Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PHILEX MINING CORPORATION,	CTA EB Case No. 817 (CTA Case No. 7798)
Petitioner,	
	Members: ACOSTA, *PJ,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE,	
Respondent.	Promulgated: JUN 13 2012 aulapolinario 9:00 a.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review,[1] filed by petitioner- Philex Mining Corporation on August 31, 2011, which seeks to reverse and set aside the Decision[2] (*Assailed Decision*) dated April 13, 2011 and the Resolution[3] (*Assailed Resolution*) dated August 8, 2011, denying its Motion for Reconsideration for lack of merit, rendered by the Court of Tax Appeals Third Division in CTA Case No. 7798 entitled, *"Philex Mining Corporation vs. Commissioner of Internal Revenue,"* the dispositive portions thereof, respectively, reads as follows:

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[1] Petition for Review, CTA En Banc Rollo, pp. 1-18.
[2] Annex "A", Ibid, pp. 20-34.
[3] Annex "B", Ibid, pp. 40-43.

Decision dated April 13, 2011

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** for having been filed late.
>
> **SO ORDERED.**"

Resolution dated August 8, 2011

> "**WHEREFORE,** premises considered, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The antecedent facts, as summarized by the CTA Third Division, are hereunder adopted, to wit:

> "Petitioner, a corporation organized under Philippine laws, is engaged in the mining business, including the exploration and operation of mine properties and commercial production and marketing of mine products, with principal office at 27 Brixton St., Pasig City.
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> Petitioner is a value-added tax (VAT)-registered taxpayer, with VAT Registration Certificate No. 35-6-000731 effective October 29, 1987, and under Bureau of Internal Revenue (BIR) Form No. 2303 as of January 31, 1997. Likewise, pursuant to Sec. 4.100-3 of Revenue Regulations No. 7-95, it had its Application for Zero rate, approved on April 21, 1988.
>
> On the other hand, respondent Commissioner of Internal Revenue is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the NIRC. She holds office at the BIR National Office, Diliman, Quezon City.

On July 19, 2006, petitioner filed with the BIR its Original VAT Return (BIR Form 2550-Q) for the 2nd quarter of 2006.

On February 28, 2008, petitioner filed an Amended VAT Return (BIR Form 2550-Q) for the 2nd quarter of 2006 showing a total zero-rated sales of P2,175,954,150.68, domestic purchases of goods amounting to P220,089.25 with input tax of P26,410.71, and importation of goods amounting to P99,534,929.34 with input tax of P11,944,191.32.

On January 10, 2007, petitioner filed its claim for refund or tax credit with the One-Stop-Shop Center of the Department of Finance via Application No. 54767, in the amount of P11,970,602.23.

On June 27, 2008, petitioner filed the instant Petition for Review, alleging respondent's inaction on said administrative claim for refund, docketed as C.T.A. Case No. 7798.

In her Answer, respondent alleged by way of special and affirmative defenses, to wit:

> '6. The claim for refund is still under examination by the respondent's Bureau;
>
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
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> 8. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.'

Petitioner presented Eileen C. Rodriguez and Albert G. Alba, as witnesses, and documentary evidence, marked as Exhibits 'A' to

> 'J', inclusive of their submarkings, which were all admitted by the Court in a Resolution dated August 18, 2009.
>
> On the other hand, respondent submitted the case for decision, without presenting any evidence.
>
> Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.
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> Considering petitioner's 'Memorandum' filed on April 29, 2010, and the Report of the Judicial Records Division dated May 13, 2010 that respondent failed to file her memorandum despite notice, the case was deemed submitted for decision on May 20, 2010."

The CTA Third Division promulgated its Decision on April 13, 2011, dismissing the Petition for Review for having been filed beyond the 30-day prescriptive period.

Not satisfied with the said Decision, petitioner filed a Motion for Reconsideration[4] on May 3, 2011, praying that the April 13, 2011 Decision "be reconsidered, and an amended Decision be rendered, based on the documentary and testimonial evidence that were presented, formally offered and admitted."

On August 8, 2011, a Resolution[5] was promulgated by the CTA Third Division denying the aforementioned Motion for Reconsideration for lack of merit. Unfazed, petitioner elevated the case on appeal before the CTA *En Banc* on August 31, 2011.

Petitioner raised the following grounds in support of the instant Petition, to wit:

I

> THE MAJORITY IN THE 3RD DIVISION ERRED IN DISMISSING THE PETITION DUE TO ALLEGED LATE FILING. THE FACT IS THE PETITION WAS FILED WITHIN THE PERIOD SET BY PREVAILING COURT RULINGS WHEN IT WAS FILED; HENCE, IT WAS FILED ON TIME.

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[4] Division Docket, pp. 159-172.

[5] Ibid, pp. 177-180.

II

THE MAJORITY IN THE 3RD DIVISION ERRED IN RETROACTIVELY APPLYING THE AICHI RULING IN DECIDING THIS INSTANT CASE.

Thereafter, the Court issued a Resolution[6] on September 20, 2011 ordering respondent to file her Comment to the instant Petition. However, per Records Verification[7], respondent failed to file the same.

On February 29, 2012, the case was submitted for decision, taking into consideration petitioner's Manifestation[8] filed on January 16, 2012, sans respondent's Memorandum.[9]

In the case at bench, petitioner claims that: (a) it timely filed the instant petition since it was filed within the two year prescriptive period from the date it filed its VAT return for the 2nd quarter of 2006, following the ruling of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (Atlas case)[10]; and (b) in the interest of justice, fair play and consistency, the new ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,* (Aichi case)[11] should be applied prospectively only to future cases.

The Court is not persuaded.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En* Banc finds no new matters which have not yet been considered and passed upon by the CTA Third Division in its Assailed Decision and Resolution.

As correctly held by the CTA Third Division with respect to the first issue, and *We* agree:

> **"However, notwithstanding the timely filing of the administrative claim, we are constrained to deny the**

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[6] CTA En Banc Rollo, pp. 45-46.
[7] Records Verification Form dated November 3, 2011, CTA En Banc Rollo, p. 47.
[8] CTA En Banc Rollo, pp. 51-52.
[9] Records Verification Form dated February 1, 2012, CTA En Banc Rollo, p. 54.
[10] G.R. No. 141104 and 148763, June 8, 2007.
[11] G.R. No. 184823, October 6, 2010.

present petition for having been filed late, way beyond the period prescribed in Section 112 (C) of the NIRC of 1997, as amended, which provides:

> 'SEC. 112.Refunds or Tax Credits of Input Tax. —
>
> xxx xxx xxx
>
> (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 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.'

Pursuant to the above provision, the Commissioner has one hundred twenty (120) days from the submission of supporting documents to decide the claim for refund. In case of full or partial denial, or inaction, the taxpayer may appeal to this Court, within thirty (30) days from receipt of the decision or from the lapse of the 120-day period.

Thus, counting from January 10, 2007, which was presumably the date when petitioner submitted supporting documents, together with its application for refund, the CIR had 120 days, or until May 10, 2007, within which to decide the claim. Within 30 days from the lapse of the 120-day period, or from May 11, 2007 until June 9, 2007, petitioner should have elevated its claim for

refund to this Court. Therefore, petitioner had until June 9, 2007 within which to elevate its claim to this Court on the ground of respondent's inaction. However, records show that petitioner filed the present Petition for Review on June 27, 2008 only, which is more than one (1) year late or 384 days, to be exact, way beyond the prescribed period.

xxx xxx xxx

More importantly, the Supreme Court had already settled the relevance of the prescribed periods under Section 112 in the recent case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra, to wit:

> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent' claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:
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> xxx xxx xxx
>
> Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application for tax refund/credit,' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
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> 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." (Emphasis supplied)

Thus, considering that petitioner's Petition for Review (CTA Case No. 7798) was filed on June 27, 2008, or 384 days beyond the 30-day prescriptive period, the Court acquires no jurisdiction to act on the said judicial claim.

Settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[12]

Anent petitioner's contention that the Aichi Case should not be applied retroactively, the same deserves scant consideration.

It is worthy of emphasis that this Court has no option but to uphold and apply the ruling of the Supreme Court in Aichi Case, it being the final arbiter of justifiable controversy, to wit:

> "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. There is only one Supreme Court from whose decisions all other courts should take their bearings."[13]

In relation thereto, the Supreme Court in the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*[14], held 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. For this Court to rule otherwise would be to transgress the Constitution and arrogate upon itself a power that it does not by law possess.[15] Consequently, there is no reason for this Court to depart from the ruling of the Supreme Court in the Aichi case as it is the prevailing doctrine on the

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[12] Ace Publications vs. Commissioner of Customs, May 29, 1964.
[13] Commissioner of Internal Revenue vs. Michael J. Lhuiller Pawnshop, Inc., G.R. No. 150947, July 15, 2003, citing the case of GSIS vs. Court of Appeals, 334 Phil. 163, 175; 266 SCRA 187 (1997).
[14] G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781.
[15] Republic of the Philippines vs. Maj. Gen. Garcia, G.R. No. 167741, July 17, 2007.

mandatory observance of the 120-30 day period under Section 112 of the NIRC, as amended, before filing an appeal with the Court of Tax Appeals.

Furthermore, the Court of Tax Appeals in *CBK Power Company Limited vs. Commissioner of Internal Revenue (CTA Case Nos. 7771 and 7814, December 3, 2010)* justifies the retroactive application of the *Aichi Case* in this wise:

> "To hold otherwise would not only offend the above-cited principles, but would altogether undermine the very foundations upon which the afore-cited principles were pronounced by the Supreme Court in the aforementioned decisions.
>
> Under the principle of *stare decisis et non quieta movere,* past judicial precedents should be followed in subsequent cases by all courts in the land. Hence, the cases of Mirant and Aichi constitute as *stare decisis* to the case at bar."

Following the above-cited principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled, it bears stressing that the principles laid down in Aichi Case have been adopted in several recent decisions[16] of the Court of Tax Appeals *En Banc* for the purpose of maintaining consistency in our jurisprudence.

Lastly, the interpretation placed upon Section 112(D) of the 1997 NIRC, as amended, retroacts to the date of the enactment of the said code on January 1, 1998, following the well-settled rule that "judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely

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[16] Procter and Gamble Asia, Pte. Ltd., vs. CIR, CTA EB Case No. 746 (CTA Case Nos. 7523 and 7556), December 20, 2011; CIR vs. Mirant Navotas Corporation (Formerly: Southern Energy Navotas, Inc.), CTA EB Case No. 650 (CTA Case No. 6960), December 20, 2011; Crescent Park 19-1 Property Holdings, Inc. vs. CIR, CTA EB Case No. 743 (CTA Case No. 8057), December 7, 2011; Kepco Ilijan Corporation vs. CIR, CTA EB Case No. 611 (CTA Case No. 6682), June 13, 2011; Crescent Park 18-2 Property Holdings, Inc., vs. CIR, CTA EB Case No. 684 (CTA Case No. 8061), June 8, 2011; CIR vs. Mindanao I Geothermal Partnership, CTA EB Case Nos. 673 & 675 (CTA Case No. 6906), April 19, 2011; CIR vs. Taganito Mining Corporation, CTA EB Case No. 559 (CTA Case No. 6867), April 18, 2011; CIR vs. Team Energy Corporation, CTA EB Case No. 603 (CTA Case No. 7229 & 7298), April 8, 2011.

establishes the contemporaneous legislative intent that the interpreted law carried into effect."[17]

In sum, there is no cogent reason or justification to disturb the findings and conclusion spelled out in the Decision dated April 13, 2011 and Resolution dated August 8, 2011 of the CTA Third Division.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the April 13, 2011 Decision and the August 8, 2011 Resolution of the CTA Third Division in CTA Case No. 7798 entitled, *"Philex Mining Corporation vs. Commissioner of Internal Revenue"*, are hereby **AFFIRMED *in toto.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my Dissenting Opinion dated April 13, 2011.)
LOVELL R. BAUTISTA
Associate Justice

[17] Eagle Realty vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009.

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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 above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice