REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ENERGY DEVELOPMENT CORPORATION ("EDC", formerly known as "PNOC Energy Development Corporation"),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 809
(CTA CASE NO. 7926)

Members:

ACOSTA, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and,*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 3 1 2012 ArApolinario 9:00 a.m.

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DECISION

ACOSTA, *PJ:*

Before this Court of Tax Appeals *En Banc* is a Petition for Review filed on August 18, 2011 assailing the Resolution of the Court of Tax Appeals Second Division promulgated on May 9, 2011 in CTA Case No. 7926 entitled "ENERGY DEVELOPMENT CORPORATION ("EDC", formerly "PNOC ENERGY DEVELOPMENT CORPORATION") vs. Commissioner of Internal Revenue, and its Resolution promulgated on July 15, 2011, denying Petitioner's Motion for Reconsideration of the said Second Division's Resolution promulgated on May 9, 2011. The dispositive portion of the assailed May 9, 2011 Resolution reads:

> "**WHEREFORE**, premises considered, respondent's **"Motion to Dismiss"** filed on March 25, 2011 is hereby **GRANTED**. Accordingly, the instant Petition for Review is **DENIED** for having been prematurely filed.
>
> **SO ORDERED**.

THE FACTS

As stipulated by the parties in the Joint Stipulation of Facts and Issues[1] and as borne by the records of this case, the following are the undisputed facts:

Petitioner, Energy Development (EDC) Corporation (formerly PNOC Energy Development Corporation), is a corporation duly organized and existing under the laws of the Republic of the Philippines under Securities and Exchange Commission Registration No. 66381, with principal office at the NPC Compound, Kalayaan, Laguna.

Respondent is the Commissioner of Internal Revenue mandated by law to enforce and implement the National Internal Revenue Code of 1997, as amended, and related statutes, including among others and proper cases, the issuance of a tax credit certificate, with office address at BIR National Office Building, Diliman, Quezon City.

Petitioner, Energy Development Corporation (EDC), is a corporation whose primary purpose is to "explore, discover, develop, extract, dig and drill for, produce, utilize, refine, treat, process, transport, market, use, experiment with, distribute, manufacture, smelt or otherwise deal in, any mineral or otherwise,

[1] Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 7926, Docket, pp. 86-88.

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which by itself or in combination with other substances, or after processing or refining, or the application to it of technology emanates, gives off, generates or causes the emanation of [sic.] generation of heat or power or energy such as, but not limited to, petroleum or oil, coal, marsh gas, methane gas, geothermal sources of heat and power, uranium and other minerals and fossil deposits, and to promote, offer, negotiate, conclude, execute, sell, engage in and/or render technical consultancy services whether local or abroad."

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under VAT Certificate of Registration No. OCN8RC0000018858 and has been issued Taxpayer Identification No. 000-169-125-000.

On April 25, 2007, July 19, 2007, and October 25, 2007, petitioner filed through Electronic Filing & Payment System (EFPS) its Quarterly VAT Return for the 1st, 2nd, and 3rd quarters, respectively, per certification dated August 18, 2009 of Cesar D. Escalada, Chief LTDO-Makati.

On December 22, 2007, petitioner filed through EFPS its amended quarterly VAT returns for the 1st to 3rd quarters of 2007, per certification dated August 18, 2009 of Cesar D. Escalada, Chief LTDO-Makati.

On January 25, 2008, petitioner filed through EFPS its regular quarterly VAT return for the 4th quarter of 2007, per certification dated August 18, 2009 of Cesar D. Escalada, Chief LTDO-Makati.

On March 30, 2009, petitioner filed with the Large Taxpayer's District Office (LTDO) of Makati City a claim for tax credit/refund of EDC's input VAT attributable to its zero-rated sale of steam and purchases under the "Construction-In-Progress" account amounting to Php89,103,931.29 for the year 2007.

Thereafter, a Petition for Review was filed on April 24, 2009 with the First Division of the Court of Tax Appeals.

Respondent filed his answer[2] on June 18, 2009, raising the following special and affirmative defenses:

> 5. Petitioner's claim for refund or issuance of a tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 7. Petitioner's claim for refund in the amount of **Php89,103,931.29,** representing the alleged unutilized input VAT paid attributable to its zero-rated sales of geothermal steam and purchases under the Construction-in-Progress Account for the period covering the four quarters of taxable year 2007 were not fully substantiated by proper documents, such as sales invoices, official receipts and other relevant documents.
>
> 8. Petitioner's sales of geothermal steam and purchases under the Construction-in-Progress Account do not qualify as zero-rated VAT.
>
> 9. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT attributable to zero-rated sales of geothermal steam and purchases under the Construction-in-Progress Account for the period covering the four quarters of taxable year 2007.
>
> 10. Petitioner failed to comply with the substantiation requirements under BIR Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the 1997 Tax Code.
>
> 11. Petitioner failed to comply with the substantiation requirements under BIR Revenue Regulations No. 16-2005, in relation to Section 112 (A)(B) of the 1997 Tax Code.
>
> 12. Petitioner's claim for refund/credit of the alleged unutilized input VAT attributable to its zero-rated sales of geothermal steam and purchases under the Construction-in-Progress Account for the period covering the four quarters of taxable year 2007 has already **prescribed**

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[2] Answer, CTA Case No. 7926, Docket pp. 61-67.

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pursuant to Section 112(A) (B) of the 1997 Tax Code, in relation to Supreme Court ruling in the recent case of Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, 565 SCRA 154.

13. Petitioner has the burden of proof to establish its right to the claimed refund/credit, as such its failure to adduce sufficient evidence is fatal to its claim.

14. Petitioner failed to show it has complied with the provisions under Section 204(C) in relation to Section 229 of the Tax Code.

15. Claim for refund partakes the nature of tax exemption, hence, the same is construed strictly against petitioner. (CIR vs. Ledesma, 31 SCRA 95).

16. The Petition for Review should be dismissed for failure of petitioner to comply with the requirements under Rule 43, Section 5 of the Rules of Court, in relation to the Supreme Court ruling in the case of San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue, G.R. No. 147749 dated June 22, 2006 since it did not indicate that the person who signed the verification/certification on non-forum shopping was duly authorized by the Board of Directors of Energy Development Corporation. It must be noted that the attached Secretary's Certificate dated February 5, 2007 to the petition refers to an entity, PNOC Energy Development Corporation (PNOC-EDC) and not the herein petitioner (i.e. Energy Development Corporation) and that it did not indicate the name of the person who signed the verification/certification on non-forum in the instant case.

Thereafter, this case was transferred to the Court of Tax Appeals Second Division through an Order[3] dated January 7, 2010. During trial, petitioner presented testimonial and documentary evidence. On the other hand, respondent filed a Motion to Dismiss on March 25, 2011. Subsequently, petitioner filed its Comment/Opposition (Re: Motion to Dismiss dated March 23, 2011).

On May 9, 2011, the Court of Tax Appeals Second Division rendered the assailed resolution, which granted respondent's motion which resulted to the dismissal of the Petition for Review filed on April 24, 2009 for having been prematurely filed.

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[3] Order, CTA Case No. 7926, Docket, p. 131.

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Herein petitioner filed its Motion for Reconsideration of the said resolution on May 26, 2011. The Court of Tax Appeals Second Division, in a Resolution promulgated on July 15, 2011, denied petitioner's Motion.

Hence, petitioner filed on August 18, 2011 the instant Petition for Review before the Court *En Banc* assailing the Resolution of the Court of Tax Appeals Second Division promulgated on May 9, 2011 in CTA Case No. 7926 entitled "ENERGY DEVELOPMENT CORPORATION ("EDC", formerly "PNOC ENERGY DEVELOPMENT CORPORATION") vs. Commissioner of Internal Revenue, and its Resolution promulgated on July 15, 2011, denying Petitioner's Motion for Reconsideration of the said Second Division's Resolution promulgated on May 9, 2011. On the other hand, respondent filed its comment on October 10, 2011.

On February 8, 2012, the Court issued a Resolution[4] submitting the case for decision, taking in consideration petitioner's memorandum[5] filed on December 29, 2011 and respondent's manifestation & motion[6] posted on December 29, 2011, stating that she is adopting all her legal arguments and affirmative defenses found in her Comment/Opposition dated October 10, 2011 to petitioner's Petition for Review in the above-captioned case, as well as, the factual findings and conclusions of the Second Division's Resolutions dated May 9, 2011 and July 15, 2011 in CTA Case No. 7926, as part of her memorandum in the above captioned case.

[4] Docket, p. 208-209.
[5] Docket, pp. 182-203.
[6] Docket, pp. 204-205.

THE ISSUES

The parties have agreed on the following issues[7] to be resolved by this Court:

1. Whether or not (EDC) is entitled to a refund or the issuance of a tax credit certificate on unutilized input vat attributable to its zero-rated sales of steam and purchases under the Construction-in-Progress account for the year 2007 amounting to Php89,103,931.29.

2. Whether or not the petitioner incurred VAT Input Taxes attributable to its zero-rated sales of steam and purchases under the Construction-in-Progress account in the amount of Php89,103,931.29 for year 2007.

3. Whether or not petitioner's sale of steam and purchases under the Construction-in-Progress account qualifies as zero-rated sales for VAT purposes.

4. Whether or not the petitioner's claim for refund/tax credit of alleged input VAT allegedly attributable to its zero-rated sales of steam and purchases under the Construction-in-Progress account for the year 2007 in the total amount of Php89,103,931.29 is fully substantiated by proper documents.

5. Whether or not the alleged input VAT of petitioner for the period covering the four (4) quarters of taxable year 2007 had been carried over to the succeeding taxable quarter/year(s), and applied the same against its output VAT liability for the said period.

6. Whether or not petitioner has complied with the requirements under BIR Revenue Regulations No. 7-95 and 16-2005, in relation to Sections 112(A)(B), 113 and 237 of the 1997 Tax Code.

7. Whether or not petitioner's claim for refund or tax credit of alleged unutilized input VAT attributable to its zero-rated sales of geothermal steam and purchases under the Construction-in-Progress Account for the period covering the four (4) quarters of taxable year 2007 has already prescribed.

8. Whether or not petitioner failed to comply with the requirements under Rule 43, Section 5 of the Rules of Court.

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[7] Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 7926, Docket, pp. 88-89.

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THE MAIN ISSUE

WHETHER OR NOT PETITIONER HAD TIMELY AND DULY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR TAX CREDIT/REFUND OF ITS INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALE OF STEAM AND PURCHASES UNDER THE "CONSTRUCTION-IN-PROGRESS" AMOUNTING TO P89,103,931.29 FOR THE YEAR 2007.

THE COURT *EN BANC's* DECISION

After a thorough review of the records of the case, the Court *En Banc* finds that petitioner's claim for tax credit/refund lacks merit.

The Period to File the Administrative Claim and Judicial Claim for Refund of Input Taxes

It is worthy to note that the Supreme Court, in the case *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[8], applied Section 112(A) in ascertaining whether the taxpayer timely filed its administrative claim for refund and Section 112(D) in determining the timely filing of the judicial claim with the CTA. Section 112(D) (now, Section 112(C) of RA No. 9337) reads as follows:

> "(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 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.**

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[8] G.R. No. 184823, October 6, 2010.

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The disquisition in the *Aichi Forging Case* significantly explained that the phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refer to applications for refund/credit filed with the CIR and not to appeals made to the CTA. Moreover, in the same case, it was ruled that the failure to await the decision of the CIR or the lapse of the 120-day period prescribed in Section 112(D) amounts to a premature filing which is crucial in filing an appeal with the CTA. The pertinent portion of the said case reads:

> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. **Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.**
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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." **The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. **The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. <u>In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA</u>.** (emphasis supplied)

In other words, a claim for refund over excess input VAT arising from zero-rated or effectively zero-rated sales must be administratively filed within two (2) years from the close of the taxable quarter when the sales were made. There is

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also an indispensable requirement for the taxpayer to await the action or inaction of the Commissioner within a period of one hundred twenty (120) days before it can appeal to this Court its claim for refund on excess or unutilized input VAT arising from zero-rated or effectively zero-rated sales.

Applying Sections 112(A) & (D) of the 1997 NIRC, as amended, to herein case

The present claim pertains to input VAT on zero-rated sales incurred for all the four (4) quarters of taxable year 2007. The pertinent dates are as follows:

Period Covered	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim	End of the 120-day period under Section 112 (D), NIRC	End of the 30-day period under Section 112 (D), NIRC
1ST to 4th Quarter, 2007	March 30, 2009	April 24, 2009	July 8, 2009	August 27, 2009

Following the provisions of Sections 112(A) and (D) of the 1997 NIRC, it appears that the claim for refund or issuance of a tax credit certificate of input VAT was administratively filed within the two (2) year period, hence, compliant with Section 112(A) of the 1997 NIRC. The petitioner, however, failed to comply with the one hundred twenty (120) day period required to await the decision of the respondent as prescribed in Section 112(D) of the 1997 NIRC. Thus, petitioner prematurely filed the judicial claim of excess input VAT for all the four quarters of taxable year 2007.

It should be noted that petitioner's premature filing of its judicial claim is a violation of the doctrine of exhaustion of administrative remedies. It is well settled that non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[9] The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel,* the case is susceptible of dismissal for lack of cause of action.[10]

It appears that respondent raised in its Motion to Dismiss the premature filing of the case in Court. Thus, respondent did not waive said defense.

In the case of ***Fidel Dabuco, et. al. vs. Court of Appeals***[11]***,*** the Supreme Court ruled:

> "As a preliminary matter, we wish to stress the distinction between the two grounds for dismissal of an action: failure to state a cause of action, on the one hand, and lack of cause of action, on the other hand. The former refers to the insufficiency of allegation in the pleading, the latter to the insufficiency of factual basis for the action. Failure to state a cause may be raised in a Motion to Dismiss under Rule 16**, while lack of cause may be raised any time.** Dismissal for failure to state a cause can be made at the earliest stages of an action. Dismissal for lack of cause is usually made after questions of fact have been resolved on the basis of stipulations, admissions or evidence presented." (Emphasis supplied)

Accordingly, the Court must dismiss petitioner's claim for the issuance of a tax credit certificate representing its unutilized input taxes for all the four (4) quarters of taxable year 2007 for lack of cause of action.

WHEREFORE, the assailed resolutions dated May 9, 2011 and July 15, 2011 in CTA Case No. 7926 of the Second Division of this Court are hereby **AFFIRMED WITH MODIFICATION.** The instant Petition for Review is hereby **DENIED** for lack of merit and for lack of cause of action.

SO ORDERED.

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[9] *Carale vs. Abarintos,* G.R. No. 120704, March 3, 1997.
[10] *Paat vs. Court of Appeals,* G.R. No. 111107, January 10, 1997.
[11] G.R. No. 133775, January 20, 2000.

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ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(with separate concurring opinion)
JUANITO C. CASTANEDA, JR.
Associate Justice

(on leave)
LOVELL R. BAUTISTA
Associate Justice

(concurs with the separate concurring opinion of Associate Justice Juanito C. Castañeda, Jr.)
ERLINDA P. UY
Associate Justice

(concurs with the separate concurring opinion of Associate Justice Juanito C. Castañeda, Jr.)
CAESAR A. CASANOVA
Associate Justice

(concurs with the separate concurring opinion of Associate Justice Juanito C. Castañeda, Jr.)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(on leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice

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Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAY 3 1 2012 Apolinario 9:00 a.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I concur in the decision penned by Presiding Justice Ernesto D. Acosta in dismissing the Petition for Review. However, I would like to reiterate that the premature filing of judicial claim warranted a dismissal of the petition inasmuch as the CTA did not acquire jurisdiction. Thus, I vote to affirm in *toto* the assailed Resolutions promulgated by the CTA Second Division dated May 9, 2011 and July 15, 2011.

The principles laid down in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[1] (Aichi case) are applicable to the present case.

The *Aichi* case is **controlling and should be applied outright** in all cases where the facts are substantially the same as the mentioned case. The said case is an actual application of Section 112(A) and (D)[2] of the National Internal Revenue Code (NIRC) of 1997 where the Supreme Court disallowed the refund of unutilized input VAT due to prematurity of judicial claim "as no jurisdiction was acquired by the CTA," to wit:

> "In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as **no jurisdiction was acquired by the CTA**." [3] (emphasis ours)

Applying *Aichi* ruling to the instant case, I vote to **AFFIRM** the basis for the dismissal of the petition as contained in the assailed Resolutions. The 120-30 day period should be applied in the same manner as it was applied in *Aichi* case.

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[1] G.R. No. 184823, October 6, 2010, 632 SCRA 422. The *Aichi* case became final as per Supreme Court's Resolution dated December 6, 2010.
[2] Now Section 112 (C), as amended by Republic Act (RA) No. 9337.
[3] *Supra*, note 1.

The CTA is bound by the ruling of the Supreme Court as the latter is the ultimate arbiter whose decisions all other courts should take bearings.

We note the ruling of the Supreme Court in the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue* [4] that all rulings of the Supreme Court on questions of law are conclusive and binding on all courts. All courts must take their bearings from the decisions of the Supreme Court. The Supreme Court, by tradition and in our system of judicial administration has the last word on what the law is; it is the final arbiter of any justifiable controversy. Indeed, there is only one Supreme Court from whose decisions all other courts should take bearings.[5]

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.

Taking into consideration the CTA's special and limited jurisdiction, the decisions, rulings or inaction of the Commissioner are necessary in order to vest the CTA with jurisdiction to entertain the appeal.[6] The jurisdiction of the CTA is provided under Section 7 of Republic Act (RA) No. 1125, as amended by RA 9282, to wit:

Sec. 7. Jurisdiction. — The CTA shall exercise:

[4] G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781.
[5] *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals*, 334 Phils. 163, 175, 266 SCRA 187 (1997).
[6] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, Resolution dated April 24, 2007, 522 SCRA 144.

> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue 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 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 Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; (emphasis ours)

The CTA shall exercise exclusive appellate jurisdiction to review by appeal the <u>decisions</u> as well as the <u>inaction</u> by the Commissioner of Internal Revenue (CIR) in cases involving refunds of internal revenue taxes. In case where the NIRC provides a specific period for action, the CIR's inaction shall be deemed a denial.

In this case, Section 112 (C) of the NIRC provides specific period of action, that is, the 120-day period within which the CIR shall render a decision. When no decision is made after the 120-day period, the taxpayer has 30 days within which to file an appeal with the CTA. If the taxpayer failed to do so, the taxpayer loses his right of judicial recourse. On the other hand, when a judicial claim is filed without awaiting the lapse of the 120-day period and there is no decision yet, the CTA acquires no jurisdiction as there is no decision or inaction to speak of. Thus, the 120-day period is crucial in filing an appeal with the

CTA.[7] At this point, there was neither a showing that a decision was rendered by the CIR within the 120-day period nor a lapse of the said period.

In the case of *Ker & Company, Ltd. vs. Court of Tax Appeals*,[8] the Supreme Court held that when the law provides a period within which to commence an action, such requirement is jurisdictional, pertinent portion of the decision states:

> While the right to appeal a decision of the Collector to the Tax Court is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty days after receipt of the Collector's decision, or ruling is jurisdiction. "**If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss**" (Callahan vs. Chespeake & Ohio, 407 Supp. 323, mentioned on p. 175, Moran's Rules of Court, Vol. 1, 1952 Ed.). xxx **The right to appeal from the decision of the Collector being a statutory right, the same can be invoked only in accordance with the requisites provided by law** (Wee Poco v. Posadas, 64 Phil. 648). xxx (emphasis ours)

Also, the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* [9] should be applied by analogy to the present case. The pertinent portion of the ruling states:

> The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and**

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[7] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra,* note 1.
[8] No. L-12396, January 31, 1962, 4 SCRA 160.
[9] *Supra*, note 6.

> **failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction** to entertain and determine the correctness of the assessments. **Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.**[10] (emphasis ours)

The Supreme Court ruled that the **30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction**. This applies to cases of refund under Section 112 where the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA.

Similarly in the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,*[11] the Supreme Court reiterated that **perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[12] Jc

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[10] *Ibid.*
[11] G.R. No. 167606, August 11, 2010, 628 SCRA 96.
[12] *Ibid.*

Thus, "a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and judicial claims would result in the denial of his claim." [13]

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[13] *Supra* note 1.