REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

CE CEBU GEOTHERMAL POWER COMPANY, INC., Petitioner,	**CTA EB NO. 862** (CTA Case No. 7740)
	Members:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 26 2013 9:55 a.m.

x - x

D E C I S I O N

UY, J.:

Before the Court is a Petition for Review filed on February 6, 2012 by petitioner CE Cebu Geothermal Power Company, Inc., praying for the reversal of the Decision dated September 2, 2011 and the Resolution dated December 21, 2011, both rendered by the Second Division of this Court (Court in Division)[1] in CTA Case No. 7740, entitled *"CE Cebu Geothermal Power Company, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent".*

The assailed Decision dismissed the Petition for Review filed in said case, while the assailed Resolution denied petitioner's Motion for

[1] Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juañito C. Castañeda, Jr. and Associate Justice Cielito N. Mindaro-Grulla.

Reconsideration of the said Decision, both on the ground of lack of merit.

THE FACTS

As found by the Court in Division, these are the facts of the case.

Petitioner CE Cebu Geothermal Power Company, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at Kananga, Leyte.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes as provided by law.

Petitioner was incorporated on January 12, 1994, the primary purpose of which is to "design, develop, construct, erect, assemble, commission and operate geothermal power plants and related facilities for the conversion into electricity of steam and brine provided by and under contract with the Philippine Government, or any subdivision, instrumentality or agency thereof, or any other government-owned or controlled corporation, or other entity engaged in the development, supply or distribution of energy."

Petitioner was principally engaged in the business of power generation through geothermal energy and the subsequent sale of generated power to the PNOC-EDC pursuant to an Energy Conversion Agreement ("ECA") with the latter.

Pursuant to the ECA, petitioner's cooperation period with PNOC-EDC ended on June 25, 2006. As a result of its retirement from business effective December 31, 2007, petitioner has filed for the cancellation of its VAT registration and TIN.

For the first to fourth quarters of CY 2006, petitioner filed with the Bureau of Internal Revenue (BIR) its Quarterly VAT Returns, reflecting its zero-rated sales, domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the following periods:

2006 Taxable Quarter	Date of Filing of Quarterly VAT Return	Current Transactions				
		Zero-Rated Sales (₱)	Domestic Purchases – Goods Other Than Capital Goods (₱)	Importation– Goods Other Than Capital Goods (₱)	Domestic Purchases – Services (₱)	Services Rendered by Non-Residents (₱)
1st	April 25, 2006	508,703,325.31	3,417,927.20	540,480.00	18,247,688.58	680,700.63
2nd	July 25, 2006	596,032,475.11	6,676,806.60	6,250,861.67	15,517,456.40	157,320.67
3rd	October 25, 2006	400,908,040.39	1,420,723.83	681,608.33	6,969,222.90	0.00
4th	January 25, 2007	0.00	804,946.33	0.00	7,214,345.67	0.00
	Total	**1,505,643,840.81**	**12,320,403.96**	**7,472,950.00**	**47,948,713.55**	**838,021.30**

On September 11, 2007, petitioner filed with the BIR Large Taxpayer's Audit and Investigation Division I (LTAID I) an administrative claim for refund/tax credit of unutilized input VAT for the four quarters of CY 2006. In its claim for refund/tax credit, petitioner maintains that it paid and incurred unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods in the total amount of P7,827,610.98.

When its application for refund/credit remained unresolved by the BIR, petitioner filed a Petition for Review before the Court in Division on March 14, 2008 and the case was docketed as CTA Case No. 7740.

On May 22, 2008, respondent filed her Answer interposing certain special and affirmative defenses including, *inter alia*, that petitioner's claim for refund has prescribed in view of Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Trial ensued and after presentation of the parties' evidence and witnesses, the Court in Division required the parties to submit their respective Memorandum. Petitioner submitted its Memorandum on January 17, 2011 while respondent submitted her Memorandum on January 24, 2011. Thus, the case was submitted for decision in the Resolution dated January 27, 2011 of the Court in Division.

On September 2, 2011, the Court in Division dismissed the Petition for Review filed in CTA Case No. 7740 for lack of jurisdiction, the dispositive portion thereof reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is DISMISSED for lack of jurisdiction.

SO ORDERED."[2]

Moreover, the Court *a quo* made the following findings: (1) the premature filing of the claim for refund or tax credit of petitioner before the Court warrants denial of its Petition for Review inasmuch as no jurisdiction was acquired by the Court over the case; and (2) petitioner's entitlement to the claimed input VAT due to its retirement from or cessation of business pursuant to Section 112(B) of the NIRC of 1997 was raised for the first time before the Court in Division, and thus, the same was not allowed. Additionally, the Court *a quo* also found that petitioner submitted the documents in support of its claim only on November 13, 2009, and therefore respondent Commissioner of Internal Revenue had 120 days or until March 13, 2010 within which to act upon petitioner's claim.

On September 21, 2011, petitioner filed a Motion for Reconsideration of the said Decision but the same was denied in the assailed Resolution dated December 21, 2011 for lack of merit. The dispositive portion thereof reads as follows:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration is hereby DENIED for lack of merit."[3]

Subsequently, petitioner filed a Motion For Extension of Time to File Petition for Review on January 20, 2012 before this Court[4] which was granted in the Resolution dated January 24, 2012. The Court *En Banc* gave petitioner a final and non-extendible period of fifteen (15) days from January 20, 2012 or until February 4, 2012, to file its Petition for Review.[5]

On February 6, 2012, the instant Petition for Review[6] was filed.

As directed in the Resolution dated February 27, 2012[7] by the Court *En Banc,* respondent filed her Comment to the instant Petition for Review on March 16, 2012[8], alleging that the Second Division of this Court has no jurisdiction over petitioner's claim for refund; that

[2] Docket, p. 75
[3] Docket, p. 85
[4] Docket, pp. 1-4.
[5] Docket, p. 5.
[6] Docket, pp. 6-52.
[7] Docket, pp. 87-88.
[8] Docket, pp. 89-113.

tax laws are civil in nature and may be applied retroactively, as well as the ruling of the Supreme Court in the ***Aichi***[9] case.

Considering the arguments raised in the Petition for Review vis-à-vis the Comment, the parties were required to submit their respective memorandum within thirty (30) days from receipt of the Resolution dated May 22, 2012.[10]

On June 22, 2012, respondent filed a Manifestation,[11] stating that she is adopting the arguments she raised in her Comment to the Petition for Review as her Memorandum. For its part, pursuant to a Motion for Extension of Time To File Memorandum[12] duly granted by the Court, petitioner timely filed its Memorandum on July 13, 2012.[13] Thereafter, this case was deemed submitted for decision on August 1, 2012.[14]

Hence, this Decision.

THE ISSUE

Based on the arguments presented by the parties, the principal issue raised is whether or not this Court properly acquired jurisdiction over the instant claim taking into consideration the timeliness of the filing of the judicial claim with the Court of Tax Appeals as provided under the existing applicable provisions of the National Internal Revenue Code (NIRC) of 1997, as amended.

Relative thereto, petitioner submits the following assignments of errors:

> "16.1. The CTA-Division erred in holding that the 120 - day period given to Respondent to act on the application for tax refund or credit is jurisdictional;
>
> 16.2. The CTA-Division erred in not finding that Respondent was estopped from raising the defense of

[9] Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010
[10] Docket, pp. 116-117.
[11] Docket, pp. 118-120.
[12] Filed on June 28, 2012, Docket, pp. 123-125.
[13] Docket, pp. 128-189.
[14] Resolution dated August 1, 2012, Docket, pp. 192-193.

prematurity for failure to allege such defense in her Answer or in a Motion to Dismiss;

16.3. The CTA-Division erred in giving Aichi retroactive effect to judicial claims for refund filed before its promulgation; and

16.4. The CTA-Division erred in not finding that Petitioner presented more than sufficient proof to show that it is entitled to the issuance of a TCC for its unutilized input VAT for CY 2006 due to the cessation of its business effective December 31, 2007."[15]

Petitioner's Arguments

Petitioner raises the following grounds in support of the instant Petition for Review, to wit:

"10.1. Law and jurisprudence have long settled the rule that the CTA acquires jurisdiction when the two-year prescriptive period under Section 229, Tax Code is about to expire without the administrative claim for refund having been resolved;

10.2. Aichi could not have validly overturned the well-settled rule on periods for filing VAT refund claims set forth in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (Atlas) without violating the constitutional mandate that no doctrine or principle laid down by the Supreme Court may be reversed or modified except by the Supreme Court sitting *En Banc*;

10.3. The legislative history of the amendment of Section 112, Tax Code shows lack of legislative intent to do away with the two-year period provided in Section 229, Tax Code. Likewise, the legislative history of the jurisdiction of the CTA shows its recognition of the significance of the two-year period;

---

[15] Docket, pp. 16-17.

10.4. Respondent waived the defense of non-exhaustion of administrative remedies;

10.5. The prospective application of Aichi is legally and equitably imperative; and

10.6. Petitioner sufficiently proved that it is entitled to a refund for its unutilized input VAT for CY 2006 due to the cessation of its business effective December 31, 2007."[16]

Respondent's Counter-arguments

Respondent counters that the Court in Division was correct in ruling that it is bereft of jurisdiction to hear and decide on petitioner's claim for refund. It expounds by stating that when petitioner filed its Petition for Review only on March 14, 2008 or more than one (1) month after the lapse of the period allowed by law to file the same, the said Petition was therefore clearly *filed out of time*.

Furthermore, respondent contends that tax laws which are civil in nature may be applied effectively; that contrary to the allegation of petitioner, the case entitled *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc, G.R. No. 184823, October 6, 2010*, cannot be considered a new doctrine, and thus, may be retroactively applied in the instant case; that Section 120 of the NIRC of 1997, as amended, is the governing rule to be followed in application for tax refund and not Section 229 as allegedly claimed by petitioner; and that the first and fundamental duty of the Court is to apply the law, hence, when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation.

THE COURT EN BANC'S RULING

The Court *a quo* correctly dismissed the Petition for Review filed in CTA Case No. 7740 for lack of jurisdiction as the same was filed beyond the thirty-day period mandated under Section 112 of the NIRC of 1997, the pertinent provisions of which read as follows:

SEC. 112. *Refunds or Tax Credits of Input Tax*. -

[16] Petitioner's Memorandum filed on July 13, 2012, Docket, pp. 137-138; See also Docket, p. 17.

> (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: xxx
>
> xxx xxx xxx
>
> (C)[17] *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 Subsections (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.**
>
> xxx xxx xxx. *(Emphasis supplied)*

Based on the foregoing provisions, prior to seeking judicial recourse before the CTA, a VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax attributable to zero-rated or effectively zero-rated sales within two (2) years after the close of taxable quarter when the sales or purchases were made.

Likewise, under paragraph (C) thereof, the Commissioner of Internal Revenue (CIR) is given a **120-day period, from submission of complete documents in support of an administrative claim for refund/application for issuance of the tax credit certificate** within which to act upon said claims. Upon denial of the claim or

---

[17] Previously Section 112(D) before Republic Act No. 9337, which took effect on July 1, 2005.

application, or **upon expiration of the 120-day period without any action on the claim, the taxpayer has a 30-day period only within which to appeal said adverse decision or unacted claim before the CTA**.

Clearly therefore, Section 112(C) of the NIRC of 1997, as amended, provides for a 120-day period for the CIR to act on administrative claims for refund/applications for issuance of the tax credit certificate from submission of complete supporting documents, as well as a 30-day period for the taxpayer to seek judicial recourse with the Court of Tax Appeals, on two (2) instances : (1) upon partial or full denial of its refund claim; or (2) upon the inaction of the CIR for a period of 120 days from the submission of complete documents in support of its refund claim.

As regards the assigned errors presented by petitioner, all these matters have been addressed by the Supreme Court in its recent decision in the consolidated cases of ***Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 187485, 196113, and 197156, February 12, 2013,*** wherein the Supreme Court sitting *En Banc* finally settled the issue regarding the proper observance of the prescriptive periods provided under Section 112 of the NIRC of 1997, including the periods of effectivity and scope of the *Atlas*[18], *Mirant*[19], *and Aichi*[20] Doctrines. The pertinent discussions in the aforesaid case, read:

> "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

[18] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007.
[19] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008.
[20] *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

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 unappealable*. 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."[21] *(Emphasis and italics supplied)*

Moreover, the Supreme Court expressed that:

"The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant***. The *Atlas* doctrine was **limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT**. Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.

The *Atlas* doctrine has no relevance to the 120+30

---

[21] *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013, Decision, p. 29.

day periods under Section 112(C) because the application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. **The language of Section 112(C) is plain, clear, and unambiguous**. xxx

xxx xxx xxx

The old rule (*Gibbs vs. Collector of Internal Revenue, 107 Phil. 232, 1960)* that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period**. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. **One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine**, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional."[22] *(Emphasis supplied)*

From the foregoing jurisprudential pronouncements, it is clear that a taxpayer-claimant is required by law to judicially appeal its claim for refund within thirty (30) days from the expiration of the 120-day period for the CIR to act on the refund claim, whether governed

[22] *Ibid.*, pp. 34-35.

by jurisprudence before, during or after the *Atlas* case.

Applying the abovementioned declarations of the Supreme Court sitting *En Banc*, and the clear provisions of Section 112 of the NIRC of 1997, as amended, to the present case, there is no doubt that petitioner only had a limited period of thirty (30) days from the expiration of the 120-day period without any action from the CIR to file its judicial claim before this Court. Otherwise, such judicial claim shall be considered as prescribed or filed out of time.

In other words, even if this Court will not apply the *Aichi*[23] case in the instant case as it was only promulgated on October 6, 2010, more than three (3) years after petitioner filed its administrative claim for refund on September 11, 2007, still Section 112(C) clearly states that in case of failure on the part of the Commissioner of Internal Revenue to act on the application within the 120-day period prescribed by law, petitioner has only thirty (30) days after the expiration of the 120-day period to appeal the unacted claim with the CTA.

Petitioner's failure to comply with the said mandatory period of thirty (30) days is fatal to its claim because this Court could no longer acquire jurisdiction over said claim on the ground of prescription.

In the more recent consolidated cases of ***Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. Nos. 193301 and 194637, March 11, 2013***, the High Court applied the ruling in the aforesaid *San Roque* case and provided a Summary of Rules on Prescriptive Periods Involving VAT as a guide for all parties concerned, to wit:

> "We summarize the rules on the determination of **the prescriptive period for filing a tax refund or credit of *unutilized input VAT* as provided in Section 112 of the 1997 Tax Code**, as follows:
>
> (1)An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

[23] *Supra.*, see note 21.

> (2)The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
>
> **(3)A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.**
>
> (4)All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.[24] *(Emphasis supplied)*

By way of resume, the general rule is that a judicial claim must be filed with the CTA within thirty (30) days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR. Otherwise, the said judicial claim shall be considered as filed out of time.

The exception provided for in the *San Roque* case, pertaining to the reliance on BIR Ruling No. DA-489-03, speaks only of non-compliance with the 120-day prescriptive period pursuant to Section 112(C) of the NIRC of 1997, as amended. It does not however exempt the taxpayer-claimant from complying with the 30-day period to judicially appeal its claim for refund or tax credit.

It bears emphasis that the abovementioned exception to the general rule refers only to the premature filing of judicial claim before the CTA, i.e., a taxpayer seeking judicial relief with the CTA on its claim for tax refund or the issuance of a tax credit certificate need not wait for the lapse of the 120-day period for filing its judicial claim upon

---

[24] Decision promulgated on March 11, 2013, Second Division, penned by Justice Antonio T. Carpio, p. 29.

reliance on BIR Ruling No. DA-489-03, from December 10, 2003 until its abandonment in the *Aichi* case on October 6, 2010.

However, in case the taxpayer-claimant fails to judicially appeal its claim for refund or tax credit within the 30-day prescriptive period under Section 112(C) of the NIRC of 1997, as amended, then such is *not one of premature filing but of late filing.*

Taking into consideration the foregoing jurisprudential pronouncements in the case at bench, We look at the pertinent dates as regards petitioner's refund claim, to wit:

Calendar year 2006	*Date of Filing (and payment) of Quarterly VAT Return*	*Filing date of administrative claim*	*Last day of the 120-day period under Section 112(C) from date of filing of administrative claim in case of inaction*	*Last day of the 30-day period to judicially appeal said inaction before the Court of Tax Appeals*	*Filing date of Petition for Review*
1st Quarter	April 25, 2006	September 11, 2007	January 9, 2008	**February 8, 2008**	**March 14, 2008**
2nd Quarter	July 25, 2006				
3rd Quarter	October 25, 2006				
4th Quarter	January 25, 2007				

Evidently, petitioner complied with the required two-year period within which to file a refund/tax credit claim with the Bureau of Internal Revenue by filing its administrative claim on September 11, 2007 (within the period from the date of payment of the output VAT)[25]. From said date, the CIR had 120 days or until January 9, 2008 to act on its refund claim. As there was inaction on the part of the CIR within the 120-day period, petitioner had 30 days from January 9, 2008, or until February 8, 2008 to seek judicial recourse before this Court.

Having filed its judicial claim with the Court in Division in CTA Case No. 7740 only on March 14, 2008, the same was definitely filed out of time.

Anent the Court in Division's finding that petitioner subsequently submitted documents in support of its claim on November 13, 2009, such submission is of no consequence. To

---

[25] Applying the *Atlas* doctrine considering that both petitioner's administrative claim (September 11, 2007) and judicial claim (March 14, 2008) were filed during its effectivity from June 8, 2007 until its abandonment on September 12, 2008 (*Mirant* doctrine).

emphasize, such submission will not have the effect of treating the same as the reckoning point of the 120-day period under Section 112(C). This must be so because petitioner is deemed to have already submitted the "complete documents" when it filed its administrative claim on September 11, 2007. As can be gleaned from the said administrative claim,[26] petitioner has manifested the documents it is submitting in support thereof, to wit:

> "The amount of input VAT paid by our Company for all the quarters of calendar year 2006 amounted to P7,827,610.98, as shown in our duly filed Quarterly VAT Returns for each of the four quarters, **copies of which are attached as Annexes A-1 to A-4.**" *(Emphasis supplied)*

Furthermore, it is hard to conceive that petitioner filed its Petition for Review (CTA Case No. 7740) without being convinced that it has already submitted all the complete documents to support its administrative claim. It is noteworthy that, in the said Petition for Review filed on March 14, 2008, petitioner alleged the following:

> "22. To date, Respondent has not favorably decided on Petitioner's claims for refund and/or tax credit of the total amount of ₱7,827,610.98, representing unutilized and/or unapplied input VAT for the 1st to 4th quarters of CY 2006.
>
> 23. Such failure of the Respondent to refund or issue a TCC for Petitioner's unutilized input VAT **despite Petitioner's compliance with all the requisites provided for by law to entitle it to a refund or tax credit of such unutilized input taxes** is tantamount to a denial of said claim." *(Emphasis supplied)*

As a corollary, it would be highly unreasonable to allege an "inaction" from respondent in the said Petition for Review, if petitioner was uncertain if it has submitted the complete documents.

Moreover, petitioner is allowed to further submit documents at the administrative level even after the expiration of the 120-day period. In the *San Roque* case, the Supreme Court said:

[26] Exhibit "L".

> "...even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must ***necessarily*** continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings."

In fine, as already pointed out, the 120-day period should be counted from the date of the filing of petitioner's administrative claim on September 11, 2007. As petitioner failed to observe the 30-day period under Section 112(C) of the NIRC of 1997, as amended, to judicially appeal its administrative claim, the belated filing of the Petition for Review in CTA Case No. 7740, the Court *a quo* committed no reversible error when it dismissed the said case for lack of jurisdiction.

Parenthetically, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[27] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[28] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[29]

WHEREFORE, in light of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated September 02, 2011 and Resolution dated December 21, 2011 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

---

[27] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[28] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[29] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
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 Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

CE CEBU GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 862
(CTA Case No. 7740)

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

Promulgated:
JUN 26 2013 [illegible] 9:55 a.m.

x---x

CONCURRING AND DISSENTING OPINION

CASANOVA, *J.*:

While I concur with the majority opinion denying petitioner's Petition for Review for lack of merit, I, however, disagree with the outright application of the consolidated cases 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*[1] which clarifies the issue on the application of the 120-30 day prescriptive period for refund under Section 112 of the 1997 NIRC.

[1] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

It is possible that a Motion for Reconsideration of the said decision may have been filed, thus, until the said Supreme Court case has attained finality and the corresponding entry of judgment has been made[2], prudence dictates that this Court's position on the matter be maintained and application of the new doctrine be, in the meantime, deferred.

In sum, I concur with the majority in affirming the dismissal of petitioner's judicial claim on the ground of lack of jurisdiction.

CAESAR A. CASANOVA
Associate Justice

---

2 RULE 36
JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF
Sec. 2. *Entry of judgments and final orders.*
If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.