Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

CHEVRON HOLDINGS INC., [formerly CALTEX (ASIA) LIMITED],
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 837
(CTA Case No. 7624)

Present:
DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
MAY 07 2013 2:00 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals*, as amended*, of the Decision [1] and Resolution[2] rendered by the Third Division of this Court on June 2, 2011 and September 13, 2011, respectively, the dispositive portions of which read as follows:

<u>Decision dated June 2, 2011:</u>

> "**WHEREFORE**, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and, accordingly **DISMISSED** for having been filed late.
>
> **SO ORDERED.**"[3]

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[1] Penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justice Amelia R. Cotangco-Manalastas with Associate Justice Lovell R. Bautista dissenting. *En Banc* Docket, pp. 68-84.
[2] *Id., En Banc* Docket, pp. 86-91.
[3] *En Banc* Docket, p. 78.

<u>Resolution dated September 13, 2011:</u>

"**WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED."[4]

The antecedent facts as culled from the Decision of the Third Division of this Court are as follows:

"Petitioner is a domestic corporation duly organized and existing under the laws of the State of Delaware, United States of America. It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as a regional operating headquarters (ROHQ) under SEC Registration No. A199802486 dated June 3, 1998, with office address at 33/Floor, Yuchengco Tower I, RCBC Plaza, 6819 Ayala Avenue, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She may be served with summons, pleadings and other legal processes at her office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

As a regional operating headquarters, petitioner's purposes are limited to general administration and planning, business planning and coordination, sourcing and procurement of raw materials and components; corporate finance advisory services, marketing control and sales promotion, training and personnel management, logistic services, research and development, technical support and maintenance, data processing and communication, and business development.

Petitioner is registered with the BIR, as a VAT taxpayer, as evidenced by its BIR Certificate of Registration OCN 9RC0000136077, bearing Taxpayer Identification Number 201-056-391-000.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for the four quarters of 2005, respectively:

[4] *Id*. at 90.

Taxable Quarter	Date of Filing of Original Return
1st	April 22, 2005
2nd	July 22, 2005
3rd	January 25, 2006
4th	April 25, 2006

For the four quarters of 2005, petitioner incurred unutilized input VAT credits from its domestic purchases of capital goods, non-capital goods and services in the total amount of ₱31,183,668.49:

2005 Taxable Quarter		Unutilized Input VAT Credits			
	Domestic Purchases – Capital Goods	Domestic Purchases – Goods Other than Capital Goods	Domestic Purchases - Services	On purchases of Capital Goods Exceeding P1 Million	Total
1st	P2,490,335.83	379,200.67	4,955,679.55		7,825,216.05
2nd	319,395.14	206,687.43	2,837,338.75		3,363,421.32
3rd	2,939,734.37	197,836.39	6,029,948.19		9,167,518.95
4th		602,594.22	4,505,396.07	5,719,521.88	10,827,512.17
Total					P31,183,668.49

Of the total accumulated input VAT of ₱31,183,668.49, petitioner is claiming a refund of ₱26,933,760.40, allegedly attributable to its zero-rated sales for the four quarters of 2005.

On May 17, 2006, petitioner filed its administrative claim for refund of unutilized input VAT for the four quarters of the taxable year 2005.

In view of respondent's inaction, on April 20, 2007, petitioner filed the present Petition For Review.

In her Answer, respondent alleged by way of special and affirmative defenses:

> '4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations; hence, not refundable.
> 6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/ credit.
> 7. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such; they are

> looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).'"[5]

Petitioner presented its testimonial and documentary evidence, while respondent did not present any evidence. Consequently, both parties were ordered to file their respective Memorandum within thirty (30) days from notice. The petition was deemed submitted for Decision [6] sans respondent's Memorandum.

On June 2, 2011, the Third Division of this Court promulgated a Decision[7] dismissing the Petition for Review for having been filed late. The Court *a quo* anchored its Decision based on the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[8] (the "*Aichi* Case") that "the second paragraph of *Section 112(C) of the NIRC of 1997, as amended,* 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."[9] Thus, the Court *a quo* held that petitioner's belated filing of its petition for review 187 days beyond the prescribed 30-day period to appeal from respondent's inaction on the administrative claim divests the court of jurisdiction.

Petitioner moved for reconsideration of the above-cited Decision, which was subsequently denied in a Resolution[10] dated September 13, 2011.

Hence, petitioner filed the instant Petition for Review.

Petitioner raises the following issues before this Court *En Banc*, to wit:

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[5] *Id.* at 69-71.
[6] Division Docket, p. 537.
[7] *Supra* note 1.
[8] G.R. No. 184823, October 6, 2010.
[9] *En Banc* Docket, p. 76.
[10] *Supra* note 2.

> "A.
> Chevron Holdings relied in good faith that an appeal is perfected if both the administrative and judicial claims for refund are filed within two years from filing of the VAT return, based on the controlling jurisprudence and interpretation by this Honorable Court existing at the time of filing of petitioner's administrative claim and at the time of the filing of the petition for review.
>
> B.
> Judicial decisions applying or interpreting the laws shall form a part of the legal system of the Philippines.
>
> C.
> In highly meritorious and exceptional cases, the general rule that jurisdiction is conferred by law and not by the consent of the parties may be set aside.
>
> D.
> This Honorable Court has given due course to judicial claims for refund of taxpayers similarly situated to petitioner. To deny the present petition for review despite equal footing between those taxpayers and petitioner violates petitioner's right to due process and equal protection of the law.
>
> E.
> The Supreme Court's decision in Silicon Phils. v. Commissioner of Internal Revenue (639 SCRA 521) promulgated on January 17, 2011 contradicts the Aichi case promulgated on October 6, 2010."[11]

The principal issue to be resolved is whether petitioner is entitled to a tax refund or credit of its alleged unutilized input VAT attributable to zero-rated sales for the four quarters of the taxable year 2005 in the amount of ₱26,933,760.40.

The principal issue is answered in the negative.

In its petition, petitioner vigorously argues that the Court *a quo* erred in ruling that it did not perfect the appeal in the manner and within the period prescribed by law as it relied in good faith on the controlling jurisprudence and

[11] *En Banc* Docket, p. 13.

interpretation of this Court at the time it filed its administrative and judicial claim for refund. It cited various decisions[12] of this Court at the time it filed its Petition for Review until March 2010 or three (3) years thereafter where this Court consistently applied Section 112(A) in relation to Section 229 of the NIRC of 1997, as amended, in ruling that both administrative and judicial claims for refund should be filed within the 2-year period reckoned from the filing of the quarterly VAT return sans the compliance with the 120-day period requirement under Section 112(C) in cases of appeals due to inaction of respondent.

Petitioner's argument is misplaced.

It is hornbook doctrine that in our judicial hierarchy, the Supreme Court reigns supreme. It has the last word on what the law is; it is the final arbiter of any justifiable controversy as there is only one Supreme Court from whose decisions all other courts should take their bearings.[13] While the decisions of subordinate courts have a persuasive effect and may serve as judicial guides, it need not be emphasized that only the decisions of the Supreme Court establish

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[12] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, CTA Case No. 6965, February 26, 2007; *Applied Food Ingredients, Inc., v. Commissioner of Internal Revenue,* CTA Case No. 6687, May 22, 2006; *Takenaka Corporation Philippines Branch v. Commissioner of Internal Revenue,* CTA Case No. 6762, March 20, 2006; *Mirant Navotas Corporation v. Commissioner of Internal Revenue,* CTA Case No. 6257, June 16, 2003; *Nec Components Philippines v. Commissioner of Internal Revenue,* CTA Case No. 6145, June 3, 2002; *Schneider Electric S.A. v. Commissioner of Internal Revenue,* CTA Case No. 6036, August 8, 2002; *Sagara Metro Plastics Industrial Corp. v Commissioner of Internal Revenue,* CTA Case Nos. 6295, 6320 & 6333, October 10, 2003; *Taganito Mining Corp. v. Commissioner of Internal Revenue,* CTA Case No. 6384, January 12, 2004; *Rio Tuba Nickel Mining Corporation v. Commissioner of Internal Revenue,* CTA Case No. 6293, February 3, 2004; *Bonifacio Vivendi Water Corp. v. Commissioner of Internal Revenue,* CTA Case No. 6380, March 29, 2005; *AT&T Communications Service v. Commissioner of Internal Revenue,* CTA Case No. 6447, September 29, 2005; *Mirant Corporation v. Commissioner of Internal Revenue,* CTA Case No. 6418, April 11, 2006; *Matsushita Business Machine Corporation of the Philippines v. Commissioner of Internal Revenue*, CTA Case No. 6495, January 5, 2007; *Panay Power Corporation v. Commissioner of Internal Revenue*, CTA Case No. 6807, October 30, 2006; *Kepco Philippines Corporation v. Commissioner of Internal Revenue,* CTA Case No. 6679, October 26, 2005; *San Roque Corporation v. Commissioner of Internal Revenue,* CTA Case No. 6427, October 19, 2005; *Ironcon Builders and Development Corporation v. Commissioner of Internal Revenue,* CTA Case No. 6502, January 5, 2006; *Takenaka Corporation Philippines Branch v. Commissioner of Internal Revenue*, CTA Case No. 6752, January 2, 2007.

[13] *Albert v. Court of First Instance of Manila (Branch VI),* L-26364, May 29, 1968, 23 SCRA 948.

jurisprudence or doctrines in this jurisdiction. [14] Thus, decisions of this Court do not constitute precedents, and therefore do not bind the Supreme Court or the public.[15]

Consequently, the Court *a quo* correctly applied the landmark case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (the "*Aichi* Case").[16] In the said case, the Supreme Court squarely addressed the issue on the prescriptive period for filing an administrative claim for unutilized input VAT and its subsequent filing of judicial appeal before this Court under *Section 112 of the NIRC of 1997, as amended.* The Supreme Court emphasized that the administrative claim for unutilized input VAT refund/credit must be filed within two (2) years reckoned from the close of the taxable quarter when the relevant sales were made regardless of whether said tax was paid or not pursuant to *Section 112(A) of the NIRC of 1997, as amended,*[17] which reads:

> "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 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

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[14] Commissioner of Internal Revenue v. Court of Appeals, et al. and Atlas Consolidated Mining and Development Corporation v. Court of Appeals, et al., G.R. Nos. 104151 and 105563, March 10, 1995.

[15] Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue, *G.R. Nos. 187485, 196113 & 197156,* February 12, 2013.

[16] G.R. No. 184823, October 6, 2010. In a Resolution dated December 6, 2010, the Supreme Court resolves to DENY with FINALITY the motion for partial reconsideration of the "*Aichi*" Decision.

[17] *Id.* citing Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008, 565 SCRA 154.

> 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.]

Corollary thereto, in determining the period within which to file a judicial claim for unutilized input VAT refund/credit before the Court of Tax Appeals, the applicable provision is *Section 112(C) [formerly Section 112(D)] of the NIRC of 1997, as amended*, which reads:

> "Sec. 112(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**." [Emphasis supplied.]

In interpreting the foregoing provision, the Supreme Court in *Aichi Case* declared that observance of the 120-day period under Section 112(D) [now, Section 112(C)] of the NIRC of 1997, as amended, for the Commissioner of Internal Revenue to act on administrative claims for refund/credit of unutilized input VAT is crucial in filing an appeal to the Court of Tax Appeals.

Significantly, in the recent case of ***Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156,*** *(the "San Roque Case")*, promulgated on February 12, 2013, the Supreme

Court *En Banc* clarified that compliance with the 120+30 day periods under Section 112(D) of the NIRC of 1997, as amended, is both mandatory and jurisdictional. Thus:

> "Section 112(D) of the 1997 Tax Code is clear, unequivocal, and categorical that the Commissioner has 120 days to act on an administrative claim. The taxpayer can file the judicial claim (1) ***only within thirty days after the Commissioner partially or fully denies the claim*** within the 120-day period, or (2) ***only within thirty days from the expiration of the 120-day period*** if the Commissioner does not act within the 120-day period.
>
> There can be no dispute that upon effectivity of the 1997 Tax Code on 1 January 1998, or **more than five years *before* San Roque filed its administrative claim on 28 March 2003**, the law has been clear: the 120-day period is mandatory and jurisdictional. San Roque's claim, having been filed administratively on 28 March 2003, is governed by the 1997 Tax Code, not the 1977 Tax Code. Since San Roque filed its judicial claim before the expiration of the 120-day mandatory and jurisdictional period, San Roque's claim cannot prosper."

Simply stated, a taxpayer can only file a judicial claim for unutilized input VAT refund/credit under *Section 112(D) of NIRC of 1997, as amended,* before this Court (1) ***within thirty (30) days after the Commissioner partially or fully denies the claim*** within the 120-day period, or (2) ***within thirty (30) days from the expiration of the 120-day period*** if the Commissioner does not act within the 120-day period. Consequently, failure to heed the mandatory twin periods of 120 and 30-days is crucial to its appeal and warrants a dismissal as no jurisdiction is acquired by this Court over its petition.

In refuting the application of the *Aichi* Case in the instant petition, petitioner contends that the Court *a quo* erred in applying the general rule that jurisdiction is conferred by law and cannot be stipulated by the parties as this may be set aside in highly meritorious cases and exceptional cases such as in the instant case where applicable law on jurisdiction is neither clear nor unambiguous, and in cases where the parties admitted in the Joint Stipulation of Facts and Issues that the administrative and judicial claims for refund were filed within the periods prescribed by law. Moreover, petitioner asseverates that denial of the instant petition is tantamount to violation of its right to due process and equal protection of the law citing decisions of this Court where it gave due course to several petitions for review despite having been filed beyond the 30th day from the 120-day period that respondent is given to act on the administrative claim.

We are not persuaded.

It is an elementary rule of procedure that 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."[18] Concomitantly, it does not depend upon the answer of the defendant or even upon agreement, waiver or acquiescence of the parties.[19] In fact, "the jurisdiction of the court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss for, otherwise, the question of jurisdiction would depend almost entirely on the defendant."[20]

Hence, contrary to petitioner's stance that the ambiguity in the law would merit an exception to the general rule on jurisdiction, it is worthy of emphasis that the *Aichi* and *San Roque* cases clearly and categorically declared that the taxpayer's non-compliance with the 120-day period under *Section 112(D) of the NIRC of 1997, as amended*, warrants a dismissal of the judicial appeal before the CTA inasmuch as no jurisdiction was acquired by the said court. Moreover, petitioner cannot invoke the admission of the parties in the Joint Stipulation of Facts and Issues that both administrative and judicial claims for refund were filed within the periods prescribed by law as jurisdiction of the court does not depend upon agreements between the parties.

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[18] *La Naval Drug Corporation vs. Court of Appeals*, G.R. No. 103200, 31 August 1994.
[19] *Victorino Quinagoran v. Court of Appeals, et al.*, G.R. No. 155179, August 24, 2007 *citing Hilario v. Salvador*, G.R. No. 160384, April 29, 2005, 457 SCRA 815.
[20] *Id., citing Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156.

Further, it must be borne in mind that "the right to appeal is not a natural right or 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. The party who seeks to avail of the same must comply with the requirements of the law. Failing to do so, the right to appeal is lost."[21]

It bears stressing that the "Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction."[22] Notably, by virtue of Republic Act No. 9282,[23] the jurisdiction of the Court of Tax Appeals has been considerably expanded to include not only decisions or rulings but inaction of the Commissioner of Internal Revenue.[24] Thus, 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,[25] specifically on a claim for refund, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 120-day period fixed by law for the Commissioner to act on a claim for refund.[26] Otherwise stated, the 30-day period after the receipt of such decision or ruling, or inaction on the part of the CIR 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 appeal or petition for review. Significantly, said period is not merely directory but

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[21] *Producers Bank of the Phil. vs. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185 *citing* *Ortiz vs. Court of Appeals*, 299 SCRA 708 (1998).
[22] *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[23] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[24] *See* Section 7 of Republic Act No. 9282, amending R.A. No. 1125, otherwise known as the Law Creating the Court of Tax Appeals and Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals.
[25] *Supra* note 23.
[26] *See* *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, *supra* note 8.

mandatory and it is beyond the power of the courts to extend or shorten the same.

Anent petitioner's assertion that the Court *a quo* erred in applying the Supreme Court's decisions in *Aichi* and *Mirant Pagbilao*[27] notwithstanding that these cases were decided more than three years after the filing of the present petition for review, it cited Supreme Court decisions[28] promulgated after the *Aichi* case where the High Court allegedly took cognizance of these cases albeit non-compliance with the 120-day rule under *Section 112(C) of the NIRC of 1997, as amended*. It further claims that it is unconstitutional for the *Aichi* doctrine to overturn a previous Supreme Court decision on the issue of the prescriptive period in filing judicial claims for input VAT refund citing *Atlas Consolidated mining and Development Corporation v. Commissioner of Internal Revenue* (the "*Atlas* Case").[29] Instead, petitioner opines that the doctrine enunciated in the *Aichi* Case should be applied prospectively.

Petitioner's arguments must necessarily fail.

Well-settled is the rule that when the Supreme Court decides a case, it does not pass a new law but merely interprets a pre-existing one, and such judicial interpretation constitutes part of that law of the date of its original passage.[30] It merely casts light upon the contemporaneous legislative intent of that law.[31] Notably, in the recent case of *Accenture, Inc. v. Commissioner of Internal Revenue*,[32] the Supreme Court echoes the same principle in this wise:

> "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.

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[27] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008, 565 SCRA 154.

[28] Kepco Philippines Corporation v. Commissioner of Internal Revenue, 636 SCRA 166, November 24, 2010; and Silicon Philippines v. Commissioner of Internal Revenue, 639 SCRA 521, January 17, 2011.

[29] G.R. Nos. 141104 and 148763, 524 SCRA 73, June 8, 2007.

[30] See Castro v. Hon. Deloria, et al., G.R. No. 163586, January 27, 2009.

[31] *Id.*

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

> **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 construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.**"[33] [Emphasis supplied.]

Consequently, contrary to petitioner's claim that the Supreme Court's inconsistent rulings in the recent cases of *Aichi* and *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue* (the "*Silicon* Case")[34] underscore the instability of judicial pronouncements as to what determines this Court's jurisdiction in refund claims for input tax, it must be emphasized that "**[a]ny issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent**."[35] Thus, unlike in the *Aichi Case*, the legal issue of whether compliance with the 120-30 day period under *Section 112 (D) of the NIRC of 1997, as amended,* is mandatory and crucial in filing a judicial appeal with the Court of Tax Appeals was not squarely raised in the *Silicon* Case cited by petitioner. To be precise, the core issues raised in the *Silicon* Case are:

(1) whether failure to show that the taxpayer secured an Authority to Print (ATP) from the BIR and to indicate the same in its export sales invoices; and

(2) whether failure to print the word "zero-rated" in its export sales invoices are fatal in its claim for credit/refund of input VAT attributable to its zero-rated sales.

In the instant case, petitioner timely filed its administrative claim for unutilized input VAT refund/credit before the BIR on May 17, 2006 for the four quarters of the taxable year 2005, which is clearly within the two-year prescriptive period reckoned from the close of the taxable

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[33] *Id. citing* Columbia Pictures, Inc. v. Court of Appeals, 329 Phil. 875, 907-908 (1996); and Senarillos v. Hermosisima, 100 Phil. 501 (1956).
[34] G.R. No. 172378, 639 SCRA 521, January 17, 2011.
[35] *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue, supra* note 15.

quarter when the sales were made. As to its judicial claim, however, petitioner belatedly filed its Petition for Review before the Court *a quo* only on April 20, 2007 or 187 days beyond the prescribed 30-day period to appeal before this Court reckoned from the lapse of the 120-day period fixed by law for the respondent to act on claim for refund. Clearly then, this case is one of late filing which renders this Court without jurisdiction to entertain the instant petition. As aptly held by the Supreme Court in the case of *San Roque:*[36]

> "Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences."

Consequently, petitioner's failure to file its judicial claim before this Court within 30 days from the lapse of the mandatory 120-day period under *Section 112(C) of the*

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[36] *Id.*

NIRC of 1997, as amended, warrants a dismissal on its petition on the ground of absence of jurisdiction to take cognizance of the case.

In fine, We reiterate the long-standing principle in taxation that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law must be construed in *strictissimi juris* against the taxpayer. Therefore, since taxes are the lifeblood of the nation, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based.[37]

In view of this Court's finding that the Court *a quo* acquired no jurisdiction over the instant case, We find no cogent reason to further discuss the other issues raised in the said petition.

WHEREFORE premises considered, the petition is **DENIED**. The Decision of the Third Division of this Court in CTA Case No. 7624 dated June 2, 2011 and its Resolution dated September 13, 2011 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[37] Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124043, October 14, 1998, 298 SCRA 83.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice