REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION
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HEDCOR SIBULAN, INC., Petitioner,	**CTA CASE NO. 8125**
	Members:
-versus -	**BAUTISTA,** Chairperson **PALANCA-ENRIQUEZ,** and **MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 18 2011 ABFernando 11:38a.m.

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RESOLUTION

For our resolution is petitioner's **"Motion for Reconsideration[1]"** filed on February 16, 2011, seeking reconsideration of the Resolution[2] promulgated on January 31, 2011, the dispositive portion of which states --

> "**WHEREFORE**, premises considered the instant ***Motion to Dismiss*** is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED.**"

Petitioner argues that the Court erred in dismissing the instant case because under Section 6, Rule 16 of the Revised Rules of Court; only those grounds for a motion to dismiss as enumerated in Section 1 of the said rule may be pleaded as affirmative defenses in the Answer and premature filing is

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[1] *Rollo*, pp. 370-416.
[2] Id. at 357-362.

not one of them. Petitioner also avers that the Court should not have dismissed the instant petition considering that respondent never raised any such grounds in her Answer.

Moreover, petitioner avers that the Court erred in applying the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia Inc.*[3] (Aichi case) to the present case since new rulings should not be applied retroactively to cases that were filed prior to the promulgation of the new rulings.

Respondent filed her "Comment (Re: Motion for Reconsideration dated 16 February 2011)" on March 16, 2011, counter arguing that a taxpayer must observe administrative proceedings before appealing to the Court, to give respondent an opportunity to decide on the claim and correct the action of subordinate officers.

Likewise, respondent posits that petitioner filed an administrative claim for refund on June 25, 2010; then, filed its Petition for Review with the Court barely four (4) days later. As such, the Court did not err in dismissing the case as it never acquired jurisdiction on account of the premature filing of the petition with the Court.

We find for respondent.

To begin with, Section 6, Rule 16 of the Rules of Court explicitly states that an affirmative defense contained in an Answer may be regarded as having the effect of a Motion to Dismiss, to wit:

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

> "Sec. 6. *Pleading grounds as affirmative defenses.* – **If no motion to dismiss had been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer** and, in the discretion of the court, a preliminary hearing may be had thereon **as if a motion to dismiss had been filed**.
>
> The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer." *[Emphasis and underscoring supplied]*

Here, it is clear that petitioner violated the doctrine of exhaustion of administrative remedies by filing its petition with the Court barely four days after it filed its claim for refund with respondent. As its petition was prematurely filed, there is no case over which the Court may acquire jurisdiction.

If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within its jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. **The premature invocation of the court's intervention is fatal to one's cause of action.**[4]

With respect to petitioner's claim that the Court should not have applied the *Aichi* case as it was not the prevailing jurisprudence at the time its petition was filed; it is relevant to stress that by tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution

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[4] Union Bank of the Philippines vs. Court of Appeals, et. al., G.R. No. 131729, May 19, 1998.

form part of the legal system of the country.[5] In fact, it is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of hierarchy of courts.[6]

Thus, the Court cannot deviate from the ruling of the Supreme Court in the *Aichi case*, which merely set forth the literal application of the terms of Section 112 (D)(now, Section 112 [C]) of the National Internal Revenue Code (NIRC) of 1997, as amended, which has been in existence even before the promulgation of the *Aichi case*. Said law explicitly provides –

> "SEC. 112. Refunds or Tax Credits of Input Tax. –
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> x x x x
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> (D) 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 Subsections (A) and (B) hereof.
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> 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."** *[Emphasis and underscoring supplied]*

Under the verbal legis rule, if the words of the law are clear, plain and free from ambiguity, it must be given its literal meaning and applied without any interpretation. In the case of *Abello v. Commissioner of Internal Revenue*[7] the Supreme Court enunciated:

[5] Caram Resources Corp. vs. Judge Maximo C. Contreras, Metc, Branch 61, Makati, Metro Manila, A.M. No. MTJ-93-849, October 26, 1994.
[6] Commission on Higher Education vs. Atty. Felina S. Dasig, G.R. No. 172776, December 17, 2008.
[7] G.R. No. 120721, February 23, 2005.

> "It bears stressing that the **first and fundamental duty of the Court is to <u>apply the law</u>**. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation...." *[Emphasis and underscoring supplied]*

The aforequoted Section cannot be any clearer. After the expiration of the 120-day period, a taxpayer may appeal the inaction of the Commissioner of Internal Revenue (CIR) to the Court within 30 days. Hence, the Court correctly dismissed the case for petitioner's failure to wait for the expiration of the 120-day period before filing its petition with the Court, as the premature invocation of the Court's jurisdiction has resulted to lack of cause of action.

WHEREFORE, premises considered, petitioner's "**Motion for Reconsideration**" is hereby **DISMISSED** for lack of merit.

SO ORDERED.

(I maintain my *Dissenting Opinion* as promulgated by this Court in Resolution dated January 31, 2011.)
LOVELL R. BAUTISTA
Associate Justice

I concur in the result.

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice