REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TAKASAGO PHILIPPINES, INC., Petitioner,	C.T.A. CASE NO. 7924
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 10 2011; 9:05 am

x- x

RESOLUTION

Fabon-Victorino, *J.*:

For resolution is respondent's Motion to Dismiss dated March 23, 2011, praying for the dismissal of the instant petition for refund of unutilized input VAT attributable to zero-rated sales for the four (4) quarters of taxable year 2007 for want of jurisdiction.

Respondent claims that petitioner filed its application for refund with Bureau of Internal Revenue (BIR) RDO 47, East Makati on April 14, 2008. Applying the periods provided in Section 112 of the NIRC, as amended, respondent had 120 days or until August 12, 2008 to rule on the claim. Counting 30 days from the receipt of the adverse decision, or from the lapse of 120 days, petitioner had until September 11, 2008 to appeal with the Court of Tax Appeals (CTA). However, the instant Petition was filed only on April 24, 2009 or 225 days beyond the 30-day reglementary period to appeal prescribed in Section 112 of the NIRC, effectively depriving the Court of jurisdiction justifying the dismissal of the case.

Considering further that subject motion is assailing the jurisdiction of the Court, such defense may be invoked at any stage in the proceedings.

Despite the opportunity granted, petitioner did not file any comment or register any objection to respondent's motion, hence, this resolution.

There is no denying that the subject Motion to Dismiss was filed after respondent's Answer and soon after petitioner rested its case. Under Section 1, Rule 16 of the Revised Rules of Civil Procedure, a motion to dismiss should be filed within the time for but before filing the answer to the complaint or pleading asserting a claim[1] and where an answer has been filed, the defendant is estopped from filing a motion to dismiss.[2]

The rule is however not absolute. Even after the answer has been filed, a defendant or respondent can still file a motion to dismiss on the following grounds: (1) lack of jurisdiction, (2) *litis pendentia* (3) lack of cause of action, and (4) discovery during trial of evidence that constitutes a ground for dismissal.[3]

Obviously, the issue of belated filing of the petition involves the jurisdiction of the Court to entertain the same. The Supreme Court in a myriad of cases has invariably ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional.[4] Therefore, lack of jurisdiction which respondent invokes in his motion to dismiss falls within the exceptions and therefore may be filed even after the filing of respondent's Answer or after petitioner concluded its presentation of evidence.

On the timeliness of the instant Petition for Review, the relevant provision is Section 112 of the NIRC, as amended, which reads as follows:

[1] Co vs. Court of Appeals, G.R. No. 147999. February 27, 2004.
[2] Phil-Ville Development vs. Javier, G.R. No. 147738, December 13, 2005.
[3] Panganiban vs. Pilipinas Shell, G.R. No. 131471. January 22, 2003.
[4] Sehwani, Incorporated vs. In-N-Out Burger, Inc., G.R. No. 171053, October 15, 2007.

> "Section 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 x x x
>
> (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. x x x"

Pursuant to the foregoing provision, any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable input tax. However, the claim for refund of unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be made 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.[5]

It is a matter of record petitioner's administrative claim for refund for the four quarters of the year 2007 was seasonably filed on April 14, 2008, or within two years from the close of the relevant taxable quarter. From the said date, respondent had 120 days to act on the administrative claim or until August 12, 2008. Thereafter, petitioner had 30 days or until September 11, 2008, within which to impugn an adverse decision or respondent's inaction via a petition for review with the CTA.

However, for reason only known to it, petitioner sought refuge from this Court by assailing respondent's inaction only on April 24, 2009 or a significant delay of 225 days. Obviously, the Court can no longer act on the petition without violating the rules. The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[6]

[5] CIR vs. Mirant, G.R. No. 172129, September 12, 2008.
[6] RCBC vs. CIR, G.R. No. 168498, April 24, 2007.

Section 11 of Republic Act (R.A.) No. 1125, as amended R.A. No. 9282 and R.A. No. 9503 further clarified the period to appeal in this wise:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision , ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. x x x

Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals further states that:

> "SEC. 3. *Who may appeal; period to file petition.* - A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal

Revenue to act on the disputed assessments.
x x x"

WHEREFORE, the Motion to Dismiss dated March 23, 2011, filed by respondent Commissioner of Internal Revenue, is hereby **GRANTED**. Consequently, the Petition for Review dated April 23, 2009, filed by petitioner Takasago Philippines, Inc. is hereby **DISMISSED,** for lack of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice