[G.R. No. 192006, November 14, 2018]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, MINDANAO I GEOTHERMAL PARTNERSHIP, RESPONDENT.

DECISION

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated January 6, 2010, and the Resolution[3] dated April 15, 2010 of the Court of Tax Appeals (CTA) *en banc,* in CTA E.B. No. 459, which affirmed the Amended Decision[4] dated September 23, 2008 of the CTA's First Division in CTA Case No. 6788 in a claim for the issuance of a certificate of tax credit for unutilized excess input value-added tax (VAT) filed by Mindanao I Geothermal Partnership (M1).

The Facts

M1 is a duly registered Philippine partnership which is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in the business of generation, collection, and distribution of electricity, steam, and hot water supply.[5]

Sometime in December 1994, M1 entered into a build-operate-transfer contract with the Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC) for the finance, design, construction, testing, commissioning, operation, maintenance, and repair of a 47-megawatt geothermal plant. Under the contract, PNOC-EDC shall supply and deliver steam to M1, who shall then convert the steam into electric power and supply such power to the National Power Corporation for and in behalf of PNOC-EDC. M1's geothermal power plant project has been accredited by the Department of Energy as a Private Sector Generation Facility pursuant to the provisions of Executive Order No. 215.[6]

On June 26, 2001, Republic Act No. 9136, or the Electric Power Industry Reform Act (EPIRA) took effect. It amended the National Internal Revenue Code (NIRC) to make the delivery and supply of electric power by generation companies VAT zero-rated. Pursuant to said law, M1 adopted VAT zero-rating in the computation of its VAT payable in the course of filing its VAT returns, on the belief that its sales qualify for VAT zero-rating. Subsequently, M1 filed its VAT returns for the third and fourth quarters of taxable year 2001 on October 24, 2001, and January 24, 2002, respectively, declaring accumulated unutilized excess input VAT in the amount of Php 4,417,437.97 as of the fourth quarter of taxable year 2001, which it attributed to its zero-rated sales to PNOC-EDC for the same period.[7]

On June 24, 2002, M1 filed with the BIR an administrative claim for the issuance of a tax credit certificate in the amount of Php 4,417,437.97, corresponding to its claimed unutilized excess input VAT as of the fourth quarter of 2001.[8]

On September 30, 2003, after the BIR's alleged inaction, M1 elevated its claim to the CTA through a petition for review. The BIR, represented by respondent Commissioner of Internal Revenue (CIR), filed its answer on November 17, 2003. The case then proceeded to trial on the merits and was submitted for decision on July 19, 2005, without memorandum from the BIR.[9]

On October 13, 2005, the CTA First Division rendered a Decision[10] in the case. M1's petition was denied for failure to submit Certificates of Creditable Tax Withheld at Source and machine-validated Monthly VAT Declarations for the months of July and August 2001. The tax court in division held that without these documents, the VAT payments cannot be applied against M1's output VAT liability. Hence, there would be no excess VAT to refund.[11]

On November 17, 2005, M1 filed a motion for new trial, claiming that the non-submission of the aforesaid documents was based on the recommendation of the independent certified public accountant (CPA) commissioned by the CTA. The motion was granted[12] and M1 included the documents in its Supplemental Offer of Documentary Evidence.[13]

On September 23, 2008, the CTA First Division rendered an Amended Decision[14] ordering the BIR to issue a Tax Credit Certificate in favor of M1 in the amount of Php 4,067,876.53, representing unutilized input VAT incurred for the third and fourth quarters of taxable year 2001.

The tax court in division admitted the Certificates of Creditable Withheld at Source and the machine-validated Monthly VAT Declarations showing VAT payment which was submitted by M1. To determine if M1 applied its excess input tax credits for taxable year 2001 against its output VAT in the succeeding quarters of taxable years 2002 and 2003, the CTA First Division took judicial notice of M1's Quarterly VAT Returns for the last three quarters of 2002 and first two quarters of 2003, which were attached to M1's petitions for review in three other cases pending with the tax court.[15]

The BIR moved for reconsideration, which was denied. Thus, on February 25, 2009, after its motion for extension was granted by the tax court, BIR filed a Petition for Review before the CTA *en banc* to assail the Amended Decision.

On January 6, 2010, in its Decision,[16] the CTA *en banc,* by a 4-2 vote, affirmed the CTA First Division's ruling. The CTA *en banc* upheld the grant of M1's motion for new trial, ruling that the finding of mistake on M1's part was well-taken, given M1's mistaken but *bonafide* reliance on the report of the court-commissioned CPA. The tax court also sustained its First Division's taking judicial notice of M1's Quarterly VAT Returns which were found in the records of M1's other pending cases with the CTA. The dissenting Justices were of the opinion that the CTA First Division cannot properly take judicial notice of the Quarterly VAT Returns found in M1's other pending cases.[17]

The BIR filed a motion for reconsideration which raised *inter alia,* for the first time, the issue of whether or not M1's claim was timely filed. However, the CTA denied the motion through a Resolution[18] dated April 15, 2010, holding that the issue was a matter of prescription, which cannot be raised for the first time on appeal or on reconsideration.

On June 2, 2010, the BIR, represented by its Commissioner, filed a Petition for Review on *Certiorari* with this Court, which was docketed as G.R. No. 192006. On September 23, 2010, M1 filed its Comment on the Petition.[19] On February 18, 2011, the CIR filed his Reply.[20] The Court, in a Resolution[21] dated March 23, 2011, granted M1's motion to admit rejoinder and noted the attached Rejoinder.

The Issues

The CIR raises the following issues for resolution:

1. Whether or not the CTA erred in taking judicial notice of the quarterly VAT returns filed by M1 in other cases before the CTA;
2. Whether or not the BIR was denied due process when the CTA took judicial notice of the quarterly VAT returns filed by M1 in other cases before the CTA without a hearing;
3. Whether or not CTA erred in granting M1's motion for new trial; and
4. Whether or not the First Division of the CTA had jurisdiction to entertain M1's claim for a tax credit certificate.

On the issue regarding the propriety of judicial notice, the CIR asserts that the VAT returns attached to the records of M1's other pending cases can be the subject of neither mandatory nor discretionary judicial notice because the statements therein are still disputable, hence at the very least, the CTA should have conducted a hearing on the matter; while M1 contends that the matter was one which the tax court could acquire knowledge of by virtue of its judicial functions, and that the current action is so intimately related to the other three actions where the Quarterly VAT Returns were filed, such that the tax court ban take judicial notice of the returns.

On the issue of the propriety of the grant of M1's motion for new trial, the CIR asserts that M1's ratiocination for the non-submission of the Certificates of Creditable Withheld at Source and the machine-validated Monthly VAT Declarations does not constitute mistake or excusable negligence sufficient for the grant of a new trial, and that the documents are not newly-discovered evidence but actually "forgotten evidence". M1 on the other hand asserts that its reliance on the court-commissioned accountant was "misplaced confidence" amounting to a mistake which would justify the grant of a new trial. M1 also notes that when it moved for a new trial, the BIR did not object at the first instance.

Finally, as regards the issue of the CTA's jurisdiction over the claim, the CIR asserts that the judicial claim for tax credit was filed out of time. According to the,taxman, under Section 112(C) of the NIRC, as amended, it had until October 22, 2002, or 120 days from the date of filing of M1's administrative claim for refund, to act upon the claim, failing which M1 only had until November 21, 2002, or 30 days-from the lapse of the 120-day period, to file a judicial claim before the CTA. Therefore, M1's claim, which was filed on September 30, 2003, was filed after the jurisdictional period had lapsed. M1 counters that the BIR is estopped from raising the issue of jurisdiction, having raised it for the first time on reconsideration before the CTA *en banc.* It also argues that the *CIR v. Aichi Forging Company of Asia, Inc.*[22] ruling should not be applied retroactively; and that *pre-Aichi* rulings of the CTA treating the 120+30-day period under Section 112(D) as merely permissive, should be applied in this case.

Ruling of the Court

The petition is meritorious.

The Court begins by discussing the threshold issue of the tax court's jurisdiction to entertain M1's claim for tax credit. The applicable law is Section 112 of the NIRC,[23] which establishes the procedural and temporal parameters for the claim of excess input VAT refunds. The provision states in part:

> SEC. 112. *Refunds or Tax Credits of Input Tax. —*
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> (A) *Zero-rated or Effectively Zero-rated Sales. —* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) 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, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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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 Subsection (A) and (B) hereof.

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.

The precise mandate of these provisions has been the subject of many Supreme Court decisions such as the *Atlas Consolidated Mining and Dev't. Corp. v. CIR,*[24] CIR v. Mirant Pagbilao Corp.,[25] and *CIR v. San Roque Power Corp.*[26] cases. The jurisprudence interpreting Section 112 was further summarized by the Court in *Silicon Philippines, Inc. v. CIR*:[27]

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. *(Aichi)*
2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque)*
3. The only other rule is the *Atlas* ruling, which applied only from 8 June 2007 to 12 September 2008. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. *(San Roque)*

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi* and *San Roque)*
4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*
5. Late filing is absolutely prohibited, even during the time when BIR Ruling

No. DA-489-03 was in force. *(San Roque)*[28]

M1 asks this Court not to apply the *Aichi* ruling to the case at bar since the administrative and judicial claims at issue were filed before the promulgation of *Aichi.* It further asks this Court to sanction *pre-Aichi* interpretations of Section 112(C), citing rulings of the CTA and the Court's ruling in *San Carlos Milling Co., Inc.* v. *CIR*[29] to that effect. It asserts that a retroactive application of *Aichi* will work injustice to taxpayers who relied in good faith on rulings which applied the general rule on statutory construction to Section 112(C). It also asserts that the BIR raised the issue for the first time on motion for reconsideration with the CTA *en banc,* hence it should be deemed estopped to raise the issue.

The Court is not persuaded.

The issue regarding the retroactive application of *Aichi* has been settled in *San Roque:*

> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30-day mandatory and jurisdictional periods. Thus, **strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine,** except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.[30] (Emphasis and underscoring Ours)

San Roque has been applied and reiterated in two prior decisions of this Court involving claims for input VAT tax credit filed by M1.[31] Hence, the applicable law at the time of the filing of the claim, as held in *San Roque,* is clear: the word "may" in Section 112(C) refers to the choice of remedy and not to the period for seeking such remedy, *i.e.,* the taxpayer *may or may not* appeal the claim, but if it elects to do so, the appeal must be filed within the 30-day period.

Applying therefore the *verba legis* import of Section 112(C) to the case at bar, the Court recapitulates the material dates. M1's administrative claim was filed on June 24, 2002, which is within the two-year period under Section 112(A) and *Atlas.* The 120-day period for CIR to rule on M1's claim lapsed on October 22, 2002. M1, therefore, had 30 days from that date, or until November 21, 2002, to appeal to the CTA. However, M1 filed its Petition for Review with the CTA only on September 30, 2003 - 333 days after the lapse of the 120-day period. The judicial claim was therefore filed out of time, and the CTA had no jurisdiction to entertain it.

A similar situation involving claims filed prior to the promulgation of the *Aichi* and *San Roque* rulings

was passed upon in the case of *Silicon Philippines, Inc. v. CIR.*[32] In that case, the taxpayer filed claims for tax credit on its excess input VAT taxes attributed to zero-rated sales for the first quarter of 1999 and the second quarter of 2000. The claims were filed, respectively, on August 6, 1999 and August 10, 2000. The BIR did not act on both claims, prompting the taxpayer to file judicial claims before the CTA on March 30, 2001 and June 28, 2002. The Court, applying *San Roque,* held:

> After a careful perusal of the records in the instant case, we find that Silicon's judicial claims were filed late and way beyond the prescriptive period. Silicon's claims do not fall under the exception [under BIR Ruling No. DA-489-03]. Silicon filed its Quarterly VAT Return for the 1st quarter of 1999 on April 22, 1999 and subsequently filed on August 6, 1999 a claim for tax credit or refund of its input VAT taxes for the same period. From August 6, 1999, the CIR had until December 4, 1999, the last day of the 120-day period, to decide Silicon's claim for tax refund. But since the CIR did not act on Silicon's claim on or before the said date, Silicon had until January 3, 2000, the last day of the 30-day period to file its judicial claim. However, Silicon failed to file an appeal within 30 days from the lapse of the 120-day period, and it only filed its petition for review with the CTA on March 30, 2001 which was 451 days late. Thus, in consonance with our ruling in *Philex* in the *San Roque* ponencia, Silicon's judicial claim for tax credit or refund should have been dismissed for having been filed late. **The CTA did not acquire jurisdiction over the petition for review filed by Silicon.**
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> Similarly, Silicon's claim for tax refund for the second quarter of 2000 should have been dismissed for having been filed out of time. Records show that Silicon filed its claim for tax credit or refund on August 10, 2000. The CIR then had 120 days or until December 8, 2000 to grant or deny the claim. With the inaction of the CIR to decide on the claim which was deemed a denial of the claim for tax credit or refund, Silicon had until January 7, 2001 or 30 days from December 8, 2000 to file its petition for review with the CTA. However, Silicon again failed to comply with the 120+30-day period provided under Section 112 (C) since it filed its judicial claim only on June 28, 2002 or 536 days late. **Thus, the petition for review, which was belatedly filed, should have been dismissed by the CTA which acquired no jurisdiction to act on the petition.**[33]
> (Citations omitted and bracketing, emphasis and underscoring Ours)

As regards M1's argument regarding the belated invocation of the CTA's lack of jurisdiction over the claim, we find the same to be unmeritorious.

Rule 9, Section 1 of the Revised Rules of Court, which is suppletory to the Revised Rules of the CTA, provides that "when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, x x x the court shall dismiss the claim." Thus, in *Ombudsman Carpio-Morales v. CA, et al.,*[34] the Court held that "[t]he Court *ex mero motu* may take cognizance of lack of jurisdiction at any point in the case where that fact is developed. The court has a clearly recognized right to determine its own jurisdiction in any proceeding."[35] This is because "jurisdiction

is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action."[36]

However, jurisprudence recognizes "jurisdiction by estoppel" as an exception to the general rule. The principle was first enunciated by this Court in the 1968 case of *Tijam, et al. v. Sibonghanoy, et al.*[37] Over time, the Court has qualified the *Tijam* ruling. In *Calimlim, et al. v. Hon. Ramirez, etc., et al.,*[38] the Court observed that succeeding cases invoking *Tijam* have lost sight of the exceptional circumstances which underpin the ruling therein, thus *"virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel"*;[39] and in *La Naval Drug Corporation v. CA,*[40] the Court clarified that estoppel, to constitute a conferment of jurisdiction, must be *"unequivocal and intentional"*.[41] In *Tijam,* the Court ruled that the party raising lack of jurisdiction had been barred from doing so through estoppel by *laches,* because the defense was raised only in a motion to dismiss filed fifteen (15) years after it was impleaded as a party, and only after the plaintiff had moved for execution of the final judgment. Given the extremely belated invocation of the issue of lack of jurisdiction, the Court found it equitable and just to declare the party estopped from raising it.[42]

The Court has reviewed the record and does not find any circumstance which would warrant the application of jurisdiction by estoppel as enunciated in *Tijam.* The precise meaning of Section 112 of the NIRC has been the subject of debate for many years; and the issue has only been scrutinized in detail and settled when the *Atlas, Aichi, Mirant,* and *San Roque* rulings came out. The Court's pronouncement in *San Rogue* is instructive:

> This Court cannot brush aside the grave issue of the mandatory and jurisdictional nature of the 120-day period just because the Commissioner merely asserts that the case was prematurely filed with the CTA and does not question the entitlement of San Roque to the refund. The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit. 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 otherwise meritorious,

particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements x x x.[43] (Citations omitted)

Considering that the CTA had no jurisdiction over the claim filed by M1, the Court foregoes discussion of the other issues raised by the CIR in its petition as it would be superfluous to do so.

WHEREFORE, premises considered, the petition is hereby **GRANTED.** The Decision dated January 6, 2010, and the Resolution dated April 15, 2010 of the Court of Tax Appeals *en banc,* in CTA E.B. No. 459 are hereby **REVERSED** and **SET ASIDE.** Respondent Mindanao I Geothermal Partnership's judicial claim for refund, docketed as CTA Case No. 6788, is hereby **DISMISSED** for having been filed out of time.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, Caguioa, and *J. Reyes, Jr.,*[*] *JJ.,* concur.

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[*] Designated as Acting Member per Special Order No. 2587 dated August 28, 2018.

[1] *Rollo,* pp. 7-30.

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Caesar A. Casanova and Lovell R. Bautista concurring, and Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez dissenting; id. at 37-53.

[3] Id. at 70-75.

[4] Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, concurring; id. at 232-244.

[5] Id. at 40.

[6] Id.

[7] Id. at 40-41.

[8] Id. at 41.

[9] Id.

[10] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Lovell R. Bautista and Caesar A. Casanova, concurring; id. at 89-96.

[11] Id. at 95-96.

[12] Id. at 108.

[13] Id. at 109-230.

[14] Id. at 232-244.

[15] Id. at 241-242.

[16] Id. at 37-53.

[17] Dissenting Opinion of Associate Justice Erlinda P. Uy, id. at 54-58; and Dissenting Opinion of Associate Justice Olga Palanca-Enriquez, id. at 59-69.

[18] Id. at 70-75.

[19] Id. at 311-325.

[20] Id. at 333-344.

[21] Id. at 371.

[22] 646 Phil. 710 (2010).

[23] Section 112(C) has been amended by Republic Act No. 10963 (Tax Reform for Acceleration and Inclusion Law) by reducing the period within which the Commissioner could act on input VAT refund claims from 120 days to 90 days.

[24] 551 Phil. 519 (2007).

[25] 586 Phil. 712 (2008).

[26] 703 Phil. 310 (2013).

[27] 757 Phil. 54 (2015).

[28] Id. at 65.

[29] 298-A Phil. 76 (1993).

[30] Supra note 26, at 371.

[31] *Mindanao II Geothermal Partnership v. CIR,* 706 Phil. 48 (2013), which involves M1's VAT input tax credit claims for 2005; and *Mindanao I Geothermal Partnership v. CIR,* G.R. No. 197519, November 8, 2017, involving M1's VAT input tax credit claims for 2004.

[32] 727 Phil. 487 (2014).

[33] Id. at 503-504.

[34] 772 Phil. 672 (2015).

[35] Id. at 718, citing *Fabian v. Hon. Desierto,* 356 Phil. 787, 800-801 (1998).

[36] *Asiatrust Dev't. Bank v. First Aikka Dev't, Inc., et al.,* 665 Phil. 313, 326-327 (2011).

[37] 131 Phil. 556 (1968).

[38] 204 Phil. 25 (1982).

[39] Id. at 34-35.

[40] 306 Phil. 84 (1994).

[41] Id. at 93-94.

[42] Supra note 37, at 562-563.

[43] Supra note 26, at 356-357.