REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1582 (CTA Case No. 8721)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
DOHLE SHIPMANAGEMENT PHILS., CORP., Respondent.	Promulgated: MAY 14 2019

x- 4:19 p.m. x

RESOLUTION

Fabon-Victorino, J.:

On November 13, 2018, the Court *En Banc* rendered an Amended Decision,[1] disposing the case as follows:

> **WHEREFORE**, petitioner's *Motion for Reconsideration* dated June 20, 2018 is **GRANTED**. The impugned Decision dated June 1, 2018 is **REVERSED** and **SET ASIDE**.
>
> Accordingly, respondent Dohle Shipmanagement Phils., Corp.'s judicial claim for refund of excess and unutilized input taxes for taxable year (TY) 2011 in the aggregate amount of ₱25,922,574.79 is **DENIED**. This case is **DISMISSED**, on jurisdictional ground.

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[1] *Rollo,* pp. 229-236.

SO ORDERED.

Unfazed, respondent filed a Motion for Reconsideration dated December 17, 2018,[2] arguing that it seasonably filed its judicial claim for refund under Section 112(C) of the NIRC, as amended. Pursuant to the said provision, petitioner had 120 days from submission of complete supporting documents to act on its administrative claim for refund. From the receipt of petitioner's adverse decision, or from the lapse of the 120-day period to act on the administrative claim, respondent had 30 days within which to institute its judicial claim with the Court in Division. With the submission of complete supporting documents on May 30, 2013, petitioner had until September 27, 2013[3] to act on its administrative claim. There being no action on the part of petitioner, it had 30 days or until October 27, 2013, to seek judicial intervention. Thus, its judicial claim for refund was seasonably instituted with the Court in Division on October 25, 2013.

Further, RMC No. 49-2003 only finds application on pending claims at the time it was issued and does not in any way affect those VAT refund claims filed thereafter such as the subject claim for refund for TY 2011.

Respondent as well argues that Section 112 of the NIRC, as amended, does not require submission of supporting documents within a period of thirty (30) days from filing of the administrative claim if unaccompanied by any supporting documents. To so require will allegedly override, supplant or modify Section 112 of the NIRC, as amended, which should not be allowed, relying on jurisprudence[4] as its basis.

Respondent as well claims that RMC No. 49-2003 has no force and effect of law as: 1) it was not published in a newspaper of general circulation or Official Gazette; and 2) it was merely an internal issuance by the BIR for amplification of laws, rules and regulations for the compliance by revenue officers and not of taxpayers.

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[2] Ibid. at pp. 237-253.
[3] 120 days from May 30, 2013.
[4] *Confederation for Unity, Recognition and Advancement of Government Employees, et al. vs. Commissioner of Internal Revenue,* G.R. No. 213446, July 3, 2018.

Further, respondent is of the opinion that the pronouncement of the Supreme Court in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[5] (*PTG* case), particularly on the application of RMC No. 49-2003 on administrative claims filed prior to June 11, 2014, is merely an *obiter dictum* since such pronouncement was not necessary in the determination of the case on the merits. As such, it should not be deemed as a binding precedent by the Court *En Banc*.

And assuming that the *PTG* case finds application in the case at bar, the Supreme Court counted the 120-day period from the actual date of submission of complete supporting documents by therein claimant on August 28, 2008 even if the submission was more than thirty (30) days from institution of its administrative claim on May 15, 2008. In closing, respondent prays to reinstate the Court *En Banc's* original Decision of June 1, 2018.

In his Comment/Opposition dated February 6, 2019, petitioner counters that following the tenet in the *PTG* case and RMC No. 49-2003, for administrative claims filed prior to June 11, 2014 such as the case at bench[6], respondent had thirty (30) days from filing of its administrative claim on March 22, 2013, or until April 21, 2013, to submit supporting documents. On the other hand, he had 120 days therefrom or until August 19, 2013, to act on the said administrative claim which he failed to do, thus, respondent had until September 18, 2013 to file its judicial claim for refund with the Court in Division. Indubitably, its judicial claim for refund was belatedly instituted on October 25, 2013.

Moreover, RMC No. 49-2003 is merely procedural in nature, thus, it did not enlarge, alter, or restrict Section 112 of the NIRC, as amended. Further, such circular is deemed as an interpretative rule for it was designed to provide the road map in handling refund cases, thus, publication thereof could be dispensed with. Also contrary to petitioner's submission, the application of RMC No. 49-2003 in the *PTG*

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[5] G.R. No. 207112, December 8, 2015.
[6] March 22, 2013.

case is not an *obiter dictum* as it was discussed in relation to the VAT refund case of the claimant therein.

THE RULING OF THE COURT

Respondent's VAT refund claim is covered by RMC No. 49-2003

In the *PTG* case, the Supreme Court *En Banc* explicitly declared that the rule set forth in RMC No. 49-2003 encompasses administrative claims for VAT refund filed prior to June 11, 2014.[7] With the institution of respondent's administrative claim for VAT refund on March 22, 2013, there can be no doubt that it is covered by RMC No. 49-2003.

The issuance of RMC No. 49-2003 is a valid exercise of petitioner's quasi-legislative power

Section 4[8] of the NIRC, as amended explicitly endows petitioner the authority to interpret tax statutes in consonance with his quasi-legislative power. Quasi-legislative power is defined as the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy.[9] For the exercise thereof to stand the test of judicial scrutiny, it must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute.[10]

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[7] Administrative claims for VAT refund filed on or after June 11, 2014, are governed by RMC No. 54-2014.

[8] **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. xxx

[9] See *Alliance for the Family Foundation, Philippines, Inc. (ALFI), et al. vs. Hon. Garin,* G.R. Nos. 217872 and 221866, April 26, 2017.

[10] See *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation,* G.R. Nos. 167274-75, July 21, 2008.

Tested against the above jurisprudential guidelines, Section 112(C) of the NIRC, as amended, states that the 120-day period for petitioner to act on an administrative claim for VAT refund is counted from the date of submission of complete supporting documents. Note however that the Tax Code is *ab silencio* on *when are the foregoing supporting documents are considered complete*. Precisely, RMC No. 49-2003 was issued to address the foregoing matter. Such circular did not unduly stretch, modify, or amend Section 112(C) of the Tax Code, but merely spelled out the instances when supporting documents may be deemed complete. In fact, directly opposite respondent's posture, the reckoning point for petitioner to decide on administrative claims for VAT refund stands untouched - 120 days from submission of complete supporting documents, no more, no less.

The subject ruling in the PTG case is not an obiter dictum

An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it.[11] It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument.[12]

Significantly, xxx an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*, and this rule applies to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated.[13] Thus, to determine whether the subject ruling

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[11] *Auyong Hian (Hong Hua Hang) vs. Court of Tax Appeals, et al.*, G.R. No. L-28782, September 12, 1974, citing *Bouvier's Law Dictionary, Third Revision*, Vol. I, p. 863.

[12] *Land Bank of the Philippines vs. Federico Suntay, as represented by his assignee, Josefina Lubrica*, G.R. No. 188376, December 14, 2011.

[13] See *Villanueva, Jr. vs. The Hon. Court of Appeals*, G.R. No. 142947, March 19, 2002.

is an *obiter dictum*, a scrutiny of the issue raised and the corresponding ruling in the *PTG* case are in order.

Among the issues raised in *PTG* case was the timeliness of therein claimant's judicial claim for refund on January 23, 2009 as provided for in Section 112(C) of the NIRC, as amended.[14]

Note that both the 120-day period to decide an administrative claim and the 30-day period to file a judicial claim under Section 112 of the Tax Code are inseparable, precisely the need to determine the commencement and lapse of both periods. Applying RMC No. 49-2003, the Supreme Court ruled that for claims filed prior to June 11, 2014, petitioner's 120-day period to decide an administrative claim commences from the taxpayer's submission of complete supporting documents, which among others may either be: a) actual date of completion of supporting documents, if *incomplete* documents were submitted within the 30-day period from filing of administrative claim and completed the same at a later date *without* any notice of its insufficiency/deficiency originating from petitioner; or b) date of expiration of the 30-day period from filing of the administrative claim when it was instituted *without* any supporting documents. Undeniably, the foregoing rules were crafted to address one of the issues posed by the taxpayer in the *PTG* case. As such, the subject ruling is the standing tenet which the Court must strictly adhere to.

The remaining arguments were squarely addressed in the assailed Amended Decision of November 13, 2018

As for the remaining matters raised by respondent in the instant Motion, these have been exhaustively discussed and passed upon by the Court *En Banc* in the assailed Amended Decision of November 13, 2018, particularly in pages 3-6 thereof. To repeat, the failure of a taxpayer, such as respondent, to render obeisance with the mandatory and jurisdictional 120+30 day periods *and* prevailing

[14] Statement of Issues, PTG case, p. 5.

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jurisprudence, as in the present case, will result in non-acquisition by the Court of legal competence to hear the judicial claim.

WHEREFORE, respondent's *Motion for Reconsideration* dated December 20, 2018 is **DENIED**. The Amended Decision of November 13, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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

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

(On Leave)
CATHERINE T. MANAHAN
Associate Justice