REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TELUS INTERNATIONAL PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 7745, 7797 & 7834

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
JUL 08 2011 11:00 A.m.

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RESOLUTION

For consideration is respondent's **"Motion to Dismiss"** filed on April 13, 2011, with petitioner's **"Comment/Opposition (Re: Motion to Dismiss dated 20 April 2011)"** filed on April 29, 2011.

Respondent moves for the dismissal of the instant petitions on the ground that this Court lacks jurisdiction to hear them for they were filed beyond the 30-day prescriptive period provided by Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended.

Respondent contends that in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1], the Supreme Court emphasized the mandatory nature of the periods provided in Section 112(C) when it held that "the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

On the other hand, petitioner argues that the judicial claims for refund/tax credit of petitioner covering the 1st to 4th quarters of 2006 were seasonably filed and respondent can no longer invoke lack of jurisdiction under the principle of estoppel by laches.

Petitioner maintains that the relevant provision here is Section 229 of the 1997 NIRC and limiting the applicability of Section 229 by excluding the refund/tax credit of input VAT payments is contrary to the long standing mandate of the rule on statutory construction of harmonizing and giving effect to the provision of a statute as a whole rather than piecemeal.

We disagree. *Section 112(C) of the 1997 NIRC, as amended,* specifically provides:

> "**Section 112**. *Refunds or Tax Credits of Input Tax.*
>
> (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

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

> hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> 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."

The above law is clear and leaves no room for further interpretation. First, it is specifically applicable to refunds/tax credits of input tax. Second, it provides that the Commissioner of Internal Revenue (CIR) has 120 days to decide on a taxpayer's claim for refund or issuance of tax credit certificate. Third, the taxpayer has 30 days to appeal the CIR's decision or inaction before this Court.

Applying Section 229 to cases of refund/issuance of tax credit certificate for unutilized input taxes will be putting an unnecessary interpretation in an otherwise clear provision of a law. Time and time again, it has been repeatedly declared by the Supreme Court that where the law speaks in categorical language, there is no room for interpretation. There is only room for application.[2]

Applying Section 112(C) to the cases at bar will show that the petitions were indeed filed beyond the "30-day" prescriptive period. To illustrate, petitioner filed its administrative claim for CTA Case Nos.

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[2] Cebu Portland Cement Co. vs Minucipality of Naga, G.R. No. 24116, August 22, 1968.

7745, 7797 and 7843 on August 9, 2007. Counting 120 days from the filing of petitioner's administrative claim on August 9, 2007, respondent had until December 7, 2007, within which to decide. Considering that respondent failed to issue any decision, petitioner had 30 days or until January 6, 2008, within which to file its appeal before this Court.

However, petitioner filed its judicial claim on June 23, 2008, March 28, 2008 and September 30, 2008 for CTA Case No. 7745, CTA Case No. 7797 and CTA Case No. 7843, respectively. Apparently, petitioner's filing of its judicial claims for refund was made beyond the thirty-day prescriptive period and this Court lacks jurisdiction to entertain the instant petitions considering that the 30-day appeal period provided under Section 11 of Republic Act (RA) 1125 is considered by the Supreme Court as a jurisdictional requirement.[3]

With respect to petitioner's argument that respondent can no longer invoke lack of jurisdiction under the principle of estoppel by laches; suffice it to say that in the case of De Herrera vs. Bernardo[4], the Supreme Court held that:

> "The ruling in People v. Regalario that was based on the landmark doctrine enunciated in Tijam v. Sibonghanoy on the matter of jurisdiction by estoppel is the exception rather than the rule. **Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case.** In such controversies, laches should have been clearly present; that is, lack of

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[3] Ker & Co., Ltd. vs. CTA, No. L-12396, January 31, 1962.
[4] G.R. No. 170251, June 1, 2011.

> jurisdiction must have been raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.
>
> In Sibonghanoy, the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by the Surety almost 15 years after the questioned ruling had been rendered. At several stages of the proceedings, in the court a quo as well as in the Court of Appeals, the Surety invoked the jurisdiction of the said courts to obtain affirmative relief and submitted its case for final adjudication on the merits. It was only when the adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction." (*Emphasis supplied.*)

Applying the foregoing ruling to the present case, estoppel by laches did not set in because the circumstances of the cases at bar do not fall squarely with the circumstances attending the *Tijam vs. Sibonghanoy* case. Respondent did not sit for 15 years before invoking the ground of lack of jurisdiction.

Be that as it may, Section 1 of Rule 9 of the Rules of Court provides that lack of jurisdiction is not deemed waived even if not raised in the answer. In fact, courts are allowed to *motu propio* dismiss a case on lack of jurisdiction when it appears from the pleadings or evidence on record that the court has no jurisdiction.

Likewise jurisdictional issue may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.[5]

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[5] Figueroa v. People, G.R. No. 147406, July 14, 2008, 558 SCRA 63, 81.

Finally, petitioner's contention that both parties admitted the jurisdiction of this Court in their *Joint Stipulation of Facts and Issue* does not hold water because it is settled that jurisdiction is fixed by law and cannot be conferred by the parties.[6]

WHEREFORE, premises considered, respondent's *Motion to Dismiss* is hereby **GRANTED**. Accordingly, the instant *Petitions for Review are* hereby **DISMISSED** for being filed out of time.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

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[6] Supra, note 5.