REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SANKYU-ATS CONSORTIUM-B,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10313

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

APR 18 2024 8:58 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The *Petition for Review* prays that judgment be rendered annulling, reversing, and setting aside the decision of the respondent in its notice of non-acceptance, and thereby ordering the respondent to refund and/or issue a tax credit certificate in favor of petitioner in relation to its excess and/or unutilized input value-added tax (VAT) credits in the total amount of ₱2,518,170.89, for the 1st quarter of taxable year 2018.[1]

THE PARTIES

Petitioner Sankyu-ATS Consortium-B is a consortium duly created by virtue of a Consortium Agreement between ATS Construction International, Inc. and Sankyu, Inc. on October 4, 2019, with business address at 124 Bonifacio St., Lower Jasaan, Misamis, Oriental.[2] It is a VAT registered entity with Tax Identification Number 710-338-514-000.[3]

Respondent is the Commissioner of Internal Revenue, the government agency tasked to, among others, collect all national internal revenue taxes. As Commissioner, respondent has the power to decide disputed assessments,

[1] Statement of the Case, Pre-Trial Order dated May 5, 2022, Docket, p. 284.
[2] Exhibit "P-7", Docket, pp. 417 to 420.
[3] Exhibit "P-1", Docket, p. 373.

refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).[4]

THE FACTS

On April 30, 2020, the BIR issued Revenue Regulation (RR) No. 11-2020 which stated in effect that the deadline for filing a VAT refund covering calendar quarter ending March 31, 2018 is extended until May 30, 2020 or thirty (30) days from the date of lifting of the quarantine, whichever comes later.[5]

Thereafter, on May 11, 2020, the Inter Agency Task Force for the Management of Emerging Infectious Disease (IATF) issued Resolution No. 35 which declared that Cagayan de Oro City will no longer be under community quarantine beginning May 16, 2020.[6]

On June 16, 2020, petitioner filed its letter dated June 10, 2020 (*Application for VAT Refund for the 1st Quarter of Taxable Year 2018*),[7] requesting that its application of refund be granted in the amount of ₱2,518,170.89, for the 1st quarter of taxable year 2018.

On July 3, 2020, petitioner, through Mr. Benjamin Idulsa, received the BIR letter dated 29 June 2020,[8] informing the petitioner of the non-acceptance of its claim for refund.

The present *Petition for Review* was filed on August 3, 2020.[9]

Subsequently, respondent posted a *Motion for Extension of Time to File Answer* on February 18, 2021, praying that he be granted an additional period of thirty (30) days from February 18, 2021, or until March 20, 2021, within which to submit his Answer.[10] The said motion was granted by the Court in its Resolution dated March 9, 2021.[11]

On March 23, 2021, respondent posted a *Motion for Leave to Admit Attached Answer*,[12] with appended *Answer*.[13]

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[4] Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket, pp. 250 to 251.
[5] Par. 2, Facts Admitted, JSFI, Docket, p. 251.
[6] Par. 3, Facts Admitted, JSFI, Docket, p. 251.
[7] Par. 3.1.2, Timeliness of the Petition, *Petition for Review*, Docket, p. 7; Exhibit "P-6", Docket, pp. 402 to 416.
[8] Par. 4, Facts Admitted, JSFI, Docket, p. 251; Exhibits "P-9" to "P-10", Docket, pp. 423 to 427.
[9] Docket, pp. 6 to 36.
[10] Docket, pp. 130 to 132.
[11] Docket, p. 136.
[12] Docket, pp. 137 to 140.
[13] Docket, pp. 142 to 148.

In the Resolution dated June 3, 2021,[14] the Court granted petitioner's *Motion for Leave to Admit Attached Answer* and admitted the attached *Answer.*

Thereafter, trial ensued.

On May 5, 2023, the case was deemed submitted for decision.[15]

THE ISSUE

The parties agreed on the following issue for resolution of this Court, to wit:

> "a. Whether Petitioner is entitled to a tax refund or the issuance of a tax credit certificate ("TCC") in the amount of Php2,518,170.89 representing excess and/or unutilized input VAT for Q1 TY2018."[16]

Petitioner's arguments:

Petitioner argues that it is entitled to a VAT refund and/or issuance of tax credit certificate in the amount of ₱2,518,170.89, which is attributable to its zero-rated sales in the 1st quarter of taxable year 2018; that respondent's non-acceptance of petitioner's administrative claim for VAT refund is deemed a full denial within the meaning of Section 112 (C) of the National Internal Revenue Code (NIRC) for all intents and purposes; that respondent's non-acceptance of petitioner's administrative claim for VAT refund, together with the complete supporting documents, is bereft of legal basis; that the additional requirements for VAT refund claims imposed under Revenue Memorandum Circular (RMC) No. 47-2019 is violative of Section 4 of the NIRC, as amended; and that denying the buyer-taxpayer the right for input VAT refund due to erroneous invoices issued by the seller-taxpayer is unjust.

Respondent's counter-arguments:

Based on his *Answer*, respondent contends that petitioner failed to file a claim for refund within the prescribed and extended period; that the Court has no jurisdiction over the instant Petition, as petitioner's claim for refund was not accepted in the first place and, thus, nothing was filed and denied in the instant case; and that claims for refund are strictly against the taxpayer and in favor of the government.

[14] Docket, p. 151.
[15] Minute Resolution dated May 5, 2023, Docket, p. 631.
[16] Issue, JSFI, Docket, p. 253.

THE COURT'S RULING

The present *Petition for Review* must be dismissed.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.**[17]

Section 7(a)(1) and (2), and 11 of Republic Act (RA) No. 1125,[18] as amended by RA No. 9282,[19] confers jurisdiction to this Court relative to decisions and inactions of respondent, and states the manner of appealing the same, to wit:

> "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**;" *(Emphases added)*
>
> "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...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.**

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[17] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[18] AN ACT CREATING THE COURT OF TAX APPEALS.
[19] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

xxx xxx xxx." *(Emphasis added)*

Based on the foregoing provisions, this Court has appellate jurisdiction over decisions, rulings, or inactions of respondent. The appeal must be filed within thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

Regarding the decisions of respondent and the period fixed by law for action for claims of refund for creditable input taxes, Section 112(C) of the NIRC of 1997, as amended by RA No. 10963[20], provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *Period within which Refund 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 the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing provision, it is plain that the law vests the power to decide the applications of refund for creditable input taxes to respondent, and that the latter has ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application. In case of respondent's full or partial denial of the claim, the taxpayer affected may, within thirty (30) days from receipt of the decision denying the same, appeal the said decision with this Court.

It is noteworthy that the powers of respondent granted under the NIRC of 1997, as amended, may be delegated under Section 7 thereof,[21] and one of

[20] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

the said powers granted to respondent is to decide claims for refund under Section 112 of the same law. This power has been delegated to certain BIR officials, pursuant to the following provisions of RMC No. 17-2018,[22] which was signed by then Commissioner of Internal Revenue Caesar R. Dulay, to wit:

> "I. Claims for value-added tax (VAT) refund
>
> A. General Policies
>
> xxx xxx xxx
>
> 5. Any findings in the course of the verification/review of the VAT claims that may lead to a deficiency in internal revenue taxes, other than VAT, shall be communicated by the processing/reviewing office of the concerned investigating office having jurisdiction over the taxpayer-claimant. However, if the findings involve VAT, these may result to disallowance or denial of the claim, or if the case warrants, for possible assessment of VAT liability.
>
> Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period. **<u>The denial letter shall be signed by the</u>** Commissioner (CIR)/Deputy Commissioner – Operations Group (DCIR – OG)/Assistant Commissioner (ACIR)/**<u>Regional Director</u>**, as the case may be.
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> xxx xxx xxx

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[21] "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 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 powers 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."

[22] 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 the Tax Reform for Acceleration and Inclusion (TRAIN).

C. Claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of Tax Code, as amended by R.A. No. 10963

1. **All claims for VAT refund by other zero-rated taxpayers**, indirect exporters and claims filed in accordance with Sec. 112 (B) of the Tax Code, as amended, **shall be filed with and processed by the concerned Revenue District Office** and LT Audit Division having jurisdiction over the taxpayer-claimant.

2. **The docket with report on said claims shall be reviewed by the Assessment Division**/Office of the Head Revenue Executive Assistant (HREA), **and shall be subject to the approval/disapproval by the Regional Director**/ACIR – LTS, as the case may be, irrespective of amount.

xxx xxx xxx

III. **Time frame to process claims for VAT claims under Sections 112 (A) and (B) of the Tax Code, as amended further by R.A. No. 10963**

1. The 90-day period prescribed under 112(C) of the Tax Code, as amended, shall start from the actual date of filing of the application with complete documents duly received by the processing office.

2. The 90-day period shall be applied prospectively, i.e., for claims filed upon the effectivity of R.A. No. 10963.

3. **The following time frame shall be strictly adhered to by the** processing, reviewing and **approving offices**:

Time Frame to Verify/Process, Review and **Approve/Disapprove the Claim**

xxx xxx xxx

Regional Cases	No. of Days from Receipt of Application
Verification/processing RDOs)	60
Review (Assessment Division))	20
Approval by Regional Director	**10**
Total No. of Days	90

> 4. **<u>The concerned revenue officers/officials shall act on the recommended claims</u> in accordance with the abovementioned time frame, including VAT claims on importations.**" *(Emphases and underscoring added)*

Thus, for regional cases, the power to decide applications or claims for refund of creditable input taxes was delegated to the Regional Director, within the (ninety) 90-day time frame set forth by the aforequoted Section 112(C) of the NIRC of 1997, as amended. Notably, the participation of an RDO after the filing of the claim is limited only to *"verification/processing."* Correspondingly, for applications or claims for refund of creditable input taxes filed with the concerned Revenue District Office, the appealable decision to this Court is not one issued by the corresponding RDO, but by the corresponding Regional Director.

In the present *Petition for Review,* petitioner invokes this Court's jurisdiction and the timely filing of the said Petition, as follows:

> "3.1.7. On 3 July 2020, SAC-B, through Mr. Benjamin Idulsa, received the BIR letter dated 29 June 2020 issued by the Respondent, through his authorized representative, informing SAC-B of the non-acceptance of its claim for refund ('Notice of Non-Acceptance').
>
> 3.2. Under the CTA Rules, Section 112 (C) of the NIRC, relevant BIR issuances, and prevailing jurisprudence, SAC-B has thirty (30) days from the receipt of the Notice of Non-Acceptance, or **until 3 August 2020, within which to appeal to this Honorable Court**.
>
> Hence, this Petition [filed on August 3, 2020] is timely filed."[23]

The Court is not convinced.

Records evidently show that the subject of the appeal is not the one issued by the Regional Director, but the letter dated June 29, 2020 of Assistant Revenue District Officer (ARDO) Victoria M. Maandig,[24] which was received by petitioner on July 3, 2020.[25] However, as already intimated, it is only the decision of the Regional Director on the refund claim of input VAT which is appealable to this Court.

Considering that the ARDO is not an authorized signatory under RMC No. 17-2018, and that **no decision was ever rendered by the Regional Director** in the present case, the Court hereby rule that there is no decision rendered on petitioner's application for refund or tax credit.

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[23] Docket, p. 8.
[24] Exhibits "P-9" to "P-10", Docket, pp. 423 to 427.
[25] Par. 3.1.7, Timeliness of the Petition, *Petition for Review*, Docket, p. 7; Exhibit "P-10", Docket, p. 427.

In fine, considering that the subject of the present appeal is not the one appealable to this Court, the present *Petition for Review* must therefore be dismissed.

To reiterate, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[26]

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[26] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

ATTESTATION

I attest 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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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