REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

TELUS INTERNATIONAL PHILIPPINES INC., Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 7892

x- -x

TELUS INTERNATIONAL PHILIPPINES INC., Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 7978

x- -x

TELUS INTERNATIONAL PHILIPPINES INC., Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 8016

Members:

ACOSTA, *Chairperson*
UY, and
FABON-VICTORINO, JJ.

Promulgated:

SEP 07 2011 ; 2:23 pm

x -x

RESOLUTION

Before this Court is respondent's **"MOTION TO DISMISS"** filed on July 26, 2011 with petitioner's **"COMMENT/OPPOSITION (Re: Motions to Dismiss dated 26 July 2011)"** filed on August 8, 2011.

In this instant Motion, respondent argues that the Petitions for Review docketed as CTA Case Nos. 7892 and 7978 were prematurely filed in violation of Section 112(C) of the National Internal Revenue Code (NIRC) of 1997. Respondent cites the ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1] *(Aichi case)* that "the premature filing of the claim for refund/credit of input tax before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA." In conclusion, respondent prays that the case be dismissed since the Court lacks jurisdiction to hear the same.

Petitioner, in its Comment/Opposition, stated that (a) the defense of premature invocation of the court's intervention is deemed waived considering that respondent did not raise it at the time the Answers to the Petitions for Review were filed; (b) the Motion was filed after respondent filed her Answers to the Petitions for Review; hence, it must be dismissed outright since the Rules requires that a motion to dismiss shall be filed within the time for but before the filing of an answer to the complaint or a pleading asserting a claim; (c) its judicial claims were seasonably filed pursuant to Section 229 of the NIRC and the prevailing jurisprudence upholding the right of the taxpayer to seek judicial redress before the lapse of the two-year prescriptive period when the claim remained unacted upon by the Commissioner; (d) judicial decisions must conform to previous case laws as required under the doctrine of stare decisis; and (e) an examination of Sections 112 and 229 of the 1997 NIRC with their counterpart provisions prior to the amendments introduced by RA Nos. 8424 and 9337 reveal that there were no significant amendments introduced by the later laws that could justify the adoption of the Aichi case. The Court's declaration

---

[1] G.R. No. 184823, October 6, 2010

that the 120-day period must be exhausted before the institution of judicial claim has changed the Court's consistent position before the Aichi case that Section 229 of the NIRC already covers the filing of judicial claims. This change in interpretation amounts to an amendment by implication which is frowned upon.

Based on the arguments of both parties, we resolve in favor of the respondent.

By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[2]

In the Aichi case, the Supreme Court stated that "the second paragraph of Section 112(D) of the NIRC envision 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." Accordingly, "in both instances, the taxpayer has 30 days within which to file an appeal with the CTA", and "the premature filing of the claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA." The said interpretation placed upon Section 112(D) *[now 112(C)]* of the NIRC in that *Aichi case* retroacts to the date of the enactment of the said law on January 1, 1998 following the well-settled rule that "the Court's interpretation of the law is part of the law as of the date of its

---

[2] Dante Nacuray et, al. vs. NLRC, G.R. Nos. 114924-27, March 18, 1997; and Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc. G.R. No. 150947, July 15, 2003 *citing the case of GSIS vs. Court of Appeals, 334 Phil. 163, 175; 266 SCRA 187 (1997)*

enactment since the court's interpretation merely establishes the contemporary legislative intent that the construed law purports to carry into effect."[3]

There is no reason to depart from the decision of the Supreme Court in the *Aichi case* which applied the provision of Section 112(D) of the NIRC following the doctrine of *stare decisis et non quieta movere*. The said doctrine enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[4]

Thus, based on the ruling in the *Aichi case*, the CTA acquires no jurisdiction over the case when the Petition for Review relative to one's claim for refund/credit of input tax has been prematurely filed in violation of Section 112(D) of the NIRC.

Moreover, under Section 7 of Republic Act No. 1125, as amended, the CTA has exclusive appellate jurisdiction to review by appeal the inaction of the Commissioner of Internal Revenue in cases involving refunds of internal revenue tax, among others. The Court, therefore, has no jurisdiction over the case when the Petition for Review is filed without waiting for the expiration of the 120-day period provided in Section 112(D) of the NIRC since there is yet no inaction of the Commissioner of Internal Revenue over which the Court can exercise jurisdiction.

---

[3] Philippine Constitution Association vs. Enriquez, G.R. No. 113105, August 19, 1994; 235 SCRA 506 *citing People v. Licera, 65 SCRA 270 [1975]*

[4] Lazatin vs. Desierto, G.R. No. 147097, June 5, 2009; Fermin vs. People, G.R. No. 157643, March 28, 2008 *citing Castillo v. Sandiganbayan, 427 Phil. 785, 793 (2002).*

Considering that the issue of jurisdiction may be raised at any stage of the proceedings, the instant Motion to Dismiss on the ground of lack of jurisdiction is perfectly allowed by the Rules. Indeed, Section 1, Rule 9 of the Rules of Court provides that 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, the court shall dismiss the same.

The case at hand reveals that petitioner filed the applications for issuance of tax credit certificate of its claimed excess/unutilized input tax of P30,487,312.70 for the first and second quarters of 2007, and P29,116,649.87 for the third quarter of 2007 on March 3, 2009 and July 23, 2009, respectively. Counting from these dates, the Commissioner has 120 days or until June 30, 2009 and November 19, 2009, respectively, within which to act upon the claims. Thereafter, without action on the part of the Commissioner, an appeal may be filed with this Court within 30 days or until July 30, 2009 and December 19, 2009, respectively.

Unfortunately, petitioner did not wait for the lapse of the 120-day period and immediately filed its Petitions for Review, which were docketed as CTA Case No. 7892 and 7978 on March 31, 2009 and September 30, 2009, respectively. Hence, following the pronouncement in the Aichi case, these premature appeals warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

WHEREFORE, premises considered, respondent's **Motion to Dismiss** is hereby **GRANTED.** Accordingly, the Petitions for Review docketed as CTA Case Nos. 7892 and 7978 are hereby **DISMISSED** for lack of jurisdiction for premature filing which is tantamount to lack of cause of action.

With respect to the remaining case docketed as CTA Case No. 8016, the same is set for the continuation of the presentation of petitioner's evidence on November 8, 2011 at 9:00 a.m.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice