REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PILIPINAS KYOHRITSU, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1131
(CTA Case No. 8622)

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

OCT 08 2015
2:20 p.m.

x- x

RESOLUTION

COTANGCO-MANALASTAS, J.:

For resolution is petitioner's *Motion for Reconsideration* filed on April 16, 2015. Respondent failed to file her comment despite due notice.

Petitioner moves for the reconsideration of this Court's Decision, promulgated on March 23, 2015, the dispositive portion of which reads:

> **"WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. The Resolutions, dated November 12, 2013 and February 13, 2014, of the Third Division in CTA Case No. 8622, are hereby **AFFIRMED.**
>
> **SO ORDERED."**

Petitioner anchors its motion on the following grounds:

a. The issue as to the timeliness of the petition was never raised in the respondent's answer nor in any of her pleadings.

b. The Honorable Court cannot dismiss the case based on mere presumption and speculation that petitioner has already submitted completed documents.

c. The petition was timely filed. Petitioner has the right/option to wait for the decision of the Commissioner of Internal Revenue (CIR).

d. The second paragraph of Section 112(C) of the National Internal Revenue Code (NIRC) is unconstitutional.

A perusal of petitioner's motion reveals that the grounds relied upon are but a mere rehash or reiteration of its previous arguments, which the Court *En Banc* had considered, sufficiently passed upon and adequately discussed in the assailed Decision.

Anent petitioner's argument that the timeliness of the filing of the petition for review was never raised as an issue by the respondent, suffice it to say that the Court is not precluded from resolving the issue of jurisdiction/prescription regardless of whether the issue was raised in the petition or not.

Section 1, Rule 9 of the Rules of Court expressly provides that:

> "Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings** or the evidence on record **that the court has no jurisdiction over the subject matter**, that there is another action pending between the same parties for the same cause, or that **the action is barred** by prior judgment or **by the statute of limitations, the court shall dismiss the claim.**" (*Emphasis supplied*)

Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[1]

And as held by the Supreme Court in *CIR vs. San Roque Power Corporation, Taganito Mining Corporation vs. CIR, and Philex Mining Corporation vs. CIR*[2], the 120+30 day period prescribed under Section 112(C) of the NIRC is **mandatory** and **jurisdictional**. It was conclusively settled therein that it is Section 112 of the NIRC which is applicable specifically to claims for tax credit certificates and tax refunds for unutilized creditable input VAT, and not Section 229.[3] The 2-year period under Section 229 does not apply to appeals before the Court of Tax Appeals in relation to claims for a refund or tax credit for unutilized creditable input VAT. Section 229 pertains to the recovery of taxes erroneously, illegally, or excessively collected. *San Roque* stressed that "input VAT is not 'excessively' collected as understood under Section 229 because, at the time the input VAT is collected, the amount paid is correct and proper." It is, therefore, Section 112 which applies specifically with regard to claiming a refund or tax credit for unutilized creditable input VAT.[4]

In view of the foregoing, the Court in Division's *motu proprio* dismissal of the petition on the ground of lack of jurisdiction/prescription is proper.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[1] *Bernardo vs. Heirs of Eusebio Villegas*, G.R. No. 183357, March 15, 2010.
[2] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[3] *Taganito Mining Corporation vs. CIR*, G.R. No. 201195, November 26, 2014.
[4] *Visayas Geothermal Power Company vs. CIR*, G.R. No. 197525, June 4, 2014.

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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