REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1051** (CTA Case Nos. 8054, 8117 & 8139)
	Present: **DEL ROSARIO,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY,**
- versus -	**CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN** *JJ.*
MANULIFE DATA SERVICES, INC., Respondent.	**Promulgated:** NOV 17 2014 10:20 a.m.

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DECISION

UY, *J.*:

This Petition for Review[1] filed on August 27, 2013 seeks the reversal and setting aside of the Decision dated May 8, 2013[2] and Resolution dated July 24, 2013[3], both promulgated by the Second

[1] EB Docket, pp. 5 to 14.
[2] EB Docket, pp. 16 to 37; Ponencia of Associate Justice Juanito C. Castañeda, and concurred by Associate Justice Caesar A. Casanova, and Associate Justice Amelia R. Contangco-Manalastas.
[3] EB Docket, pp. 39 to 44.

Division of this Court (or "Court in Division") in the consolidated cases docketed as CTA Case Nos. 8054, 8117, and 8139, respectively entitled as *"Manulife Data Services, Inc. (Philippines), Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

> **Decision dated May 8, 2013:**
>
> "**WHEREFORE**, premises considered, petitioner's claim for issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of ₱8,294,312.44 in favor of petitioner, representing unutilized input VAT attributable to its zero-rated sales for the four quarters of 2008.
>
> **SO ORDERED**".
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> **Resolution dated July 24, 2013**:
>
> "**WHEREFORE**, premises considered, respondent's **'MOTION FOR PARTIAL RECONSIDERATION (Re: Decision promulgated on 8 May 2013)'** and petitioner's **'MOTION FOR PARTIAL RECONSIDERATION *(Re: Decision of 08 May 2013)*'** are **DENIED** for lack of merit.
>
> **SO ORDERED**".

THE FACTS

Petitioner (or CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (or BIR), with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Manulife Data Services, Inc. (or Manulife) is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) to operate as a Regional Operating Headquarters under SEC Certificate of Registration and SEC License No. FS2006030505. Manulife is a VAT-registered taxpayer as evidenced by Certificate of Registration No. OCN3RC0000330824. It was established for the purpose of engaging in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.

Manulife duly filed its original and amended Quarterly Value-Added Tax (VAT) Returns for taxable year 2008.

Alleging that it has unapplied/excess input VAT from its zero-rated sales, Manulife filed administrative claims for refund or issuance of tax credit certificate (TCC) before the BIR Revenue District Office (RDO) No. 38 on the following dates and for the following amounts:

PERIOD COVERED	DATE FILED	AMOUNT CLAIMED
First Quarter of 2008	December 4, 2009	₱ 4,356,925.62
Second to Fourth Quarters of 2008	February 26, 2010	₱ 11,552,309.31

Due to inaction on the part of the CIR, Manulife elevated its refund claims before this Court on the following dates:

PERIOD COVERED	DATE FILED	CASE DESIGNATION
First Quarter of 2008	March 30, 2010	CTA Case No. 8054[4]
Second Quarter of 2008	June 29, 2010	CTA Case No. 8117[5]
Third and Fourth Quarters of 2008	July 26, 2010	CTA Case No. 8139[6]

In her Answer in CTA Case No. 8054, the CIR alleged the following Special and Affirmative Defenses:

"<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>

"4. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

5. [Manulife's] claim for the issuance of tax credit certificate is subject to administrative investigation/ examination by [the BIR].

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[4] This case was raffled to the Second Division of this Court.
[5] This case was raffled to the Third Division of this Court.
[6] This case was raffled to the Second Division of this Court.

6. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.

7. Moreover, in order to validly claim for tax credit/refund, it is imperative for petitioner to prove its compliance with the following, viz:

a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations.

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003).

c. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112(C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of such claim.

d. That the input taxes of P4,355,695.62 allegedly representing unutilized input VAT from its purchases of goods and services were:

i. paid by petitioner;
ii. attributable to its zero-rated sales or effectively zero-rated sales; and,
iii. such input taxes paid should not have been applied against any output tax.

e. That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of P4,355,695.62 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) of the 1997 NIRC, as amended.

8. In an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for tax credit/refund.

9. Finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same *(Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005)*. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444*)."

The CIR employed the same arguments in her Answer in CTA Case No. 8117.

In her Answer in CTA Case No. 8139, the CIR interposed the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

"4. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;

5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of [Manulife] to prove the same is fatal to its cause of action. In the instant case, [Manulife] failed to present proof that the input VAT it is claiming as refund remained unutilized.

6. In addition, [Manulife] must prove that the compensation or consideration which it received for the services rendered were actually paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

7. [Manulife] should prove its legal basis for claiming the amount being refunded."

On September 9, 2010, Manulife filed a Motion for Consolidation of CTA Case No. 8117 with CTA Case No. 8054. Likewise, on October 18, 2010, Manulife filed a Motion for Consolidation of CTA Case No. 8139 with CTA Case No. 8054. Both Motions were granted on November 4, 2010 and November 11, 2010, respectively.

During trial, Manulife presented its documentary and testimonial evidence. On the other hand, the CIR, through counsel, manifested that she has no witness to present.

The consolidated cases were submitted for decision on August 29, 2012, considering Manulilfe's Memorandum filed on August 23, 2012 and the CIR's Memorandum on August 17, 2012.

On May 8, 2013, the Court in Division rendered the assailed Decision, partially granting the refund claim of Manulife in the amount of ₱8,294,312.44, representing unutilized input VAT attributable to its zero-rated sales for the four quarters of 2008. The CIR was ordered to issue a TCC in the said amount.

Both parties respectively filed their Motions for Partial Reconsideration of the assailed Decision, on May 24, 2013, in the case of Manulife, and on May 29, 2013, in the case of the CIR.

On July 24, 2013, the Court in Division denied both motions in the assailed Resolution dated July 24, 2013, for lack of merit.

Subsequently, on August 12, 2013, the CIR filed before the Court *En Banc* a *Motion For Extension of Time To File Petition for Review*,[7] wherein the CIR requested for an extension of fifteen (15) days from August 9, 2013, within which to file her Petition for Review.

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[7] EB Docket, pp. 1 to 3.

Acting on the said motion, the Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from August 9, 2013, or until August 24, 2013, within which to file her Petition for Review.[8]

Thereafter, the instant Petition for Review was filed on August 27, 2013[9] before the Court *En Banc*, praying that the Decision dated May 8, 2013 and Resolution dated July 24, 2013, be reversed and set aside, and a new decision be rendered entirely denying Manulife's claim for tax refund/credit for the four quarters of 2008.

In the Resolution dated September 27, 2013,[10] Manulife was ordered by the Court *En Banc* to file a Comment, not a motion to dismiss, to the instant Petition for Review. Upon the filing of Manulife's "*Comment/Opposition (Re: Petition for Review dated 23 August 2013)*" on November 4, 2013[11], the Court *En Banc* resolved to give due course to the instant Petition for Review. Accordingly, the parties were required to submit their respective memorandum.[12]

Manulife filed its Memorandum on February 6, 2014.[13] The CIR, however, failed to file her memorandum. Hence, the instant case was considered submitted for decision on June 4, 2014.[14]

Hence, this Decision.

THE ISSUES

In the instant Petition for Review, the issues raised for the consideration of the Court *En Banc* are as follows:

> " **WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED WHEN IT CONSIDERED RESPONDENT'S JUDICIAL**

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[8] Minute Resolution dated August 14, 2013, EB Docket, p. 4.
[9] August 24, 2013 fell on a Saturday, the following Monday, August 26, 2013 was declared National Heroes Day, a regular holiday, hence the Petition for Review was timely filed before the Court *En Banc* on August 27, 2013.
[10] EB Docket, pp. 50 to 51.
[11] EB Docket, pp. 58 to 64.
[12] Resolution dated December 18, 2013, EB Docket, pp. 67 to 68.
[13] EB Docket, pp. 69 to 79.
[14] Resolution dated June 4, 2014, EB Docket, pp. 84 to 85.

> **CLAIMS FOR THE FIRST QUARTER OF 2008 AS TIMELY FILED**
>
> **WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED WHEN IT EXERCISED JURISDICTION OVER RESPONDENT'S CLAIM FOR TAX REFUND/ CREDIT**
>
> **WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED WHEN IT PARTIALLY GRANTED RESPONDENT'S CLAIM FOR TAX REFUND/CREDIT OF ALLEGED UNUTILIZED INPUT VAT FOR THE FIRST TO FOURTH QUARTERS OF 2008**".

Petitioner's Arguments:

The CIR argues that the Court in Division erred when it considered Manulife's judicial claim for the 1st Quarter of 2008 as timely filed on the basis of BIR Ruling No. DA-489-03. According to the CIR, the Government cannot be and must not be estopped by any erroneous interpretation in the issuance of BIR Ruling No. DA-489-03 regarding the reckoning of the prescriptive periods for input VAT refund/credit.

Moreover, the CIR contends that Manulife failed to prove that it has submitted complete supporting documents to warrant the granting of the application for refund or issuance of TCC and to reckon the commencement of the 120-day period for the CIR to decide the application. Allegedly, since Manulife failed to submit the required complete supporting documents, its judicial claims were prematurely filed in violation of the doctrine of exhaustion of administrative remedies.

The CIR further avers that the Court in Division erred in partially granting Manulife's claim for VAT refund/credit. According to the CIR, application for tax refund/TCC should be denied in cases when the taxpayer failed to comply with the requirements provided under Revenue Memorandum Circular No. (RMC) 29-2009, dealing with the compliance by claimants with certain conditions/requirements upon audit/verification of the claim, before a refund is granted "in proper cases"; and the effect of non-compliance, which is the denial of the said claim.

Lastly, the CIR points out that Manulife's claim for refund/credit is subject to administrative investigation/examination by the CIR; and pending the closure of this investigation, no grant of refund may be given to Manulife based on the claim filed.

Respondent's Counter-Arguments:

On the other hand, Manulife counters that its judicial claim for refund for the four quarters of taxable year 2008 was timely filed, pursuant to Section 112(C) of the National Internal Revenue Code (NIRC) and the recent pronouncements of the Supreme Court in *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*[15] (or the "*San Roque* case"). Thus, there was a rightful exercise of jurisdiction by the Court in Division to review its claim for unutilized input VAT refund for taxable year 2008.

Manulife further avers that it presented as part of its evidence the letter application it filed with the BIR for its administrative claim, attached therewith were complete documents supporting its claim for refund/credit. Manulife points out that, aside from not contesting the veracity of these documents, the CIR failed to present evidence that will show that Manulife failed to submit the complete set of documents.

As regards the CIR's claim that Manulife failed to prove compliance with the conditions set forth in RMC 29-2009, Manulife contends that the same is bereft of merit because the CIR did not present any evidence in support of such allegation.

THE COURT *EN BANC*'S RULING

We find no merit in the instant Petition for Review.

There 120+30-day periods under Section 112 of the NIRC of 1997, as amended are mandatory and jurisdictional. However, there are exceptions to this rule.

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

The rule on the 120+30-day periods is found in Section 112 of the NIRC of 1997, as amended by Republic Act No. (RA) 9337,[16] which reads as follows:

> 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: xxx
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> xxx xxx xxx
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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 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 Subsections (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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> xxx xxx xxx. *(Emphasis supplied)*

Based on the foregoing, a VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input VAT must file an administrative claim within two years from the close of the taxable

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[16] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

quarter when the sales were made. After that, the taxpayer must await the decision or ruling of denial of its claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision or ruling of denial or expiration of the 120-day period, it may file its petition for review with this Court within thirty (30) days.[17]

In the *San Roque* case, the Supreme Court stressed the mandatory and jurisdictional nature of the 120+30 day period provided in the aforequoted Section 112(C) of the NIRC of 1997, as amended, but provided exceptions thereto, to wit:

> "...The application of the 120+day periods was first raised in *Aichi*,[18] which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) states that 'the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents,' the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. Such doctrine is basic and elementary.
>
> When Section 112(C) states that 'the taxpayer affected **may**, within thirty (30) days from 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 law does not make the 120+30 day periods optional just because the law uses the word '**may**.' The word 'may' simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word 'may' be construed as

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[17] *Team Energy Corporation (Formerly Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 197760, January 13, 2014.

[18] Referring to *Commissioner of Internal Revenue vs. Aichi Forging Company, Inc.*. G.R. No. 184823, October 6, 2010.

making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

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To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, <u>except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010</u> when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

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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. <u>There are, however, two exceptions to this rule.</u> 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. <u>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.</u> 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.

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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 in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, 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.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional." *(Underscoring supplied)*

In the consolidated cases *a quo*, the pertinent dates involved are summarized below:

<table>
<tr><th>Period</th><th>Filing date of administrative claim</th><th>Last day of the 120-day period under Section 112(C) from date of filing of administrative claim in case of inaction</th><th>Last day of the 30-day period to judicially appeal said inaction before the Court of Tax Appeals</th><th>Filing date of Petition for Review</th></tr>
<tr><td>1st Quarter 2008</td><td>December 4, 2009</td><td>April 3, 2010</td><td>May 3, 2010</td><td>March 30, 2010 (CTA Case No. 8054)</td></tr>
<tr><td>2nd Quarter 2008</td><td rowspan="3">February 26, 2010</td><td rowspan="3">June 26, 2010</td><td rowspan="3">July 26, 2010</td><td>June 29, 2010 (CTA Case No. 8117)</td></tr>
<tr><td>3rd Quarter 2008</td><td rowspan="2">July 26, 2010 (CTA Case No. 8139)</td></tr>
<tr><td>4th Quarter 2008</td></tr>
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Thus, following the doctrinal pronouncements of the *San Roque* case, the Court *En Banc* finds that Manulife's judicial claims were all timely filed with the Court in Division based on the following grounds: (a) the judicial claims for the 2nd, 3rd, and 4th quarters of 2008 were timely made because it complied with the mandatory and jurisdictional 120+30-day periods under Section 112(C) of the NIRC of 1997; and, (b) the judicial claim for the 1st quarter of 2008 was timely made because it was done during the effectivity BIR Ruling No. DA-489-03, *i.e.*, from December 10, 2003 until October 6, 2010.

It must be emphasized that in RMC 54-2014 dated June 11, 2014,[19] the CIR herself has effectively recognized the doctrine laid down in the *San Roque* case, particularly the efficacy of BIR Ruling No. DA-489-03 from December 10, 2003 to October 6, 2010, in this wise:

> "**IV. Exception to the Mandatory and Jurisdictional Nature of the 120+30 day Period (BIR Ruling No. DA-489-03 dated 10 December 2003)**
>
> As an exception to the mandatory and jurisdictional 120+30 day period, it was emphasized that from the time of 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 (or a period of almost 7 years), taxpayers/claimant ***need not wait*** for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. This exception, however, is limited to cases of premature filing (filing of judicial claim prior to the lapse of the 120-day period) and *does not extend to late of filing of a judicial claim.*" *(Underscoring supplied)*

Thus, even though the judicial claim for the 1st quarter of 2008 was prematurely filed without waiting for the expiration of the 120-day mandatory period, the Court in Division may validly take cognizance of CTA Case No. 8054, since it was filed within the period exempted from the 120+30-day mandatory periods. Hence, the Court *En Banc* finds no merit in the CIR's contention that the Court in Division erred when it considered Manulife's judicial claim for the 1st quarter of 2008 as timely filed on the basis of BIR Ruling No. DA-489-03.

BIR Ruling No. DA-489-03 provides a valid claim for equitable estoppel under Section 246 of the NIRC of 1997.

It is likewise the averment of the CIR that assuming that BIR Ruling No. DA-489-03 is an erroneous interpretation of a difficult question of law, particularly the reckoning of the prescriptive periods for input VAT refund or credit, it is a long and firmly settled rule of law that the Government is not bound by the errors committed by its

[19] SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

agents. According to the CIR, in the performance of its government functions, the State cannot be estopped by the neglect of its agents and officers.

We disagree.

As a general rule, the government is not estopped from collecting taxes legally due because of mistakes or errors of its agents. But like other principles of law, this admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer.[20] The rule on non-estoppel of the government is not designed to perpetrate an injustice.[21]

The Supreme Court ruled, in the *San Roque* case, that BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the NIRC of 1997, *viz*:

> "BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the **'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.'** Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
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> 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

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[20] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117982, February 6, 1997.

[21] *Leca Realty Corporation vs. Republic of the Philippines; Republic of the Philippines vs. Bank of the Philippine Island et al.*, G.R. Nos. 155605 & 160179, September 27, 2006.

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.

Section 4 of the Tax Code, a *new* provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:

> Sec. 4. *Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Since the Commissioner has **exclusive and original jurisdiction to interpret tax laws**, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Section 246 provides as follows:

> Sec. 246. Non-Retroactivity of Rulings.— Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:

> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (Emphasis supplied)

Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only the Commissioner because this Section expressly states, '***Any*** revocation, modification or reversal' without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayer similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. As held by this Court in *CIR vs. Philippine Health Care Providers, Inc.*:[22]

> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence,

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[22] G.R. No. 168129, April 24, 2007.

> where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
>
> This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd.*, *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.*, *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc.*, and *Commissioner of Internal Revenue v. Court of Appeals*. **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case**.
>
> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer. (Emphasis supplied)"

Such being the case, BIR Ruling No. DA-489-03 effectively shielded the filing of Manulife's judicial claim for the 1st quarter of 2008 from the vice of prematurity. Since the said BIR Ruling provides a basis for equitable estoppel, the CIR cannot now question the Court in Division's exercise of jurisdiction over CTA Case No. 8054 on the basis of the rule on non-estoppel of the government.

Submission of complete supporting documents at the administrative level.

The CIR further avers that since Manulife failed to submit to the CIR the required complete supporting documents, it necessarily follows that the filing of the Petitions for Review with this Court were premature.

The argument of the CIR is devoid of merit.

The submission of complete supporting documents is presumed, pursuant to the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue.*[23] In the said case, the Supreme Court said:

> "Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.**"[24]

In view of the presumption of the submission of complete supporting documents and there being no evidence to the contrary, the documents submitted in Manulife's administrative claims filed on December 4, 2009, and February 26, 2010, are deemed complete documents. The fact of the submission of those complete documents is shown in the said administrative claims themselves, to wit:

> <u>**Administrative claim filed on December 4, 2009 (Letter dated December 4, 2009):**</u>[25]
>
> "We hereby submit, on behalf of MDSI, an application for the issuance of a tax credit certificate covering the unapplied/excess input VAT in the amount of **PESOS: Four Million Three Hundred Fifty Six Thousand Two Hundred Ninety Five and Sixty Centavos (Php 4,356,295.62)** for the period 1 January 2008 to 31 March 2008. <u>We attach herewith the following documents in support of our application</u>:
>
> 1. Three (3) copies of BIR Form 1914;
> 2. Article of Incorporation of MDSI;
> 3. BIR Certificates of Registration and annual registration payment;

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[23] G.R. Nos. 198729-30, January 15, 2014.

[24] Read also *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 184266, November 11, 2013), wherein the Supreme Court ruled as follows:

> "…**absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund** in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively." *(Emphasis supplied)*

[25] Exhibit "C".

4. 2008 Audited Income Tax Return;
5. 2008 Audited Financial Statement;
6. Monthly VAT Returns;
   a. January VAT Return, original and amended; and
   b. February VAT Return, original;
7. Quarterly VAT Returns for the:
   a. 1st Quarter of 2008;
   b. 2nd Quarter of 2008, amended and original;
   c. 3rd Quarter of 2008, amended and original;
   d. 4th Quarter of 2008, original;
   e. 1st Quarter of 2009, original;
   f. 2nd Quarter of 2009, original; and
   g. 3rd Quarter of 2009, original;
8. Summary List of Zero-Rated Sales for the 1st Quarter of 2008 with photocopies of Sales Official Receipts and Sales Invoices issued by MDSI;
9. Summary List of Local Purchases for the 1st Quarter of 2008 with photocopies of the VAT invoices for the purchase of goods and the VAT official receipts for the purchase of services;
10. Sworn Certification of MDSI showing the amount of Zero-Rated Sales, Taxable Sales and Exempt Sales for the 1st Quarter of 2008;
11. Certification from the Department of Finance that MDSI has not filed a similar claim for refund with the Bureau of Internal Revenue, Bureau of Customs and Board of Investments for the period 1 January 2008 to 31 December 2008; and
12. MDSI Official Receipts Nos. 31 to 65 for the 1st to 2nd Quarters of 2007 (photocopies);
13. Copies of the Service Contracts of MDSI with its client." *(Underscoring supplied)*

Administrative claim filed on February 26, 2010 (Letter dated February 22, 2010):[26]

"We hereby submit, on behalf of MDSI, an application for the issuance of a tax credit certificate covering the unapplied/excess input VAT in the amount of **PESOS: Eleven Million Five Hundred Fifty Two Thousand Three Hundred Nine Pesos and Thirty One Centavos (Php 11,552,309.31)** for the period 1 April 2008 to 31 December 2008. We attach herewith the following documents in support of our application:

1. Three (3) copies of BIR Form 1914;
2. Article of Incorporation of MDSI;
3. BIR Certificates of Registration and annual registration payment;
4. 2008 Audited Income Tax Return;
5. 2008 Audited Financial Statement;

[26] Exhibit "C-3".

6. Monthly VAT Returns:
   a. April, 2008;
   b. May, 2008;
   c. July, 2008;
   d. August, 2008;
   e. October, 2008; and
   f. November 2008;
7. Quarterly VAT Return for the:
   a. 2nd Quarter of 2008, amended and original;
   b. 3rd Quarter of 2008, amended and original;
   c. 4th Quarter of 2008, original;
   d. 1st Quarter of 2009, original;
   e. 2nd Quarter of 2009, original;
   f. 3rd Quarter of 2009, original; and
   g. 4th Quarter of 2009;
8. Summary List of Zero-Rated Sales for the 2nd to 4th Quarters of 2008 with photocopies of Sales Official Receipts and Sales Invoices issued by MDSI;
9. Summary List of Local Purchases for the 2nd to 4th Quarters of 2008 with photocopies of the VAT invoices for the purchase of goods and the VAT official receipts for the purchase of services;
10. Sworn Certification of MDSI showing the amount of Zero-Rated Sales, Taxable Sales and Exempt Sales for the 2nd to 4th Quarters of 2008;
11. Certification from the Department of Finance that MDSI has not filed a similar claim for refund with the Bureau of Internal Revenue, Bureau of Customs and Board of Investments for the period 1 January 2008 to 31 December 2008; and
12. Copies of the Service Contracts of MDSI with its clients." *(Underscoring supplied)*

In view of the submission of the said complete documents, there is no basis for the CIR to assert that she *"cannot decide the claim for refund without the taxpayer submitting its complete supporting documents."*[27]

And even assuming that We can ignore the foregoing presumption and find that Manulife did not present or attached the *"complete supporting documents"* in its administrative claims, the CIR can always decide a refund claim, in view of the recognized principle that the **CIR ought to know the records of all taxpayers**.[28]

Thus, the reckoning of the 120-day period respectively

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[27] Petition for Review (at p.6), EB Docket, p. 10.
[28] *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12, 2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

commenced from the filing of the said administrative claims.

The efficacy of RMC 29-2009.

The CIR also contends that there must be compliance with the requirements of RMC Items III and IV of RMC 29-2009; otherwise, the application for tax refund/TCC should be denied.

We find this contention is untenable.

For easy reference, quoted hereunder are the said provisions of RMC 29-2009, viz:

> "**III. Period Within Which Refund or Tax Credit of Input Taxes Shall be Made**
>
> Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents. For the purpose of defining 'proper cases' in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
>
> a. Submission of complete documents necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
>
> b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Officer (RO) for audit/verification;
>
> c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/ claimant within five (5) days from receipt of the notification from the RO; and
>
> d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, *i.e.*, failure to present the accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, the running of the 120-day period *shall stop from the date of notification* to the taxpayer. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, *for resolution and issuance* of legal opinion, which should be rendered within thirty (30) working days from receipt of the request.

xxx xxx xxx xxx

IV. Effect of Non-submission of Documents or Non-compliance with Audit/Verification Requirements in Support of the Application for Claim for Tax Refund/Credit

Application of tax refund/TCC shall be denied where the taxpayer/claimant failed to submit complete supporting documents or failed to comply with the audit/verification requirements as stated in Items III.a to III.d hereof, where applicable, *after three (3) notifications* from the processing/investigating office. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding *Denial Letter* to the taxpayer/claimant." *(Italics and underscoring supplied)*

Revenue Memorandum Circulars, such as RMC 29-2009, are considered administrative rulings which are issued from time to time by the CIR.[29] While administrative issuances have the force and effect of law,[30] said Circulars cannot prevail over the clear and plain language of the Tax Code.[31] In this connection, it must be

[29] *Asia International Auctioneers, Inc. vs. Parayno, et al.*, G.R. No.163445, December 18, 2007; *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999.
[30] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.
[31] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. Commissioner of Internal Revenue*, G.R. No. 130838, August 22, 2006.

emphasized that Section 112(C) of the NIRC of 1997, as amended by RA 9337, is clear and plain as to the running of 120-day period. It does not provide for any instance where the same may be stopped or tolled; nor does it authorize the CIR to stop or toll the same.

Moreover, Section 112 (C), particularly the reckoning and running of the 120-day period, is clear and plain. Thus, no interpretation thereof is necessary. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[32] In this connection, it must be stressed that in *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*,[33] the Supreme Court said:

> "As mentioned at the outset, Section 102(b)(2) of the Tax Code is very clear. **Therefore, no statutory construction is needed. <u>Neither can conditions or limitations be introduced where none is provided for. Rewriting the law is a forbidden ground that only Congress may tread upon</u>.**" *(Emphasis and underscoring supplied)*

Correspondingly, even conceding that the construction of a statute by the CIR is to be given great weight, the courts, which include this Court, are **not** bound thereby if such construction is erroneous or is clearly shown to be in conflict with the governing statute or the Constitution or other laws.[34]

More importantly, even assuming that Items III and IV of RMC 29-2009 is valid and binding upon this Court, it must be emphasized that there is no showing that Manulife did not comply with the conditions or requirements stated therein. At this juncture, it must already be stated that in the consolidated cases *a quo*, the CIR never presented any evidence at all to present its case or to rebut Manulife's evidence.[35]

A more careful reading of the said Items III and IV of RMC 29-

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[32] *Amores vs. House of Representatives Electoral Tribunal, et al.*, G.R. No. 189600, June 29, 2010.
[33] G.R. No. 152609, June 29, 2005.
[34] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009.
[35] Refer to the Minutes of Hearing held on June 18, 2012, Division Docket, Vol. II (CTA Case No. 8054), p. 909.

2009 would reveal that the taxpayer/claimant must comply with the conditions or requirements stated therein only *"upon audit/verification of his/its claim"*. In this case, it was not clearly shown that an audit or verification of Manulife's administrative claims was ever conducted by the BIR.

But even if We further assume that such audit or verification has been conducted, it is clear that the stoppage or suspension of the 120-day period will respectively occur only in the following instances: (1) *"from the date of notification to the taxpayer"* of his/its supposed failure to comply; or (2) when during the audit or verification, a question of law arises and the issue is referred to the BIR's Legal Division or the Legal Service. In the case at bar, neither of the said instances was ever shown to exist.

Correspondingly, whether or not We consider Items III and IV of RMC 29-2009 as valid and binding upon this Court, the same is of no moment.

This Court is not barred from granting the refund or issuance of Tax Credit Certificate (TCC) by a pending administrative investigation.

Finally, We do not agree with the CIR's contention that pending the closure of the supposed investigation of Manulife's claim, no grant of refund may be given to Manulife by the Court.

Indubitably, when a judicial claim is timely filed in accordance with law and consistent with the doctrine laid down in the *San Roque* case, the CIR must still continue the investigation of the administrative claim. Thus:

> "...if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.
>
> On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue to evaluate the administrative claim. There is

> nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must necessarily continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings."

However, the continuation of the investigation of the said administrative claim does not prevent this Court from deciding an appeal of a refund claim. In fact, under RMC 49-2003, which has the force and effect of a law,[36] the BIR itself recognizes and addresses the situation where this Court is able to release a decision ahead of the BIR. Said BIR issuance provides:

> "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), **the administrative agency and the tax court may act on the case separately**. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
>
> **If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim.** On the other hand, if the administrative agency is able to process the claim of the

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[36] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, supra (footnote no. 29).

> taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite of the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office." *(Emphases supplied)*

Hence, it is not correct for the CIR to argue that the pendency of an administrative investigation of Manulife's claim prevents the granting of a refund by the Court in Division.

Nevertheless, it must be stated that with or without the foregoing provisions of RMC 49-2003, the Court in Division can still definitely take cognizance of the consolidated cases *a quo*.

The Court in Division has the exclusive appellate jurisdiction to review on appeal decisions of the CIR in cases involving refunds of internal revenue taxes. Moreover, if the CIR fails to decide within the 120-day period provided by law, such inaction shall be deemed a denial of the application for tax refund which the taxpayer can elevate to this Court in Division through a petition for review.[37]

Being clothed with judicial power, which includes the duty *"to settle actual controversies involving rights which are legally demandable and enforceable"*,[38] the Court in Division cannot be prevented from exercising its jurisdiction, specifically conferred to it by law, to decide a properly and timely filed appeal, even when the administrative claim is still pending investigation with the BIR.

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[37] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 184360 & 184361, and 184384, February 19, 2014.

[38] Section 1, Article VIII of the 1987 Constitution, in relation to Section 1 of RA 1125, as amended by RA 9282.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated May 8, 2013 and Resolution dated July 24, 2013, promulgated by the Court in Division in the consolidated cases of CTA Case Nos. 8054, 8117 and 8139, are hereby **AFFIRMED** *in toto*.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice