REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

DENSO TECHNO PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7950

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

AUG 17 2011
HBFernando 3:05p.m.

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RESOLUTION

PALANCA-ENRIQUEZ, J.:

This is a Petition for Review filed on July 23, 2009 by Denso Techno Philippines, Inc. praying for the refund or issuance of a tax credit certificate (TCC) in the total amount of P9,379,311.17, representing petitioner's excess and unutilized input value-added tax (VAT) derived from its domestic purchases of goods and services attributable to its zero-rated VAT sales of services.

On October 21, 2009, respondent Commissioner of Internal Revenue (CIR) filed a "Motion to Dismiss," to which an "Opposition" was filed by petitioner on November 3, 2009.

In its Resolution dated December 11, 2009, the Former First Division partially granted respondent's Motion to Dismiss with regard to petitioner's claim for refund of unutilized input VAT for the second quarter of 2007 for having been filed late, and also ruled that the claim for refund of unutilized input VAT for the third and fourth quarters of 2007 and 1st quarter of 2008 was filed within the prescribed period. Thus, the case proceeded with regard to the remaining third and fourth quarters of 2007 and first quarter of 2008.

On March 16, 2011, respondent CIR again filed a "Motion to Dismiss," to which an "Opposition" was filed by petitioner on April 7, 2011.

This case was originally raffled for completion of records to Associate Justice Lovell R. Bautista. During the deliberation of the Motion to Dismiss, Associate Justice Lovell R. Bautista voted to deny the motion; however, Associate Justice Olga Palanca- Enriquez registered her dissent, and voted to grant the motion, to which Associate Justice Amelia Cotangco-Manalastas concurred. Hence, on May 16, 2011, this case was re-assigned to Associate Justice Olga Palanca- Enriquez to write the majority opinion.

The Motion to Dismiss is anchored on the grounds of lack of cause of action and lack of jurisdiction, to wit:

1) The Petition for Review filed by petitioner beyond the 30-day reglementary period from the lapse of the 120-day period accorded to

the CIR to decide on the administrative claim for input VAT refund is not within the ambit of the jurisdiction of this Court; and

2) The defense of lack of jurisdiction may be raised by herein respondent at any stage of the proceedings.

In its Opposition, petitioner counter-argues that the issue of prescription had already been raised in respondent's Motion to Dismiss filed on October 19, 2009, which was resolved by this Court in its Resolution dated December 11, 2009. Thus, *res judicata* by conclusiveness of judgment bars respondent from relitigating this very same issue.

The Court finds merit in the Motion to Dismiss.

Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 112. Refunds or Tax Credit of Input Tax. –
>
> xxx xxx
>
> (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 <u>within one hundred twenty (120) days</u> 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, <u>within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period</u>, appeal the decision or the**

> **unacted claim with the Court of Tax Appeals.**" *(emphasis supplied)*

In the recent case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010, the Supreme Court ruled 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.

In this case, records show that on November 28, 2008, petitioner applied for an administrative claim for refund of unutilized input VAT for the period covering April 1, 2007 to March 31, 2008 with the Commissioner of Internal Revenue, which is within the two-year prescriptive period from the close of the quarter when such sales were made.

From November 28, 2008, which is the date petitioner filed its administrative claim, together with the supporting documents, the Commissioner of Internal Revenue has one hundred twenty (120) days or until March 28, 2009, within which to decide the administrative claim for refund, pursuant to *Section 112 (C) of the NIRC of 1997, as amended.* In this case, petitioner's administrative claim was not acted upon by respondent CIR, within the prescribed 120-day period; thus, petitioner has 30 days from March 29, 2009 or until April 28, 2009 to appeal to the CTA the CIR's inaction on its administrative claim for refund.

Records show, however, that petitioner filed its judicial claim for refund by way of the instant Petition for Review on July 23, 2009 only. The Petition for Review was, therefore, filed 86 days way beyond the prescribed 30-day period to appeal to this Court.

For this reason, pursuant to the Aichi case, the claim for refund of the unutilized input VAT pertaining to the period of April 1, 2007 to March 31, 2008 should be denied for having been filed late, as the Court has not acquired jurisdiction over the case.

Petitioner's contention that the Resolution dated December 11, 2009 of the Former First Division constitutes conclusiveness of judgment between the parties cannot be sustained.

Pursuant to *Section 47(c) of Rule 39 of the 1997 Rules of Civil Procedure, as amended,* conclusiveness of judgment precludes the relitigation of a particular issue in another action between the same parties on a different cause of action. Thus, issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.

Here, petitioner's reliance on the doctrine of "conclusiveness of judgment" is clearly misplaced. Evidently, there is no final judgment on a particular issue made in a former suit between the same parties, as the Resolution dated December 11, 2009 is a mere interlocutory order and not a final judgment on a disputed fact or question. Moreover, there is no second case within which a particular settled issue has been relitigated between the same parties involving a different cause of action. Hence, said Resolution dated December 11, 2009 cannot be considered as conclusiveness of judgment between the parties.

Furthermore, at the time the Resolution dated December 11, 2009 was issued by the former First Division partly granting respondent's "Motion To Dismiss", the Supreme Court has not yet decided the Aichi Case. It was only on October 6, 2010 when the Supreme Court promulgated its decision in the Aichi Case. Being the highest court in the land, we have no recourse, but to apply the ruling laid down by the Supreme Court in said case.

Finally, settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings *(Ace Publications vs. Commissioner of Customs, 11 SCRA 147).*

WHEREFORE, premises considered, respondent CIR's "Motion to Dismiss" is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for having been filed late.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

I CONCUR:

(With Separate Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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Respondent.

CTA CASE No. 7950

Members:

Bautista, *Chairperson,*
Palanca-Enriquez, *and*
Cotangco-Manalastas, JJ.

Promulgated on:
AUG 17 2011
ABFernando 3:05 p.m.

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SEPARATE CONCURRING AND DISSENTING OPINION

BAUTISTA, J.:

The Court resolves to grant the Motion to Dismiss filed by the Commissioner of Internal Revenue considering of that the Petition for Review filed by Denso Techno Philippines, Inc. ("Denso") was filed late, i.e., eighty six (86) days beyond the prescribed thirty (30)-day period after the expiration of the one hundred twenty (120) days appropriated for the Commissioner to grant or deny the administrative claim.

It is my opinion that the declaration of the two (2)-year prescriptive period under Section 112[1] of the 1997 National Internal Revenue Code ("NIRC") must be in accordance with Section 229 of the same Code. Thus, the judicial recourse to this Court allowed by Section 112(C) of the 1997 NIRC is merely directory and permissive,

[1] As amended by Republic Act No. 9337.

and not mandatory nor jurisdictional, for so long as it is made within the settled two (2)-year prescriptive period.[2]

A taxpayer-claimant *may* file an appeal within thirty (30) days, either from the lapse of the one hundred twenty (120)-day period within which the CIR shall decide on the claim, or after the receipt of the decision denying the same, so long as it is within the two (2)-year prescriptive period.

Section 112 (C) of the 1997 NIRC states that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> xxx xxx xxx
>
> (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.

The cited provision will show that it contains the word "may," thus indicating that it is merely permissive and operates to confer discretion.[3] It gives the taxpayer-claimant an option to pursue the claim with this Court, provided that the claim is filed within the prescriptive period.

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[2] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009.
[3] Bersabal *v.* Salvador, G.R. No. L-35910, July 21, 1978, 84 SCRA 176, *citing Dizon v. Encarnacion, G.R. No. L-18615, December 24, 1963, 9 SCRA 714.*

The same issue had been thoroughly addressed in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[4] to wit:

> **It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC.** It is a well-settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.
>
> Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:
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> > "It appears therefore, **that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case.** This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
> >
> > Incidentally, **the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal.** The law fixed the same period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for

[4] CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

> filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Boldfacing supplied*)

Thus, there is no need to wait for the denial of the claim by the CIR or even his inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court,[5] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period.[6] Beyond that period, the taxpayer can no longer appeal to this Court.[7]

As the administrative claim for refund was filed with the Commissioner of Internal Revenue ("CIR") on November 28, 2008, the doctrine found in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*,[8] on September 12, 2008 must be followed. In the said case, the 2-year prescriptive period is reckoned from the close of the pertinent quarter, regardless of the date when the VAT return is actually filed.

With this, since the present case involves a claim for refund for the period covering April 1, 2007 to March 31, 2008, the two (2)-year prescriptive period is

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[5] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.
[6] Commissioner of Internal Revenue *v.* Victorias Milling Co., Inc., No. L-24108, January 3, 1968, 22 SCRA 12.
[7] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.
[8] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

reckoned from the following dates: June 30, 2007, September 30, 2007, December 31, 2007 and March 31, 2008.

Thus, it is clear that the administrative claim falls within the prescriptive period. However, I must concur with the dismissal of the judicial claim covering the second quarter ending June 30, 2007 since the two (2)-year period ended on June 30, 2009. While as to the three (3) other quarters, I find the same to be filed within the prescriptive period.

Accordingly, I vote that the Motion to Dismiss filed by the Commissioner of Internal Revenue be **GRANTED**, insofar as the 2nd quarter of the taxable year 2007; is concerned. However, as to the 3rd and 4th quarters of the taxable year 2007, as well the 1st quarter of taxable year 2008, the same should be **DENIED** for being filed within the prescribed period.

LOVELL R. BAUTISTA
Associate Justice