REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

FRANKLIN BAKER COMPANY OF THE PHILIPPINES, Petitioner,	**CTA CASE NO. 11592**
	Members:
- versus -	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, <u>*JJ.*</u>
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 05 2024

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1:05 p.m.

RESOLUTION

Before this Court is the *Petition for Review* filed on August 16, 2024. Upon perusal of the allegations thereof, the Court notes that it has no jurisdiction to take cognizance of the case.

The facts, as alleged in the instant *Petition*, are as follows:

TIMELINESS OF THE PETITION

4. On April 1, 2024, petitioner filed an administrative claim for refund of its unutilized/unclaimed excess input VAT for the four quarters of taxable year 2022 with the BIR for the amount of PhP115,345,122.76.

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7. On July 23, 2024, petitioner received a letter dated June 25, 2024, signed by Deputy Commissioner Maridur V. Rosario of the Operations Group of the BIR informing the former of the denial of petitioner's claim for refund of unutilized input VAT for the period beginning January 1, 2022 and ending December 31, 2022.

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8. Hence, the filing of this Petition for Review with the Honorable Court.

STATEMENT OF ALLEGATIONS

9. Petitioner is registered with the BIR for VAT as well as other internal revenue taxes per its BIR Certificate of Registration (COR) No. xRC0000995351E, showing its Tax Identification No. (TIN) 000-421-318-000.

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10. Petitioner's primary business is the manufacture and export sale of various food products.

11. For the four taxable quarters of taxable year 2022 (January 1, 2022 to December 31, 2022), petitioner sold by export majority of its products to customers outside the Philippines.

12. The said export sales of the petitioner were subjected to VAT at the rate of zero percent (0%).

13. For the subject period petitioner had unutilized creditable input VAT aggregating to PHP [sic] PhP 115,345,122.76, which was the subject of the claim for refund filed with the BIR.

14. The above creditable Input VAT was not credited against petitioner's Output VAT liability for the succeeding taxable quarters.

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25. On July 23, 2024, respondent issued "**Annex D**" denying Petitioner's claim for refund. "**Annex D**" was served on the Petitioner last June 23, 2024 at its BIR-registered head office address; xxx

In claims for the refund of excess and unutilized input value-added tax (VAT) attributable to zero-rated sales, the taxpayer must file its administrative and judicial claims within the prescriptive periods under Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by the Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, to wit:

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.

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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 for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed** in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial."

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code. *(Emphasis supplied)*

The Supreme Court summarized the rules regarding the prescriptive periods for filing of the administrative and judicial claims for refund or tax credit of input VAT in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*,[1] in this wise:

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. *(Aichi)*

2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque)*

3. The only other rule is the *Atlas* ruling, which applied only from 8 June 2007 to 12 September 2008. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. *(San Roque)*

B. 120 [now 90] + 30-Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day [now 90-day period], or (2) file the judicial claim within thirty days from

[1] G.R. No. 191498, January 15, 2014.

the expiration of the 120-day [now 90- day] period if the Commissioner does not act within the 120-day [now 90-day] period.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi* and *San Roque)*

4. As an exemption to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)*

Since the subject matter of the case pertains to refund of input VAT attributable to zero-rated export sales from January 1, 2022 to December 31, 2022 pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the date of reckoning of the administrative two-year prescriptive period is the close of the respective taxable calendar quarter of the year 2022. Petitioner, therefore, should file its administrative claim for refund within the following two-year periods:

Calendar Quarter of Year 2022	**Two Years from the End of Calendar Quarter**
First Quarter 2022	March 31, 2024
Second Quarter 2022	June 30, 2024
Third Quarter 2022	September 30, 2024
Fourth Quarter 2022	December 30, 2024

In paragraph 4 of the *Petition*, petitioner alleges that it filed an administrative claim for refund of its unutilized unclaimed excess input VAT for the four quarters of taxable year (TY) 2022 with the BIR on **April 1, 2024**. As the deadline for filing the administrative claim for refund for the first quarter of 2022 on March 31, 2024 fell on a Sunday, the deadline to file the same was on the next working day, or on April 1, 2024. Thus, petitioner's application for administrative claim for refund for all quarters of TY 2022 was timely filed on April 1, 2024.

As regards the judicial claim for refund, however, this Court finds that the same was filed outside the prescriptive period allowed under Section 112(C) of the NIRC of 1997, as amended.

Based on Section 112(C) of the NIRC of 1997, as amended, and as elucidated in the afore-quoted *Mindanao II Geothermal* case,[2] there are two periods which must be considered in filing a judicial claim for the refund or tax credit of excess or unutilized input VAT, namely:

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[2] *Ibid.*

(1) the period of **90 days** which serves as a period for the Commissioner of Internal Revenue (CIR) to act on the administrative claim for refund or credit; and,

(2) the period of **30 days** within which the taxpayer may file its judicial claim with the CTA.

The filing of judicial claim for refund must be done either: (1) within 30 days after the CIR denies the claim within the 90-day period; or, (2) within 30 days from the expiration of the 90-day period, if the CIR does not act within the 90-day period, whichever is earlier.

Applying the above rule in the case at bar, from the filing of petitioner's administrative application with the BIR on April 1, 2024, the CIR had 90 days therefrom, or until **June 30, 2024,** to act on the claim. Should the CIR fail to act on the application within the 90-day period, petitioner has 30 days from such expiration to file its judicial claim, or until **July 30, 2024.**

In paragraph 25 of the *Petition for Review*, petitioner avers that it received on July 23, 2024 a letter from respondent dated June 25, 2024, completely denying petitioner's claim for refund. Thereafter, petitioner filed its *Petition* on **August 16, 2024.** Such action of petitioner demonstrates its mistaken notion that the counting of the 30-day period, within which to file a judicial action, is reckoned from the date of its receipt of CIR's denial of its claim for refund despite the fact that the 90-day period has lapsed earlier than the receipt of the CIR's denial letter, to wit:

Taxable Year 2022	Two Years from the End of the Calendar Quarter	Filing of Administrative Claim with BIR	Receipt of CIR's Denial Letter	Last Day of Filing of Judicial Claim (90+30 days)	Actual Filing with the CTA
First Quarter	March 31, 2024	April 1, 2024	July 23, 2024	July 30, 2024	August 16, 2024
Second Quarter	June 30, 2024				
Third Quarter	September 30, 2024				
Fourth Quarter	December 30, 2024				

The Court clarifies that, when petitioner received the letter from respondent on July 23, 2024 denying entirely its claim for refund, the same was already beyond the 90-day period for the CIR to act, which ended on June 30, 2024. It is a settled ruled that 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 [now 90-day] period, **whichever is sooner.**[3] The petitioner's receipt of the denial letter on July 23, 2024, which was already beyond the 90-day period, does not alter the jurisdictional period within which to appeal to the CTA due to the inaction of the CIR. Accordingly, the judicial claim should have been filed not later than July 30, 2024.

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[3] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 182737, March 2, 2016.

In *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[4] the Supreme Court pronounced:

> A final note, the taxpayers are reminded that when the 120-day [now 90-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 [now 90-day] waiting period.

The Supreme Court has also stated that *"any claim filed in a period less than or beyond the 120+30 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA"*.[5]

We reiterate that jurisdiction is conferred by law and the lack of it affects the very authority of the Court to take cognizance of and to render judgment on the action; otherwise, the inevitable consequence would make the Court's discretion a 'lawless' thing.[6]

Rule 9, Section 1 of the Rules of Court provides:

> SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **<u>when it appears from the pleadings</u>** or the evidence on record **<u>that the court has no jurisdiction over the subject matter</u>**, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, **<u>the court shall dismiss the claim</u>**. *(Emphasis and underscoring supplied)*

Based on the foregoing, there are four grounds upon which the court may *motu proprio* dismiss a claim, namely: (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and, (4) prescription of action.

In this case, based on the allegations in the *Petition*, it already appears that the judicial claim was filed out of time, thereby divesting this Court of its jurisdiction over the subject matter. Inasmuch as one of the above-cited grounds is lack of jurisdiction over the subject matter, the Court can therefore *motu proprio* dismiss the present claim.

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4 G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*, G.R. No. 252821, September 2, 2020.

5 *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016, *supra.*.

6 *Municipality of Sta. Fe vs. Municipality of Aritao*, G.R. No. 140474, September 21, 2007.

Settled is the rule that claims for tax credit or refund, just like tax exemptions, are strictly construed against the taxpayers.[7] Strict compliance with the 90+30-day period is, therefore, necessary for such claim for refund to prosper.

WHEREFORE, premises considered, the instant *Petition for Review* filed on August 16, 2024 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[7] *Sitel Philippines Corp. vs. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017.