REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DOHLE SHIPMANAGEMENT PHILS. CORP., Petitioner,	CTA CASE NO. 8702
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE and the ONE-STOP SHOP INTERAGENCY TAX CREDIT AND DUTY DRAWBACK CENTER OF THE DEPARTMENT OF FINANCE, Respondents.	Promulgated: SEP 07 2017 3:13 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

For court action is petitioner's *Motion for Reconsideration* dated May 2, 2017,[1] assailing the Decision dated April 4, 2017, the *fallo* of which reads:

> **WHEREFORE**, the Petition for Review dated August 29, 2013 filed by petitioner Dohle Shipmanagement Phils. Corp. (Dohle) is **DISMISSED** on jurisdictional ground.
>
> **SO ORDERED**.[2]

[1] Docket (Vol. III), pp. 1623-1635.
[2] Ibid. at p. 1621.

1648

Petitioner insists that it timely filed its judicial claim for refund or issuance of tax credit. Petitioner theorizes that since it submitted its complete supporting documents to substantiate its administrative claim on April 12, 2013, respondent had 120 days from April 12, 2013, or until August 10, 2013, to act on its administrative claim, following Section 112(C) of the National Internal Revenue Code (NIRC), as amended. Counting another 30 days from August 10, 2013, petitioner had until September 10, 2013 to file an appeal before this Court. Thus, the instant petition was seasonably filed on August 30, 2013. For petitioner, the Court erred in dismissing its judicial claim for refund or tax credit for lack of jurisdiction.

Further, petitioner imputes error on the Court in applying the principle enunciated in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[3] *(Total Gas)* insofar as requiring the taxpayer to submit supporting documents within the 2-year period under Section 112(A) of the NIRC, as amended for claims filed prior to June 11, 2014. It submits that the subject ruling was an *obiter dictum* as the same was unnecessary for the resolution of the issues in *Total Gas*, hence, not a binding precedent for observance by the Court.

In addition, the ruling in *Total Gas* must be applied prospectively, says petitioner. Since its administrative claim for refund was filed on August 12, 2011, or more than four (4) years prior to *Total Gas'* promulgation on December 8, 2015, hence, the pronouncement therein will have no application in the present controversy.

On the other hand, respondent One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DOF), quoting portions of the assailed Decision, maintains that the dismissal of the instant petition for lack of jurisdiction is proper.

The Ruling of the Court

The instant Motion for Reconsideration must be denied.

[3] G.R. No. 207112, December 8, 2015.

Contrary to petitioner's contention, the ruling *Total Gas* case is not an *obiter dictum*. An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it.[4] It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument.[5] Thus, to determine whether the subject ruling is an *obiter dictum*, a scrutiny of the issue raised and the subject ruling in *Total Gas* are in order.

One of the issues raised in *Total Gas* was whether Pilipinas Total Gas, Inc. (PTGI)'s judicial claim for refund was belatedly filed on January 23, 2009, or way beyond the 30-day period to appeal as provided in Section 112(C) of the Tax Code, as amended.[6]

Both the 120-day period to decide an administrative claim and the 30-day period to file a judicial claim under Section 112 of the Tax Code are inseparable, precisely the need to determine the commencement and lapse of both periods. Thus, the Supreme Court held, *inter alia* that the CIR's 120-day period to decide an administrative claim starts from the taxpayer's submission of complete supporting documents *and* such submission may not go beyond the 2-year prescriptive period in Section 112(A) of the same Code for claims filed prior to the advent of RMC No. 54-2014, or before June 11, 2014 (subject ruling).

It must be emphasized that the subject ruling was crafted to squarely address one of the issues posed by PTGI in the said case. In fact, the subject ruling questioned by petitioner was clearly applied to PTGI's judicial claim filed on January 23, 2009, or prior to the June 11, 2014 cut-off.[7] As such, the subject ruling is the prevailing tenet to which the Court must strictly adhere. In other words, the Court is left

[4] *Auyong Hian (Hong Hua Hang) vs. Court of Tax Appeals, et al.*, G.R. No. L-28782, September 12, 1974, citing *Bouvier's Law Dictionary, Third Revision*, Vol. I, p. 863.
[5] *Land Bank of the Philippines vs. Federico Suntay, as represented by his assignee, Josefina Lubrica*, G.R. No. 188376, December 14, 2011.
[6] Statement of Issues, Decision in G.R. No. 207112, p. 5.
[7] Decision in G.R. No. 207112, p. 14.

1650

with no recourse but to apply the same in the given controversy.

Again, diametrically opposed to petitioner's stance, the Total Gas ruling may be applied retroactively. Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force and effect of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted.[8]

Clear as day that the subject ruling in *Total Gas* is the prevailing disquisition of the Supreme Court from January 1, 1998, or from the effectivity of the NIRC, as amended. Hence, the subject ruling may be applied retroactively with respect to petitioner's claim for refund.

As for the remaining matters raised in the instant Motion, suffice it to say that they have been exhaustively discussed, treated and passed upon by the Court in the assailed Decision of April 4, 2017. To repeat, the failure of petitioner to comply with the mandatory and jurisdictional 120+30 day periods and the prevailing jurisprudence deprived the Court of competence to hear and decide petitioner's judicial claim.

In fine, petitioner utterly failed to advance substantial arguments that will warrant a reversal, much less a modification of the assailed Decision of April 4, 2017.

WHEREFORE, petitioner's Motion for Reconsideration dated May 2, 2017 is **DENIED**, for lack of merit. The assailed Decision dated April 4, 2017 is **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[8] *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.

1657

We Concur

LOVELL R. BAUTISTA Associate Justice	*(Inhibited)* MA. BELEN M. RINGPIS-LIBAN Associate Justice

1652