REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE AIRPORT GROUND SUPPORT SOLUTIONS, INC. (formerly Philippine Airport and Ground Services Globeground, Inc.), *Petitioner,*	**CTA Case No. 10202**
	Members:
	DEL ROSARIO, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.*
-*versus*-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 23 2020 · 9:50a

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RESOLUTION

This resolves petitioner's *Motion for Reconsideration [Re: Resolution dated 22 November 2019]* filed on December 20, 2019.

The assailed Resolution dated November 22, 2019 dismissed petitioner's Petition for Review filed on October 25, 2019, on the ground of failure to comply with the mandatory and jurisdictional 120+30 day periods under Section 112(C) of the 1997 National Internal Revenue Code, as amended (NIRC).

In its *Motion*, petitioner states that it opted to wait for the decision of the Commissioner of Internal Revenue (CIR) before filing its judicial claims with the Court of Tax Appeals (CTA).

We reiterate that in *Commissioner of Internal Revenue v. San Roque Power Corporation*[1] (*San Roque* case), the Supreme Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the BIR Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the

[1] G.R. Nos. 187485, 196113, and 197156, February 12, 2013; also, cited in *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

expiration of the 120-day period if the BIR Commissioner does not act within that period.

This was further reiterated in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[2] which stated:

> The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner. (*Underscoring ours*)

In this case, petitioner states that it filed its administrative claim on December 14, 2012[3] and submitted supporting documents immediately thereafter.[4] Counting 120 days from December 14, 2012, the Commissioner of Internal Revenue (CIR) had until April 13, 2013 within which to act on petitioner's claim for refund. Considering that respondent failed to act thereon within the 120-day period, petitioner had thirty (30) days after the lapse of the 120-day period or until May 13, 2013 within which to file its judicial appeal before this Court. It should be noted that a denial of the claim of refund made after the 120+30 day period is not considered in counting the period for judicial appeal. This is because the inaction of the CIR during the 120-day period is "deemed a denial", and without a timely appeal, said inaction which is "deemed a denial" becomes final and unappealable.[5]

Furthermore, in a later Supreme Court ruling following the *San Roque* case, the Court held, to wit:

> 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.[6]

The receipt of the denial dated September 17, 2019 of the claim for refund on September 25, 2019, which is after the 120-day period is inconsequential, even with the effectivity of the TRAIN law. It should be noted that the "deemed a denial"

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[2] G.R. No. 182737, March 2, 2016.
[3] Petition for Review, p. 2.
[4] *Id.*
[5] *Steag State Power, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019, citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[6] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

became final long before the TRAIN law became effective on January 1, 2018.

Petitioner's reliance on Revenue Regulations No. 1-2017[7] is misplaced. Nothing therein modified the periods to appeal to the Court of Tax Appeals, as it merely stated the respective jurisdictions of the CTA and the BIR in evaluating claims for refund.

It has been emphasized repeatedly that compliance with the 120+30 day periods prescribed under Section 112(C) of the NIRC is mandatory and jurisdictional.[8] Accordingly, petitioner's belated filing of its judicial claim rendered the Court devoid of jurisdiction over it. Thus, the dismissal of the instant Petition for Review is in order.

WHEREFORE, the instant *Motion for Reconsideration [Re: Resolution dated 22 November 2019]* is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[7] Prescribing the Regulations Governing Applications for Value-Added Tax (VAT) Credit/Refund Filed under Section 112 of the Tax Code, as Amended, Prior to Revenue Memorandum Circular No. 54-2014 dated June 11, 2014.
[8] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.