REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CARMEN COPPER CORPORATION, Petitioner,	C.T.A. CASE NO. 8042
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, *and* RINGPIS LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 21 2013 9:29 a.m.

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RESOLUTION

Fabon-Victorino, J.:

On July 8, 2013, petitioner filed an Omnibus Motion [To Admit Exhibits and Reopen the Case], to which respondent filed Comment/Opposition dated July 29, 2013.

In the Resolution dated August 6, 2013, the Court granted petitioner's motion to reopen the case but held in abeyance the resolution of petitioner's motion to admit exhibits pending petitioner's filing of a Supplemental Offer of Evidence. On September 9, 2013, petitioner filed its Supplemental Offer of Evidence.

Shortly thereafter or on September 23, 2013, respondent filed a Motion to Dismiss, to which petitioner filed an Opposition dated October 21, 2013.

First, the motion to dismiss, the resolution of which may render the other incidents moot.

Respondent moves to dismiss the case on the ground that it was filed beyond the reglementary period mandated under Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, divesting the Court of the authority to entertain the same.

To stress her point, respondent presents a table showing the date petitioner filed its administrative claim for refund for the 3rd and 4th quarters of 2007 and the 1st to 4th quarters of 2008 as follows:

PERIOD	**DATE OF FILING**
3rd Quarter of 2007	December 19, 2008
4th Quarter of 2007	December 19, 2008
1st Quarter of 2008	February 9, 2009
2nd Quarter of 2008	March 11, 2009
3rd Quarter of 2008	March 11, 2009
4th Quarter of 2008	March 11, 2009

Respondent admits that the table shows clearly that petitioner's administrative claims for refund were timely filed. This, according to respondent is however not true with regard petitioner's judicial claim for refund which was filed on March 26, 2010 or way beyond the 30-day period to appeal.

Respondent avers that pursuant to Section 112(C) of the NIRC of 1997, as amended, petitioner had 120 days from the time the administrative claims for refund were filed with her office to act on them. After the lapse of the said 120-day period without any action on her part, petitioner had 30 days to elevate the case to the Court via a petition for review. Based on the foregoing table, petitioner had the following dates within which to file its petition for review with this Court, thus:

PERIOD	DATE OF FILING OF ADMINISTRATIVE CLAIM	LAPSE OF 120-DAY PERIOD	LAPSE OF 30-DAY PERIOD
3rd Quarter of 2007	December 19, 2008	April 18, 2009	May 18, 2009
4th Quarter of 2007	December 19, 2008	April 18, 2009	May 18, 2009
1st Quarter of 2008	February 9, 2009	June 9, 2009	July 9, 2009
2nd Quarter of 2008	March 11, 2009	July 9, 2009	August 8, 2009
3rd Quarter of 2008	March 11, 2009	July 9, 2009	August 8, 2009
4th Quarter of 2008	March 11, 2009	July 9, 2009	August 8, 2009

Respondent asserts that petitioner allowed several months to pass after the 120-day period before it filed its Petition for Review with this Court on March 26, 2010. In other words, they were filed way beyond the 30-day period of appeal provided under Section 112(C) of the NIRC of 1997, as amended, divesting the Court of jurisdiction to entertain the appeal.

Respondent finds support in the ruling of the Court in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[1] where the Court denied the petition for being filed out of time depriving the Court of competence to entertain the judicial action.

Significantly, the timeliness of the administrative and judicial claims for tax refund is one of the issues stipulated upon by the parties in their Joint Stipulation of Facts and Issues.

Finally, Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides that when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim even if the defense of lack of jurisdiction was not pleaded in the answer or motion to dismiss.

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[1] CTA EB No. 776, October 11, 2012.

In rejecting the motion, petitioner insists that at the time its administrative and judicial claims for refund were filed, the 120+30 day periods for filing a judicial claim for refund of excess and unutilized input VAT provided in Section 112(C) of the NIRC of 1997, as amended, was merely discretionary.

In support thereof, petitioner cites the ruling of the Court in *Team Sual Corporation vs. Commissioner of Internal Revenue*[2] which held that the judicial recourse after the lapse of the 120-day period is merely directory and permissive and not mandatory and jurisdictional so long as the administrative and judicial claims are filed within the two-year prescriptive period under Sections 112 and 229 of the NIRC of 1997, as amended.

Petitioner likewise cites the Court's ruling in the subsequent case of *Commissioner of Internal Revenue vs. Team Sual Corporation*[3] where it was held that administrative and judicial claims for refund are deemed timely instituted if filed within two years from the close of the taxable quarter wherein the relevant sales were made.

Petitioner also claims that at the time it filed the instant petition, there was yet no categorical pronouncement by the Supreme Court on the nature of the 120+30-day periods provided under Section 112(C) of the NIRC of 1997, as amended. However, in deciding VAT refund cases, the High Court in a number of cases[4] consistently disregarded the 120+30-day periods and granted the judicial claims for refund even if filed beyond the said 120+30-day periods. Petitioner invokes as well the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[5], where the Supreme Court ruled that the two-year prescriptive period for the filing of both the administrative and judicial claims for refund of excess and

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[2] CTA Case Nos. 6630 and 6733, June 7, 2010.
[3] CTA EB Case No. 504 (CTA Case No. 6421), June 16, 2010.
[4] *Philippine Geothermal Inc., vs. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010 and *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.
[5] G.R. Nos. 141104 and 148763, June 8, 2007.

unutilized input VAT should be reckoned from the date of filing of the quarterly VAT return and the payment of the tax due.

Moreover, it is a hornbook rule that jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated.[6]

Petitioner further takes premium on the alleged failure of respondent to raise lack of jurisdiction in her Answer for non-observance of the mandatory requirement under Section 112(C) of the NIRC of 1997, as amended.

This is not to discount the fact that it already presented the evidence in support of its Petition for Review. For petitioner, the instant motion to dismiss is but a frivolous resort to procedure to deny it judicial due process.

The only issue for determination in this incident is whether petitioner's appeal before this Court on the ground of respondent's inaction was seasonably filed.

Section 112(C) of the NIRC, as amended, mandates, thus:

> SEC. 112. Refunds or Tax Credits of Input Tax. —
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> 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.

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[6] *Office of the Ombudsman vs. Rodriguez*, G.R. No. 172700, July 23, 2010; *Deltaventures Resources, Inc. vs. Hon. Cabato*, 384 Phil. 252 (2000).

> 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. xxxx

As admitted by respondent, the administrative claims for refund of its unutilized input taxes for the 3rd and 4th quarters of 2007 and the 1st to 4th quarters of 2008 were seasonably filed by petitioner on December 19, 2008, February 9, 2009 and March 11, 2009, respectively. In accordance with Section 112 (C) of the NIRC, as amended, respondent had 120 days or until April 18, 2009, June 9, 2009 and July 9, 2009, respectively, to rule on petitioner's administrative claim.

In the present case, there was no action on the part of respondent, thus, petitioner had thirty (30) days after April 18, 2009, June 9, 2009 and July 9, 2009 or until May 18, 2009, July 9, 2009 and August 8, 2009, respectively, to file its judicial claim. The record however shows that petitioner filed its appeal before the Court only on March 26, 2010, or almost a year beyond the 30-day period prescribed by law, effectively depriving the Court of jurisdiction to entertain the appeal.

The need to comply with the 120+30 day periods was bolstered in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[7] ("Aichi case"), where the Supreme Court ruled:

> Section 112(D)[8] of the NIRC clearly provides that the CIR has '120 days, from

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[7] G.R. No. 184823, October 6, 2010.
[8] Now Section 112 (C), as amended by Republic Act No. 9337.

the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two 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.' The phrase 'within two (2) years . . . apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with

> Subsections (A) and (B)' within which to decide on the claim.
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> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC 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. As we see it then, the 120-day period is crucial in filing an appeal with the CTA." (emphases supplied)

In the subsequent 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*[9] ("San Roque case") clarifying the application of the doctrines in the cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[10], *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[11] and *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[12] the Supreme Court states that compliance with the 120+30-day periods under Section 112 (C) of the NIRC of 1997, as amended, is both mandatory and jurisdictional, viz:

> 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

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[9] G.R. No. 187485; G.R. No. 196113; G.R. No. 197156, February 12, 2013.
[10] G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.
[11] G.R. No. 172129, 12 September 2008, 565 SCRA 154.
[12] *Supra*, Note 7.

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. The Mirant ruling, which abandoned the Atlas doctrine, adopted 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 day periods under Section 112 (C) because the application of the 120+30 day periods was not in issue in Atlas. 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. When Section 112 (C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. 65 Such doctrine is basic and elementary.

When Section 112(C) states that "the taxpayer affected may, within thirty (30) days from 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 law does not

> make the 120+30 day periods optional just because the law uses the word "may". The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional.
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> The old rule 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.

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:

> 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.
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> **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**. (Emphases supplied.)

As illustrated above, the belated filing of the petition after the inaction of respondent renders the Court without authority to entertain the petition. This situation is undeniably similar to the instant case.

In the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*,[13] the Supreme Court reaffirmed the principle that the right to appeal is not a natural right, but merely a statutory privilege exercised only in the manner and in accordance with the provisions of law, and thus, held as follows:

> The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.
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> The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional. Thus:
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>> Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal. (citations omitted)

Moreover, the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[14] The

[13] G.R. No. 167606, August 11, 2010, 628 SCRA 96.
[14] *Commissioner of Internal Revenue vs. Villa*, L-23988, January 02, 1928.

jurisdiction of the tribunal over the subject matter or nature of an action 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. If the court has no jurisdiction over the nature of an action, it may dismiss the same *ex mero motu* or *motu proprio*.[15]

Moreover, want of jurisdiction may be raised at any stage of the proceeding. And any judgment rendered by a court without jurisdiction is void (Golangco v. Fung, 504 SCRA 321). Thus, to proceed with the trial, when it is plain that the Court has no jurisdiction over the case is futile and a waste of time and resources.

Finally, the present Petition for Review involves a claim for refund which is in the nature of a claim for exemption which is construed *strictissimi juris* against the taxpayer[16] and liberally in favor of the government as tax refunds involve a return of revenue from the government. The claimant/taxpayer must indubitably show the specific provision of the law from which the right arises and it cannot be allowed to exist upon mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund. To repeat, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.[17]

WHEREFORE, the Motion to Dismiss dated September 23, 2013, filed by respondent Commissioner of Internal Revenue, is hereby **GRANTED**.

Consequently, the instant Petition for Review filed by petitioner Carmen Copper Corporation on March 26, 2010, is hereby **DISMISSED**. In view of the foregoing, the Omnibus

[15] *Danao, et al. vs. Tappa, et al.*, G.R. No. 181303, September 17, 2009.
[16] *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999.
[17] *Commissioner of Internal Revenue vs. Rosemarie Acosta*, G.R. No. 154068, August 3, 2007.

Motion [To Admit Exhibits and Reopen the Case] dated July 8, 2013 and Supplemental Offer of Evidence dated September 9, 2013 are now **MOOT**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice