REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NIPPON EXPRESS PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2506
(CTA Case No. 10242)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

Promulgated:
FEB 15 2023 4:03 pm

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DECISION

REYES-FAJARDO, *J.*:

This Petition for Review[1] dated July 7, 2021 seeks to overturn the Resolutions dated January 13, 2021[2] and June 17, 2021[3] in CTA Case No. 10242, whereby the Court in Division dismissed Nippon Express Philippines Corporation's refund claim of alleged excess and unutilized input Value-Added Tax (VAT) attributable to zero-rated sales for the four (4) quarters of calendar year (CY) 2017, for lack of jurisdiction.

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1 *Rollo,* pp. 1-15.
2 *Id.* at pp. 29-35.
3 *Id.* at pp. 38-43.

The antecedents follow.

On March 29, 2019, petitioner filed before the Bureau of Internal Revenue - LT Audit Division 2 (BIR-LTAD2), an administrative claim for VAT refund in the total amount of ₱86,120,256.09, representing the alleged unutilized input taxes attributable to its VAT zero-rated sales, covering the four (4) quarters of CY 2017.[4] On even date, petitioner submitted documents in support thereof.[5]

On June 11, 2019, petitioner received a Letter dated May 30, 2019, issued by Teresita M. Dizon, OIC - Assistant Commissioner Large Taxpayers Service (OIC ACIR-LTS Dizon), denying said refund claim (Letter-Denial).[6]

On July 10, 2019, petitioner filed a request for reconsideration of such denial with respondent.[7]

On December 11, 2019, petitioner received respondent's Letter dated September 19, 2019, denying its request for reconsideration with finality.[8]

On January 10, 2020, petitioner filed a Petition for Review before the Court in Division.[9]

On October 12, 2020, respondent filed through registered mail, a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court.[10]

By Resolution dated January 13, 2021,[11] the Court in Division dismissed CTA Case No. 10242 in this wise:

> **WHEREFORE**, premises considered, respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* is

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4 Par. 2.1, Petition for Review dated January 6, 2020. Docket (CTA Case No. 10242), p. 8.
5 Par. 4.9, Petition for Review dated January 6, 2020. *Id.* at p. 10.
6 Par. 4.12, Petition for Review dated January 6, 2020. *Id.* at p. 11.
7 Par. 4.13, Petition for Review dated January 6, 2020. *Ibid.*
8 Par. 4.14, Petition for Review dated January 6, 2020. *Ibid.*
9 *Id.* at pp. 7-47.
10 *Id.* at pp. 420-426.
11 *Supra* note 2.

hereby **GRANTED**. Accordingly, the Petition for Review under CTA Case No. 10242 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Petitioner sought,[12] but failed,[13] to obtain a reversal of the Resolution dated January 13, 2021; hence, this Petition.

Petitioner argues that its Petition for Review was timely filed before the Court in Division. Under Section 112(C) of the National Internal Code of 1997, as amended by Republic Act (RA) No. 10963[14] (NIRC, as amended), the taxpayer has thirty (30) days from receipt of an adverse decision from the BIR, to appeal to the Court in Division. Given that it received respondent's adverse decision on December 11, 2019, it had thirty (30) days therefrom, or until January 10, 2020 to appeal to the Court in Division. Thus, its Petition for Review was timely filed before the Court in Division on January 10, 2020.

Petitioner asseverates that OIC ACIR-LTS Dizon's Letter-Denial, issued on May 30, 2019, is not the adverse decision appealable to the Court in Division. The reasons are: *one,* respondent's decision is the one appealable to the Court in Division because it contained a tenor of finality; and *two,* to hold that OIC ACIR-LTS Dizon's Letter-Denial as the one appealable to the Court in Division is offensive to the doctrine of exhaustion of administrative remedies.

Through Comment/Opposition dated November 21, 2021,[15] respondent counters that petitioner's thirty (30)-day period to appeal to the Court in Division under Section 112(C) of the NIRC, as amended by RA No. 10963, began to run from its receipt of OIC ACIR-LTS Dizon's Letter-Denial on June 11, 2019. Counting thirty (30) days therefrom, petitioner had until July 11, 2019 to appeal to the Court in Division. The belated filing of petitioner's Petition for Review on January 10, 2020 resulted in the Court in Division's non-acquisition of jurisdiction over petitioner's judicial claim for input VAT refund. Therefore, dismissal of CTA Case No. 10242 is warranted.

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12 Petitioner's Motion for Reconsideration (re: Resolution dated 13 January 2021). Docket (CTA Case No. 10242), pp. 510-518.

13 *Supra* note 3.

14 Otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)."

15 *Rollo,* pp. 48-55.

OUR RULING

We deny the Petition.

Our jurisdiction over refund cases is found in Section 7(a)(1) and (2) of RA No. 1125,[16] as amended by RA No. 9282, which provides:

> 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 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 relations 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 of action, in which case the inaction shall be deemed a denial;
>
> ...

Section 3(a)(1) and (2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA)[17] clarified that the Court in Division has jurisdiction over the decision or inaction of respondent involving refund of internal revenue taxes, among others.[18] Specifically, before the Court in Division may exercise its jurisdiction over input VAT

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16 An Act Creating the Court of Tax Appeals

17 A.M. 05-11-07-CTA.

18 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:
(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 or other applicable law provides a specific period for action: ...

refund cases, Section 112(C) of the NIRC, as amended must be strictly observed, which reads as follows:

> ***SEC. 112. Refunds or Tax Credits of Input Tax.*** **-**
>
> ...
>
> ***(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.*** - In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.

As it stands, the BIR has ninety (90) days from date of submission of the official receipts or invoices and other supporting documents, to decide on the taxpayer's administrative claim for input VAT refund. Jurisprudence declares that at present, said invoices, official receipts, and other supporting documents must be submitted upon the filing the taxpayer's administrative claim for input VAT refund.[19] To validly seek redress before the Court in Division, the taxpayer must file a Petition for Review, within thirty (30) days from the receipt of an adverse decision rendered within said ninety (90)-day period, *or* within thirty (30) days after the lapse of such ninety (90)-day period, whichever comes earlier. *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[20] is on point:

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19 See *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue*, G.R. No. 244154, July 15, 2020. Beginning June 11, 2014, or upon effectivity of Revenue Memorandum Circular (RMC) No. 54-2014, the documents are deemed complete upon filing of the taxpayer's administrative claim for input VAT refund.

20 G.R. No. 182737, March 2, 2016. This case involved a taxpayer's claim for input VAT refund under the *then* Section 112 of the NIRC. The jurisdiction of the CTA in Section 7 of RA No. 1125, as amended by RA No. 9282 *stands untouched* notwithstanding the amendments introduced by RA No. 10963 in Section 112(C) of the NIRC. Thus, this case may find application in input VAT refund claims covered by RA No. 10963.

> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day [now 90-day] period, whichever is sooner.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA.[21]

Petitioner filed its administrative claim for input VAT refund covering the four (4) quarters of CY 2017, as well as its supporting documents on March 29, 2019. Counting ninety (90) days therefrom, the BIR had until June 27, 2019 to decide on said administrative claim. On June 11, 2019, petitioner received OIC ACIR-LTS Dizon's Letter-Denial dated May 30, 2019. Counting thirty (30) days from June 11, 2019, it had until July 11, 2019 to file a Petition for Review before the Court in Division. Petitioner's belated filing of its Petition for Review on January 10, 2020 justifies the dismissal of CTA Case No. 10242.

Petitioner argues that OIC ACIR-LTS Dizon's Letter-Denial is not appealable to the Court in Division. Rather, it is respondent's adverse decision it received on December 11, 2019, which was appealable to the Court in Division.

The argument is specious.

True, respondent's adverse decision on its input VAT refund claim was received by petitioner on December 11, 2019. Equally true is that said decision is respondent's final action on such matter. Yet, the ninety (90)-day period to decide petitioner's administrative claim for input VAT refund expired on June 27, 2019. Hence, respondent's decision received on December 11, 2019, or one received *outside* said ninety (90)-day period to decide an administrative claim for input VAT refund, is *not* the adverse decision appealable to the Court in Division, envisaged by Section 112(C) of the NIRC, as amended, as interpreted by jurisprudence. To stress, in input VAT refund cases, only an adverse decision received by the taxpayer *within* the ninety (90)-day period to decide said administrative claim may be the subject of an appeal before the Court in Division.

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21 Boldfacing supplied.

Also as diametrically opposed to petitioner's argument, OIC ACIR-LTS Dizon's Letter-Denial received by petitioner on June 11, 2019 is the adverse decision appealable to the Court in Division. To expound:

Section 7[22] of the NIRC, as amended, declares that respondent may delegate the powers vested in her under said Code, to subordinate officials with the rank of division chief or higher, save for the four (4) instances specified in said provision.[23] The power to deny administrative claims for input VAT refund under Section 112(A) and (C) of the NIRC, as amended is no exception. Precisely, Revenue Memorandum Circular (RMC) No. 17-2018,[24] delegated to *inter alia,* the ACIR the authority to deny administrative claims for input VAT refund:

I. Claims for value-added tax (VAT) refund:

A. General Policies

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22 **SEC. 7. *Authority of the Commissioner to Delegate Power.*** - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner **shall not be delegated**:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept. (Boldfacing supplied)

23 See *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 211072, November 6, 2017; *People of the Philippines v. Valeriano*, G.R. No. 199480, October 12, 2016; *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005; and *Republic of the Philippines v. Hizon*, G.R. No. 130430, December 13, 1999.

24 SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as Tax Reform for Acceleration and Inclusion (TRAIN).

...

5. ...

> **Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period. The denial letter shall be signed by** the Commissioner of Internal Revenue (CIR)/Deputy Commissioner - Operations Group (DCIR - OG)/ **Assistant Commissioner (ACIR)**/Regional Director, as the case may be.[25]

Indeed, the ACIR, like OIC ACIR-LTS Dizon, possesses the authority to deny administrative claims for input VAT refund. The ninety (90)-day period within which the BIR may decide such administrative claim was until June 27, 2019. As between respondent's adverse decision received by petitioner *outside* said ninety (90)-day period on December 11, 2019, vis-à-vis OIC ACIR-LTS Dizon's Letter-Denial received by petitioner *within* such ninety (90)-day period on June 11, 2019, the latter's adverse decision is the one appealable to the Court in Division, consistent with Section 112(C) of the NIRC, as amended by RA No. 10963, in relation to Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282.

Petitioner nonetheless asserts that declaring OIC ACIR-LTS Dizon's Letter-Denial as the adverse decision appealable to the Court in Division violates the doctrine of exhaustion of administrative remedies.

The assertion is more apparent, than real.

Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court.[26]

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25 Boldfacing supplied.

26 *Republic of the Philippines v. Felix*, G.R. No. 203371, June 30, 2020.

No specific provision of law, or rules and regulations expressly allow or require the action taken by OIC ACIR-LTS Dizon to be challenged before respondent. There being none, petitioner had availed all the administrative procedures, by filing its administrative claim for input VAT refund before the BIR-LTAD2. So too was OIC ACIR-LTS Dizon granted ample opportunity to decide on such claim, through issuance of her Letter-Denial received by petitioner on June 11, 2019. *Ergo*, our ruling that OIC ACIR-LTS Dizon's Letter-Denial is appealable to the Court in Division adhered with the doctrine of exhaustion of administrative remedies.

In conclusion, the Court in Division dismissed CTA Case No. 10242 for lack of jurisdiction, because petitioner failed to observe the mandatory and jurisdictional periods enshrined in Section 112(C) of the NIRC, as amended, in relation to Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282.

So must it be.

WHEREFORE, the Petition for Review dated July 7, 2021, filed by Nippon Express Philippines Corporation, is **DENIED**. The Resolutions dated January 13, 2021 and June 17, 2021, in CTA Case No. 10242, are **AFFIRMED**.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

With Separate Concurring Opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NIPPON EXPRESS PHILIPPINES CORPORATION, *Petitioner,*	**CTA EB NO. 2506** (CTA Case No. 10242) Present: Del Rosario, *P.J.*, Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, Cui-David, and Ferrer-Flores, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 15 2023 4:03 PM

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Marian Ivy F. Reyes-Fajardo denying the Petition for Review dated July 7, 2021 filed by Nippon Express Philippines Corporation and, in turn, affirming the Resolution dated January 13, 2021 as well the Resolution dated June 17, 2021 of this Court's First Division in CTA Case No. 10242.

I just wish to add that even on the assumption that the letter issued by OIC ACIR-LTS Dizon and received by petitioner on June 11, 2019 may not be considered as the reckoning point for the 30-day period to appeal to this Court due to its alleged lack of tenor of finality, and the petitioner might contend that

it has the right within the remainder of the prescribed 90-day period to await for a more definite decision on its administrative VAT refund claim, I am still of the view that the Petition for Review was filed out of time.

As borne out by the facts, the 90-day period within which the CIR should act on the administrative VAT refund claim ended on June 27, 2019. The lapse of the 90-day period on this date should be deemed a denial of petitioner's refund claim. Section 7(a)(2) of RA 1125, as amended, expressly provides that the inaction by the CIR in cases involving refunds of internal revenue taxes where the National Internal Revenue Code provides a specific period of action shall be deemed a denial. Relative thereto, Section 112(C) of the 1997 NIRC, as amended, supplied the specific period within which the CIR shall act on administrative VAT refund claims. Upon the lapse of the 90-day period, the denial of petitioner's administrative VAT refund claim thus attained an indisputable character of finality. Accordingly, petitioner has a period of thirty (30) days from June 27, 2019 or until July 27, 2019 within which to file an appeal to this Court. Evidently, the filing of the Petition for Review on January 10, 2020 was way beyond the aforesaid reglementary period. The Petition for Review was clearly belatedly filed, and consequently, this Court failed to acquire jurisdiction over the same.

If truth be told, respondent's issuance of an adverse decision received on December 11, 2019 may even be considered as a mere superfluity given that, by that time, there is already a denial of petitioner's administrative VAT refund claim by operation of law.

All told, I vote to **DENY** the present Petition for Review.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice