EN BANC

G.R. No. 187485 – COMMISSIONER OF INTERNAL REVENUE, Petitioner, **v. SAN ROQUE POWER CORPORATION,** Respondent.

G.R. No. 196113 – TAGANITO MINING CORPORATION, Petitioner, **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

G.R. No. 197156 – PHILEX MINING CORPORATION, Petitioner, **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated:

February 12, 2013

x----------x

SEPARATE OPINION

LEONEN, *J.*:

I agree with the *ponencia* to the effect that:

1. A VAT-registered person whose sales are zero-rated, or effectively zero-rated, may apply for a refund or credit of creditable input tax within 2 years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. An administrative claim that is filed beyond the 2-year period is barred by prescription.

2. CIR has 120 days from the date of submission of complete documents in support of an application, within which to act on the claim. The taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or after the expiration of the 120-day period within which the claim has not been acted upon.

3. The 120 + 30-day period is mandatory and jurisdictional and the CTA does not acquire jurisdiction over a judicial claim that

is filed before the expiration of the 120-day period. On the other hand, failure of the taxpayer to elevate its claim within 30 days from the lapse of the 120-day period, counted from the filing of its administrative claim for refund, or from the date of receipt of the decision of the CIR, will bar any subsequent judicial claim for refund.

4. Excess input tax is not an excessively, erroneously, or illegally collected tax. A claim for refund of this tax is in the nature of a tax exemption, which is based on a specific provision of law, i.e., Section 110 of NIRC, which allows VAT-registered persons to recover the excess input taxes they have paid in relation to their sales. Hence, claims for refund/tax credit of excess input tax are governed not by Section 229 but only by Section 112 of the NIRC.

These interpret the following provisions of the NIRC viz:

> Section 112. *Refunds or Tax Credits of Input Tax.* -
>
> (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: xxx
>
> xxx xxx xxx
>
> (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.
>
> ***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 mine)
>
> Section 110. *Tax Credits*. -

> (A) Creditable Input Tax. - xxx
>
> (B) Excess Output or Input Tax. - If at the end of any taxable quarter the ouput tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

I am however unable to agree with the conclusion that the interpretation we have just put on these provisions take effect only when we pronounce them. Thus, in the view of the *ponencia*, that it is to be applied "prospectively".

My disagreement stems from the idea that we do not make law. Ours is a duty to construe: i.e., declare authoritatively the meaning of existing text. I can grant that words are naturally open textured and do have their own degrees of ambiguity. This can be based on their intrinsic text, language structure, context, and the interpreter's standpoint.

However, the provisions that we have just reviewed already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that are available to them. That is, that resort to judicial action can only be done after a denial by the commissioner or after the lapse of 120 days from the date of submission of complete documents in support of the administrative claim for refund.

Furthermore, settled is the principle that an "erroneous application and enforcement of the law by public officers do not preclude a subsequent correct application of the statute, and the Government is never estopped by mistake or error on the part of its agents."[1]

Accordingly, while the BIR Commissioner is given the power and authority to interpret tax laws pursuant to Section 4 of the NIRC, it cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous.

Concededly, under Section 246 of the NIRC, "[a]ny revocation, modification or reversal of any BIR ruling or circular shall not be given retroactive application if the revocation, modification or reversal will be

1 *Philippine Basketball Association v. Court of Appeals*, 392 Phil. 133, 144 (2000).

prejudicial to the taxpayers." However, if it is patently clear that the ruling is contrary to the text of the law, there can be no reliance in good faith by the practitioners.

BIR Ruling DA-489-03 which states that "the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review," constitutes a clear disregard of the express and categorical provision of Section 112(D) of the NIRC. Thus, the Commissioner's erroneous application of the law is not binding and conclusive upon this Court in any way.

As aptly held by this Court in *Philippine Bank of Communications v. CIR*:[2]

> Article 8 of the Civil Code recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. A memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same.[3]

In many instances, we have not given "prospective" application to our interpretation of tax laws. For instance:

A) In the case of *The Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc. and Court of Tax Appeals*,[4] we were guided by our ruling in *Guagua Electric Light Co., Inc. v. Collector of Internal Revenue*[5] which was **promulgated on 24 April 1967 (while the Ilagan case was pending)** where we held that a demand on the part of the Collector (now Commissioner) of Internal Revenue for payment of an erroneously refunded franchise tax is in effect an assessment for deficiency franchise tax. Applying the five-year prescriptive period for assessment specified under Section 331 of the Tax Code (and not Article 1145 of the Civil Code), we held that CIR's assessment made on 27 July 1961 against Ilagan Electric for erroneously refunded franchise tax for the 4th quarter of 1952 to the 4th quarter of 1954 is barred by prescription.

---

2 *Philippine Bank of Communications v. CIR, CTA & CA*, 361 Phil. 916 (1999).
3 Id. at 931.
4 *The Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc. and Court of Tax Appeals*, 140 Phil. 62 (1969).
5 *Guagua Electric Light Co., Inc. v. Collector of Internal Revenue*, 126 Phil. 85 (1967).

B) In the case of *Collector of Internal Revenue v. Batangas Transportation Company and Laguna-Tayabas Bus Company*,[6] we reversed the Court of Tax Appeals and held that in light of our ruling in the case of *Eufemia Evangelista v. Collector of Internal Revenue* [7] **promulgated on October 15, 1957,** the "Joint Emergency Operation" operated by Batangas Transportation Company and Laguna-Tayabas Bus Company is a "corporation" within the meaning of Section 84(b) of the Internal Revenue Code, and consequently, is subject to income tax.

C) The non-prospective effect of our decision can also be gleaned from what transpired in the case of *Carmen Planas v. Collector of Internal Revenue*.[8] That case involved a resolution of the CTA directing the execution of a judgment of the defunct Board of Tax Appeals, which affirmed the war profit tax assessment made by the Collector (now Commissioner) against Carmen Planas. We took note of our 30 March 1954 Resolution dismissing Carmen Planas' appeal from the Board of Tax Appeals decision on the basis of our declaration in *University of Sto. Tomas v. Board of Tax Appeals*,[9] that the provisions of E.O. No. 401-A conferring upon the Board of Tax Appeals exclusive jurisdiction over all appeals from decisions of the CIR in disputed assessments and other matters arising under the NIRC are null and void; hence, said Board has no jurisdiction over said internal revenue cases. Therefore, we concluded that the decision of the Board of Tax Appeals was neither valid, final or executory.

As a matter of fact, in the fairly recent case of *Accenture, Inc. v. Commissioner of Internal Revenue*,[10] we upheld the Court of Tax Appeal's application of our pronouncements in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[11] (*Burmeister*) as basis in ruling that *Accenture's* services would qualify for zero-rating under Section 108(b) of the 1997 NIRC [formerly Section 102(b) of the 1977 Tax Code], only if the recipient of the services was doing business outside of the Philippines. We held:

> Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule

6 *Collector of Internal Revenue v. Batangas Transportation Company and Laguna-Tayabas Bus Company*, 102 Phil. 822 (1958).
7 *Eufemia Evangelista v. Collector of Internal Revenue*, 102 Phil. 140 (1957).
8 *Carmen Planas v. Collector of Internal Revenue*, 113 Phil. 377 (1961).
9 *University of Sto. Tomas v. Board of Tax Appeals*, 93 Phil. 376 (1953).
10 *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.
11 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 541 Phil. 119 (2007).

> against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[12]

It is the duty of the lawyers of private parties to best discern the acceptable interpretation of legal text based upon methodologies familiar to lawyers. In doing so, they take the risk that the Supreme Court will rule otherwise, especially if the text of the law – as in this case – is very clear.

This Court should not be a guarantor of lawyer's mistakes. Nor should it remove all risks taken by the taxpayers through the advice and actions of their counsels. The capacity to bear the costs of these mistakes in interpretation is generally better internalized by the private taxpayers rather than carried by the public as a whole. Government has had no agency in the decision of the private parties—in this case San Roque and Taganito Mining —to prematurely raise their claims with the Court of Tax Appeals. They could have taken the other route and erred on the side of caution, especially since Section 112 (D) of the NIRC is very clear.

In view of the foregoing, I concur with the statement of doctrines in the *ponencia* but vote for the following result:

1. Grant the petition of the Commission of Internal Revenue in G.R. No. 187485 to deny the claim for tax refund or credit of San Roque Power Corporation in the amount of P560,200,283.14;
2. Deny the petition of Taganito Mining Corporation in G.R. No. 196113 for a tax credit in the amount of P8,365,664.38; and
3. Deny the petition of Philex Mining Corporation in G.R. No. 197156 for a tax refund or credit of P23,956,732.44.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

12 *Accenture, Inc. v. Commissioner of Internal Revenue*, supra.