REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CORAL BAY NICKEL CORPORATION, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 1269** (CTA Case NO. 7895)
COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **CORAL BAY NICKEL CORPORATION,** Respondent.	**CTA EB NO. 1270** (CTA Case NO. 7895) Present: Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, and Ringpis-Liban, JJ. Promulgated: DEC 21 2016 3:35 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is the Commissioner of Internal Revenue's (CIR) **Motion for Reconsideration Re: Decision dated June 29, 2016** filed on July 25, 2016, with Coral Bay Nickel Corporation's (Coral Bay) **Comment/Opposition (to the Commissioner of Internal Revenue's Motion for Reconsideration dated July 25, 2016)** filed through registered mail on September 9, 2016.

For easy reference, the dispositive portion of the assailed Decision[1] states:

> "**WHEREFORE**, premises considered, the consolidated Petitions for Review are **DENIED.** The assailed September 1, 2014 Decision and January 27, 2015 Resolution of the Third Division in CTA Case No. 7895 are **AFFIRMED.**
>
> **SO ORDERED.**"

In his motion, the CIR argues that the Court of Tax Appeals (CTA) has no jurisdiction over the Petition due to prematurity for failure to submit complete supporting documents. Further, the CIR asserts that assuming that the CTA has jurisdiction, Coral Bay still failed to substantiate its claim for refund. On the other hand, Coral Bay argues that it is covered by Revenue Ruling DA-489-03 as provided for in the *San Roque* case. Moreover, Coral Bay asserts that it submitted all supporting documents and it complied with the substantiation requirements.

From the foregoing, the Court *En Banc* shall resolve the following issues: (1) Whether Coral Bay's Petition is premature and (2) Whether Coral Bay substantiated its claim for refund.

The instant motion is denied.

The CTA has jurisdiction to entertain the instant case

The CIR argues that, following the ruling of the Supreme Court in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[2] the running of 120-day period under Section 112(C) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended), did not commence

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[1] Court *En Banc* Docket, Vol. 2, pp. 895-908, penned by Retired Associate Justice Amelia R. Cotangco-Manalastas.
[2] G.R. No. 207112, December 8, 2015.

to run for failure of Coral Bay to submit complete supporting documents. The CIR stresses that it is incumbent for Coral Bay to show in a judicial claim that its administrative claim should have been granted in the first place.

On the other hand, Coral Bay argues that it need not wait for the lapse of the 120-day period before it could seek judicial relief before the CTA. This is pursuant to the ruling of the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue.*[3]

The Court *En Banc* finds no merit to the CIR's argument.

The Court *En Banc* previously discussed in the assailed Decision that:

> "On February 12, 2013, the Supreme Court issued its decision on the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue,* (*'San Roque'*) wherein it affirmed with qualification the decision in the *CIR vs. Aichi Forging Company of Asia, Inc.* (*'Aichi'*) case concerning the mandatory and jurisdictional nature of the 120+30 day period provided under Section 112(C) of the Tax Code. The Supreme Court held therein that compliance with the 120-day and the 30-day periods under Section 112 of the Tax Code is mandatory and jurisdictional, save for those input VAT refund cases that were prematurely filed (i.e., before the lapse of the 120-day period) with the CTA between December 10, 2003 (when the BIR Ruling No. DA-489-03) was issued) and October 6, 2010.
>
> Effectively, the *San Roque* case created a period of exception (i.e., from December 10, 2003 to October 6, 2010), where judicial claims that did not comply with the mandatory 120-day period shall be entertained.
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> xxx xxx xxx
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> Since the instant judicial claim was filed on March 31, 2009, well within the period of exception created in the case of *San Roque*, CNBC need not wait for the lapse of the 120-day period before it could seek judicial relief before the CTA. Pursuant to the *San Roque* case, the subject judicial claims may

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[3] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336-469.

be respectively considered as timely filed, and thus, the CTA properly acquired jurisdiction over CNBC's judicial claim for input VAT refund or issuance of TCC."

Meanwhile, in *Total Gas*, the Supreme Court held that:

"In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to Review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim."

Here, the Court *En Banc* found in the assailed Decision that Coral Bay filed both its administrative and judicial claim on the same date, or on March 31, 2009. This is allowed pursuant to *San Roque*, as an exception to the mandatory 120-day period rule.

In relation to *Total Gas*, at the time of filing of Coral Bay's judicial claim, there is yet to be a decision on its administrative claim. Hence, the same shall be treated as inaction by the CIR which is properly appealable before the CTA. As such, Coral Bay may present evidence that may not have been submitted to the CIR, as the case is being essentially decided in the first instance.

Meanwhile, Coral Bay states that the CIR denied its administrative claim only on November 9, 2012, which is more or less 4 years from the time the administrative claim was filed. Obviously, this is way beyond the 120-day period for the CIR to act on Coral Bay's claim. Clearly, the present case falls under the category of inaction of the CIR that is properly appealable before the CTA.

Coral Bay partially substantiated its claim

Finally, the CIR asserts that petitioner failed to comply with the substantiation requirements provided under Revenue Regulations No. 7-95 dated June 1, 1998.

On this score, the Court *En Banc* agrees with the findings of the Court in Division which *We* upheld in the assailed Decision. Thus:

> "An examination of the arguments in the instant petition shows that they were essentially lifted from CNBC's Motion for Reconsideration. There is nothing in CNBC's petition that was not considered and passed upon by the Court in Division in the assailed *Decision* and *Resolution*. The relevant points in the challenged Resolution are reproduced hereunder:
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> > 'Note that the Court disallowed the amount of P13,178,915.64, representing petitioner's input taxes on purchases from SMCC, because the supporting invoices or official receipts have alterations or additions without counter-signature or with counter-signature but could not be ascertained whether the person who counter-signed the alterations or additions was authorized.
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> > Indeed, it is incredible that petitioner was unaware of the insertions/alterations on the official receipts issued to it by SMCC. In the first place, petitioner would not have asked SMCC to insert or add the required information in the receipts to make them compliant. While petitioner had the right to request its supplier to issue a compliant receipt/invoice, it had the corresponding obligation to check whether the insertions/alterations were properly validated or countersigned by the authorized signatory. Petitioner in this regard miserably failed. For failure to have the insertions/alterations in the official receipts issued to it by SMCC countersigned by the authorized signatory, petitioner is not deemed to have acted with ordinary prudence in connection with its claim for refund.
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> > On petitioner's alleged reliance on the report of the ICPA, suffice it to say that the Court is not bound by the ICPA's report or findings for they are mere tools or guide to aid the Court in the determination of the case. The Court may either completely or partially adopt it or totally disregard it. The Court can even come up with its own findings and evaluation of the pieces of evidence submitted by the parties in support of their respective positions.

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In other words, without the validation of the alterations or additions on the said invoices or receipts, the said documents failed to satisfy the requirements of the law. Consequently, they cannot be considered in favor of petitioner.

More importantly, the attached copies of the alleged proofs of remittances is (sic) of no consequence, since the said documents were not formally offered and admitted in evidence.'

For failure of CNBC to have the insertions/alterations in the supporting invoices or official receipts countersigned or to have the counter-signature verified, CNBC consequently failed to properly substantiate the disallowed input VAT amounting to P13,178,915.64, thus, the Court affirms and finds no compelling reason to disturb the conclusions arrived at by the Court in Division."

Considering the foregoing, the Court *En Banc* finds no cogent reason to disturb its ruling in the assailed Decision.

WHEREFORE, in view thereof, the Commissioner of Internal Revenue's Motion for Reconsideration Re: Decision dated June 29, 2016 is **DENIED**, for lack of merit. Accordingly, the Decision dated June 29, 2016 of the Court *En Banc* is **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice