REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MINDANAO I GEOTHERMAL PARTNERSHIP, *Petitioner,*	**CTA EB No. 956** (CTA Case No. 8247)
- versus -	Present: Del Rosario, PJ, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 16 2013 9:05 a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, Mindanao I Geothermal Partnership, assailing the *Decision*[1] dated August 10, 2012, and the *Resolution*[2] dated October 16, 2012, of the former Second Division of the Court denying petitioner's claim for refund or issuance of tax credit certificate in the amount of P12,275,984.24, allegedly representing excess and unutilized creditable input value-added tax (VAT) for the four quarters of taxable year 2009.

[1] *Rollo*, pp. 6-20.
[2] *Rollo*, pp. 22-29.

The Facts

The facts, as culled from the records[3], are as follows:

Petitioner is a partnership previously registered with the Securities and Exchange Commission (SEC), with principal office address at 36th Floor, Tower I, The Enterprise Center, 6766 Ayala Avenue, Makati City. Petitioner is a duly registered VAT taxpayer, with Taxpayer Identification Number (TIN) 004-712-984-000.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including, among others, the duty to decide upon and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for the four quarters of taxable year 2009, declaring the following information:

PERIOD (2009)	Date Filed mm/dd/yyyy	TOTAL SALES/ RECEIPTS[4]	INPUT VAT FROM PREVIOUS PERIOD	DOMESTIC PURCHASES[5]	INPUT VAT ON DOMESTIC PURCHASES	NET ACCUMULATED EXCESS INPUT VAT
1st Quarter	04/24/2009	P10,752,871.91	P30,509,672.26	P19,501,072.91	P2,340,128.75	P32,849,801.01
1st Quarter (Amended)	07/24/2009	11,020,729.08	30,509,672.26	19,501,072.91	2,340,128.75	32,817,658.15
2nd Quarter	07/21/2009	29,806,053.44	32,849,801.01	30,133,953.41	3,616,074.41	36,465,875.42
2nd Quarter (Amended)	07/24/2009	30,047,392.69	32,817,658.15	30,133,953.41	3,616,074.41	36,404,771.85
3rd Quarter	10/13/2009	22,675,497.19	36,404,771.85	0.00	1,319,015.59	37,723,787.44
3rd Quarter (Amended)	11/20/2009	23,184,693.61	36,404,771.85	10,991,796.58	1,319,015.59	37,662,683.87
4th Quarter	01/12/2010	0.00	37,662,683.87	42,706,438.58	5,124,772.63	42,787,456.50
4th Quarter (Amended)	01/15/2010	15,000.00	37,662,683.87	42,706,438.58	5,124,772.63	42,785,656.50

[3] *Rollo*, pp. 6-13, *citations omitted.*

[4] Total Sales/Receipts broken down as follows (*Exhibits "I"* to *"P"*):

PERIOD (2009)	VATABLE SALES/ RECEIPTS	ZERO RATED SALES/ RECEIPTS	TOTAL SALES/ RECEIPTS	OUTPUT VAT
1st Quarter	P 0.00	P 10,752,871.91	P 10,752,871.91	P 0.00
1st Quarter (Amended)	267,857.17	10,752,871.91	11,020,729.08	32,142.86
2nd Quarter	0.00	29,806,053.44	29,806,053.44	0.00
2nd Quarter (Amended)	241,339.25	29,806,053.44	30,047,392.69	28,960.71
3rd Quarter	0.00	22,675,497.19	22,675,497.19	0.00
3rd Quarter (Amended)	509,196.42	22,675,497.19	23,184,693.61	61,103.57
4th Quarter	0.00	0.00	0.00	0.00
4th Quarter (Amended)	15,000.00	0.00	15,000.00	1,800.00

[5] Sum of Domestic Purchases of Goods Other than Capital Goods and Domestic Purchase of Services.

On March 29, 2010, SEC issued a Certification stating that an Affidavit of Withdrawal was executed by Naoto Tago, representative of Marubeni Pacific Energy Holdings Corporation (MPEHC), one of the two partners in petitioner, thereby technically dissolving the said partnership.[6]

On April 15, 2010, petitioner filed with respondent a written request for the cancellation of its BIR Registration/Tax Identification Number and the issuance of Tax Clearance Certificate, with a claim for refund or issuance of tax credit certificate for its alleged excess input VAT for the year 2009 in the amount of P12,275,984.24. Petitioner cites BIR Ruling No. 003-06 dated February 14, 2006 as legal basis of its refund claim, which confirmed that the sale of electricity by petitioner to Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC) is subject to zero percent (0%) VAT rate pursuant to Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Inasmuch as petitioner has yet to receive a favorable response from respondent and before it could be barred by prescription, petitioner filed a Petition for Review on March 31, 2011.

In her Answer filed on May 6, 2011, respondent interposed various Special and Affirmative Defenses. Respondent basically asserts that petitioner has the burden of proving its right to the tax refund sought. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. Moreover, since petitioner primarily hinged its claim for refund of alleged excess input VAT in Section 112(A) and (D) of the NIRC of 1997, petitioner's right to file the instant case has prescribed. As admitted by petitioner in paragraph 20 of its petition that 'on April 25, 2010, it filed with respondent BIR a written request for cancellation of its Tax Identification Number (TIN) and issuance of Tax Clearance Certificate with a claim for refund or tax credit for its excess input VAT for the year 2009 in the amount of P12,275,984.24' and it is of

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[6] *Exhibit "A"*.

judicial notice that the judicial claim was filed on March 31, 2011. Counting 30 days from the lapse of 120-day period, it is evident that the instant petition was filed way beyond the period mandated by law, as it filed the petition 199 days after the lapse of 30-day period. Evidently, the 30-day period as mandated by Section 112(D) and *CIR vs. Aichi Forging* was not complied with. The case has prescribed; therefore the Honorable Court has no jurisdiction to take cognizance of the case and should dismiss the petition.

The parties submitted their Joint Stipulation of Facts and Issues on June 29, 2011, which the Court in Division approved in a Resolution dated June 30, 2011. Thereafter, the pre-trial was terminated and the parties were ordered to proceed with the trial proper.

During trial, petitioner presented documentary and testimonial evidence. On the other hand, respondent, through counsel, waived her right to present evidence since her counsel has not received the report of the investigation of the case. The parties were given a period of thirty (30) days from April 23, 2012 or until May 23, 2012 to file their respective memorandum.

On June 5, 2012, the case was submitted for decision, considering respondent's Memorandum filed on May 22, 2012 and the report of the Court's Records Division dated May 31, 2012 that petitioner failed to file a memorandum.

Petitioner filed a Motion for Reconsideration with Motion to Admit Attached Memorandum on June 15, 2012. On July 3, 2012, respondent filed her Comment (Re: Motion to Admit Attached Memorandum). After deliberating on both parties' arguments, the Court in Division denied petitioner's Motion.

The former Second Division, in its *Decision*[7] dated August 10, 2012, denied petitioner's claim for refund or issuance of tax credit certificate. The Court in Division held that applying Section 236(F)(1) and (2)(b) of the NIRC of 1997, as amended, petitioner's cancellation of VAT registration became effective only on May 1, 2010, which is the first day of the following month reckoned from April 15, 2010 or the date when it filed its application for cancellation of BIR Registration/TIN with the BIR. Then, pursuant to Section 112(B) of the NIRC of

[7] *Supra*, Note 1.

1997, as amended, in relation to Section 4.112-1(b) of Revenue Regulations (RR) No. 16-05, the application for issuance of tax credit certificate for any unused input tax must be filed within two (2) years from the date of cancellation. Hence, the earliest date that petitioner can file a claim for refund or credit was on May 1, 2010. Therefore, petitioner's administrative claim for refund on April 15, 2010 was prematurely filed.

Finding no justifiable reason to disturb the above Decision, the Court in Division denied petitioner's Motion for Reconsideration in the Resolution[8] dated October 16, 2012.

Aggrieved, petitioner filed the instant *Petition for Review*[9] by registered mail on November 19, 2012 and received by this Court on December 5, 2012.

Respondent was ordered to file its comment within ten (10) days from receipt of the Resolution[10] dated February 6, 2013. Respondent filed its Comment (Re: Petitioner's Petition for Review)[11] on March 4, 2013.

Considering the arguments/discussions raised by both parties, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[12].

Petitioner filed by registered mail a Reply (To Respondent's Comment dated March 4, 2013)[13] on March 18, 2013 and received by this Court on March 27, 2013.

Respondent filed her Memorandum[14] on May 2, 2013 while petitioner filed its Memorandum[15] on May 9, 2013. Thus, the above-captioned case was submitted for decision on May 29, 2013.

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[8] *Supra*, Note 2.
[9] *Rollo*, pp 42-79; 260-297.
[10] *Rollo*, pp. 486-487.
[11] *Rollo*, pp. 488-495.
[12] *Rollo*, pp. 498-499, Resolution dated March 13, 2013.
[13] *Rollo*, pp. 513-521.
[14] *Rollo*, pp. 529-539.
[15] *Rollo*, pp. 542-577.

The Issues

Petitioner raises the following grounds in support of its petition[16]:

I. The Honorable Second Division erred in denying petitioner's petition for review in that it is clear that petitioner filed its claim for tax refund/credit principally under Section 108(B)(7) in relation to Section 112(A) of the 1997 Tax Code, as amended.

II. The Second Division of this Honorable Court erred when it failed to consider that the petitioner's administrative and judicial claims were timely filed based on then consistent ruling of this Honorable Court.

III. The Second Division of this Honorable Court erred when it failed to consider the fact that the Commissioner of Internal Revenue (CIR) took cognizance of petitioner's administrative claim by her issuance of a letter of authority and subsequent requests for supporting documents and presentation of book of accounts, which is tantamount to a waiver of the alleged premature filing of petitioner's administrative claim.

IV. The denial of petitioner's claim due to technicalities and legalisms contravenes the basic policies and the spirit of the EPIRA Law.

V. The Second Division of this Honorable Court erred in denying petitioner's petition for review in that it is clear that petitioner has complied with all the required conditions to a claim for refund or tax credit.

VI. Technicalities and legalisms should yield to substantial justice, equity and fairplay in light of the fact that the court-commissioned Independent Certified Public Accountant found that petitioner is entitled to a tax refund/credit in the amount of at least P12,242,476.94 and the fact that petitioner is

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[16] *Rollo*, pp. 58-59.

already technically dissolved and therefore will no longer be able to use its excess unutilized input VAT.

The Ruling of the Court

The Petition for Review has no merit.

A careful perusal of the arguments raised by petitioner in the instant petition shows that the same had been thoroughly discussed and passed upon in the assailed Decision and Resolution. Be that as it may, this Court will again address the arguments of petitioner to reinforce its ruling.

Section 112(B) of the NIRC of 1997, as amended, allows a taxpayer, whose registration has been cancelled due to cessation of business, to apply for the issuance of a tax credit certificate for excess and unutilized input VAT, *to wit*:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> xxx xxx xxx
>
> (B) Cancellation of VAT Registration. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, **within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax** which may be used in payment of his other internal revenue taxes." *(Emphasis supplied)*

Corollary thereto, Section 4.112-1 (b) of RR No. 16-05, provides as follows:

> "Section 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* —
>
> xxx xxx xxx
>
> (b) *Cancellation of VAT registration.-*
>
> A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Sec. 106(C) of the Tax Code may, **within two (2) years from the date of**

> **cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes; *Provided,* however, that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized**." *(Emphasis supplied)*

Section 204 of the NIRC of 1997, as amended, further states that:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —*
>
> xxx xxx xxx
>
> A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. **Any request for conversion into refund of unutilized tax credits may be allowed**, subject to the provisions of Section 230 of this Code: *Provided,* That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further,* That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made." *(Emphasis supplied)*

From the foregoing, it is clear that a taxpayer whose registration has been cancelled due to, *inter alia*, cessation of business, may within two (2) years from the date of cancellation of its registration, apply for the issuance of a tax credit certificate for any unused input tax which may be used to pay other internal revenue taxes. And in cases where the taxpayer has no internal revenue tax liabilities, he shall be entitled to a refund.

The two (2)-year period is reckoned from the date of cancellation of a taxpayer's registration. In relation thereto, Section 236(F)(1) and (2)(b) of the NIRC of 1997, as amended, states:

> SEC. 236. *Registration Requirements. —*
>
> xxx xxx xxx
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> (F) *Cancellation of Registration. —*

(1) ***General Rule.*** — The **registration** of any person who ceases to be liable to a tax type shall be **cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update** in a form prescribed therefor;

(2) ***Cancellation of Value-added Tax Registration.*** *— A VAT-registered person may cancel his registration for VAT if:*

xxx xxx xxx

(b) He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.

The cancellation of registration will be effective from the first day of the following month. *(Emphasis supplied)*

On December 22, 2009, the Board of Directors and Stockholders of Marubeni Pacific Energy Holdings Corporation (MPEHC), Marubeni Pacific II Energy Holdings Corporation and Marubeni Energy Holdings Corporation approved and authorized the merger with Axia Power Holdings Philippines Corporation (APHPC), with APHPC as the surviving entity, effective January 1, 2010. The merger was approved by the SEC on March 29, 2010. On account of the merger, MPEHC withdrew as one of the two partners in Mindanao I Geothermal Partnership.

On March 29, 2010, the SEC approved the Affidavit of Withdrawal executed by MPEHC, which resulted in the dissolution of petitioner. Consequently, petitioner filed its request for cancellation of BIR Registration/TIN and issuance of Tax Clearance Certificate, with a claim for refund or issuance of tax credit certificate of its unutilized input VAT on April 15, 2010.

Pursuant to Section 236(F)(1) and (2)(b) above-quoted, the general rule is that the registration of any person who ceases to be liable to a tax type shall be cancelled upon filing an application for registration information update. However, cancellation of VAT registration will be effective from the first day of the following month. In this case, petitioner filed its Application for Cancellation of TIN and Issuance of Tax Clearance Certificate with a Claim for Refund of Excess Input

Value-Added Tax on April 15, 2010. Hence, petitioner's VAT registration is considered cancelled effective May 1, 2010. Counting two (2) years from the said date of cancellation, petitioner may apply for the issuance of a tax credit certificate of its unused input tax until May 1, 2012.

Consequently, the filing of petitioner's administrative claim on April 15, 2010 was prematurely made.

The same pronouncement was made by this Court in the cases of *Associated Swedish Steels Phils., Inc. vs. Commissioner of Internal Revenue (CIR)* [17] and *CE Cebu Geothermal Power Company, Inc. vs. CIR*[18].

Petitioner argues that the principal basis of its administrative claim for refund/credit is Section 108(B)(7) in relation to Section 112(A) of the NIRC of 1997, as amended. Hence, it was erroneous for the Court to rule that the claim was prematurely filed as required under Sections 112(B), 204 and 236(F)(1) and (2)(b) of the NIRC of 1997, as amended.

However, as correctly pointed out by the Court in Division, petitioner cannot fault this Court in not considering the provisions of Sections 108(B)(7) and 112(A) of the NIRC in settling its case in view of the fact that even petitioner itself recognized that its petition is filed "pursuant to Section 112 in relation to Section 52(C) of the 1997 Tax Code, as amended, pertaining to the claim for refund or tax credit of creditable input tax by a dissolving corporation." [19] As the Court in Division had observed in the assailed Decision, the applicable provision for this case is Section 112(B) of the NIRC, which governs the tax credits of unused input tax as a result of the cancellation of VAT registration due to retirement from or cessation of business.

Petitioner insists that a claim for refund under Section 112(A) of the NIRC must be filed within the two-year prescriptive period and when the two-year period is about to lapse, the taxpayer must file an appeal without awaiting the decision of the CIR.

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[17] CTA Case No. 7850, September 16, 2011.
[18] CTA Case No. 7740, September 2, 2011.
[19] *Division docket*, p. 6 (paragraph 1.f of Petition for Review).

Even assuming *arguendo* that the instant petition falls under Sections 108(B)(7) and 112(A) of the NIRC of 1997, the same must still fail for failure of petitioner to observe the periods provided under Section 112(C) of the NIRC of 1997, which provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Tax 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 *CIR vs. Aichi Forging Company of Asia, Inc. (Aichi)*[20], the Supreme Court emphasized that failure to await the decision of the Commissioner or the lapse of 120-day period prescribed in Section 112(D) [now Section 112(C)] of the NIRC of 1997 amounts to a premature filing of a judicial claim. And the premature filing of a claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

The above ruling was reiterated in the case of *CIR vs. San Roque Power Corporation, Taganito Mining Corporation and Philex Mining Corporation*[21], where the Supreme Court held that compliance with the 120-day waiting period is mandatory and jurisdictional. Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action,

[20] G.R. No. 184823, October 6, 2010.
[21] G.R. Nos. 187485, 196113, and 197156, dated February 12, 2013.

with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition.

As correctly ruled by the Court in Division, applying Section 112(C) of the NIRC and *Aichi*, the petition was filed out of time, pertinent portion of the assailed Resolution states:

> "Petitioner filed on April 15, 2010 a written request for the cancellation of its Tax Identification Number (TIN) and issuance of Tax Clearance Certificate (TCL) with a claim for refund or tax credit for its excess input VAT for the year 2009. Counting 120 days from the filing of the said administrative claim, respondent has until August 13, 2010, within which to decide on the said claim. Since respondent did not act on petitioner's administrative claim, petitioner has 30 days or until September 13, 2010[22], within which to file its appeal before this Court. Considering that petitioner filed its judicial claim only on March 31, 2011, which is way beyond the thirty day period to appeal, this Court therefore has no jurisdiction to entertain the claim."

Petitioner also insists that the *Aichi* ruling should not apply to its pending claim. However, the *Aichi* ruling was promulgated on October 6, 2010 while petitioner's judicial claim was filed on March 31, 2011 or after the *Aichi* ruling. Nevertheless, even if petitioner's claim is a pending claim, the pronouncements made in the *Aichi* case can be applied to the instant case without violating the rule against retroactive application as ruled in *Accenture, Inc. v. CIR,*[23] where the Supreme Court held that the interpretation of a law by the High Court constitutes part of that law from the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Hence, the Supreme Court's interpretation of the Section 112 (C) of the NIRC of 1997, as amended, in the *Aichi* Case constitutes part of the law as of the date of its original passage.

Petitioner also argues that respondent took cognizance of petitioner's administrative claim by her issuance of a Letter of Authority and subsequent request for supporting documents and thus must be considered as a waiver on the part of the CIR to question the timeliness of said claim

We do not agree.

[22] Should be September 12, 2010.
[23] G.R. No. 190102, July 11, 2012.

Respondent cannot be faulted for issuing a Letter of Authority since respondent merely observed the standard procedure in cases of application for dissolution/retirement, pursuant to RR No. 11-08[24] which provides that all taxpayers who filed for cancellation of registration due to closure/cessation or termination of business shall be subjected to immediate investigation by the BIR office concerned to determine the taxpayer's tax liabilities.

Moreover, the government is not estopped by acts or errors of its agents, particularly on matters involving taxes.[25]

Lastly, the charter of the CTA expressly provides that its jurisdiction is to review on appeal "decisions of the Commissioner of Internal Revenue in cases involving . . . refunds of internal revenue taxes." [26] When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial"[27] of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction . . . deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.[28]

Thus, petitioner having prematurely filed its administrative claim for refund or credit on April 15, 2010 while the cancellation of registration became effective only on May 1, 2010 in disregard of the provisions of Section 112(B)

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[24] Consolidated Revenue Regulations on Primary Registration, Its Updates, and Cancellation, amended by RR No. 5-10 (further amended by RR No. 7-12).
[25] *CIR vs. PLDT*, G.R. No. 140230, December 15, 2005.
[26] Section 7 of RA No. 1125, as amended, provides:
"Section 7. Jurisdiction. — The CTA shall exercise:
(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 Code 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 of action, in which case the inaction shall be deemed a denial; xxx." *(Underscoring supplied)*
[27] *Ibid.*
[28] *Supra,* Note 21.

and Section 236(F)(1) and (2)(b) of the NIRC of 1997, no administrative claim for refund or credit was properly filed before the CIR. In other words, petitioner filed its administrative claim for TCC at the time when there was yet no right to file such claim. Consequently, there can be no decision or inaction of the CIR to speak of over which the Court can exercise its appellate jurisdiction. Thus, the instant petition must necessarily fail.[29]

In view of the above ruling, the Court finds it no longer necessary to dwell on the other issues raised by petitioner.

Finding no reversible error, *We* affirm the assailed *Decision* dated August 10, 2012 and *Resolution* dated October 16, 2012 of the former Second Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[29] *Associated Swedish Steels Phils., Inc. vs. CIR*, CTA Case No. 7850, December 15, 2011.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice