REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BASES CONVERSION AND DEVELOPMENT AUTHORITY, Petitioner,	**CTA EB No. 1102** (CTA Case No. 8487)
-versus-	Present: Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 07 2015 3:30 p.m.

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DECISION

CASTAÑEDA, JR. *J.*:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed by petitioner Bases Conversion and Development Authority (BCDA) assailing the (a) Resolution of the CTA First Division dated March 14, 2013,[1] which granted respondent's Motion to Dismiss and, accordingly dismissed the Petition for Review for lack of jurisdiction; and (b) Resolution of the CTA Special First Division dated November 25, 2013,[2] which denied petitioner's Motion for Reconsideration for lack of merit.

THE FACTS

The facts of the case are as follows:

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[1] *Rollo*, pp. 26-34. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Erlinda P. Uy, concurring.
[2] *Rollo*, pp. 35-40. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Erlinda P. Uy, concurring.

Petitioner BCDA is a government instrumentality vested with corporate powers created under Republic Act (RA) 7227, as amended by RA 7917, primarily for the following purposes:[3]

(1) Convert into alternative productive uses the military reservations in the country and their extensions; and for this purpose, raise funds by the sale of portions of Metro Manila military camps transferred to it by the President.

(2) Apply said funds to the development and conversion to productive civilian use of the aforementioned former U.S. bases.[4]

Respondent is the Commissioner of Internal Revenue ("CIR"), vested under the appropriate laws with authority to carry out all functions, duties and responsibilities of the Bureau of Internal Revenue, including, *inter alia*, the power to decide, approve, and grant claim for refunds and/or issue tax credit certificates of erroneously paid or illegally collected internal revenue taxes.[5]

On May 10, 2012, petitioner filed a Petition for Review[6] pursuant to Section 7(a)(2) of RA 1125, as amended by RA 9282, claiming refund of the Creditable Withholding Tax (CWT) totaling P24,267,151.24 allegedly paid under protest in a series of payments from May 11, 2010 to 31 December 2010 in connection with BCDA's sale/disposition of its allocated units as its share in the "Serendra Project" in Fort Bonifacio, Taguig City.

On July 2, 2012, CIR filed her Answer[7] essentially arguing that:

a. The application for refund was already denied as early as March 15, 2012, hence, the Honorable Court has no jurisdiction to hear the present petition;[8]
b. Petitioner is not exempt to pay taxes pursuant to Section 27 (C) of the National Internal Revenue Code of 1997, as amended;[9]
c. In a case for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.[10]

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[3] Joint Stipulation of Facts, Division Docket, pp. 190-191.
[4] *Ibid.*, Division Docket, pp. 190-191.
[5] *Ibid.*, Division Docket, p. 191.
[6] Division Docket, pp. 6-24.
[7] Division Docket, pp. 138-156.
[8] *Ibid.*, pp. 139-146.
[9] *Ibid.*, pp. 147-152.
[10] *Ibid.*, pp. 152-155.

Subsequently, the parties filed their respective Pre-Trial Briefs,[11] as well as their Joint Stipulation of Facts,[12] which was approved by CTA First Division in the Resolution dated August 30, 2012.[13]

On November 29, 2012, CTA First Division issued the Pre-Trial Order,[14] summarizing the facts and issue stipulated by the parties, the evidence to be presented by the parties and the hearing dates, and stating that the pre-trial is terminated. On the same date, respondent filed a Motion to Dismiss[15] based on lack of jurisdiction.

In the Motion to Dismiss, respondent attached BIR's Letter dated March 15, 2012[16] received by petitioner on April 3, 2012 denying petitioner's claim for refund. According to respondent, the court has no jurisdiction on the judicial claim because it was filed only on May 10, 2012 or beyond the 30-day period to appeal.

Petitioner submitted a Comment/Opposition to Respondent's Motion to Dismiss[17] on December 27, 2012. It argued that the petition must be resolved on the merits because of the transcendental and novel issue of whether or not BCDA, as a tax-exempt government instrumentality with corporate powers, is entitled to a refund of CWT.

On March 14, 2013, CTA First Division issued a Resolution[18] which granted respondent's Motion to Dismiss, and accordingly dismissed the Petition for Review. The dispositive portion of which reads as follows:

> **IN VIEW OF ALL THE FOREGOING**, the *Motion to Dismiss* dated November 29, 2012, filed by respondent, is hereby **GRANTED**. Consequently, the *Petition for Review* filed by petitioner Bases Conversion and Development Authority, is hereby **DISMISSED**, for lack of jurisdiction.
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> **SO ORDERED.**[19]

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[11] Respondent's Pre-Trial Brief, Division Docket, pp. 161-166 and Petitioner's Pre-Trial Brief, Division Docket, pp. 168-182.
[12] Division Docket, pp. 190-195.
[13] Division Docket, p. 200.
[14] Division Docket, pp. 557-566.
[15] Division Docket, pp. 567-578.
[16] Division Docket, pp. 580-582.
[17] Division Docket, pp. 587-599.
[18] Division Docket, pp. 662-670.
[19] *Ibid.*, p. 670.

On April 12, 2013, petitioner filed a Motion for Reconsideration[20] while respondent filed her Comment[21] on May 15, 2013. The CTA Special First Division denied the Motion for Reconsideration in its November 25, 2013 Resolution[22], the dispositive portion of which is as follows:

> **WHEREFORE**, the *Motion for Reconsideration (Re: 14 March 2013)* dated April 10, 2013, filed by petitioner Bases Conversion and Development Authority, is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**[23]

Hence, this Petition for Review *en banc.*

THE ISSUES

Petitioner raises the following grounds:

I.

THE CTA SPECIAL FIRST DIVISION ERRED IN DISMISSING BCDA'S PETITION FOR REVIEW FOR LACK OF JURISDICTION.

II.

THE CTA SPECIAL FIRST DIVISION ERRED IN NOT CONSIDERING THE TRANSCENDENTAL AND NOVEL ISSUE RAISED IN BCDA'S PETITION FOR REVIEW.[24]

THIS COURT'S RULING

The Petition lacks merit. We affirm the assailed Resolutions dismissing the case for lack of jurisdiction.

The 30-day appeal period before the CTA is jurisdictional.

The law creating the CTA, i.e., Republic Act (RA) 1125, as amended by RA 9282, expressly specifies that its jurisdiction is to review on appeal

[20] Division Docket, pp. 672-678.
[21] Division Docket, pp. 682-694.
[22] Division Docket, pp. 705-710.
[23] *Ibid.*, p. 710.
[24] *Rollo*, p. 8.

"decisions of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes."[25] The party adversely affected by a decision of the CIR may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.[26] **The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling** x x x.[27]

Here, respondent issued an adverse decision[28] on petitioner's administrative claim received by the latter on April 3, 2012. Petitioner had until May 3, 2012 within which to appeal the decision following the 30-day appeal period under RA 1125, as amended by RA 9282. The Petition for Review[29] before the CTA First Division was filed only on May 10, 2012 or seven (7) days after the 30-day period to file an appeal.

Clearly, this is not a case of "inaction" as what petitioner would like the court to consider. There was a decision, hence, the 30-day appeal period commenced after the adverse decision was received. In this case, the petition before the CTA First Division was belatedly filed.

Jurisprudence recognized the jurisdictional character of the 30-day period within which to file an appeal before the CTA.[30] This 30-day appeal period under CTA's Charter was given emphasis in the recent case of *Miramar Fish Company Inc. v. Commissioner of Internal Revenue*[31] (*Miramar*). Although the *Miramar* case involved a refund of unutilized input VAT, the basic jurisdictional requirements under Secs. 7 and 11 of RA 1125, as amended by RA 9282, finds application to the present case. The Supreme Court stressed that **a claim for refund can proceed only upon compliance with the jurisdictional requirement**. It was held:

> Section 7 of RA No. 1125, which was thereafter amended by RA No. 9282, clearly defined the appellate jurisdiction of the CTA:

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[25] The charter of the CTA, RA 1125, as amended by RA 9282, provides:

> Section 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> xxx xxx xxx (emphasis ours)

[26] Sec. 11, RA 1125, as amended by RA 9282.

[27] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144, 152.

[28] Division Docket, pp. 580-582.

[29] Division Docket, pp. 6-28.

[30] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006, 491 SCRA 213, 221 citing *Ker & Company, Ltd. v. Court of Tax Appeals*, G.R. No. L-12396, January 31, 1962, 4 SCRA 160, 163; *Commissioner of Internal Revenue v. Western Pacific Corporation*, G.R. No. L-18804, May 27, 1965, 14 SCRA 105, 108-109.

[31] G.R. No. 185432, June 4, 2014

> **Section 7.** ***Jurisdiction***. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
>
> (1) **Decisions of the Collector of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; (Emphasis supplied)
>
> xxx xxx xxx

Relative thereto, Section 11 of the same law prescribes how the said appeal should be taken, to wit:

> **Section 11.** ***Who may appeal; Effect of appeal***. — Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals **may file an appeal in the Court of Tax Appeals <u>within thirty days</u> after the receipt of such decision or ruling.** (Emphasis and underscoring supplied)[32]

Also, We apply by analogy the case of *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[33] where the Supreme Court pointed out that the court is powerless to extend the 30-day appeal period.

> From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an**

[32] *Ibid.*
[33] G.R. No. 168498, April 24, 2007, 522 SCRA 144.

> **appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction** to entertain and determine the correctness of the assessments. **Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.**[34] (emphasis ours)

Meanwhile, it is petitioner's stance that the CTA First Division and CTA Special First Division should have relaxed the rules on procedure and allowed its petition to prosper given the transcendental and novel issue involved in this case.

We do not agree.

The Supreme Court was emphatic on strict compliance with the jurisdictional conditions on tax refunds. The court cautioned itself not to establish a precedent whereby non-compliance with mandatory and jurisdictional conditions prescribed by law can be trampled with if the claim is otherwise meritorious. In the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, Philex Mining Corporation v. Commissioner of Internal Revenue,*[35] it was held:

> x x x Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.
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> This Court cannot disregard mandatory and jurisdictional conditions mandated by law simply because the Commissioner chose not to contest the numerical correctness of the claim for tax refund or credit of the taxpayer. Non-compliance with mandatory periods, non-observance of prescriptive periods, and non-adherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit, whether or not the Commissioner questions the numerical correctness of the claim of the taxpayer. **This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is**

[34] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[35] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336, 383-384.

> **otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, for then every tax refund case will have to be decided on the numerical correctness of the amounts claimed, regardless of non-compliance with mandatory and jurisdictional conditions.** [36] (emphasis ours)

Moreover, in *Miramar* case, Supreme Court ruled that courts cannot decide the case on the merits when it does not acquire jurisdiction over the subject matter or nature of an action.

> "x x x jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, 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. **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.**"[37] (emphasis ours)

Timely perfection of an appeal is mandatory.

In the case of *Philippine National Bank v. Commissioner of Internal Revenue*,[38] the Supreme Court affirmed the Resolutions of the CTA *En Banc* which dismissed outright the Petition for Review filed by PNB for failure to strictly observe three procedural rules, one of which was the late filing of the petition (four days beyond the additional 15 days granted to file the petition). PNB's failure to observe the basic procedural rules when it filed its petition with the CTA *En Banc* warranted a dismissal of its case. The Supreme Court held:

> x x x **the timely perfection of an appeal is a mandatory requirement. One cannot escape the rigid observance of this rule by claiming oversight, or in this case, lack of foresight. Neither can it be trifled with as a "mere technicality" to suit the interest of a party**. Verily, the

[36] *Ibid.*
[37] *Miramar Fish Company Inc. v. Commissioner of Internal Revenue*, G.R. No. 185432, June 4, 2014; *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778. March 12, 2014.
[38] G.R. No. 172458, December 14, 2011, 662 SCRA 424.

periods for filing petitions for review and for *certiorari* are to be observed religiously. "Just as [the] losing party has the privilege to file an appeal within the prescribed period, so does the winner have the . . . right to enjoy the finality of the decision." In *Air France Philippines v. Leachon*, we held:

> **Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable.** It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it. The requirements for perfecting an appeal within the reglementary period specified in the law must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays, and are necessary for the orderly discharge of the judicial business. For sure, the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.[39] (emphasis ours)

Therefore, petitioner's right to appeal to the CTA from the adverse decision of the CIR is merely a statutory privilege, not a constitutional right. The stringent compliance with the conditions set forth by the statute is mandatory in the exercise of such statutory privilege. Petitioner failed to comply with the statutory conditions and must thus bear the consequences. "Well settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit."[40]

Accordingly, "perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case."[41]

WHEREFORE, on the basis of the foregoing considerations, the petition is **DISMISSED.** The March 14, 2013 Resolution of CTA First

[39] *Ibid.*
[40] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 189440, June 18, 2014.
[41] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010, 628 SCRA 96, 105.

Division and the November 25, 2013 Resolution of the CTA Special First Division in CTA No. 8487 are hereby **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice