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FIRST DIVISION

[G.R. No. 189440, June 18, 2014]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MINDANAO II GEOTHERMAL PARTNERSHIP, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari assailing the May 29, 2009 Decision[1] and September 4, 2009 Resolution[2] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB Case No. 431. The CTA En Banc had affirmed the Decision[3] dated June 4, 2008 and Resolution[4] dated October 7, 2008 of the First Division of the Court of Tax Appeals (CTA First Division) in CTA Case No. 6909 which ordered the petitioner to issue a tax credit certificate (TCC) in favor of the respondent in the reduced amount of P689,313.37. This amount represented the unutilized input value-added tax (VAT) allegedly incurred by the respondent in connection with its zero-rated sales for the taxable year 2002.

The pertinent facts, as summarized by the CTA *En Banc,* are as follows:

Respondent Mindanao II Geothermal Partnership filed with the Bureau of Internal Revenue (BIR) its Quarterly VAT Returns for the four quarters of taxable year 2002. The respondent declared zero-rated sales in the amount of P769,384,702.23 and input VAT of P7,427,965.37 on domestic purchases of goods and services worth P74,279,653.78.[5]

The zero-rated sales, purchases, and input VAT of the respondent are broken down per quarter by the CTA *En Banc* as follows:

Exhibit	Taxable Quarter	Zero-rated Sales	Purchases	Input Vat
D	1st Quarter	P213, 813, 056.47	P17, 516, 718.65	P1, 751, 671.86
E	2nd Quarter	210, 379, 134.36	14, 294, 058.68	1, 429, 405.85
F	3rd Quarter	176, 468, 276.36	24, 719, 490.96	2, 471, 949.09
G	4th Quarter	168, 724, 235.04	17, 749, 385.49	1, 774, 938.57
	Total	P769, 384, 702. 23	P74, 279, 653.78	P7, 427, 965.37 [6]

On May 30, 2003, the respondent filed with the BIR Revenue District No. 108 a

claim for refund or issuance of a TCC of its unutilized input VAT attributable to its zero-rated sales for the taxable year 2002 in the amount of P7,427,965.37. However, the petitioner failed to act on the claim. Thus, on March 31, 2004, the respondent filed a *Petition for Review* with the CTA First Division. The case was docketed as CTA Case No. 6909.[7]

On July 30, 2004, the respondent filed a *Motion for Leave of Court to Amend its Petition for Review* in order to correct its claim from P3,891,414.38 to the proper amount of P7,427,965.37. This was granted by the CTA First Division on September 22, 2004.[8]

Meanwhile, pending the resolution of CTA Case No. 6909, the petitioner issued to respondent TCC No. 200600003060 in the amount of P6,251,065.74. The issuance of this TCC belatedly and partially granted the claim of the respondent. For this reason, the respondent filed a *Motion for Leave of Court to File Attached Supplemental Petition for Review* which was granted by the CTA First Division on February 13, 2008.[9]

On June 4, 2008, the CTA First Division rendered the assailed decision partially granting respondent's claim in the amount of P6,940,379.11. Since the petitioner already issued the aforementioned TCC No. 200600003060 in favor of the respondent, the CTA First Division ordered the fulfillment of only the balance of the respondent's claim in the amount of P689,313.37. Specifically, the dispositive portion of the assailed decision provides:

> WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to ISSUE a TAX CREDIT CERTIFICATE in favor of petitioner in the reduced amount of P689,313.37, representing unutilized input VAT incurred by petitioner in connection with its zero-rated sales for taxable year 2002.
>
> SO ORDERED.[10]

On June 23, 2008, the petitioner filed a *Motion for Partial Reconsideration*[11] which was denied by the CTA First Division in its Resolution dated October 7, 2008.

On November 12, 2008, the petitioner filed a *Petition for Review* with the CTA *En Banc* which however dismissed the petition for lack of merit on May 29, 2009, as follows:

> WHEREFORE, premises considered, the instant petition is hereby DENIED DUE COURSE, and accordingly, DISMISSED for lack of merit.
>
> SO ORDERED.[12]

Aggrieved, the petitioner filed a *Motion for Reconsideration*[13] with the CTA En Banc raising the issue of prescription of the respondent's judicial claim under Section 112

(D)[14] of the National Internal Revenue Code of 1997 (NIRC) for the first time.

On September 4, 2009, the CTA *En Banc* denied the *Motion for Reconsideration* on the ground that issues raised for the first time at the appellate level cannot be entertained by the reviewing court. The CTA *En Banc* held,

> Record shows that petitioner CIR's argument that respondent Mindanao II failed to file its judicial claim, within 30 days after the lapse of the 120-day period provided under *Section 112 (D) of the NIRC of 1997, as amended*, was raised for the first time by petitioner CIR in its present Motion for Reconsideration before this Court *En Banc.* Said issue was never raised in petitioner CIR's Answer and Amended Answer filed before the Court in Division. Neither was it raised by petitioner CIR in his present Petition for Review before this Court *En Banc*.
>
> As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic consideration of due process impels this rule (*Del Rosario vs. Bonga*, 350 SCRA 108).[15]

Hence, the present petition which raises the sole issue

> [WHETHER] THE COURT OF TAX APPEALS EN BANC DECIDED A QUESTION OF SUBSTANCE WHICH IS NOT IN ACCORD WITH THE LAW AND PREVAILING JURISPRUDENCE.[16]

In fine, the petitioner argues that the issue of prescription of the respondent's judicial claim can still be raised for the first time before the CTA *En Banc.* While the general rule requires that all factual and legal questions, arguments, and issues not raised in the proceedings below cannot be raised belatedly on appeal, the petitioner points out that one of the recognized exceptions to this rule is prescription as when the records of the case clearly reveal that the action has prescribed. Moreover, the petitioner argues that the CTA *En Banc* erred in declaring that the judicial claim for refund must be filed within two years from the close of the taxable quarter when the relevant sales were made as this prescriptive period only refers to taxes erroneously or illegally assessed or collected.

On the other hand, the respondent argues that the petitioner is estopped from raising the issue of prescription before the CTA *En Banc* because a change of theory in the appellate court is offensive to the basic rules of due process, fair play, and justice. The respondent further contends that its claim was, in any event, properly filed within the two-year prescriptive period which should be reckoned from the close of the taxable quarter when the relevant sales were made.

We grant the petition.

Notwithstanding the timely filing of the respondent's administrative claim, we are constrained to order the dismissal of the respondent's judicial claim for tax refund or tax credit for having been filed beyond the mandatory and jurisdictional periods provided in Section 112(C) of the NIRC. Section 112(C) expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner of Internal Revenue (CIR), thus:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> x x x x
>
> (C) *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) 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 supplied.)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the CIR to the CTA within 30 days from receipt of the CIR's decision, or if the CIR does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.[17]

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[18] this Court clarified the mandatory and jurisdictional nature of the 120+30 day period provided under Section 112(C) of the NIRC. We clarified that the two-year prescriptive period under Section 112(A)[19] of the NIRC refers only to the filing of an administrative claim with the BIR. Meanwhile, the judicial claim under Section 112(C) of the NIRC must be filed within a mandatory and jurisdictional period of 30 days from the date of receipt of the decision denying the claim, or within 30 days from the expiration of the 120-day period for deciding the claim. Thus, we mandated strict compliance with this "120+30" day period:

> Section 112(D) [now Section 112(C)] of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit,