CTA Form No. 8

22-000061-0069

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10768

SANKYU-ATS CONSORTIUM - B,
Petitioner,

\- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

LMA LAW OFFICES
12th Floor, Unit 12D, 6805 Ayala Avenue
Multinational Bancorporation Centre, Bel-Air 1209
City of Makati, Fourth District
National Capital Region (NCR)

GREETINGS:

You are hereby notified by these presents that on **July 11, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 14, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SANKYU-ATS CONSORTIUM - B, *Petitioner*,	**CTA CASE NO. 10768**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: JUL 11 2025; 2:30 PM

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DECISION

CUI-DAVID, J.:

Before the Court is the *Petition for Review* [1] filed by petitioner Sankyu-ATS Consortium - B on February 4, 2022, seeking that a judgment be rendered ordering respondent Commissioner of Internal Revenue (CIR) to refund or issue a Tax Credit Certificate (TCC) in the amount of ₱3,273,004.43, representing petitioner's alleged excess and/or unutilized creditable input Value-Added Tax (VAT) attributable to its zero-rated sales for the fourth quarter of taxable year (TY) 2019.

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, 2017.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number

[1] Docket, pp. 6–35.
[2] *Id.* at 449–452, Exhibit "P-8".

710-338-514-000, and its business address is located at 124 Bonifacio St., Lower Jasaan, Misamis Oriental.[3]

Respondent is the Commissioner of the BIR, vested by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as related statutes and their implementing rules and regulations.[4]

THE FACTS AND THE PROCEEDINGS

Petitioner avers that during the fourth (4th) quarter of TY 2019, its operating income was sourced entirely from supplying services and construction materials to Philippine Sinter Corporation (PSC), a PEZA-registered Ecozone Enterprise located at the Phividec Industrial Estate – Economic Zone.[5]

Allegedly, in the course of generating its reported zero-rated sales of ₱44,299,240.00 for the 4th quarter of TY 2019, it purchased goods and services in the aggregate amount of ₱27,275,036.98, for which it incurred input VAT amounting to ₱3,273,004.43.[6]

On November 11, 2021, petitioner filed a letter dated November 5, 2021, with Revenue District Office (RDO) No. 98 – Cagayan de Oro City, requesting a refund of its excess and unutilized creditable input VAT of ₱3,273,004.43.[7]

However, on January 5, 2022, petitioner received a letter dated December 15, 2021,[8] denying its administrative claim for VAT refund, which was signed by Revenue District Officer Gledonio B. Teope, Jr., of RDO No. 98, Cagayan de Oro City.

Aggrieved, petitioner filed the present *Petition for Review* filed on February 4, 2022.

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[3] *Id.* at 93, Exhibit "P-1".
[4] *Id.* at 345, *Joint Stipulation of Facts and Issues* (JSFI), Facts Admitted, par. 1.
[5] *Id.* at 10, *Petition for Review*, par. 4.2.
[6] *Id.* at 10–11, Petition for Review, pars. 4.3 and 4.4.
[7] Docket, pp. 107–119, Exhibit "P-6"; Exhibit "R-1", BIR Records (Exhibit "R-5"), pp. 1–13.
[8] Docket, p. 127, Exhibits "P-10"; Exhibit "R-3", BIR Records (Exhibit "R-5"), p. 22.

On May 2, 2022, and within the extension[9] period granted by the Court, respondent filed his *Answer,*[10] interposing the following special and affirmative defenses: (1) the Honorable Court has no jurisdiction over the instant petition; (2) without submitting to this Honorable Court's jurisdiction, assuming this Honorable Court has jurisdiction over the instant petition, petitioner has no cause of action; (3) without admitting this Honorable Court's jurisdiction, it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim; and (4) tax refunds are strictly construed against the taxpayer and in favor of the government.

A *Pre-Trial Conference* was initially set for July 14, 2022,[11] but was reset to August 10, 2022.[12] On that date, petitioner failed to appear. Accordingly, an *Order*[13] was issued dismissing the case for failure to prosecute, in accordance with Section 5, Rule 18 of the Rules of Civil Procedure, as amended.

On September 1, 2022, petitioner filed a *Motion for Reconsideration of the Order dated 10 August 2022,*[14] which the Court granted in a Resolution dated October 28, 2022.[15] Hence, the *Order* dated August 10, 2022, was set aside, and the *Pre-Trial Conference* was set anew on February 22, 2023.

After the *Pre-Trial Conference*, the parties submitted a *Joint Stipulation of Facts and Issues,*[16] on March 14, 2023, which formed the basis for the *Pre-Trial Order*[17] issued on May 26, 2023.

Trial then ensued, during which petitioner presented its witnesses, namely: (1) Ms. Yvonne Karla M. Telan,[18] Accounting Clerk; and (2) Mr. Josefino F. Garcia,[19] the

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[9] Docket, p. 140, Resolution dated April 18, 2022.
[10] *Id.* at 141–155.
[11] *Id.* at 157–159, Notice of Pre-Trial Conference dated May 12, 2022.
[12] *Id.* at 231, Notice of Resetting dated July 14, 2022; 254, Order dated August 10, 2022.
[13] *Id.* at 254.
[14] *Id.* at 257–263.
[15] *Id.* at 283–285.
[16] *Id.* at 345–351.
[17] *Id.* at 373–384.
[18] *Id.* at 71–92, Exhibit "P-18"; 367–369 and 371–371-B, Minutes of the hearing held on, and Order dated, May 18, 2023, respectively.
[19] *Id.* at 402–408, Exhibit "P-19"; 418–420, Minutes of the hearing held on, and Order dated, September 27, 2023.

Independent Certified Public Accountant (ICPA) commissioned by the Court.[20]

On October 16, 2023, petitioner filed *Petitioner's Formal Offer of Evidence,*[21] to which respondent filed a *Comment (Re: Petitioner's Formal Offer of Evidence)*[22] on October 23, 2023.

In a Resolution dated December 14, 2023,[23] the Court admitted petitioner's offered exhibits, *except* for Exhibit "P-16" for not being found in the records, and Exhibit P-17 for not being identified.

Respondent offered the testimony of OIC-Assistant Revenue District Officer Ellen S. Tampus,[24] and filed his *Formal Offer of Evidence* on April 17, 2024.[25] The Court admitted all of respondent's exhibits in a Resolution dated May 30, 2024,[26] and directed both parties to file their respective memoranda within thirty (30) days from notice.

Petitioner filed its *Memorandum for Refund and/or Issuance of a Tax Credit Certificate (For Petitioner)*[27] on July 4, 2024. Respondent, in a *Manifestation*[28] dated July 8, 2024, stated that he would adopt the arguments in his *Answer* as his *Memorandum.* The instant case was deemed submitted for decision on July 23, 2024.[29]

Hence, this Decision.

THE ISSUE

As stipulated by the parties, the issues[30] for resolution by this Court are:

a. WHETHER THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT CASE; and

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20 *Id.* at 370, *Oath of Commission* (undated); 367–369 and 371–371-B, Minutes of the hearing held on, and Order dated, May 18, 2023, respectively.
21 *Id.* at 422–431.
22 *Id.* at 456–458.
23 *Id.* at 464–465.
24 *Id.* at 476–481, Exhibit "R-6"; 483–486, Minutes of the hearing held on, and Order dated, April 11, 2024.
25 *Id.* at 491–495.
26 *Id.* at 507–508.
27 *Id.* at 509–551.
28 *Id.* at 553–555.
29 *Id.* at 557, Notice of Resolution dated July 23, 2024.
30 *Id.* at 345–346, JSFI, Issues.

b. WHETHER [PETITIONER] SAC-B IS ENTITLED TO A TAX REFUND OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) FOR Q4 TY 2019 IN THE AMOUNT OF ₱3,273,004.43 REPRESENTING THE ALLEGED EXCESS AND/OR UNUTILIZED INPUT VAT FOR Q4 TY2019[.]

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the present *Petition for Review*; that it is entitled to a refund and/or issuance of a TCC of ₱3,273,004.43 which is attributable to its zero-rated sales for the 4th quarter of TY 2019; that respondent's denial of petitioner's administrative claim for VAT refund, filed with complete supporting documents, is bereft of legal basis; that the additional requirements for VAT refund claims imposed under BIR issuances are violative of Section 4 of the NIRC of 1997, as amended; and that denying a buyer-taxpayer the right to claim input VAT due to erroneous invoices issued by the seller-taxpayer is unjust.

Respondent's counter-arguments:

Respondent argues that petitioner is not entitled to a refund of the alleged excess input VAT for the 4th quarter of TY 2019, amounting to ₱3,273,004.43.

First, the Court has no jurisdiction over the instant case because the application for refund was not accepted by respondent due to petitioner's failure to submit complete supporting documents. As such, there was no decision appealable before the Court.

Second, assuming the Court has jurisdiction, respondent asserts that petitioner has no cause of action. Citing *Asia Brewery, Inc. v. Equitable PCI Bank*,[31] respondent claims that a cause of action has three (3) elements: (1) the legal right of the plaintiff; (2) the correlative obligation of the defendant not to violate the right; and (3) the act or omission of the defendant in violation of that legal right. According to respondent, the first element is absent as no legal right accrued to petitioner on the sole ground that its claim for refund was not accepted

[31] G.R. No. 190432, April 25, 2017 [Per J. Sereno, First Division].

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by the concerned Revenue District Office. Therefore, the second and third elements are likewise absent.

Third, assuming further that the Court has jurisdiction, respondent asserts that petitioner failed to demonstrate its entitlement to the refund of unutilized input VAT of ₱3,273,004.43. Petitioner's failure to substantiate its claim for refund warrants the denial of the claim.

And *fourth*, respondent asserts that tax refunds are strictly construed in favor of the government and against the taxpayer. The burden of proof rests upon the taxpayer to establish its entitlement by sufficient and competent evidence.

THE COURT'S RULING

The instant *Petition for Review* must be dismissed on jurisdictional ground.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[32] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. The lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[33] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[34]

The Court of Tax Appeals (CTA) is a court of special jurisdiction and may only take cognizance of such matters as are clearly within its jurisdiction.[35] Under Section 7(a)(1) and (2), and Section 11 of Republic Act (RA) No. 1125,[36] as amended by RA No. 9282,[37] the CTA has appellate jurisdiction

[32] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015 [Per J. Perez, First Division] citing *Commissioner of Internal Revenue v. Villa, et al.*, G.R. No. L-23988, January 2, 1968 [Per J. Bengzon, J.P., *En Banc*].

[33] *Malana, et al. v. Tappa, et al.*, G.R. No. 181303, September 17, 2009 [Per J. Chico-Nazario, Third Division] citing *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004 [Per J. Callejo, Sr., Second Division].

[34] *Supra* note 32.

[35] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014 [Per J. Perez, Second Division].

[36] AN ACT CREATING THE COURT OF TAX APPEALS.

[37] 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 OF REPUBLIC ACT NO. 1125,

over decisions, rulings, or inactions of the CIR. The law also prescribes the manner and period for filing an appeal, which must be done within 30 days from receipt of the decision or after the lapse of the period prescribed by law for action, 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.** *(Emphasis supplied)*

As a corollary, Section 112(C) of the NIRC of 1997, as amended by RA No. 10963,[38] provides that the Commissioner of Internal Revenue has ninety (90) days from the date of submission of the official receipts or invoices and other supporting documents to act on a refund application. If the claim is denied, the taxpayer may appeal to the CTA within 30

AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

38 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 NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

days from receipt of the decision denying the same. Notably, it is the decision, ruling, or inaction of the Commissioner—or duly authorized official—that is appealable to this Court.

Section 112 (C) provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> ... ...
>
> (C) *Period within which Refund of Input Taxes shall be Made.* – **In proper cases, <u>the Commissioner</u> 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, **<u>the Commissioner</u>** 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. *(Emphasis and underscoring supplied)*

It must be emphasized that the authority to decide claims for refund is not exclusive and may be delegated by the CIR, pursuant to Section 7[39] of the NIRC of 1997, as amended.

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[39] 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.

Revenue Memorandum Circular (RMC) No. 17-2018 [40] identifies BIR officials authorized to act and decide on VAT refund claims, to wit:

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

A. General Policies

... ...

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. **The denial letter shall be signed by the** Commissioner (CIR)/Deputy Commissioner – Operations Group (DCIR – OG)/Assistant Commissioner (ACIR)/**Regional Director**, as the case may be.

... ...

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),

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[40] 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).

> **and <u>shall be subject to the approval/disapproval by the Regional Director</u>**/ACIR – LTS, as the case may be, irrespective of amount.
>
> ... ...
>
> 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 **<u>approving offices</u>**:
>
> **Time Frame to** Verify/Process, Review and **<u>Approve/Disapprove</u> the Claim**
>
> ... ...

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.** *(Emphasis and underscoring supplied)*

Clearly, for VAT claims within the jurisdiction of a BIR Region, the Regional Director is the official empowered to *approve or disapprove* the application or claim for VAT refund within the prescribed 90-day period set forth under Section 112(C) of the NIRC of 1997, as amended. Notably, the participation of a Revenue District Officer after the filing of the claim is limited to *verification/processing.*

Accordingly, in cases where applications or claims for a VAT refund are filed with an RDO, the appealable decision to this Court is that of the Regional Director, not the one issued by the Revenue District Officer.

In the present case, petitioner's claim for VAT refund was denied through a letter dated December 15, 2021,[41] issued by Revenue District Officer Gledonio B. Teope, Jr., to wit:

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue District Office No. 98
Cagayan de Oro City

December 15, 2021

SANKYU-ATS CONSORTIUM – B
TIN 710-338-514
124 Bonifacio St., Lower Jasaan, Misamis Oriental

Subject: Application for VAT Refund covering the 4th Quarter of Taxable Year 2019

Gentlemen:

This has reference to your application for VAT refund covering the 4th Quarter of Taxable Year 2019 which was received by this Office on November 11, 2021. Please be informed that the updated guidelines and procedures on the processing of claims for VAT credit or refund is covered under Revenue Memorandum Order No. 47-2020 dated November 24, 2020. xxx xxx xxx

Review and evaluation of your submitted documents disclosed that you have rather submitted the documents enumerated in the Checklist of Mandatory Requirements on Claims for VAT Refund under Revenue Memorandum Circular No. 47-2019 dated April 16, 2019. Please take note that there are substantial differences in the prescribed formats and requirements in the abovementioned revenue issuances. In line with this, your application for VAT refund is hereby **denied**, without prejudice to the re-filing of the same with complete documents within the reglementary period set by law.

For your information and guidance.

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[41] Docket, p. 127, Exhibit "P-10"; Exhibit "R-3", BIR Records (Exhibit "R-5"), p. 22.

Very truly yours,

(SGD.)
GLEDONIO B. TEOPE, JR.
Revenue District Officer

However, as previously discussed, only the decision rendered by the Regional Director on a claim for refund of input VAT falls within the appellate jurisdiction of this Court.

In fine, as the subject of the present appeal does not constitute a decision contemplated by law as appealable to this Court, the *Petition for Review* must necessarily be dismissed. To reiterate, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[42] Since no appealable decision was issued by the proper official, the Court is without jurisdiction to entertain the present *Petition for Review.*

WHEREFORE, premises considered, the *Petition for Review* filed by Sankyu-ATS Consortium – B is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G.DEL ROSARIO
Associate Justice

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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42 *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015 [Per J. Perlas-Bernabe, First Division].

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

FIRST DIVISION

SANKYU-ATS CONSORTIUM-B,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10768

Present:

DEL ROSARIO, *P.J.*,
BACORRO-VILLENA, *and*
CUI-DAVID,

Promulgated:
JUL 11 2025; 2:30PM

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With due respect, I am constrained to withhold my concurrence from the *ponencia*'s pronouncement that the Court lacks jurisdiction over the present Petition for Review *ab initio*.

The *ponencia* anchors its ruling on the premise that the letter dated 15 December 2021[1] (**denial letter**) issued by Revenue District Officer (**RDOr**) Gledonio B. Teope, Jr. (**Teope**), is not appealable before this Court, as it was not issued by a regional director (**RD**), in accordance with Revenue Memorandum Circular (**RMC**) No. 17-2018.[2]

I, respectfully, disagree.

Section 112 (A) and (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides the legal basis to claim for refund or issuance of a tax credit certificate (**TCC**) of input value-added tax (**VAT**), including the

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[1] Exhibit "P-10", Division Docket, p. 127.

[2] 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)

taxpayer's remedy to appeal to the this Court the adverse decision or the inaction of the Commissioner of Internal Revenue (**CIR**), to wit:

> ...
>
> SEC. 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: ...
>
> ...
>
> (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.**
>
> <u>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</u>: ***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.**[3]
>
> ...

As a corollary, Sections 7 and 11 of Republic Act (**RA**) No. 1125, as amended, confer exclusive appellate jurisdiction upon this Court to review on appeal decision or inaction of the CIR in cases involving refunds of internal revenue taxes, 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[.]
>
> ...

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[3] Emphasis and underscoring supplied.

> 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.
>
> ...

In this case, petitioner received the denial letter on <u>05 January 2022</u>. Thus, petitioner had thirty (30) days, or until 04 February 2022, to appeal before this Court. Clearly, petitioner timely filed its Petition for Review on <u>04 February 2022</u> and this Court can take cognizance of the case.

Anent the majority's pronouncement that RDOr Teope lacked the authority to deny petitioner's administrative claim, thus rendering the denial not appealable before this Court, with due respect, the foregoing may not be able to withstand scrutiny.

To begin with, the clear wording of the denial letter states that "[i]n line with this, [petitioner's] application for VAT refund is hereby **denied**" and nowhere does it suggest that the application was merely "not accepted" or held in abeyance. The unmistakable tenor of the communication conveys a definitive ruling on the part of respondent, which reasonably led petitioner to believe that it had received an appealable decision.

In this regard, the Supreme Court's pronouncement in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*[4] is particularly instructive:

> ...
>
> [W]e 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 No. 1125, as amended. On the basis of his 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.
>
> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the

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[4] G.R. No. 148380. 09 December 2005.

> 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.**[5]
>
> ...

The Supreme Court emphasized the importance for the Bureau of Internal Revenue (**BIR**) to indicate in "clear and unequivocal language" when its action constitutes a final determination appealable to this Court. The rationale is to prevent unnecessary speculation by the taxpayer as to the finality of an adverse action and to allow the timely availment of judicial remedies.

The foregoing judicial precept finds further affirmation in *Allied Banking Corporation v. Commissioner of Internal Revenue*[6], where the Supreme Court held that the confusion caused by the CIR by using the words "final decision" and "appeal", which connote that the only remedy available to the taxpayer is to bring the matter directly to this Court, estopped the CIR from claiming that he did not intend the Formal Letter of Demand (**FLD**) with Assessment Notices (**ANs**) to be a final decision, thus:

> ...
>
> Moreover, we cannot ignore the fact that in the Formal Letter of Demand with Assessment Notices, respondent used the word "appeal" instead of "protest", "reinvestigation", or "reconsideration". Although there was no direct reference for petitioner to bring the matter directly to the CTA, it cannot be denied that the word "appeal" under prevailing tax laws refers to the filing of a Petition for Review with the CTA. As aptly pointed out by petitioner, under Section 228 of the NIRC, the terms "protest", "reinvestigation" and "reconsideration" refer to the administrative remedies a taxpayer may take before the CIR, while the term "appeal" refers to the remedy available to the taxpayer before the CTA. Section 9 of RA 9282, amending Section 11 of RA 1125, likewise uses the term "appeal" when referring to the action a taxpayer must take when adversely affected by a decision, ruling, or inaction of the CIR. As we see it then, petitioner in appealing the Formal Letter of Demand with Assessment Notices to the CTA merely took the cue from respondent. Besides, **any doubt in the**

[5] Citation omitted and emphasis supplied.
[6] G.R. No. 175097, 05 February 2010.

> **interpretation or use of the word "appeal" in the Formal Letter of Demand with Assessment Notices should be resolved in favor of petitioner, and not the respondent who caused the confusion.**[7]
>
> ...

By analogy, the wording of the denial letter issued by RDOr Teope, couched in definitive terms, reasonably gave petitioner the impression that it was a final disposition—thus triggering the appeal before this Court.

To now require petitioner to await another denial from an RD—after its claim had already been expressly denied and its supporting documents returned—would unjustly place petitioner in procedural *limbo*. **It bears emphasis that by the time petitioner received the denial letter from RDOr Teope on <u>05 January 2022</u>, the two (2)-year reglementary period for filing an administrative claim for refund of its excess input VAT attributable to its zero-rated sales in the fourth (4th) quarter of taxable year (TY) 2019 had already lapsed.[8] Consequently, petitioner could no longer refile the same claim with respondent.** To insist that petitioner wait for another denial from an RD who, in all likelihood, would not act—given that the BIR had already returned petitioner's supporting documents—would foster uncertainty, undermine administrative fairness and **effectively nullify petitioner's claim for refund without the benefit of a formal decision. Such procedural rigidity would defeat, rather than promote, the ends of justice.**

Moreover, even assuming *arguendo* that RDOr Teope lacked the authority to issue a final denial, any defect arising therefrom was nonetheless cured by respondent's subsequent ratification. As reflected in respondent's Answer, the CIR did not repudiate RDOr Teope's action for lack of authority. Rather, respondent echoed the same rationale as the RDOr, *i.e.*, petitioner purportedly failed to submit complete documentary requirements, and did not assert that the denial was void for want of authority. Jurisprudence holds that unauthorized acts of an agent or subordinate may bind the principal when subsequently ratified, either expressly or impliedly, or when the principal holds out the agent as having authority.[9]

Here, by adopting and affirming the RDOr Teope's ground for denial, the CIR effectively ratified the earlier action and rendered it binding upon the BIR. It is thus inequitable to penalize petitioner for relying on a denial that respondent, himself or herself, treated as valid.

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[7] Citation omitted and emphasis supplied.

[8] For VAT refund claims covering the calendar quarter ending 31 December 2019, the last day for filing an administrative claim was until **<u>31 December 2021</u>**.

[9] See *University of Mindanao, Inc. v. Bangko Sentral Pilipinas, et al.*, G.R. Nos. 194964-65, 11 January 2016.

In sum, the categorical language of the denial letter, the jurisprudential standard requiring clarity and finality in administrative action and the respondent's own acts of ratification all coalesce to justify petitioner's recourse to this Court. The denial is properly appealable and the jurisdiction of this Court is lawfully invoked.

All told, I vote to **GIVE DUE COURSE** to the Petition for Review.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice