.
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> Petitioner filed the instant *Petition for Review* on July 21, 2017.[1]

On November 18, 2019, the 2nd Division rendered the assailed Decision, which denied the Petition for Review:

> Since the instant *Petition for Review* was filed only on July 21, 2017, it is apparent that the same was belatedly filed, since the 30-day period after the expiration of the 120-day period, ended on July 15, 2017. To reiterate, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of this Court.
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> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for this Court's lack of jurisdiction.
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> **SO ORDERED**.[2]

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[1] *Rollo*, Decision dated November 18, 2019, p. 30.
[2] *Rollo*, Decision dated November 18, 2019, pp. 43-44.

Petitioner's motion for reconsideration was likewise denied in the Resolution[3] dated June 16, 2020.

On July 22, 2020, petitioner filed the present Petition for Review, assailing the 2nd Division's Decision and Resolution denying its claim for refund/issuance of TCC for lack of jurisdiction.[4]

On November 6, 2020, respondent filed his Comment/ Opposition (on Petitioner's Petition for Review),[5] and the case was subsequently submitted for decision on January 5, 2021.[6]

ISSUES

Petitioner submits the following issues:

> 1. Whether or not Petitioner's judicial claim for refund was timely filed.
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> 2. Whether or not Petitioner is entitled to the refund or issuance of tax credit certificate amounting to P90,666,827.96 representing unutilized input taxes attributable to Petitioner's zero-rated sales covering the period from January 1, 2015 to December 31, 2015.[7]

Petitioner's arguments

Petitioner argues that the 120+30 day periods provided under Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended, pertain only to cases of inaction by respondent, and, that in the instant case, respondent rendered a decision within the 120-day period. Petitioner argues that since there was an actual decision on June 14, 2017, received on July 4, 2017, petitioner had a fresh 30-day period from July 4, 2017 within which to file its judicial appeal. As such, the Petition for Review before the Court in Division was timely filed on July 21, 2017.

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[3] *Rollo*, pp. 46-48.
[4] *Rollo*, pp. 6-24.
[5] *Rollo*, pp. 58-62.
[6] *Rollo*, pp. 64-65.
[7] *Rollo*, Petition for Review, p. 13.

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Petitioner also argues that respondent may render a decision denying the refund after the 120-day period, and that there is no bar in appealing the decision within thirty (30) days from the receipt of the decision denying the claim, which is consistent with the ruling in *Lascona Land Co., Inc. v. Commissioner of Internal Revenue.*[8]

Respondent's arguments

Respondent states that petitioner reiterated its argument in its Motion for Reconsideration before the Court in Division.

Respondent argues that the Court in Division did not err in ruling that petitioner's judicial claim was belatedly filed considering that a taxpayer should no longer wait for the CIR to come up with a decision when the 120-day period has already expired. Thus, upon the expiration of the 120-day period on June 15, 2017, petitioner should have filed its judicial claim within 30 days, or until July 15, 2017. However, petitioner failed to timely file its judicial claim.

RULING OF THE COURT

The instant Petition for Review was timely filed.

Petitioner received the assailed Resolution dated June 16, 2020, on June 22, 2020.[9] Petitioner had fifteen (15) days from the date of receipt of the resolution, or until July 7, 2020, within which to file the petition for review before the Court *En Banc,* pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).[10]

On June 26, 2020, petitioner filed its *Motion for Extension of Time to File Verified Petition for Review (Pursuant to Rule 8,*

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[8] G.R. No. 171251, March 5, 2012.

[9] Docket, CTA Case No. 9632, Vol. III, Notice of Resolution, p. 935.

[10] Rule 8 Procedure in Civil Cases

Sec. 3. *Who may appeal; period to file petition.*

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(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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Sec. 3(b) of the Revised Rules of the Court of Tax Appeals)[11] praying for an additional fifteen (15) days, or until July 22, 2020, within which to file a petition for review. The same was granted in the Minute Resolution dated June 29, 2020.[12]

On July 22, 2020, petitioner timely filed the instant *Petition for Review.*

There is no compelling reason to reverse or modify the CTA Second Division's findings.

Section 112(C) of the 1997 NIRC, as amended, provides for the period to file an appeal with the Court of the Tax Appeals on the denial or unacted claim for refund of input taxes, as follows:

> 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 a 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.

The Supreme Court has further clarified the period to file an appeal on an unacted claims for refund, as follows:

> A final note, the taxpayers are reminded 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. <u>The CIR's inaction is the decision</u>**

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[11] *Rollo*, pp. 1-4.
[12] *Rollo*, p. 5.

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> **<u>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</u>**. (*Emphasis supplied*)[13]

Petitioner argues that the CIR rendered a decision on June 14, 2017, which was within the 120-day period, thus there is no inaction; and, that it received the letter dated June 14, 2017 denying its claim for refund on June 22, 2017. It is from this date of receipt of the denial that petitioner reckons the 30-day period to file its appeal with the CTA.

This argument has no merit.

It is reiterated that when the 120-day period lapses and there is inaction on the part of the respondent within the said period, the taxpayer must no longer wait for respondent to come up with a decision.[14]

When the 120-day period lapsed on June 15, 2017, petitioner had not received any decision denying its claim for refund. The inaction was therefore already present, triggering the running of the 30-day period to file a judicial claim. Notwithstanding the receipt of the denial beyond the 120-day period, it is the lapse of the 120-day period, or the inaction, that should have been the reckoning point of the 30-day period, because it came sooner. This was explained in *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*,[15] where the Supreme Court held:

> Whether respondent rules in favor of or against the taxpayer – or does not act at all on the administrative claim – within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.
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> **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, <u>whichever is sooner</u>.** (*Emphases supplied*)

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[13] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[14] *Id.*
[15] G.R. No. 182737, March 2, 2016.

Thus, the Court finds no compelling reason to reverse nor modify the findings of the CTA Second Division, as follows:

> Since the instant *Petition for Review* was filed only on July 21, 2017, it is apparent that the same was belatedly filed, since the 30-day period after the expiration 120-period, ended on July 15, 2017 (sic). To reiterate, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of this Court.
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> The letter dated June 14, 2017 of the BIR, denying petitioner's administrative claim, is of no moment, simply because there is no evidence showing when the same was received by petitioner. And even granting that the petitioner received the said letter on June 22, 2017, as alleged in paragraph 4 of instant *Petition for Review* and in paragraph 12 of petitioner's *Memorandum*, the same shall still have no effect, <u>since the 30-day period after the expiration of the 120-day period came sooner than the 30-day period from the said alleged date of receipt</u>. Thus, this Court indeed has no jurisdiction to entertain the present appeal.[16] (*Emphasis supplied*)

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the Court's Second Division, dated November 18, 2019 and June 6, 2020, respectively, are **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

[16] Rollo, Decision dated November 18, 2019, pp. 43-44.

ERLINDA P. UY
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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