REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROCTER & GAMBLE ASIA PTE. LTD., Petitioner,	**CTA EB No. 765** (CTA Case No. 7820)
	Present:
-versus-	Acosta, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, Fabon-Victorino, Mindaro-Grulla, and Cotangco-Manalastas, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 1 1 2012

x--x

D E C I S I O N

CASTAÑEDA, JR., *J*.:

Submitted for Decision before this Court is a Petition for Review filed on April 27, 2011 which assails the Decision[1] of the Court of Tax Appeals (CTA)-Second Division and its subsequent Resolution[2] on the Motion for Reconsideration both promulgated on November 22, 2010 and April 25, 2011 respectively in CTA Case No. 7820, entitled, *Procter & Gamble Asia Pte. Ltd.,*

---

[1] Penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr., and Cielito N. Mindaro-Grulla. Division *Rollo*, pp. 509-521.
[2] *Id.*, pp. 547-553.

versus Commissioner of Internal Revenue. The dispositive portion of the assailed Decision provides:

> **WHEREFORE,** premises considered, the Petition for Review is hereby **DISMISSED** for being prematurely filed.
>
> **SO ORDERED.**[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

> **WHEREFORE,** there having no new matters advanced by the petitioner in the present motion which may compel this Court to reverse, modify or amend the November 22, 2010 Decision of this Court, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**[4].

THE FACTS

The facts as borne by the records and as found by the CTA-Second Division are as follows:

> Petitioner is a foreign corporation duly organized and existing under the laws of Singapore and is maintaining a Regional Operating Headquarters in the Philippines with office address at the 18/F Petron Megaplaza, 358 Sen. Gil Puyat Ave., Makati City, in accordance with the Certificate of Registration and License issued by the Securities and Exchange Commission, to provide management, marketing, technical and financial advisory and other qualified services to related companies.
>
> Respondent is being sued in his official capacity as Commissioner of Internal Revenue and with office address at

[3] Division *Rollo*, p. 520.
[4] *Id.*, p. 553.

BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes.

Petitioner is a VAT-registered taxpayer with BIR Certificate of Registration No. 9RC0000071787.

Petitioner renders services to its affiliates in the Philippines and abroad pursuant to Service Agreements with said affiliates. Services rendered by the petitioner to its affiliates in the Philippines were billed by the petitioner through the issuance of BIR registered debit/credit memos while services rendered to its affiliates abroad were billed through the issuance of BIR-registered VAT zero-rated debit/credit memos.

As a service provider and a VAT-registered entity, petitioner files its Quarterly Value-Added Tax (VAT) Returns based on its sales and, had filed Quarterly VAT Returns for the fiscal year ending June 30, 2007, which reflected the following:

Quarter Ending	Receipts from Affiliates Abroad	Receipts from the Philippines	Total Amount Billed
July 1 to September 30, 2006	₱ 776,645,548.92	₱ 32,568,117.58	₱ 809,213,666.50
October 1 to December 31, 2006	₱ 625,400,170.13	₱ 113,432,482.75	₱ 738,832,652.88
January 1 to March 27, 2007	₱ 664,552,353.14	₱ 40,855,397.33	₱ 705,407,750.47
April 1 to June 30, 2007	₱ 671,299,517.77	₱ 43,421,067.00	₱ 714,720,584.77

The aforementioned Quarterly VAT Returns likewise showed petitioner's accumulated input taxes on its domestic purchases of capital goods, goods other than capital goods and services and refundable input VAT for the period July 1, 2006 to June 30, 2007, in the total amount of P196,137,890.63 and P165,676,503.88, respectively, broken down as follows:

Quarter Ending	Input Taxes	Refundable Input Taxes
July 1 to September 30, 2006	₱ 40,782,424.78	₱ 36,746,141.23

October 1 to December 31, 2006	₱ 63,968,910.18	₱ 47,475,217.58
January 1 to March 27, 2007	₱ 41,405,141.91	₱ 37,071,528.35
April 1 to June 30, 2007	₱ 49,981,413.76	₱ 44,383,616.72
TOTAL	**₱ 196,137,890.63**	**₱ 165,676,503.88**

On April 15, 2008, petitioner filed its Applications for Tax Credits/Refunds and letter request with the Revenue District Office (RDO) No. 49-North Makati-BIR for its unutilized input VAT attributable to its zero-rated sales covering the quarters ending September 30, 2006, December 31, 2006, March 31, 2007 and June 30, 2007.

Due to respondent's inaction on its Application/s for Tax Credits/Refunds and in order to toll the running of the two-year prescriptive period, petitioner thus filed the instant Petition for Review on August 8, 2008.

On September 29, 2008, respondent filed his Answer and interposed the following Special and Affirmative Defenses, to wit:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by respondent's Bureau.
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the aggregate amount of **Php165,676,503.88** as alleged unutilized input VAT paid attributable to its zero-rated sales of goods and services for the fiscal year ending June 30, 2007 were not fully substantiated by proper documents such (sic) sales invoices, official receipts and others.

7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.

8. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.

9. The amount subject of the claim for refund of petitioner do not pertain in full to its VAT attributable to its zero-rated sales of goods and services for the fiscal year ending June 30, 2007.

10. Petitioner failed to comply with the substantiation requirements under BIR Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the Tax Code.

11. It is incumbent upon the petitioner to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

12. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***)."

Petitioner filed its Pre-Trial Brief (For Petitioner) on October 28, 2008 while Respondent's Pre-Trial Brief was filed on November 12, 2008.

On December 3, 2008, the parties filed their Joint Stipulation of Facts and Issues which was subsequently approved by the Court per Resolution promulgated on December 10, 2008.

After presentation of its testimonial and documentary evidence, petitioner filed its Formal Offer of Evidence (Exhibits) for the Petitioner on September 22, 2009, which was admitted by the Court per Resolution dated November 26, 2009, while respondent manifested, in his Omnibus Motion, filed on April 7, 2010, that he is just submitting the case for decision based on the pleadings.

On May 24, 2010, petitioner filed its Memorandum (For the Petitioner) while respondent filed his Memorandum on June 22, 2010.

In a Resolution promulgated on August 12, 2010, the case was deemed submitted for decision.

Acting on the petition, the CTA-Second Division promulgated a decision dismissing petitioner's judicial claim for refund or tax credit of its unutilized input VAT for the fiscal year ending June 30, 2007 in the amount of ₱165,676,503.88 grounded on prematurity. The Court in Division in essence ruled that petitioner did not await for the 120-day period for the respondent to act on the claim under Sec. 112(D)[5] of the National Internal Revenue Code, as amended (NIRC).

Undaunted, petitioner filed its Motion for Reconsideration[6] on the abovementioned decision on December 3, 2010 seeking reconsideration of the November 22, 2010 Decision. However, on April 5, 2011, finding no reversible error on the Decision despite its attempt to reconsider the same, the CTA-Second

---

[5] Now Sec. 112(C) of the National Internal Revenue Code, as amended.
[6] Division *Rollo*, pp. 523-541.

Division denied the Motion prayed for by the petitioner and affirmed the Decision sought for reconsideration.[7]

On April 27, 2011, petitioner thus filed its Petition for Review before this Court.[8]

On May 23, 2011, this Court issued a Resolution[9] ordering the respondent to file its Comment within a period of ten (10) days from receipt of hereof. However, the respondent instead filed a "Motion for Extension of Time to File Comment,"[10] which the Court, in a Minute Resolution granted the movant-respondent an extension of fifteen (15)-days from June 12, 2011.[11] Thus, within the extended 15-day period to file a Comment or on June 27, 2011, respondent filed a "Comment/Opposition (To Petitioner's Petition for Review)."[12]

On July 4, 2011, petitioner in turn filed its Reply[13] to respondent's Comment. In a Resolution dated August 18, 2011, the Court gave due course to the petition and required both parties to submit their respective Memoranda within thirty (30) days from receipt thereof.[14]

On September 29, 2011, petitioner filed its Memorandum[15] but respondent, in lieu of submitting her Memorandum, filed a Manifestation and Motion that she is adopting all her arguments and affirmative defenses found in

---

[7] Division *Rollo*, pp. 547-553.
[8] *Rollo*, pp. 1-31.
[9] *Id.*, pp. 258-259.
[10] *Id.*, p. 260.
[11] *Id.*, p. 262.
[12] *Id.*, pp. 269-277.
[13] *Id.*, pp. 263-268.
[14] *Id.*, pp. 280-281.
[15] *Id.*, pp. 282-320.

her Comment/Opposition.[16] Consequently, on October 25, 2011, the Court noted the Manifestation & Motion of the respondent and accordingly submitted the above-captioned case for decision.[17]

On October 28, 2011, this case was originally raffled to Associate Justice Esperanza R. Fabon-Victorino. However, in compliance with Sec. 13, Art. VIII of the Constitution, as a result of the consultation with the Court *en banc* concerning the approval of the draft decision, with two Justices on leave, the draft decision became the minority opinion. Thus, on October 9, 2012, a re-raffle were conducted from among those who dissented on the draft decision and was accordingly assigned to Associate Justice Juanito C. Castañeda, Jr., to write the standing opinion of the Court in this case.

Hence this Decision.

THE ISSUES

Petitioner submits the following errors for the resolution of this Court:[18]

1. The CTA Second Division failed to appreciate Art. VIII, Section 4(3) of the Constitution which provides that no doctrine or principle of law laid down by the Supreme Court in a decision rendered en banc or in division may be modified or reversed except by the Supreme Court sitting en banc;

2. The doctrine laid down in the Aichi case that the 120-30 day rule is mandatory has been effectively abandoned by the Supreme Court in the subsequent cases of Hitachi Global Storage Technologies Phils. Corp. vs. Commissioner of Internal Revenue, G.R. No. 174212,

[16] *Rollo,* pp. 321-322.
[17] *Id.,* pp. 325-326.
[18] *Id.,* pp. 6-7.

dated October 20, 2010, Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 172378 dated January 17, 2011, and Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179961, dated January 31, 2011;

3. The CTA Second Division erred in applying the doctrine laid down in the Aichi case to the instant case considering that the factual antecedents involved are not identical;

4. The CTA Second Division erred in giving retroactive application of the doctrine laid down in the Aichi case;

5. The Decision of the CTA Second Division contradicts the doctrine that substantial justice, equity and fair play prevail over technicalities and legalism;

6. The CTA Second Division failed to consider that while jurisdiction is conferred by law, estoppel sets in when a party participates in all stages of the case before challenging the jurisdiction of the Court.;

7. The 120-30 day rule mentioned in Section 112(D), now Section 112(C) of the National Internal Revenue Code of 1997 (NIRC), as amended, is directory or permissive – not mandatory.

THE COURT'S RULING

This Court finds no merit in the petition. Accordingly, this case is dismissed for lack of jurisdiction on the ground of prematurity. Nonetheless, we shall discuss the petitioner's issues *in seriatim*.

***The Supreme Court is regarded as the ultimate arbiter. The* Aichi *ruling deserves outright application on the basis of the principle of* stare decisis**

Petitioner posits that the Supreme Court ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,* (Aichi)[19] was only decided by a Division of the Supreme Court and under the Constitution, only the Supreme Court *en banc* may overturn a previous ruling that the two (2)-year prescriptive period in Section 229 of the NIRC should be controlling. Therefore, the ruling in *Aichi* should not be regarded as a judicial precedent.

The Court is not convinced.

It is noteworthy that 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 justiciable controversy. There is one Supreme Court from whose decisions all courts should take their bearings.

The *Aichi* ruling is supported by the principle of *stare decisis non et quieta movere*, which is embodied in Art. 8 of the New Civil Code which states:

> Art. 8. Judicial Decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

Moreover, *stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly

---

[19] G.R. No. 184823, October 6, 2010, 632 SCRA 422. The *Aichi* ruling became final per Supreme Court's Resolution dated October 6, 2010.

situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[20] Thus, this Court sees no reason to deviate from the Supreme Court ruling in *Aichi*.

Neither can the petitioner anchor his claim that the recent cases of *Hitachi Global Storage Technologies Phils., Corp., v. Commissioner of Internal Revenue,*[21] *Silicon Philippines, Inc., vs. Commissioner of Internal Revenue,*[22] and *KEPCO Philippines Corporation v. Commissioner of Internal Revenue*[23] effectively abandoned *Aichi* as the same was merely *pro hac vice*.

In *Kepco* and *Hitachi*, it is apparent that the main issue involved is whether the respective petitioners complied with the invoicing requirements insofar as the printing of the words, "zero-rated" on invoices covering zero-rated sales under Sec. 4.108-1 of Revenue Regulations 7-95 which was later on became part of our present tax code in view of the amendments under RA 9337. The High Court ruled in the affirmative by providing that failure to print the word "zero-rated" on the invoices or receipts is fatal to a claim for refund or credit of input VAT on zero-rated sales. The same contention was likewise raised in *Silicon* aside from the issue non-presentation of Silicon's Authority to Print. Thus, as to the mandatory observance of the 120-30 day period under Sec. 112(C) of the NIRC, the *Aichi* ruling remains to be a good precedent.

---

[20] *Grand Placement and General Services Corporation vs. Court of Appeals,* G.R. No. 142358, January 31, 2006, 481 SCRA 189, 203-204 citing the case of *Negros Navigation Co., Inc. vs. Court of Appeals,* 346 Phil. 551, 563; 281 SCRA 534, 542-543 (1997).
[21] G.R. No. 174212, October 20, 2010, 634 SCRA 205.
[22] G.R. No. 172378, January 17, 2011, 639 SCRA 521.
[23] G.R. No. 179961, January 31, 2011, 641 SCRA 70.

Even assuming for the sake of argument that the rulings in *Hitachi, KEPCO* and *Hitachi, which were decided by the First and Second Division of the Supreme Court* effectively abandoned the *Aichi* case, the same will not be upheld lest it will violate the very provisions enshrined in the Constitution that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed **except by the court sitting *en banc*** under Sec. 4(3), Art. VIII of the Constitution.

It is an elementary rule that when the Supreme Court decides a case, it does not pass a new law but merely interprets a pre-existing one

Petitioner argues that the mandatory nature of the 120-30 day period rule enunciated in *Aichi* should not be applied prospectively lest it will violate the right of petitioner which merely relied in good faith on the judicial interpretation prevailing at the time of the filing of the petition.

We do not agree.

In the case of *Eagle Realty Corporation v. Republic of the Philippines, et al.,*[24] the Supreme Court has this occasion to state:

> Judicial interpretation of a statute constitutes part of the law **as of the date it was originally passed,** since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one. (emphasis supplied)

[24] G.R. No. 151424, July 31, 2009, 594 SCRA 555, 558.

Also, in the recently promulgated case of *Accenture, Inc. v. Commissioner of Internal Revenue,*[25] the Supreme Court, through then Associate Justice (now Chief Justice) Maria Lourdes P. A. Sereno, supported the view of retrospective application of Supreme Court decisions, to wit:

> x x x Accenture still argues that the tax appeals courts cannot be allowed to apply to *Burmeister* this Court's interpretation of Section 102(b) of the 1977 Tax Code, because the Petition of Accenture had already been filed before the case was even promulgated on 22 January 2007, to wit:
>
> > x x x While the Burmeister case forms part of the legal system and assumes the same authority as the statute itself, however, the same cannot be applied retroactively against the Petitioner because to do so will be prejudicial to the latter.
>
> The CTA *en banc* is of the opinion that Accenture cannot invoke the non-retroactivity rulings of the Supreme Court, whose interpretation of the law is part of that law as of the date of its enactment.
>
> xxx xxx xxx
>
> Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. **When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's**

[25] G.R. No. 190102, July 11, 2012.

> **construction merely establishes the contemporaneous legialative intent that the interpreted law carried into effect.** (emphasis supplied)

The law takes effect from the time it becomes effective and not from the time of the promulgation of a decision applying the law. Considering that the applicable law here is the NIRC of 1997 which took effect on 1 January 1998,[26] petitioner's claim falls within its coverage. Notably, it is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute.[27] The validity and obligatory force of a law proceed from the fact that it has first been promulgated.[28]

In view of the extraordinary factual milieu surrounding the cases of Tijam, La'O and Bernardo, petitioner's reliance thereto cannot be sustained

Petitioner further asseverated that since the respondent took an active participation in the proceedings, the latter has deemed to have waived or is now estopped from questioning the jurisdiction of the Court to hear the merits of this case on the basis the ruling held in *Tijam v. Sibonghanoy, et al.,*[29] *La'O v. Republic of the Philippines, et al.,*[30] and *Bernardo v. Heirs of Eusebio Villegas*[31]

We beg to differ. *Jc*

---

[26] *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc.,* G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals,* 334 Phil. 163, 175, 266 SCRA 187 (1997).
[27] *Abakada Guro Party List vs. Purisima,* G.R. No. 166715, August 14, 2008, 562 SCRA 251.
[28] *Mighty Corporation vs. E & J Gallo Winery,* G.R. No. 154342, July 14, 2004, 434 SCRA 473.
[29] L-21450, April 15, 1968, 23 SCRA 29.
[30] G.R. No. 160719, January 23, 2006, 479 SCRA 439.
[31] G.R. No. 183357, March 15, 2010, 615 SCRA 466.

As a general rule, jurisdiction over the subject matter is "conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside."[32] In *Tijam,* the Supreme Court recognized the concept of waiver of the defense of lack of jurisdiction over the subject matter on the ground of estoppel by laches as an exception considering that defendant-appellant in *Tijam* took fifteen years (15) years before it filed its Motion to Dismiss for the first time raising the question of lack or jurisdiction:

> It has been held that a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject matter of the action or of the parties was not important in such cases because the party is barred from such conduct *not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated* – obviously for reasons of public policy.
>
> Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (Pease vs. Rathbun-Jones etc., 243 U.S. 273, 61 L.Ed. 715, 37 S.Ct. 283; St. Louis etc. vs. McBride, 141 U.S. 127, 35 L. Ed. 659). And in Littleton vs. Burgess, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

---

[32] *La Naval Drug Corporation v. Court of Appeals,* G.R. No. 103200, August 31, 2004.

Wisely, some cases[33] have cautioned against applying *Tijam* except for the most exceptional cases where the factual milieu is similar to *Tijam.*[34] Thus, for *Tijam* to apply, laches should be clearly present.[35]

The factual setting in *Tijam, La'O* and *Bernardo* is obviously not in all fours in this case. Here, petitioner's failure to observe the 120-30 day period under Sec. 112 of the NIRC is a sufficient ground that deprives this Court of jurisdiction. On that score, the principle of estoppel by laches cannot be applied in the instant case. Therefore, there is no estoppel by laches on the part of the respondent to speak of.

Prescriptive Periods for filing an administrative and judicial claim under Sec. 112 of the NIRC

Proceeding to the main issue, claims for refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales are governed by Sec. 112 (A) and (C) of the NIRC, which provides:

> 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: *Provided, however,* That in the case of

---

[33] *Figueroa v. People,* G.R. No. 147406, July 14, 2008, 558 SCRA 63; *Calimlim v. Ramirez,* 204 Phil. 25 (1982).
[34] *Lamsis v. Dong-e,* G.R. No. 173021, October 20, 2010, 634 SCRA 154.
[35] *Regalado v. Go,* G.R. No. 167988, February 6, 2007, 514 SCRA 616, 635.

zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. (Emphasis supplied)

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.

xxx xxx xxx

The abovementioned provisions provides an application for a claim for refund of unutilized input VAT attributable to zero-rated sales may be made within two (2) years after the close of the taxable quarter when the sales were made. It is noteworthy that the above proviso applies only to claims for refund/credit before the respondent and not for purposes of filing a judicial claim before this Court. Thereafter, a claim for refund before this Court must be filed within a period of thirty (30) days either from receipt of the decision of the respondent or in case of the latter's inaction, upon the expiration of the one hundred and twenty (120)-day period reckoned from the date of the submission of complete documents in support of its application to decide on the administrative claim for refund. The 120-30 day period as provided by the NIRC is mandatory in nature and its non-compliance with necessarily result in the denial of the claim.

In the cases of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Corporation, Inc.,*[36] (Mirant) and *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[37] categorically held that the reckoning point of the two (2)-year prescriptive period for filing an administrative claim for refund is from the close of the taxable quarter when the relevant sales were made. Quoting *Mirant*:

> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**.

The ruling in *Aichi* in turn, provides:

> Hence, the CTA *En Banc* ruled that the reckoning of the two-year period for filing a claim for refund/credit of unutilized input VAT should start from the date of payment of tax and not from the close of the taxable quarter when the sales were made.

---

[36] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[37] *Supra,* at note 6.

> **The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that <u>Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.</u>** (Emphasis and underlining ours)
>
> xxx xxx xxx
>
> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. **<u>To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.</u>** (Emphasis and underscoring ours)

Aichi further held that the Commissioner of Internal Revenue (CIR) is given a period of one hundred and twenty (120) days from the submission of complete documents to act on the administrative claim for refund. Should the administrative claim be denied OR if the 120-day period given to the CIR to resolve the administrative claim expires, the remedy of the taxpayer is to seek a judicial recourse before this Court. It is noteworthy that the **non-observance of the 120-30 day period is fatal to the judicial claim for refund**:

xxx xxx xxx

> ***The filing of the judicial claim was premature***

However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

> SEC. 112. Refunds or Tax Credits of Input Tax.
> –
> x x x x
>
> (D) 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) and (B) 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.** (Emphasis supplied)

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 tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

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. *Jr*

Respondent's assertion that non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." **The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. <u>As we see it then, the 120-day period is crucial in filing an appeal with the CTA.</u>

xxx xxx xxx

<u>In fine, 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.</u>[38] (Emphasis and underscoring ours) *gz*

---

[38] *Supra*, at note 6.

Applying the provisions and the Supreme Court rulings in the case at bar, petitioner filed its administrative claim for refund with the Bureau of Internal Revenue (BIR) on April 15, 2008,[39] which is well within the two (2)-year prescriptive period reckoned from September 30, 2006, December 31, 2006, March 31, 2007 and June 30, 2007, the close of the taxable quarters when the relevant sales pertaining to the claimed input VAT were made.

However, since the judicial claim was filed on August 8, 2008 or only 115 days from April 15, 2008, the date when the administrative claim was filed with the Bureau of Internal Revenue, petitioner clearly did not wait for the 120-day period for the CIR to decide, thus, constitutes premature filing which as a consequence, strips this Court of jurisdiction over this case.

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction

Since the CTA is a specialized court of limited jurisdiction,[40] we can only take cognizance of such matters as are clearly within our jurisdiction, *i.e.,* exclusive appellate jurisdiction on decisions/rulings or inaction of the CIR.[41] The law conferring jurisdiction on the CTA is Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, to wit:

Sec. 7. *Jurisdiction.* –The CTA shall exercise: *ge*

---

[39] Admitted Facts, par. 17, Joint Stipulation of Facts and Issues, Division *Rollo*, p. 187.
[40] *Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp., et. al.,* G.R. 158540, July 8, 2004, 434 SCRA 65.
[41] *Commissioner of Internal Revenue vs. Taganito Mining Corporation,* CTA EB No. 559 (CTA Case No. 6867) April 18, 2011.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes,** fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action in which case the inaction shall be deemed a denial;** (Emphasis ours)

The CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases involving refunds of internal revenue taxes. In case where the NIRC provides a specific period for action, the CIR's inaction shall be deemed a denial.

In this case, Section 112(C) of the NIRC of 1997, as amended, provides specific period of action, i.e., the 120-day period within which the CIR shall render a decision. When no decision is made after the 120-day period, the taxpayer has 30 days within which to file an appeal with the CTA. If the taxpayer failed to do so, the taxpayer loses his right of judicial recourse. On the other hand, when a judicial claim is filed without awaiting the lapse of the 120-day period and there is no decision yet, the CTA acquires no jurisdiction as there is no decision or inaction to speak of. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also to pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[42]

Also, the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,*[43] should be applied by analogy in this case. It provides:

> **The decisions, rulings, or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal,** provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction** to entertain and determine the correctness of the assessments. **Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.** (Emphasis ours)

The Supreme Court ruled that the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction. This applies to cases of

---

[42] *Asia International Auctioneers, Inc. vs. Parayno, Jr.,* G.R. No. 163445, December 18, 2007, 540 SCRA 536, 552.
[43] G.R. 168498, April 24, 2007, 522 SCRA 144, 152-153 citing the case of *Chan Kian vs. Court of Tax Appeals*, 105 Phil. 904, 906 (1959).

refund under Section 112 where the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA. "It has been ruled that **perfection of appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional.** The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law."[44]

At this juncture, there was neither a showing that a decision was rendered by the CIR or that the 120-day period has already lapsed. Evidently, there is nothing yet to be reviewed by the CTA. Thus, the 120-day period is crucial in filing an appeal with the CTA.[45] We reiterate the ruling that "a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[46]

WHEREFORE, premises considered, the Petition for Review in the above-captioned case is hereby **DISMISSED** for lack of merit. Accordingly, the assailed

---

[44] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010, 628 SCRA 96, 105.
[45] *Supra,* at note 6.
[46] *Id.*

Decision and Resolution of the CTA-Second Division in CTA Case No. 7820 are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(I will concur in the Dissent of Justice Victorino)
ERNESTO D. ACOSTA
Presiding Justice

(WITH SEPARATE CONCURRING OPINION)
LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(With Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PROCTER & GAMBLE ASIA PTE. LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 765
(CTA Case No. 7820)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

OCT 11 2012

x---x

SEPARATE CONCURRING OPINION

BAUTISTA, J.:

The factual milieu present in the case at bench shows that petitioner filed its application for tax credit/refund for unutilized input taxes attributable to zero-rated sales covering the quarters ending September 30, 2006, December 31, 2006, March 31, 2007, and June 30, 2007, on April 15, 2008, and assailing inaction on the part of respondent, petitioner filed a Petition for Review with this Court on August 8, 2008; all during which, the then prevailing ruling in this Court – the reckoning of the two

(2)-year prescriptive period – is from the filing of the pertinent return,[1] not from the close of the quarter,[2] and not even within thirty (30) days from receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.[3]

As early as the case of *Ramon Torres v. Tan Chim*,[4] the Supreme Court has ruled in this wise:

> While we profess no "idolatrous reverence for precedents," *(Philippine Trust Co. vs. Mitchell, 59 Phil., 30)*, we should not overlook the fact that the rule laid down in the *Roa case* had been adhered to and accepted for more than 20 years before the adoption of our Constitution; not only this Court but also inferior courts had consistently and invariably followed it; the executive and administrative agencies of the Government had theretofore abided by it; and the general public had acquiesced in it. **Withal, our decisions should not be, as to a given period of time, upon the same or similar facts and under the same or similar circumstances, as fluctuating as to engender the phenomenon described by Mr. Justice Thompson of the Supreme Court of Virginia as *ignis fatuus*. *(Perkins v. Clemente et als. 1 Pat and (Va.) 153.)*** (*Boldfacing supplied.*)

Indeed, when a doctrine is overruled and a different view is adopted, the new doctrine should not apply to parties who had relied on the old doctrine and acted on the faith thereof.[5] In the case of *Filoteo, Jr. v. Sandiganbayan*,[6] the High Tribunal made the following pronouncements:

> The prospective application of "judge-made" laws was underscored in *Co vs. Court of Appeals* where the Court ruled thru Chief Justice Andres R. Narvasa that in accordance with Article 8 of the Civil

---

[1] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[2] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[3] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010.
[4] G.R. No. L-46593, February 3, 1940, 69 Phil. 518.
[5] Co. *v.* Court of Appeals, G.R. No. 100776, October 28, 1993, 277 SCRA 444.
[6] G.R. No. 79543, October 16, 1996, 263 SCRA 222.

> Code which provides that "(j)udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines," and Article 4 of the same Code which states that "(l)aws shall have no retroactive effect unless the contrary is provided," the **principle of prospectivity of statutes, original or amendatory, shall apply to judicial decisions, which, although in themselves are not laws, are nevertheless evidence of what the law means.** (*Boldfacing supplied and citations omitted.*)

Thus, it is my considered view to adhere to the prospectivity principle of judicial decisions; for it would be the height of injustice to impose a new ruling, on the basis of the so-called "adherence to precedence." The facts of the case clearly shows that the latter rulings were promulgated *after* the taxpayer-claimant had faithfully relied and complied with the ruling at the time it filed its claims.

Based on the records of the case, petitioner filed its returns on the following dates: October 25, 2006, January 24, 2007, March 31, 2007, and June 30, 2007. Applying the earlier discussions, petitioner has two (2) years from the aforementioned respective dates within which to file both its administrative and judicial claims. Thus, I find the administrative and judicial claims filed on April 15, 2008, and August 8, 2008, respectively, made within the prescribed period.

It was merely unfortunate that during the pendency of the case at bench that the Supreme Court issued a ruling wherein the two (2)-year period pertains only to administrative claim, and that the taxpayer is merely given a thirty (30)-day period to elevate its claim before this Court either from the receipt of the decision denying the claim, or after the one hundred twenty (120)-day period given to the Commissioner to act thereon.

In sum, I find the Petition for Review, docketed as CTA Case No. 7820, *made within the prescribed period in force at the time the action was made.*

Accordingly, I vote that the Petition for Review be **GRANTED.**

LOVELL R. BAUTISTA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROCTER & GAMBLE ASIA PTE. LTD,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 765
(C.T.A. CASE No. 7820)

Members:

ACOSTA, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
OCT 11 2012 1:30 p.m.

x- -x

DISSENTING OPINION

Fabon-Victorino, J.:

The petition at bar challenges the Decision rendered by the Court in Division dismissing petitioner's judicial action for being prematurely filed. In other words, there was failure on the part of petitioner to exhaust administrative remedies depriving it a cause of action rendering the case dismissible on ground of prematurity.

However, the doctrine of exhaustion of administrative remedies is merely a rule of procedure and does not go to the power of the Court to hear and determine a case. In fine, it does not affect the jurisdiction of the court. Thus, if the said ground is not seasonably invoked, there is deemed to be a waiver thereof.[1] Hence, this dissent.

The majority holds the view that the filing of a judicial claim before this Court without waiting for the decision of the petitioner ("CIR") or the lapse of the 120 days from the filing of the administrative claim as provided under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, warrants the dismissal of the action on the ground of lack of jurisdiction on the part of the Court to take cognizance of the case.

With all due respect, I disagree with the majority.

It has been established that petitioner filed its administrative claim for refund/tax credit with respondent on April 15, 2008. Under Section 112(C) of the NIRC, as amended, petitioner had 120 days or until August 13, 2008 to either grant

---

1 Soto v. Jareno, 144 SCRA; Eastern Shipping Lines v. POEA, 166 SCRA 533.

or deny the same. About five (5) days before the lapse of the required 120-day period granted to respondent to act on the claim, petitioner sought judicial recourse via a Petition for Review filed on August 8, 2008. There is no way of escaping the reality that petitioner did not pursue its administrative claim to its logical conclusion depriving respondent of the full opportunity to resolve the application lodged before her office within the time frame mandated by law. To stress the obvious, petitioner failed to exhaust the administrative remedies available under the law.

The need to wait for the 120-day period for respondent to act on claim for refunds before judicial action is taken has been laid to rest in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[2] where the Supreme Court instructively held, thus:

> 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 tax refund/credit, the remedy of the taxpayer is

[2] G.R. No. 184823, October 06, 2010.

> to appeal the inaction of the CIR to CTA within 30 days.
>
> 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.**
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis. (*Emphasis supplied*)

As earlier stated the doctrine of exhaustion of administrative remedies, is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision.[3] Further, the non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, i.e., the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.[4] Notably, in the case of *Merida Water District, et al. vs.*

w

---

[3] Mercury Group of Companies, Inc. vs. Home Development Mutual Fund, G.R. No. 171438, December 19, 2007.
[4] Carale vs. Abarintos, G.R. No. 120704, March 03, 1997.

Francisco Bacarro, et al.,[5] the Supreme Court aptly emphasized that:

> xxx. Their **<u>failure to exhaust administrative remedies, however, does not affect the jurisdiction of the RTC. Non-exhaustion of administrative remedies only renders the action premature, that the "claimed cause of action is not ripe for judicial determination</u>**. (*Boldfacing and underscoring supplied*)

It is undisputed that a direct action in court without prior exhaustion of administrative remedies, when required, is premature, warranting its dismissal on a motion to dismiss grounded on lack of cause of action.[6] Thus, the failure of petitioner to exhaust available administrative remedies rendered the Petition for Review dismissible for lack of cause of action to ventilate in court.

It must be emphasized however, that non-exhaustion of administrative remedies as an objection or a defense may be waived. This is specifically enshrined in Section 1, Rule 9 of the

---

[5] G.R. No. 165993, September 30, 2008 citing Rosario v. CA, G.R. No. 89554, July 10, 1992, 211 SCRA 384, 387; Carale v. Abarintos, G.R. No. 120704, March 03, 1997, 269 SCRA 132, 141.
[6] RP vs. Sandiganbayan, G.R. No. 112708-09, March 29, 1996.

Rules of Court, which applies suppletorily to the Revised Rules of the Court of Tax Appeals,[7] to wit:

> Sec. 1. *Defenses and objections pleaded.* — **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.** However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (*Boldfacing supplied*)

Pursuant to the foregoing provision, all objections and defense not pleaded, either in a motion to dismiss or in an answer, are deemed waived, subject to the following exceptions: (1) when the court has no jurisdiction over the subject matter, (2) when there is another action pending between the parties for the same cause, or (3) when the action is barred by prior judgment or by statute of limitations, in which case the court may dismiss the claim.[8] The spirit that surrounds the foregoing statutory norm is to require the party filing a pleading or motion to raise all available exceptions for relief during the single opportunity so that single or multiple objections may be avoided.

---

[7] Section 3, Rule 1 of the Revised Rules of the Court of Tax Appeals.
[8] Sarsaba vs. Vda. De Te, G.R. No. 175910, July 30, 2009.

Clear from Section 1, Rule 9 of the Revised Rules of Court that failure to raise defenses and objections in a motion to dismiss or in an answer is deemed a waiver thereof. In this regard, the Supreme Court in elucidated in *Calub vs. Court of Appeals*[9] as follows:

> Given the circumstances in this case, we need not pursue the Office of the Solicitor General's line for the defense of petitioners concerning exhaustion of administrative remedies. We ought only to recall that exhaustion must be raised at the earliest time possible, even before filing the answer to the complaint or pleading asserting a claim, by a motion to dismiss. If not invoked at the proper time, this ground for dismissal could be deemed waived and the court could take cognizance of the case and try it.

Evident from the record that respondent never raised prematurity in the filing of the instant petition in her Answer to the Petition for Review. Neither was respondent able to raise it as ground in a Motion to Dismiss. Undeniably, such act is deemed a waiver of the defense of failure to exhaust administrative remedies on the part of respondent. That being the case, the Court may aptly take cognizance of the instant Petition for Review.

---

[9] G.R. No. 115634, April 27, 2000.

In view of the foregoing ratiocination, I vote to GRANT the Petition for Review.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

ERNESTO D. ACOSTA
Presiding Justice