REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

CTA EB No. 930
(CTA Case No. 8212)

Members:

-versus-

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.:*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 28 2013

x- -x

D E C I S I O N

CASTAÑEDA, JR., *J.*:

Assailed in this Petition for Review are the Decision dated May 16, 2012 dismissing the Petition for Review for being filed beyond the thirty day prescriptive period to appeal, and the Resolution dated August 16, 2012 denying the Motion for Reconsideration for lack of merit both issued by the Court's Second Division in CTA Case No. 8212.

THE FACTS

Hedcor Sibulan, Inc. ("petitioner") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Petitioner is engaged in the business of owning, developing, constructing, operating, repairing and maintaining of hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations.[1]

As per Power Supply Agreement, petitioner is engaged in the business of power generation through hydropower and the subsequent sale of generated power to Davao Light Power Company Inc. ("DLPCI"). Petitioner is VAT registered taxpayer with taxpayer identification number ("TIN") 005-633-984-VAT.[2]

On the other hand, the Commissioner of Internal Revenue ("respondent") as a public official is tasked to decide disputed assessments, collection, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters under the 1997 National Internal Revenue Code ("NIRC"), as amended, or other laws administered by the Bureau of Internal Revenue ("BIR").

On June 25, 2010, petitioner applied before the BIR for refund of its alleged unutilized input value added tax ("VAT") in the amount of P39,075,520.39 covering the fourth quarter of calendar year 2008 attributable to its zero-rated sales of generated power to DLPCI.[3]

Respondent's inaction prompted petitioner to seek recourse by way of a Petition for Review with the Court's Second Division on December 30, 2010.

In ruling for the respondent, the Court issued a Decision dated May 16, 2012 dismissing the Petition for Review due to petitioner's failure to file the same within the thirty day reglementary period.[4]

Dissatisfied, petitioner moved for a reconsideration of the Decision dated May 16, 2012. However, the Court in Division issued a Resolution dated August 16, 2012 denying petitioner's Motion for Reconsideration for lack of merit.[5]

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[1] Docket, CTA Case No. 8212, p. 215. Penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla.
[2] Docket, CTA Case No. 8212, p. 216
[3] Docket, CTA Case No. 8212, p. 217.
[4] Rollo, pp. 59-68.
[5] Rollo, pp. 70-77.

THE ISSUES

Unfazed, petitioner appealed to the Court *en banc* raising the following grounds:

A. There is a doctrinal conflict between *Atlas* and *Aichi* because *Atlas* categorically held that Section 229, Tax Code is applicable to excess input VAT refunds but *Aichi* held it is not.

B. *Aichi* is not controlling doctrine in this case and, therefore, should be applied prospectively.

C. An analysis of the development of the statutes and jurisprudence on claims for VAT refund shows that the two year prescriptive period under Section 229, Tax Code prevails over the 120 day period under Section 112(C), Tax Code.

D. Section 112, Tax Code is not jurisdictional. In any case, respondent, by her own issuances, is estopped from questioning the CTA-Division's jurisdiction.[6]

THE COURT'S RULING

The Petition is unmeritorious.

SECTION 112 (A) OF THE 1997 NIRC, AS AMENDED COVERS REFUND OF UNUTILIZED INPUT VAT ARISING FROM ZERO-RATED SALES.

According to petitioner, the Supreme Court held in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[7] that Section 229 of the Tax Code is applicable to claims for excess and unutilized input VAT even if the same may not be considered as illegally or erroneously collected tax.

The Supreme Court's pronouncements in the cases of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[8]

[6] Rollo, pp. 15, 19, 24 & 46.
[7] G.R. Nos. 141104 & 148763, June 8 2007, 524 SCRA 73.
[8] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

("*Mirant*") and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc*[9]. ("Aichi") that Section 229 applies only to erroneously or illegally collected taxes is mere *obiter dictum*.

The CTA Division asserts that the *Atlas* case applies only to input VAT refund cases prior to the 1997 Tax Code. However, *Atlas* should also be applied to cases involving input VAT refund made after January 1, 1998 when the 1997 Tax Code took effect since there is no significant difference between the provisions of 1977 Tax Code and the 1997 Tax Code concerning input VAT refunds.

When the *Aichi* case was at the *en banc* level, the Court of Tax Appeals ("CTA") subscribed to the *Atlas* doctrine even if the case pertains to the period July 1, 2002 to September 30, 2002 when the 1997 Tax Code was already in effect.

We disagree.

The Supreme Court has consistently ruled that Section 112(A) applies to unutilized input VAT; while Section 229 covers illegally or erroneously collected taxes. The recent consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue*[10] ("*San Roque*") explain why the entity seeking unutilized input VAT refund cannot treat the same as excessively collected under Section 229 in this manner:

> The input VAT is **not** "excessively" collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. **If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first**

[9] G.R. No. 184823, October 6, 2010, 632 SCRA 422.
[10] See *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. Nos. 193301, 194637, March 11, 2013.

VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT - who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. **The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.**

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected."

The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.**

Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the *output* VAT. This prescriptive period has no relation to the date of payment of the "excess" *input* VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. **Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT.** Such person seeking the VAT refund or credit does not claim that the input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy. Thus, a **non** zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. **He can only carry-over and apply his "excess" input VAT against his future output VAT**. If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. **The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.**

Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x illegally, x x x excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "**apply only to instances of erroneous payment or illegal collection of internal revenue taxes**." Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due**. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." **In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no**

> **legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.**

Thus, petitioner cannot invoke the provision of Section 229 as legal basis to claim for refund of unutilized input VAT on the purchases of goods and services for the fourth quarter of calendar year 2008 attributable to zero-rated sales of generated power to DLPCI.

JUDICIAL DECISIONS MERELY INTERPRET THE LAW AS OF THE DATE OF ITS ENACTMENT.

Petitioner further points that the principle of prospectivity should also apply to judicial decisions. The law cannot suddenly change in meaning to the prejudice of all taxpayers who in good faith rely upon the text of the law as it has been administratively and judicially interpreted. Thus, the rule laid down in the *Aichi* case is mandatory and must be applied prospectively.

Respondent argues that the judicial interpretation of a statute constitutes part of the law as of the date it was originally enacted.

Petitioner's contention deserves scant consideration.

The Supreme Court's interpretation of the law is part of that law as of the date of enactment because its interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect. [11] The Supreme Court has shed light on this principle in the case of *Accenture, Inc. v. Commissioner of Internal Revenue*[12]:

> Moreover, even though Accenture's Petition was filed before Burmeister was promulgated, the

[11] *National Amnesty Commission v. Commission on Audit*, G.R. No. 156982, September 8, 2004, 437 SCRA 655 and *Philippine Constitution Association v. Salvador Enriquez, Jr.*, G.R Nos. 113105, 113174, 113766 and 113888, August 19, 1994, 235 SCRA 506. *See Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, EB Case No.513, March 10, 2010 and *Commissioner of Internal Revenue v. Team Sual Corporation*, EB Case No. 504, June 16, 2010.
[12] G.R. No. 190102, July 11, 2012, 676 SCRA 325.

> pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a pre-existing one. When this Court interpreted Section 102(b) of the 1977 Tax Code in Burmeister, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes a part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.

In consonance with the intent and wordings of Congress, the date of effectivity of the 1997 NIRC was on January 1, 1998. Logically, it is improper to treat the date of promulgation of a Supreme Court's Decision as basis in applying the enforceability of the 1997 NIRC. It is not a license for courts to engage in judicial legislation. The duty of courts is to apply or interpret the law, not to make or amend it.[13]

THE ADMINISTRATIVE CLAIM FOR REFUND MUST BE FILED WITHIN TWO YEARS FROM THE CLOSE OF THE TAXABLE QUARTER WHEN THE SALES WERE MADE.

Petitioner also argues that it is more practical and reasonable to count the two year prescriptive period for filing of a refund claim or credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which should be within 20 days from the end of each quarter.

Petitioner's stance is untenable.

The two year prescriptive period counted from the close of the taxable year when sales were made under Section 112 refers to administrative refund claims as clarified in the *Aichi* case, stating that:

> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the

[13] *Rommel Silverio v. Republic of the Philippines*, G.R. No. 174689, October 19, 2007, 537 SCRA 373.

> 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 xxx 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.[14] (Emphasis supplied.)

THE EXCEPTION TO THE 120 MANDATORY DAY PERIOD MAY ONLY BE INVOKED IF THE COMMISSIONER HAS GIVEN CAUSE FOR EQUITABLE ESTOPPEL TO APPLY.

PETITIONER'S FAILURE TO TIMELY APPEAL DIVESTS THE CTA JURISDICTION OVER THE CASE.

Petitioner maintains that the legislative intent from the congressional records show that the purpose of the amendment under the 1997 Tax Code was two-fold: First, it was simply to give respondent a longer period of 120 days within which to resolve the taxpayer's claim. Second, it was intended to give the taxpayer the right to proceed to the CTA even in case of inaction on the part of the respondent which was previously unclear because the CTA's jurisdiction was only limited to appeal on respondent's actions.

Petitioner likewise claims that Section 112 is not jurisdictional. The alleged late filing of petitioner's judicial refund claim does not divest the CTA jurisdiction over the case.

Revenue Memorandum Circular No. 42-2003, as amended by RMC No. 49-2003 allows simultaneous processing of the

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[14] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

administrative and judicial claims for refund by the BIR and the CTA, respectively.

In BIR Ruling [DA-489-03] dated December 10, 2003, respondent issued a ruling confirming that the taxpayer need not wait for the lapse of the 120 day period before it could seek judicial relief with the CTA Division.

The foregoing issuances by the respondent amount to an admission that the 120/30 day period stated under Section 112 Tax Code does not affect the CTA's jurisdiction.

Respondent alleges that the Court in Division correctly ruled that it has no jurisdiction to entertain the instant case due to petitioner's failure to comply with the requirements of Section 112(C) of the 1997 NIRC, as amended. This provision requires that petitioner should appeal to the CTA within thirty days from receipt of the denial of the application or the expiration of the 120-day period granted to respondent to grant or deny the application for refund. Since the judicial claim was belatedly filed on December 30, 2010, it is undeniable that it was not filed within the reglementary period. Clearly, the judicial claim for refund has already prescribed; thus, the CTA has no jurisdiction to entertain the original Petition for Review.

This Court adheres to the Supreme Court pronouncements in the *Aichi* case explaining the relevance of the 120 day period under Section 112 in this wise:

> 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. 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.[15]

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[15] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

While the 120 day period under Section 112 is mandatory, the Supreme Court has relaxed the rule if the Commissioner has given cause for equitable estoppel to apply through the issuance of specific ruling and a general interpretative ruling. The *San Roque* case is instructive on this point:

> xxx xxx xxx
>
> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.[16]

BIR Ruling No. DA-489-03 relied upon by petitioner is a general interpretative ruling giving ground to relax the 120 day period. The case of *San Roque* emphasizes the following:

> **BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions its query to the Commissioner the administrative claim of Lazi Bay Resources Development,

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[16] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120 day period.[17] (Emphasis supplied.)

Notwithstanding the assertion of the inapplicability of the 120 day period due to the existence of equitable estoppel by virtue of BIR Ruling No. DA-489-03, petitioner's refund claim will not prosper as it failed to appeal within the 30-day reglementary period. The Court in Division observed that:

xxx xxx xxx

As shown by the records of this case, the administrative claim was filed on June 25, 2010. Hence, applying the above-cited ruling to the present case, respondent has 120 days from June 25, 2010 or until October 23, 2010 to act on the said claim. Since respondent did not act on petitioner's administrative claim, petitioner has 30 days from October 23, 2010 or until November 22, 2010, within which to file its appeal before this Court. However, considering that the petition was filed only on December 30, 2010, or thirty-eight days beyond the 30-day prescriptive period, this Court, therefore, acquires no jurisdiction to act on the said judicial claim as the same has already prescribed.[18]

Corollarily, in the *San Roque* case, Philex Mining Corporation as one of the claimants was disqualified to a refund because of its failure to file a judicial claim within the 30 day period. The Supreme Court had this to say:

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

[17] *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue & Philex Mining Corporation v. Commissioner of Internal Revenue, supra.* See *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue, supra.*
[18] Rollo, p. 67

> 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.[19]

The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the Court's review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors-in-interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been.[20]

The failure to file an appeal from the decision rendering it final and executory is not a denial of due process. The right to appeal is not a natural right or 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.[21]

Finding no reversible error committed by the Court in Division that the Petition was filed beyond the reglementary period, We sustain its dismissal.

WHEREFORE premises considered, the Petition for Review is **DISMISSED**. The assailed Decision dated May 16, 2012 and the Resolution dated August 16, 2012 are **AFFIRMED**.

SO ORDERED.

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[19] *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue & Philex Mining Corporation v. Commissioner of Internal Revenue, supra.*
[20] *Emerlinda S. Talento, in her cacpacity as Provincial Treasurer of the Province of Bataan, v. Hon. Remigio M. Escalada, Jr., Presiding Judge of the Regional Trial Court of Bataan, Branch 3, and Petron Corporation,* G.R. No. 180884, June 27, 2008, 556 SCRA 491 and *Lapulapu Development and Housing Corporation v. Group Management Corporation*, G.R. No. 141407, September 9, 2002, 388 SCRA 493.
[21] *Jaime T. Torres v. China Banking Corporation*, G.R. No. 165408, January 15, 2010, 610 SCRA 134. See *Charter Chemical and Coating Corporation v. Herbert Tan and Amalia Sonsing*, G.R. No. 163891, May 21, 2009, 588 SCRA 91.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
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

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 930
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Members:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA
UY
CASANOVA,
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MINDARO-GRULLA
COTANGCO-MANALASTAS, ***JJ.***

Promulgated:

MAY 2 8 2013 CNApolinario 1:00 p.m.

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CONCURRING AND DISSENTING OPINION

CASANOVA, *J.*:

While I concur with the majority opinion dismissing the Petition for Review due to petitioner's failure to appeal within the thirty (30) day reglementary period, I, however, cannot accede to the majority's application of the doctrine laid down in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue*[1], in resolving the case at bench.

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[1] G.R. Nos. 1874865, 196113 & 197156, February 12, 2013.

I am aware of the recent pronouncement of the Supreme Court in the said consolidated cases which clarifies the issue on the application of the 120-30 day prescriptive period for refund under Section 112 of the 1997 NIRC. In the said consolidated cases, particularly in the San Roque case, the Supreme Court ruled that from the 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, the taxpayer-claimant need not wait for the lapse of the 120-day period before it could file its judicial claim before the CTA.

However, it is possible that a Motion for Reconsideration of the said decision may have been filed, thus, until the said Supreme Court case has attained finality and the corresponding entry of judgment has been made[2], prudence dictates that the application of the new doctrine be, in the meantime, deferred.

In view of the foregoing, the undersigned votes that the Decision dated May 16, 2012 and Resolution dated August 16, 2012 of the CTA Second Division in CTA Case No. 8212 be AFFIRMED by the Court *En Banc*.

CAESAR A. CASANOVA
Associate Justice

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2 RULE 36
JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF
Sec. 2. *Entry of judgments and final orders.*
If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.