REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 855
(CTA Case No. 8248)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas*, and*
Ringpis-Liban,JJ.

Promulgated:
JUL 15 2013 ArApolinario 9:00 a.m.

X -- X

DECISION

BAUTISTA, J.:

Before the Court *En Banc* is a "Petition for Review" filed by petitioner Mindanao II Geothermal Partnership ("Mindanao") appealing the Resolution of the First Division of this Court ("Court in Division") dated August 25, 2011[1], and December 19, 2011[2] granting respondent's "Motion to Dismiss" and accordingly, dismissing petitioner's claim for excess creditable input taxes for the 1st to 4th Quarters of 2009 in the amount of Eight Million Two Hundred Fifty Eight Thousand Eight Hundred Twenty-Three and 74/100 Pesos (P8,258,823.74) for being filed out of time.

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[1] *Rollo,* (CTA EB CASE No. 855) pp. 13-23, Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Erlinda P. Uy, concurring, and Presiding Justice Ernesto D. Acosta, on leave.
[2] *Rollo,* (CTA EB CASE No. 855) pp. 5-11.

The Parties

Petitioner Mindanao II Geothermal Partnership is a general partnership duly registered with the Securities and Exchange Commission, with registered principal address at Barangay Ilomavis, Kidapawan City, North Cotabato, and whose principal purpose is to participate in the developing, financing, construction, ownership, operation, maintenance, and transfer of a geothermal electrical generation plant located in Mount Apo, North Cotabato, Mindanao, the Philippines, and otherwise to do all things including the ownership of interests in corporations or other entities in furtherance thereof.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for tax refund or tax credits as provided by law.

Antecedent Facts

On March 31, 2011, petitioner filed a Petition for Review with the Court in Division for its excess and unutilized creditable input taxes for the 1st to 4th Quarters of 2009 in the amount of P8,258,823.74.[4]

On May 26, 2011 respondent filed her "Answer."[5]

On June 22, 2011, respondent filed a "Motion to Dismiss"[6] on the ground that petitioner's "Petition for Review" was filed out of time. Respondent states that said petition was filed more than six (6) months beyond the thirty (30)-day prescriptive period provided by Section 112(D) of the NIRC of 1997.

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[3] *Rollo* (CTA EB CASE NO. 855), p. 131.
[4] *Records*, (CTA Case No. 8248), pp. 1-168, with Annexes.
[5] *Records* (CTA Case No. 8248), pp. 182-192.
[6] *Records*, (CTA Case No. 8248), pp. 215-228.

On August 10, 2011, petitioner filed its "Comment/Opposition (To Respondent's Motion to Dismiss)"[7] claiming that petitioner's peculiar situation, its SEC approved dissolution, justifies the late filing of its "Petition for Review." Petitioner claims that it had two (2) years from March 29, 2010, to file a judicial claim for refund.

The Ruling of the Court in Division

On August 25, 2011, the Court in Division promulgated a resolution resolving respondent's "Motion to Dismiss"[8] as follows:

> "**WHEREFORE**, the Motion to Dismiss dated June 21, 2011, filed by respondent Commissioner of Internal Revenue, is hereby **GRANTED**. Consequently, the instant Petition for Review filed by petitioner Mindanao II Geothermal Partnership on March 31, 2011, is hereby **DISMISSED**.
>
> **SO ORDERED.**"[9]

The Court in Division dismissed the Petition for Review on the ground of lack of jurisdiction over the subject matter of the petition due to petitioner's failure to file its Petition for Review within thirty (30) days from the 120-day period given respondent to resolve the administrative claim.

The Court explained that the second paragraph of Section 112(C) of the NIRC of 1997, as amended, presents 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 scenarios, the taxpayer has thirty (30) days to file an appeal with the CTA. The Court in Division further explained that the two (2)-

[7] *Records,* (CTA Case No. 8248), pp. 248-254.
[8] *Records,* (CTA Case No. 8248), pp. 257-267.
[9] *Ibid.* p. 267.

year period from which petitioner can claim for the issuance of a tax credit certificate for unutilized input tax refers to the period for filing the administrative claim and not the judicial claim for refund as stated in the Supreme Court decision *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia* ("Aichi case").[10]

On September 20, 2011, petitioner filed a "Motion for Reconsideration,"[11] assailing the prospective application of a new doctrine in the Aichi case, and reiterating that its petition should be given due course.

On October 25, 2011, respondent filed its "Comment"[12] reiterating its argument that the Court in Division did not have jurisdiction over the petition because the same was filed out of time.

On November 14, 2011, petitioner filed its Reply,[13] reiterating its argument against the prospective application of the Aichi case.

On December 27, 2011, the Court in Division promulgated its Resolution resolving petitioner's "Motion for Reconsideration" as follows:[14]

> "**WHEREFORE**, the Motion for Reconsideration dated September 19, 2011, filed by petitioner, is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**"[15]

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[10] G.R. No. 184823, October 6, 20120, 632 SCRA 442.
[11] *Records,* (CTA Case No. 8248), pp. 290-308.
[12] *Records,* (CTA Case No. 8248), pp. 318-340.
[13] *Records,* (CTA Case No. 8248), pp. 344-355.
[14] *Records,* (CTA Case No. 8248), pp. 361-367.
[15] *Ibid.* p. 267.

On January 26, 2012, petitioner filed this Petition for Review[16] via registered mail before the Court *En Banc*, assailing the August 25, 2011 and December 27, 2011 Resolutions of the Court in Division.

On February 23, 2012, the Court *En Banc* ordered respondent to file her comment within ten (10) days from receipt of the order.

On March 15, 2012, respondent filed a "Comment (Re: Petition for Review)"arguing that the Court in Division did not have jurisdiction over petitioner's claim for refund because it was filed out of time; that the Court in Division was correct in applying the Aichi case and that petitioner is mistaken in claiming that the Aichi case imposes a "new doctrine; that tax laws are civil in nature, and may be applied retroactively, and that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Respondent also prayed that the Court *En Banc* deny the petition for lack of merit.

On May 7, 2012, the Court *En Banc* ordered both parties to file their simultaneous memoranda.[17]

On July 9, 2012, respondent filed a "Manifestation (Re: Resolution dated May 7, 2012)"[18] stating that she is adopting the arguments raised in her "Comment (Re: Petition for Review)" filed on March 15, 2012 as her Memorandum.

On July 16, 2012, petitioner filed its "Memorandum" via registered mail. Aside from adopting all references and arguments raised in its Petition for Review dated January 26, 2012, petitioner invokes the doctrine of equal protection of laws, stating that the Court should consider that recent Supreme Court decisions that did not apply the Aichi case retroactively and the principle of *solutio*

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[16] *Rollo*, (CTA EB CASE No. 827) pp. 9-54.
[17] *Rollo*, (CTA EB CASE No. 827) pp. 519-520.
[18] *Rollo*, (CTA EB CASE No. 827) pp. 526-529.

indebiti, stating that technicalities should yield to the substantive merits of their claim. Petitioner states further, that a denial of its claim would be contrary to the declared policies of the EPIRA law.

Issues Raised by Petitioner

In its Petition for Review[19] before the Court *En Banc*, petitioner raised the following issues:

"I.

TECHNICALITIES AND LEGALISMS SHOULD YIELD TO THE SUBSTANTIVE MERITS OF PETITIONER'S CLAIM IN LIGHT OF THE SPECIAL CIRCUMSTANCES OBTAINING IN THE PRESENT CASE:

A. THAT PETITIONER IS ALREADY A DISSOLVED CORPORATION.

B. THAT IT WAS ESTABLISHED THAT PETITIONER WAS PURELY A POWER GENERATION COMPANY UNDER THE EPIRA LAW.

II.

PROCEDURAL RULES MAY BE RELAXED TO RELIEVE A LITIGANT OF A GRAVE INJUSTICE BROUGHT ABOUT BY ITS RELIANCE ON THE THEN CONSISTENT RULINGS OF THIS HONORABLE COURT.

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[19] *Ibid.*

III.

THE AICHI RULING LAID DOWN A NEW DOCTRINE OVERTURNING THE PREVIOUS WELL-SETTLED DOCTRINE LAID DOWN BY THIS HONORABLE COURT WHICH PETITIONER AND OTHER TAXPAYERS RELIED UPON IN GOOD FAITH FOR ALMOST A DECADE.

IV.

THE AICHI RULING LAID DOWN A PROCEDURAL RULE WHICH AFFECTS SUBSTANTIVE RIGHTS, AND THEREFORE SHOULD NOT BE APPLICABLE LAW AND SETTLED JURISPRUDENCE UPHOLDING THE PRINCIPLE OF PROSPECTIVITY.

V.

THE HONORABLE SUPREME COURT ITSELF HAS NOT APPLIED THE AICHI RULING RETROACTIVELY

VI.

THE RETROACTIVE APPLICATION OF THE AICHI RULING TO PETITIONER'S PENDING CLAIM WILL GO AGAINST THE BASIC POLICIES OF THE EPIRA LAW."[20]

[20] *Id.*, p. 264.

The Ruling of the Court En Banc

The Court *En Banc* finds the petition bereft of merit.

In the case of *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*[21] (*"San Roque case"*) clarifying the application of the doctrines in the cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,*[22] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,*[23] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[24] the Supreme Court states that compliance with the 120-day and 30-day periods under Section 112(D) of the NIRC of 1997, as amended, is both mandatory and jurisdictional. In finding San Roque Power Corporation's claim to be filed out of time, the Supreme Court explains as follows:

> "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."[25]

Simply put, compliance with the 120-day and 30-day periods is critical to a taxpayer's appeal. Failure to comply with the same warrants a dismissal as no jurisdiction is acquired by the Court over the petition.

Furthermore, in the same case, while finding that the claim of Philex Mining Corporation was also filed out of time, the Supreme Court stated as follows:

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[21] G.R. No. 187485; G.R. No. 196113; G.R. No. 197156, February 12, 2013.
[22] G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.
[23] G.R. No. 172129, 12 September 2008, 565 SCRA 154.
[24] G.R. No. 184823, 6 October 2010, 632 SCRA 422.
[25] G.R. No. 187485; G.R. No. 196113; G.R. No. 197156, February 12, 2013.

> "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."[26](Underlining ours.)

Clearly, as explained above, late filing of the petition after the inaction of the Commissioner renders the Court without jurisdiction to entertain the petition.

[26] G.R. No. 187485; G.R. No. 196113; G.R. No. 197156, February 12, 2013.

This situation is undeniably similar to that before the Court *En Banc*.

Petitioner filed its administrative claim for refund or issuance of a tax credit certificate of its unutilized input taxes for the year 2009 in the amount of P8,258,823.74 on April 12, 2010.[27] In accordance with Section 112(D) of the NIRC, as amended, respondent had 120 days or until August 10, 2010 to rule on petitioner's administrative claim. Thus, petitioner had thirty (30) days after August 10, 2010 or until September 10, 2010 to file its judicial claim, in the event of respondent's inaction. However, petitioner filed its judicial claim before the Court in Division on March 31, 2011[28] via registered mail. Simple math shows that petitioner filed its judicial claim six (6) months and twenty one (21) days BEYOND the period prescribed by law.

Technical rules of procedure are designed not to frustrate the ends of justice, rather, they are intended to effect the proper and orderly disposition of cases,[29] and thus strict compliance with procedural rules is required to facilitate the orderly administration of justice.[30] More so in cases such as this, where, as stated in the above-quoted Supreme Court Decision, "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."

Due to petitioner's failure to file its judicial claim within thirty (30) days from the lapse of the mandatory 120-day period under Section 112(C) of the NIRC of 1997, as amended, the Court *En Banc* finds no other recourse but to uphold the assailed Resolutions of the Court in Division, and dismiss the petition on the ground of the lack of jurisdiction.

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[27] *Records*, (CTA Case No. 8248), Annex "*L*," pp. 159-168.
[28] *Records*, (CTA Case No. 8248), pp. 1-168, with Annexes.
[29] *Ismael V. Santos, Alfredo G. Arce and Hilario M. Pastrana vs. Court of Appeals, Pepsi Cola Products Phils., Inc., Luis Lorenzo, Jr. and Frederick Dael*, G.R. No. 141947, July 5, 2001, 360 SCRA 512.
[30] *PET Plans, Inc. vs. Court of Appeals*, G.R. No. 148287, November 23, 2004, 443 SCRA 510.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated August 25, 2011 and December 19, 2011, promulgated by the First Division of the Court are hereby **AFFIRMED** in toto.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. R. - L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice