REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CATHAY PACIFIC AIRWAYS, LTD.,
Petitioner,

CTA EB No. 717
(CTA Case No. 7876)

Present:

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:

APR 17 2012 Custapolinario 2:00 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Cathay Pacific Airways, Ltd. before the Court of Tax Appeals (CTA) *en banc* assailing the Decision[1] dated September 21, 2010 and the Resolution[2] dated January 4, 2011 promulgated by

---

[1] *Rollo*, pp. 71-83. Penned by Associate Justice Olga Palanca-Enriquez with Associate Justice Lovell R. Bautista and Associate Justice Amelia R. Cotangco-Manalastas, concurring.
[2] *Rollo*, pp. 84-85.

the CTA Third Division in the case entitled "*Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 7876.

The assailed decision DISMISSED the petition for lack of jurisdiction over the subject matter.

THE FACTS

The facts of the case as found by the CTA Third Division are as follows: [3]

> On January 24, 1969, petitioner was registered with the Securities and Exchange Commission.
>
> Petitioner is registered with the BIR and was issued Tax Identification Number 000-442-856-000. Petitioner is a large taxpayer and is under the jurisdiction of the Large Taxpayers Division of the BIR, as evidenced by the Certificate of Registration issued by the Large Taxpayers Division.
>
> On May 4, 2006, petitioner filed with the Large Taxpayers Assistance Division of the BIR an Application for Registration Information Update (BIR Form 1905), indicating as reasons for its registration update, the following:
>
> a) Change of registration from non-VAT to VAT taxpayer;
> b) Change of registered address to 22nd Floor, LKG Tower, 6801 Ayala Avenue, Makati City; and
> c) Change of tax type from percentage tax to VAT.
>
> On June 26, 2006, a letter dated May 19, 2006 from Ms. Merlinda L. Ordoyo of the Large Taxpayers Service of the BIR was received by Mr. Moises Visperas, Jr., petitioner's representative, stating that international air carriers do not have the option to register for VAT under *RA 9337*, as implemented by *RR 16-2005, as amended*.
>
> On July 3, 2006, Mr. Visperas filed a letter requesting for reconsideration of the denial of petitioner's request for VAT registration.
>
> On August 18, 2006, Mr. Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayer Service, wrote a letter addressed to Mr. Rolando N. Santiago, petitioner's Financial Service and Automation

---
[3] *Rollo*, pp. 73-77.

Manager, stating that the letter of Mr. Moises V. Visperas, Jr., dated July 3, 2006, was indorsed to the Legal Service of the BIR for appropriate action.

On May 15, 2007, petitioner wrote a letter to Atty. Eufrocina S. Casasola, Vice-Chairman of the VAT Committee of the BIR, to follow-up the resolution of petitioner's request for change of registration from non-VAT to VAT taxpayer.

Despite numerous follow-ups by petitioner, the BIR has not resolved petitioner's application for VAT registration and change of tax type from percentage tax to VAT.

On February 24, 2009, in view of respondent's inaction, petitioner filed the instant Petition for Review with this Court, docketed as C.T.A. Case No. 7876.

In his Answer, respondent alleged by way of special and affirmative defenses, among others, that petitioner cannot be granted its application for change of tax type from percentage tax to VAT for the following reasons:

1) *Section 118 of RA 8424, as amended*, was not one of those sections of the NIRC that were subjected to amendments under RA *9337*, which took effect on July 1, 2005, and such being the case, *Section 118* is still valid and existing;

2) that the CTA is bereft of jurisdiction over the case on account of the fact that the sole issue of change of tax type from percentage tax to VAT registration is not considered as "other matters", which may be given consideration by this Court;

3) contrary to the allegation of petitioner, respondent acted on the letter request of petitioner to apply for change of tax type from percentage tax to VAT registration. As correctly pointed-out in the letter/reply of respondent dated May 19, 2006 through the Office of the Large Taxpayers Assistance Division I, addressed to petitioner's representative, Mr. Rolando N. Santiago, Financial Services and Automation Manager, denying its request to change its registration from Non-VAT to VAT taxpayer, the option to register for VAT under RA 9337 as implemented by RR 16-2005 applies only to the following:

a) Any person who is a VAT-exempt under Section 4-109-1 (B) (e) not required to register for VAT may, in relation to section 4-109-2, elect to be VAT-registered by registering with the RDO that has jurisdiction over the head of that person and pay the annual registration fee of P500.00 for every separate and distinct establishment.

b) Any person who is VAT-registered but enters into transactions which are exempt from VAT (mixed transactions) may opt that the VAT apply to his transactions which would have been exempt under Section 109 (1) of the Tax Code, as amended [Section 109 (2) of RA 9337].

c) Franchise grantees of radio and/or television broadcasting whose annual gross receipts of the preceding year do not exceed Ten Million Pesos (P10,000,000.00) derived from the business covered by the law granting the franchise may opt for VAT registration. This option, once exercised, shall be irrevocable. (Section 119 of the Tax Code)"

4) The sole issue being raised by petitioner does not merit a long, tedious and full blown trial considering that the only purpose of the Petition for Review filed by petitioner is to determine whether petitioner is entitled to be a VAT registered taxpayer. To reiterate, said issue has already been settled by respondent in the aforementioned letter dated May 19, 2006 on the basis of the pertinent provisions of RA 9337 and the implementing Revenue Regulations No. 16-2005.

Petitioner presented Moises M. Visperas, Jr. and Rolando N. Santiago, as witnesses, and documentary evidence, marked as Exhibits "A" to "G", inclusive of their submarkings, which were all admitted by the Court in its Resolution dated November 23, 2009.

On the other hand, counsel for respondent did not present any evidence and manifested that she is submitting the case for decision.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich the case shall be deemed submitted for decision.

Both parties having complied thereto, the petition was deemed submitted for decision on August 10, 2010.

On September 21, 2010, the CTA Third Division rendered the assailed Decision dismissing the Petition for Review. The dispositive portion of the assailed Decision reads as follows:

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of jurisdiction over the subject matter.

> **SO ORDERED.**[4]

Aggrieved, petitioner filed a Motion for Reconsideration (of the Decision dated September 21, 2010). The same was denied for lack of merit by the CTA Third Division in its Resolution promulgated on January 4, 2011. The dispositive portion of the assailed Resolution reads as follows:

> **WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration (of the Decision dated 21 September 2010)" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[5]

Hence, this Petition for Review *en banc.*

THE ISSUES

In support of the present Petition for Review, petitioner proffers the following grounds:[6]

A. THE DECISION OF THE THIRD DIVISION OF THE CTA THAT IT HAS NO JURISDICTION ON THE INACTION BY THE CIR ON PETITIONER'S APPLICATION FOR OPTIONAL VAT REGISTRATION UNDER SECTION 236 OF THE TAX CODE SINCE THE SAID TAX PROVISION DOES NOT PROVIDE FOR A PERIOD FOR THE CIR TO ACT WOULD RENDER AS MERE SURPLUSAGE THE CTA LAW PROVISION ON APPELLATE JURISDICTION OF THE CTA ON INACTION OF THE CIR ON <u>OTHER MATTERS</u> IN THE TAX CODE

B. TAXPAYERS SHOULD BE ALLOWED TO APPEAL TO THE CTA CIR'S INACTION FOR AN UNREASONABLY LONG PERIOD OF TIME IN APPLICATIONS OF TAXPAYERS ON OTHER MATTERS IN THE TAX CODE

---

[4] *Rollo,* p. 82.
[5] *Rollo,* p. 85.
[6] *Rollo,* pp. 13-14.

C. PETITIONER SHOULD NOT BE PREJUDICED BY CIR'S FAILURE TO PERFORM ITS DUTY OF ISSUING A DECISION ON PETITIONER'S APPLICATION FOR VAT REGISTRATION AND CHANGE OF TAX TYPE

D. THE HONORABLE COURT ERRED IN DISMISSING THE PETITION ON THE GROUND OF TECHNICALITIES WITHOUT CONSIDERING THE SUBSTANTIVE ISSUE INVOLVED

THIS COURT'S RULING

The petition is without merit.

The issue involves which "inaction" of the Commissioner of Internal Revenue (CIR), under the law, can be the subject of appeal before the CTA. The CIR's alleged inaction on petitioner's application for change of registration from Non-VAT to VAT taxpayer and change of tax type from percentage tax to VAT cannot be considered as "inaction" appealable to the CTA, based on the following reasons:

1. The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[7]

2. Jurisdiction must be expressly conferred by the Constitution or by the law and can never be derived by implication; and

3. CTA has no jurisdiction to rule on the validity or constitutionality of a law, or a rule or regulation issued by the Bureau of Internal Revenue (BIR).

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.

---

[7] *Ker & Company, Ltd. vs. Court of Tax Appeals*, No. L-12396, January 31, 1962, 4 SCRA 160.

The courts of special or limited jurisdiction are those which have no power to decide their own jurisdiction and can only try cases permitted by statute.[8] In this connection, the law conferring jurisdiction to CTA is Section 7 of Republic Act No. 1125 (RA 1125), as amended by Republic Act No. 9282 (RA 9282). The said provision, in part, reads:

> SEC. 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;
>
> (2) **Inaction by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**; (Emphasis ours)

The jurisdiction of the CTA has been expanded to include not only decisions or rulings but inaction as well of the CIR. **The decisions, rulings or inaction of the Commissioner are necessary in order to vest the CTA with jurisdiction to entertain the appeal.**[9] The expansion of CTA's jurisdiction did not change the jurisdiction of the CTA to entertain an appeal only

---

[8] *Regalado, Remedial Law Compendium Volume 1*, Eighth Revised Edition (2002), p. 1.
[9] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144.

from a final decision or assessment of the Commissioner, or in cases where the Commissioner has not acted within the period prescribed by the NIRC. [10]

While the jurisdiction of the CTA has been expanded to include CIR's inaction, there are parameters to determine when inaction is deemed a denial appealable to the CTA. The plain and unambiguous wordings of Sections 7 of RA 1125, as amended, dictate that three requisites must concur before CIR's "inaction" may be appealed to the CTA: (1) there must be an inaction of the CIR; (2) the case involves disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or laws administered by the BIR; and (3) expiration of specific period for action under NIRC. The " inaction" is qualified by the phrase "**where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial."** The law clearly states that it is only when the specific period of action under the NIRC has already expired that the inaction can be considered a denial appealable to the CTA.

This is also evident in Section 11 of RA 1125, as amended, which prescribes how the said appeal from CIR's inaction should be taken, to wit:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture

---

[10] *Adamson vs. Court of Appeals,* G.R. Nos. 120935 & 124557, May 21, 2009, 588 SCRA 27.

> or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> **Appeal should be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** xxx" (Emphases ours)

The 30-day period within which to appeal the CIR's inaction is reckoned from the expiration of the period fixed by law for action under the NIRC as referred to in Section 7(a)(2) of RA 1125, as amended. Hence, when the NIRC does not provide a specific period within which the CIR should act, the inaction of the CIR cannot be considered a denial appealable to the CTA. The context in which the "inaction" was used in the law is NOT inaction for an uncertain period, regardless how short or long the period is, but inaction upon the expiration of the specific period of action under NIRC.

Petitioner anchored its claim on Section 236 of the NIRC of 1997, amended, for its application for change from Non-VAT to VAT taxpayer and change of tax type from percentage tax to VAT. The pertinent portion of the provision states:

> SEC. 236. *Registration Requirements.* –
>
> xxx xxx xxx
>
> (H) *Optional Registration for Value-added Tax of Exempt Person.* – (1) Any person who is not required to register for *Jc*

> value-added tax under Subsection (G) hereof may elect to register for value-added tax by registering with the Revenue District Office that has jurisdiction over the head office of that person, and paying the annual registration fee in Subsection (B) hereof.
>
> (2) Any person who elects to register under this Subsection shall not be entitled to cancel his registration under Subsection (F)(2) for the next three years.
>
> For purposes of Title IV of this Code, any person who has registered value-added tax as a tax type in accordance with the provisions of Subsection (C) hereof shall be referred to as '*VAT-registered person'* who shall be assigned only one Taxpayer Identification Number.
>
> xxx xxx xxx

A careful reading of the said provision revealed no specific period of action for the CIR to act on the application. The CIR's inaction, therefore, is not the inaction appealable to the CTA. Thus, inasmuch as the present case did not involve a decision or inaction of the CIR in any of the instances enumerated in Section 7 of RA 1125, as amended, the CTA had no jurisdiction over the subject matter.

Jurisdiction must be expressly conferred by the Constitution or by the law and can never be derived by implication.

Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. Jurisdiction over the subject matter is conferred by the Constitution or by law. Nothing can change the jurisdiction of the court over the subject matter. That power is a matter of legislative enactment which none but the legislature may change.[11] In the case of *Ursal vs. Court of Tax Appeals, et. al*,[12] the Supreme Court emphasized the jurisdiction of the CTA is limited only to those enumerated in the law. CTA has no blanket authority to decide all tax disputes.

> Republic Act No. 1125 creating the Court of Tax Appeals did not grant it blanket authority to decide any and all tax disputes. Defining such special court's jurisdiction, the Act necessarily limited its authority to those matters enumerated therein. xxx
>
> Republic Act No. 1125 is a complete law by itself and expressly enumerates the matters which the Court of Tax Appeals may consider; such **enumeration excludes all others by implication. *Expressio unius est exclusio alterius*.**(Emphasis ours).

Since the CTA is a court of limited jurisdiction, its jurisdiction to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implication.[13] The law creating the CTA is a special law so that it cannot exercise any power beyond that which the act of the legislature has given.

CTA has no jurisdiction to rule on the validity or constitutionality of a law, or a rule or regulation issued by the BIR.

Petitioner argued that the CTA Third Division erred in dismissing the petition on the ground of technicalities without considering the substantive issues

---

[11] *United BF Homeowner's Association et al. vs. BF Homes, Inc.*, G.R. No. 124873, July 14, 1999, 310 SCRA 304.
[12] Nos. L-10123 and L-10355, April 26, 1957, 101 Phil. 209.
[13] *Southern Cross Cement Corporation vs. Philippine Cement Manufacturers Corporation*, G.R. No. 158540, July 8, 2004, 434 SCRA 65.

involved. It contended that Section 236 of the NIRC, as amended by RA 9337, if correctly interpreted, clearly grants international air carriers the option to register for VAT. Consequently, petitioner asked the CTA to set aside RR 16-2005 and RMC 46-2008 for being contrary to Section 236 of the NIRC since the said regulations do not allow optional VAT registration to international air carriers. It further questioned the existence of Section 118 of the NIRC,[14] that the failure to reflect in RA 9337 the deletion of Section 118 as proposed in Senate Bill No. 1950 is a clear oversight.[15]

Petitioner's argument must fail.

CTA has no jurisdiction to determine the validity of the law or the implementing rules and regulations issued by the BIR. In the case of *British American Tobacco vs. Jose Isidro Camacho, et al*,[16] petitioner therein assailed the validity of Section 145 of the NIRC, RA 9334 and its implementing rules and regulations. An intervenor, Fortune Tobacco, claimed that the challenge to the validity of the BIR issuances should have been brought by petitioner before the CTA and not the RTC because it is the CTA which has exclusive appellate jurisdiction over decision of the BIR in tax disputes. The Supreme Court rejected Fortune Tobacco's argument, it held: Jc

---

[14] Title V- OTHER PERCENTAGE TAXES
xxx
SEC. 118. Percentage Tax on International Carriers. –
"(A) International air carriers doing business in the Philippines shall pay a tax of three percent (3%) of their quarterly gross receipts.
"(B) International shipping carriers doing business in the Philippines shall pay a tax equivalent to three percent (3%) of their quarterly gross receipts.
xxx

[15] Petition for Review, *Rollo,* p. 59.

[16] G.R. No. 163583, August 20, 2008, 562 SCRA 511.

While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

In *Drilon v. Lim*, it was held:

> "We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, B.P. 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question."

In conclusion, the CTA as a court of special and limited jurisdiction can act only on cases clearly within its jurisdiction pursuant to the powers vested upon it by law. Thus, there being no cogent reason presented to reverse the findings of the CTA Third Division, the Court *en banc* affirms its ruling dismissing the petition for lack of jurisdiction over the subject matter.

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *en banc* is **DISMISSED.** Accordingly, the Decision of CTA Third Division dated September 21, 2010 and the Resolution dated January 4, 2011 are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(with Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I join the opinion of Presiding Justice Ernesto D. Acosta)
CAESAR A. CASANOVA
Associate Justice

See attached Concurring Opinion
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(I join the opinion of Presiding Justice Ernesto D. Acosta)
AMELIA R. COTANGCO-MANALASTAS
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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CATHAY PACIFIC AIRWAYS, LTD., Petitioner,	**CTA EB NO. 717** (CTA CASE NO. 7876)
	Members:
- versus -	**ACOSTA**, *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA,** *and,* **COTANGCO-MANALASTAS**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 17 2012

x--x

DISSENTING OPINION

With all due respect to the majority's opinion, I disagree with the dismissal of the Petition for Review.

The facts of the case as found by the CTA Third Division is clear:

> On June 26, 2006, a letter dated May 19, 2006 from Ms. Merlinda L. Ordoyo of the Large Taxpayers Service of the BIR was received by Mr. Moises Visperas Jr., petitioner's representative, stating that international air carriers do not have the option to register for VAT under RA 9337, as implemented by RR 16-2005, as amended.
>
> On July 3, 2006, Mr. Visperas filed a letter requesting for reconsideration of the denial of petitioner's request for VAT registration. Despite numerous follow-ups by petitioner, the BIR has not resolved

petitioner's application for VAT registration and change of tax type from percentage tax to VAT. On February 24, 2009, in view of respondent's inaction, petitioner filed the instant Petition for Review with this Court, docketed as CTA Case No. 7876.

The inaction of the Commissioner from July 3, 2006 to February 24, 2009, or almost three (3) years, was tantamount to a denial of its letter requesting for reconsideration of the denial of petitioner's request for VAT registration.

In the case of *The Collector of Internal Revenue vs. the Court of Tax Appeals and Hume Pipe & Asbestos Co., Inc.*[1], the Supreme Court ruled:

> The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. As the Supreme Court said in the Kiener case, 'Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer should not go to court before he is notified of the Collector's action'. The taxpayer may, indeed should, proceed without waiting for the decision of the Collector of Internal Revenue, to file his petition for review before this Court....
>
> It might be argued that without the reply of the Collector of Internal Revenue denying the taxpayer's claim for refund, there would be actually no decision, order or ruling that this Court may pass upon in review under sections 7 and 11 of Republic Act No. 1125. Indeed, that would be the case if we were to interpret the two last cited provisions of Republic Act No. 1125 in their strict literal sense. However, we realize that by following such an unreasonable interpretation, the taxpayer would be left at the mercy of the Collector of Internal Revenue, without any positive and expedient relief from the courts.
>
> **It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector of Internal Revenue would have, at his personal convenience, given the go signal.** (Emphasis supplied)

[1] G.R. No. L-11494, January 28, 1961 citing *Paracale-Gamus Co. vs. Blaquera* (CTA No. 211, Resolution of August 22, 1956).

Em

In addition, by way of analogy, the dictum laid down by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Union Shipping Corporation and the Court of Tax Appeals*[2], involving disputed assessment is also applicable:

> On this issue, this Court had already laid down the dictum that the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment.
>
> Specifically, this Court ruled:
>
>> . . . we deem it appropriate to state that **the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination** on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. **Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.** This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. **This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court.** Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.
>>
>> There appears to be no dispute that petitioner did not rule on private respondent's motion for reconsideration but contrary to the above ruling of this Court, left private respondent in the dark as to which action of the Commissioner is the decision appealable to the Court of Tax Appeals. **Had he categorically stated that he denies private respondent's motion for reconsideration and that his action constitutes his final determination on**

---

[2] G.R. No. 66160, May 21, 1990 citing *Surigao Electric Co., Inc. vs. CTA,* G.R. No. L-25289, June 28, 1974.

Ea

> **<u>the disputed assessment, private respondent without needless difficulty would have been able to determine when his right to appeal accrues and the resulting confusion would have been avoided.</u>** (Emphasis supplied)

In view thereof, I beg to differ from the view of the majority that the Petition for Review should be dismissed on the ground of lack of jurisdiction over the subject matter since the Court may aptly take cognizance of the case. To interpret otherwise, is to deprive the taxpayer to go to Court by simply allowing the Commissioner to sit down on his/her inaction.

The Commissioner of Internal Revenue and its officers are advised to be more circumspect in the discharge of their functions and act promptly on letters requesting reconsideration filed in their office. This simple case of petitioner's application for VAT registration and change of tax type from percentage tax to VAT would not have reached the Court of Tax Appeals had the Commissioner and its officers acted promptly on petitioner's letter requesting for reconsideration.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CATHAY PACIFIC AIRWAYS, LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 717
(C.T.A. Case No. 7876)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

APR 17 2012

x -- x

CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect, I concur with the *ponencia* of Justice Castañeda dismissing the instant Petition for Review on ground of lack of jurisdiction over the subject matter. The *ponencia*, scholarly and thoroughly written as it is, can very well make this Concurring Opinion an exercise in superfluity. Nonetheless, a few words would not be amiss if only to expound and give emphasis to certain points.

Petitioner filed the Petition for Review, docketed as C.T.A. Case No. 7876, due to the alleged inaction of the BIR Commissioner on petitioner's application for VAT registration and change of tax type from percentage tax to VAT, under *Section 236(H) of the NIRC of 1997, as amended.*

In this regard, Section 7(a)(2) of RA 9282, *as amended,* provides:

"SEC. 7. *Jurisdiction. – The CTA shall exercise:*

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) xxx xxx

(2) Inaction by 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, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;

xxx xxx."

Pursuant to the above provision, the CTA has exclusive appellate jurisdiction to review by appeal other matters arising under the *NIRC of 1997, as amended,* or other laws administered by the BIR, where the

NIRC provides a specific period for action, in which case, the inaction shall be deemed a denial.

It is clear from the aforequoted provision that what is appealable to the CTA in Division is the inaction by the CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC or other applicable law provides a specific period for action.

Petitioner's application for VAT registration and change of tax type from percentage tax to VAT is anchored on *Section 236(H) of the NIRC of 1997, as amended,* which provides for optional VAT registration of VAT-exempt person, to wit:

> "SEC. 236. *Registration Requirements.-*
>
> xxx xxx
>
> (H) Optional Registration for Value-added Tax of Exempt Person. –
>
> (1) Any person who is not required to register for value-added tax under Subsection (G) hereof may elect to register for value-added tax by registering with the Revenue District Office that has jurisdiction over the head office of that person, and paying the annual registration fee in Subsection (B) hereof.

lu

xxx xxx."

It is clear from the above provision that there is no specific period for the Commissioner to act on the taxpayer's optional registration for VAT of exempt person.

The failure, therefore, of respondent to resolve petitioner's application for VAT registration and change of tax type from percentage tax to VAT cannot be considered as inaction of the Commissioner that is appealable to this Court under *Section 7(a)(2) of RA 9282, as amended*, for the simple reason that Section *236(H) of the NIRC of 1997, as amended,* does not provide for a specific period for the Commissioner to act and resolve the application for change of tax type.

Clearly, the CTA has no jurisdiction over the subject matter of the Petition for Review filed in C.T.A. Case No.7876. We have the rule – long in standing and frequent in application – that jurisdiction over the subject matter is conferred only by the Constitution or law. It cannot be fixed by the will of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties *(Municipality of Sogod vs. Rosal, 207 SCRA 632).* Neither can it be conferred by acquiescence of the court *(Republic vs. Estipular, 336 SCRA 333).*

It bears stressing that the Court of Tax Appeals is a court of special jurisdiction and as such it can take cognizance only of such matters as are clearly within its jurisdiction. Its jurisdiction may only be invoked in the particular instances enumerated in *Section 7 of RA 9282, as amended.*

As a closing word, the petitioner herein is not left without a remedy. Being the interested party, it may still move for the Commissioner to resolve its "Motion for Reconsideration" on the denial of its application for VAT registration and change of tax type from percentage tax to VAT.

OLGA PALANCA-ENRIQUEZ
Associate Justice