CTA Form No. 8

19-000236-0086

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10090

HP PPS (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. JONELLE ELLINE A. MAGALONG
Bureau of Internal Revenue-Revenue Region No.8A
36th Floor, Legal Division, Export Bank Plaza Building
Sen. Gil Puyat Ave. corner Chino Roces Avenue, Makati City

QUISUMBING TORRES
16th Floor, One/NEO Building
26th Street corner 3rd Avenue
Crescent Park West, Bonifacio Global City
Taguig City

GREETINGS:

You are hereby notified by these presents that on **July 2, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 3, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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HP PPS (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10090

Members:

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

Promulgated:
JUL 02 2024 2:10PM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed by petitioner HP PPS (Philippines), Inc. (**petitioner/HPPI**) pursuant to Section 3(a)(1)[2], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the refund and/or issuance of a tax credit certificate (**TCC**) in the amount of **₱165,249,865.62**, allegedly representing its excess and/or unutilized input value-added tax (**VAT**) incurred and paid on purchase of services, goods other than capital goods, capital goods, and importations which are attributable to zero-rated sales for the period

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[1] Filed on 04 June 2019, Division Docket, pp. 12-134, with annexes.

[2] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original over or 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[.] (Emphasis supplied)

covering 01 November 2016 to 31 October 2017 or the fiscal year (**FY**) 2017.

PARTIES TO THE CASE

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 37th Floor Robinson's Summit Center, 6783, Ayala Avenue, Makati City.[3] It is registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer in accordance with Section 236[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with Taxpayer Identification Number (**TIN**) 008-927-505-000.[5]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**), who is the head of the government agency tasked with the enforcement of revenue laws and the collection of taxes and duties.[6]

FACTS OF THE CASE

On 31 January 2019, petitioner filed with the Revenue District Office No. 50 - South Makati City (**RDO No. 50**) a Letter Claim for Refund dated 18 January 2019[7] (**administrative claim**), requesting for tax credit or refund of valid input VAT for FY 2017, amounting to ₱165,249,865.62, pursuant to Section 112(A)[8] of the NIRC of 1997, as amended.

Subsequently, on 10 May 2019, petitioner allegedly received a Letter dated 30 April 2019[9] (**Denial Letter**), signed by then Regional Director Glen A. Geraldino (**RD Geraldino**) of Revenue Region (**RR**)

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3 Paragraph 1, II. The Parties, Petition for Review, supra at note 1; See Petitioner's Certificate of Incorporation, Articles of Incorporation (**AOI**) and By-Laws, Exhibit "P-1", Division Docket, Volume II, pp. 608-627.

4 **SEC. 236.** *Registration Requirements.*

5 Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket, Volume I, p. 223.

6 Par. 2, id.

7 Exhibit "P-31", id., pp. 310-317.

8 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —
(A) *Zero-Rated or Effectively Zero-Rated Sales.* — ...

9 Exhibit "R-1", BIR Records, pp. 28-30.

No. 8 – Makati, denying petitioner's administrative claim, for lack of factual basis.

PROCEEDINGS BEFORE THE COURT

Aggrieved, on 04 June 2019, petitioner filed the present Petition for Review.[10] The same was raffled to the Second Division and docketed as CTA Case No. 10090.[11]

On 10 June 2019, the Second Division issued Summons[12] ordering respondent to file an Answer within fifteen (15) days from service. Respondent received the said Summons on 17 June 2019.[13]

On 07 August 2019, respondent forwarded to the Second Division the entire BIR Records of the present case consisting of 96 pages in one (1) folder.[14] The Second Division noted the same in the Minute Resolution dated 08 August 2019.[15]

After the Second Division granted an extension of time to respondent[16], the Answer[17] was filed on 01 August 2019. There, respondent cited the following special and affirmative defenses: (1) petitioner's refund claim is still subject to respondent's administrative investigation and/or examination; (2) the instant petition states no cause of action; (3) taxes paid and collected are presumed to have been paid in accordance with law and regulations and thus, not refundable; (4) petitioner failed to comply with the requisites to successfully claim for a refund; and, (5) tax refunds are in the nature of tax exemptions and therefore are strictly construed against the taxpayer-claimant and in favor of the government.

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10 Supra at note 1.
11 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson and Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Member.
12 Division Docket, Volume I, p. 135.
13 Id.
14 See Compliance dated 07 August 2019, id., p. 142.
15 Id., p. 143.
16 See Order dated 10 July 2019, id., p. 141.
17 Id., pp. 144-148.

On 14 August 2019, the Second Division issued a Notice of Pre-Trial Conference[18] and set the case for pre-trial on 12 September 2019. In compliance with the Court's order, respondent filed his or her Pre-Trial Brief[19] on 06 September 2019, while petitioner filed its Pre-Trial Brief[20] on 10 September 2019.

During the 12 September 2019 Pre-Trial Conference, the Second Division granted the parties a period of twenty (20) days, or until 02 October 2019, within which to file their Joint Stipulation of Facts and Issues (**JSFI**). At the same hearing, the Second Division set the initial presentation of petitioner's evidence and the commissioning of an Independent Certified Public Accountant (**ICPA**) on 09 October 2019, and the continuation of petitioner's presentation of evidence on 20 November 2019.[21]

On 02 October 2019, the parties submitted their JSFI.[22]

On 07 October 2019, petitioner filed an "Omnibus Motion A. To Commission [ICPA] B. To Reset Commissioning of [ICPA]"[23] (**Omnibus Motion**), requesting the appointment of Ma. Fedna B. Parallag (**Parallag**) as the ICPA and to reschedule the 09 October 2019 hearing for her commissioning to a later date or to 20 November 2019, whichever is earlier.

On 08 October 2019, the Second Division issued a Pre-Trial Order[24] approving the parties' JSFI and terminating the pre-trial.

During the 09 October 2019 hearing, the Second Division granted petitioner's Omnibus Motion and thereby, reset the commissioning of the ICPA to 24 October 2019.[25] However, at the 24 October 2019 hearing, respondent objected to the appointment of Parallag due to a conflict of interest. Consequently, the Second Division denied the requested

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18 Id., pp. 150-151.
19 Id., pp. 152-157.
20 Id., pp. 198-212.
21 See Minutes of the Hearing and Order, both dated 12 September 2019, id., pp. 219 and 222, respectively.
22 Id., pp. 223-236.
23 Id., pp. 251-261, with annexes.
24 Id., pp. 245-250.
25 See Minutes of the Hearing and Order, both dated 09 October 2019, id., pp. 278 and 279, respectively.

commissioning and directed petitioner to propose another ICPA within 20 days, by 13 November 2019.[26]

In compliance with the Court's directive, on 13 November 2019, petitioner filed a "Motion to Commission an [ICPA]"[27] (**Motion for Commissioning**), requesting the appointment of Krista V. Bambao (**Bambao**) as the ICPA.

During the 20 November 2019 hearing, the Second Division granted petitioner's Motion for Commissioning, approving thus the appointment of Bambao as the ICPA. She was given forty-five (45) days to submit her ICPA Report and was directed to testify thereon on 20 January 2020.[28]

On 06 January 2020, ICPA Bambao submitted her Report[29], with annexes and the pre-marked exhibits.

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Paul Alcantara (**Alcantara**), petitioner's Commercial Channel Sales Manager; (2) Pradeep Vissamsetty (**Vissamsetty**), petitioner's Finance Controller; (3) ICPA Bambao; and, (4) Kristofferson Seville (**Seville**), petitioner's Enterprise Sales Manager.

During the 09 October 2019 hearing, Alcantara identified his Judicial Affidavit dated 04 October 2019[30] where he declared essentially that: (1) as Commercial Channel Sales Manager, his duties include managing petitioner's commercial resellers; (2) petitioner is engaged in the manufacture, assembly, import, export, sale and distribution of computer and electric components and parts, computer systems and equipment, test and measurement equipment and other related and ancillary electronic products; and, (3) petitioner is registered with the Securities and Exchange Commission (**SEC**) and the BIR.

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26 See Minutes of the Hearing and Order, both dated 24 October 2019, id., pp. 280 and 281, respectively.

27 Id., pp. 282-289, with annexes.

28 See Minutes of the Hearing and Order, both dated 20 November 2019, id., pp. 445 and 446-447, respectively.

29 Exhibit "P-47", id., pp. 480-505.

30 Exhibit "P-29", id., pp. 239-242.

Respondent did not conduct any cross-examination.[31]

At the 20 November 2019 hearing, Vissamsetty identified his Judicial Affidavit dated 18 November 2019[32] where he declared essentially that: (1) as Finance Controller, his duties include, among others, the review and approval of petitioner's tax returns before these are filed via the BIR's Electronic Filing and Payment System (**eFPS**); (2) petitioner is engaged in the sale, distribution and leasing of computers and electronic components and parts, and other related electronic products being sourced from various affiliated companies worldwide; (3) petitioner's administrative claim was filed within two (2) years after the close of the taxable quarters of FY 2017 when the sales were made; (4) petitioner incurred input VAT attributable to its zero-rated sales, in the amount of ₱165,249,865.62, during the period from 01 November 2016 to 31 October 2017; and, (5) petitioner rendered services and sold goods to nonresident foreign corporations (**NRFCs**) and entities registered Investment Promotion Agencies (**IPAs**) during FY 2017, totalling ₱1,524,004,717.78.

During cross-examination, Vissamsetty stated that the sales invoices prove petitioner rendered services and/or sold goods to its NRFC affiliates and that these transactions were paid for in acceptable foreign currency, as evidenced by the foreign inward remittances.[33]

Petitioner did not conduct any redirect examination.[34]

Next to testify during the 20 January 2020 hearing was ICPA Bambao, who identified her Report[35] as well as her Judicial Affidavit dated 14 January 2020.[36] In her affidavit, she declared that: (1) she checked the documents supporting petitioner's refund claim to ascertain the circumstances that gave rise to it; (2) the judicial claim for refund was also timely filed on 04 June 2019 reckoned from petitioner's alleged receipt of the Denial Letter[37] on 10 May 2019; (3) petitioner has

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31 See Minutes of the Hearing and Order, both dated 09 October 2019, id., pp. 278 and 279, respectively.
32 Exhibit "P-45", id., pp. 431-436.
33 TSN dated 20 November 2019, pp. 10-11.
34 Id., p. 11.
35 Exhibit "P-47", supra at note 29.
36 Exhibit "P-37402", Division Docket, Volume I, pp. 453-479.
37 Exhibit "R-1", supra at note 9.

excess and unutilized input VAT for FY 2017 in the amount of ₱165,249,865.62 attributable to zero-rated sales; (4) petitioner had rendered zero-rated sales to which the aforesaid excess input VAT was attributable; (5) the consideration for the zero-rated sales by petitioner was paid for in acceptable foreign currency in accordance with the rules of the Bangko Sentral ng Pilipinas (**BSP**); (6) petitioner's excess and unutilized input VAT is substantiated by VAT invoices and official receipts (**ORs**); (7) petitioner filed its claim for refund of excess and unutilized input VAT for FY 2017 within two (2) years from the close of the taxable quarter when the zero-rated sales were made; and, (6) petitioner did not carry-over or apply its excess and a unutilized input VAT subject of the administrative claim to succeeding taxable quarters and years.

During cross-examination, ICPA Bambao confirmed that, in the subject Denial Letter[38], BIR disallowed certain amounts of petitioner's zero-rated sales. When asked if she was aware of the reason for such disallowance, she answered in the negative, stating it was not mentioned in the Denial Letter. Specifically, the Denial Letter did not specify which zero-rated sales lacked the required documentation. She also clarified that the difference mentioned in Table 9 of her ICPA Report[39], amounting to ₱478,597.72, pertains to the discrepancy between the amount per sales document and the amount reported in the Summary List of Sales (**SLS**). She then affirmed that petitioner's six (6) NRFC affiliates are all conducting business outside the Philippines, as evidenced by their respective Articles of Incorporation (**AOI**) and SEC Certificate of Non-Registration (except for HP Inc.). Lastly, she confirmed that, as indicated in Table 8 of her ICPA Report, she was able to verify that petitioner's VATable sales and zero-rated sales matched those reflected in petitioner's Quarterly VAT Returns for FY 2017.[40]

Petitioner did not conduct any redirect examination.[41]

After three (3) resettings of the hearing for Seville's testimony, primarily due to the increase in COVID-19 cases among petitioner's employees and the precautionary measures adopted by petitioner, the

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38 Exhibit "R-1", supra at note 9.
39 Exhibit "P-47", supra at note 29.
40 TSN dated 20 January 2020, pp. 6-9.
41 Id., p. 10.

hearing finally took place on 18 January 2021.[42] At the hearing, Seville identified his Judicial Affidavit dated 11 March 2020[43] where he declared essentially that: (1) as Enterprise Sales Manager, his duties include managing a team of Account Managers who represent petitioner in Enterprise Accounts, handling their requirements, and managing any escalations regarding petitioner's products; (2) petitioner's customers are registered with the Philippine Economic Zone Authority (**PEZA**), Clark Development Corporation (**CDC**), and Subic Bay Metropolitan Authority (**SBMA**); and, (3) petitioner's sales to these customers were zero-rated.

During cross-examination, Seville confirmed that PEZA, CDC, and SBMA customers provided petitioner with copies of their Certificates of Registration and Tax Exemption. He also attested that once the validity and accuracy of these certificates are confirmed, the sales to these customers are immediately subjected to VAT zero-rating. Lastly, he affirmed that they consider the effectivity period of these customers' respective Certificates of Registration and Tax Exemption before subjecting the corresponding sales to VAT zero-rating.[44]

Petitioner did not conduct any redirect examination.[45]

On 04 March 2021, after completing the presentation of its testimonial evidence and after the Second Division granted two (2) extensions of time to respondent[46], petitioner filed its "Formal Offer of Evidence (with Motion to Set Commissioner's Hearing)"[47] (**FOE with Motion**) consisting of Exhibits "P-1" to "P-37411", inclusive of sub-markings. Petitioner therein requested that a Commissioner's Hearing be set for comparison of some documentary exhibits in the case docket that have not been marked "Faithful Reproduction of the Original." Respondent filed his or her Comment/Opposition[48] thereto on 26 March 2021.

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42 See Order dated 15 June 2020 (resetting the hearing to 20 July 2020), Order dated 10 July 2020 (resetting the hearing to 28 September 2020) and Order dated 28 September 2020 (resetting the hearing to 18 January 2021), Division Docket, Volume II, pp. 554, 565 and 567, respectively.

43 Exhibit "P-37412", id., Volume I, pp. 523-526.

44 TSN dated 18 January 2021, pp. 5-6.

45 Id., p. 7.

46 See Orders dated 09 February 2021 and 23 February 2021, Division Docket, Volume II, pp. 578 and 585.

47 Id., pp. 589-607.

48 Id., pp. 798-803.

On 07 June 2021, petitioner filed a "Motion for Additional Time to File Reply to Comment".[49] Pending the resolution of its motion, petitioner filed its "Reply to Comment/Opposition" on 11 June 2021.

In the Resolution dated 17 June 2021[50], the Second Division granted petitioner's "Motion to Set Commissioner's Hearing" and thereby, set the case for a Commissioner's Hearing on 05 July 2021 for the presentation and comparison of petitioner's exhibits. In the same Resolution, the Second Division also granted petitioner's "Motion for Additional Time to File Reply to Comment" and thereby, allowed petitioner to file such Reply until 11 June 2021 and held in abeyance the resolution of its FOE.

On 05 July 2021, petitioner filed a "Motion to Reset Commissioner's Hearing."[51] On even date, the Second Division granted the same and reset the Commissioner's Hearing to 21 July 2021.[52] However, on 09 February 2022, petitioner filed another motion for resetting as the 21 July 2021 hearing was cancelled due to inclement weather.[53] The Second Division likewise granted the same and reset the Commissioner's Hearing anew to 28 March 2022.[54]

After the Commissioner's Hearing held on 28 March 2022, the Second Division, in a Resolution dated 10 May 2022[55] (**FOE Resolution**), admitted petitioner's exhibits, except for the following (collectively, "**Denied Exhibits**"):

(1) Exhibits "**P-3**", "**P-38**", "**P-39**", "**P-47-1**", "**P-47-2**", "**P-20485**", "**P-21082 to P-21094**", "**P-21095 to P-21097**", "**P-21098 to P-21103**", "**P-21104 to P-21110**", "**P-21112 to P-21136**", "**P-21138 to P-21161**", "**P-21163**", "**P-21165 to P-21197**", "**P- 21199 to P-21224**", "**P-21226 to P-21263**", "**P-21265 to P-21269**", "**P-21271 to P-21308**", "**P-21310 to P-21311**", "**P-21314 to P-21354**", "**P-21356 to P-21394**", "**P-21396 to P-21400**", "**P-21402 to P-21445**", "**P-21447**", "**P-21449 to P-21454**", "**P-21456 to P-21462**", "**P-21464 to P-21504**", "**P-21507 to P-21579**", "**P-21581 to P- 21586**", "**P-21587 to P-21593**", "**P-21594 to P-21603**", "**P-21605 to P-21610**", "**P-21613 to P-21626**", "**P-21628 to P-21635**", "**P-21637 to P-21652**", "**P-21654 to P-21681**", "**P-21682 to P-21683**", "**P-21685 to**

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49 Id., pp. 808-810.
50 Id., pp. 817-818.
51 Id., pp. 819-821.
52 See Order dated 05 July 2021, id., p. 824.
53 See Motion to Set Commissioner's Hearing dated 09 February 2022, id., pp. 825-827.
54 See Order dated 17 February 2022, id., p. 829.
55 Id., pp. 839-847.

P-21703", "**P-21719 to P-21728**", "**P-21729 to P-21740**", "**P-21742 to P-21869**", "**P-32353 to P-32402**", "**P-37293 to P-37308**" and "**P-37396 and P-37396-1**"[56], for failure to present the originals for comparison;

56

Exhibit No.	Description
"P-3"	Application for Tax Credit/Refund (BIR Form No. 1914) and Checklist of Mandatory Requirements for Claim for Refund.
"P-38"	Philippine Economic Zone Authority (**PEZA**) Certification issued to Accenture, Inc.
"P-39"	Certification issued by the Subic Bay Metropolitan Authority (**SBMA**) to AMTI Computers.
"P-47-1"	Transmittal of the ICPA Report to the CTA.
"P-47-2"	Transmittal of the ICPA Report to respondent.
"P-20485"	Certification issued by the Hong Kong Shanghai Banking Corporation, Ltd.
"P-21082 to P-21094"	Altered Compliant VAT-registered ORs but with countersignature and/or vendor certification.
"P-21095 to P-21097"	VAT-registered ORs without reflecting the required BIR Authority to Print (**ATP**).
"P-21098 to P-21103"	VAT-registered ORs without reflecting the TIN of Petitioner.
"P-21104 to P-21110", "P-21112 to P-21136", "P-21138 to P-21161", "P-21163", "P-21165 to P-21197", "p- 21199 to P-21224", "P-21226 to P-21263", "P-21265 to P-21269", "P-21271 to P-21308", "P-21310 to P-21311", "P-21314 to P-21354", "P-21356 to P-21394", "P-21396 to P-21400", "P-21402 to P-21445", "P-21447", "P-21449 to P-21454", "P-21456 to P-21462", "P-21464 to P-21504" and "P-21507 to P-21579"	VAT-registered ORs without reflecting the nature of services for which the payment was made.
"P-21581 to P- 21586"	VAT-registered ORs without reflecting an incorrect VAT amount.
"P-21587 to P-21593"	VAT-registered ORs that are not readable.
"P-21594 to P-21603", "P-21605 to P-21610", "P-21613 to P-21626", "P-21628 to P-21635", "P-21637 to P-21652" and "P-21654 to P-21681"	Purchase documents other than VAT-registered ORs.
"P-21682 to P- 21683", "P-21685 to P-21703" and "P-21719 to P-21728"	VAT-registered SIs & ORs without reflecting the VAT amount.
"P-21729 to P-21740" and "P-21742 to P-21869"	VAT-registered ORs dated outside the covered period of claim.
"P-32353 to P-32402"	Import Entry and Internal Revenue Declarations (**IEIRDs**)/Single Administrative Documents (**SADs**) and/or Statements of Settlement of Duties and Taxes (**SSDTs**).
"P-37293 to P-37308"	Import documents supporting importations of goods for the first and second quarters of FY 2016.
"P-37396 and P-37396-1"	Petitioner's administrative claim for refund filed with Revenue District Office (**RDO**) No. 50 – South Makati last 31 July 2018.

(2) Exhibit "**P-33-a**", "**P-34-a**" and "**P-37-a**"[57], for failure to have the exhibits identified;

(3) Exhibits "**P-34**" and "**P-37**"[58], for failure to provide a translation of the documents written in an unofficial language;

(4) Exhibits "**P-295**", "**P-3571**", "**P-3603 to P-3607**", "**P-3643 to P-3646**", "**P-3938**", "**P-3978**", "**P-3991**", "**P-4023 to P-4024**", "**P-4056**", "**P-4158**", "**P-4177**", "**P-4201**", "**P-4224 to P-4248**", "**P-4252**", "**P-4276 to P-4277**", "**P-4281**", "**P-4284**", "**P-4297**", "**P-4301**", "**P-4305 to P-4307**", "**P-4309**", "**P-4312 to P-4318**", "**P-7218**", "**P-8168**", "**P-8502**", "**P-8989**", "**P-9795**", "**P-10971 to P-10979**", "**P-10983**", "**P-11884 to P-11885**", "**P-14007**", "**P-14065 to P-14069**", "**P-14462**", "**P-15833**", "**P-16231**", "**P-16293 to P-16294**", "**P-16524**", "**P-16937**", "**P-17063**", "**P-17065**", "**P-17224**", "**P-17378**", "**P-17487**", "**P-18046**", "**P-18183**", "**P-18186**", "**P-18257**", "**P-18317**", "**P-18427**", "**P-18650 to P-18651**", "**P-18707**", "**P-18788**", "**P-18973**", "**P-18980**", "**P-18987**", "**P-19008**", "**P-19197**", "**P-19202**", "**P-19288 to P-19290**", "**P-19417**", "**P-19479**", "**P-19511**", "**P-19513**", "**P-19782 to P-19784**", "**P-19799**", "**P-19844 to P-19850**", "**P-19870**", "**P-19952**", "**P-19971**", "**P-20471**", "**P-20472**", "**P-20481 to P-20482**", "**P-21111**", "**P-21137**", "**P-21162**", "**P-21164**", "**P-21198**", "**P-21225**", "**P-21264**", "**P-21270**", "**P-21309**", "**P-21312 to P-21313**", "**P-21355**", "**P-21395**", "**P-21401**", "**P-21446**", "**P-21448**", "**P-21455**", "**P-21463**", "**P-21505 to P-21506**", "**P-21580**", "**P-21604**", "**P-21611 to "P-21612**", "**P-21627**", "**P-21636**", "**P-21653**", "**P-21684**", "**P-21741**", "**P-21870**", "**P-24044**", "**P-24650**", "**P-25749 to P-25750**", "**P-27845 to "P-27846**", "**P-28050 to "P-28054**", "**P-29023**", "**P-29043 to P-29942**", "**P-30222**", "**P-30229**", "**P-31390 to P-31396**", "**P-31890**", "**P-31895 to P-31896**", "**P-31906**", "**P-32040**", "**P-32086**", "**P-32126**", "**P-32167**", "**P-32178**", "**P-32190**", "**P-32200**", "**P-32256**", "**P-32309 to "P-32310**", "**P-34744**" and "**P-35490**"[59], for not being found in the records of the case; and,

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57

Exhibit No.	Description
"P-33-a"	Certificate of Non-Registration issued by the Securities and Exchange Commission (SEC) stating that HP Inc. is not registered as a corporation or partnership in the Philippines.
"P-34-a"	Certificate of Non-Registration issued by the SEC stating that HP Korea is not registered as a corporation or partnership in the Philippines.
"P-37-a"	Certificate of Non-Registration issued by the SEC stating that HP Printing and Computing Solutions is not registered as a corporation or partnership in the Philippines.

58

Exhibit No.	Description
"P-34"	HP Korea's Certificate of Incorporation.
"P-37"	HP Printing and Computing Solutions' Articles of Incorporation.

59

Exhibit No.	Description
"P-295"	System generated SI without reflecting the required BIR ATP as well as the fact that the word "zero-rated" was not pre-printed.

"P-3571", "P-3603 to P-3607", "P-3643 to P-3646", "P-3938", "P-3978", "P-3991", "P-4023 to P-4024", "P-4056", "P-4158", "P-4177", "P-4201" and "P-4224 to P-4248"	Sale documents for sale of services not supported by zero-rated ORs.
"P-4252", "P-4276 to P-4277", "P-4281", "P-4284", "P-4297", "P-4301", "P-4305 to P-4307" and "P-4309"	Receipts for sale of services not supported by documents without the word "zero-rated" pre-printed.
"P-4312 to P-4318"	Credit notes returned zero-rated sales of service.
"P-7218", "P-8168", "P-8502", "P-8989", "P-9795", "P-10971 to P-10979", "P-10983", "P-11884 to P-11885", "P-14007", "P-14065 to P-14069", "P-14462", "P-15833", "P-16231", "P-16293 to P-16294", "P-16524", "P-16937", "P-17063", "P-17065", "P-17224", "P-17378", "P-17487", "P-18046", "P-18183", "P-18186", "P-18257", "P-18317", "P-18427", "P-18650 to P-18651", "P-18707", "P-18788", "P-18973", "P-18980", "P-18987", "P-19008", "P-19197" and "P-19202"	Receipts and invoices for sale of goods and services without exceptions noted.
"P-19288 to P-19290"	Receipts and invoices for sale of goods and services with unreadable items.
"P-19417", "P-19479", "P-19511", "P-19513", "P-19782 to P-19784", "P-19799", "P-19844 to P-19850", "P-19870", "P-19952", "P-19971" and "P-20471"	Sale documents for VATable sales transactions not supported by SIs and ORs.
"P-20472"	Credit note printed on SI for VATable Credit Transaction.
"P-20481 to P-20482"	Invoices and receipts for sale of goods and services entered/earned outside the covered period of the claim.
"P-21111", "P-21137", "P-21162", "P-21164", "P-21198", "P-21225", "P-21264", "P-21270", "P-21309", "P-21312 to P-21313", "P-21355", "P-21395", "P-21401", "P-21446", "P-21448", "P-21455", "P-21463", "P-21505 to P-21506" and "P-21580"	VAT-registered ORs without reflecting the nature of services for which the payment was made.
"P-21604", "P-21611 to P-21612", "P-21627", "P-21636" and "P-21653"	Purchase documents other than VAT-registered ORs.
"P-21684"	VAT-registered SI/OR without reflecting the VAT amount.
"P-21741" and "P-21870"	VAT-registered ORs dated outside the covered period of the claim.
"P-24044", "P-24650", "P-25749 to P-25750", "P-27845 to P-27846", "P-28050 to P-28054", "P-29023", "P-29043 to P-29942", "P-30222", "P-30229", "P-31390 to P-31396", "P-31890", "P-31895 to P-31896", "P-31906", "P-32040", "P-32086", "P-32126", "P-32167", "P-32178", "P-32190", "P-32200", "P-32256" and "P-32309 to P-32310"	Compliant IEIRDs/SADs and SSDTs.

(5) Exhibits **"P-998"**, **"P-1002 to P-1005"**, **"P-1116"**, **"P-1249 to P-1250"**, **"P-1567"**, **"P-1591"**, **"P-1665"**, **"P-2826 to P-2827"**, **"P-2830"**, **"P-2834 to P-2835"**, **"P-2861"**, **"P-2926"**, **"P-3028"**, **"P-3511"**, **"P-3513"**, **"P-3542 to P-3549"**, **"P-3551 to P-3554"**, **"P-3558 to P-3564"**, **"P-4253"**, **"P-4262"**, **"P-4267 to P-4269"**, **"P-4292"**, **"P-4300"**, **"P-4310 to P-4311"**, **"P-4439"**, **"P-4457"**, **"P-4467"**, **"P-4561"**, **"P-4601"**, **"P-4602"**, **"P-4642"**, **"P-4643"**, **"P-4644"**, **"P-4648"**, **"P-4652"**, **"P-4653"**, **"P-4654"**, **"P-4655"**, **"P-4659"**, **"P-4721"**, **"P-4730"**, **"P-4739"**, **"P-4740"**, **"P-4743"**, **"P-4744"**, **"P-4746"**, **"P-4751"**, **"P-4756"**, **"P-4759"**, **"P-4762"**, **"P-4764"**, **"P-4766"**, **"P-4803"**, **"P-4817"**, **"P-4824"**, **"P-4835"**, **"P-4878"**, **"P-4879"**, **"P-4885"**, **"P-5025"**, **"P-5027"**, **"P-5030"**, **"P-5031"**, **"P-5038"**, **"P-5059"**, **"P-5065"**, **"P-5071"**, **"P-5089"**, **"P-5090"**, **"P-5103"**, **"P-5105"**, **"P-5113"**, **"P-5125"**, **"P-5126"**, **"P-9982 to P-9983"**, **"P-18978"**, **"P-18981"**, **"P-18986"**, **"P-19001"**, **"P-19002"**, **"P-19021"**, **"P-19038"**, **"P-19049"**, **"P-19052"**, **"P-19054"**, **"P-19060"**, **"P-19065"**, **"P-19066"**, **"P-19075"**, **"P-19076"**, **"P-19078"**, **"P-19081"**, **"P-19082"**, **"P-19083"**, **"P-19084"**, **"P-19086"**, **"P-19088"**, **"P-19089"**, **"P-19092"**, **"P-19093"**, **"P-19094"**, **"P-19095"**, **"P-19099"**, **"P-19104"**, **"P-19106"**, **"P-19108"**, **"P-19110"**, **"P-19113"**, **"P-19123"**, **"P-19135"**, **"P-19136"**, **"P-19137"**, **"P-19138"**, **"P-19140"**, **"P-19141"**, **"P-19144"**, **"P-19147"**, **"P-19148"**, **"P-19151"**, **"P-19152"**, **"P-19153"**, **"P-19154"**, **"P-19155"**, **"P-19157"**, **"P-19158"**, **"P-19160"**, **"P-19167"**, **"P-19168"**, **"P-19293"**, **"P-20533" to "P-20534"**, **"P-20536 to "P-20537"**, **"P-20543"**, **"P-20650"**, **"P-20655"**, **"P-20658"**, **"P-20682"**, **"P-20812"**, **"P-20832" and "P-21000"**[60], for being unreadable.

"P-34744" and "P-35490"	SADs and SSDTs without exceptions noted.

60

Exhibit No.	Description
"P-998"	Invoices for sale of goods to entities registered with Investment Promotion Agencies (**IPAs**) without exceptions noted.
"P-1002 to P-1005"	
"P-1116"	
"P-1249 to P-1250"	
"P-1567"	
"P-1591"	
"P-1665"	
"P-2826 to P-2827"	
"P-2830"	
"P-2834 to P-2835"	
"P-2861"	
"P-2926"	
"P-3028"	
"P-3511"	
"P-3513"	
"P-3542 to P-3549"	Receipts for VATable sales reported as zero-rated sales.
"P-3551 to P-3554"	
"P-3558 to P-3564"	
"P-4253"	Receipts for sale of services not supported by documents without the word "zero-rated" pre-printed.
"P-4262"	
"P-4267 to P-4269"	
"P-4292"	
"P-4300"	
"P-4310 to P-4311"	
"P-4439", "P-4457", "P-4467", "P-4561", "P-4601", "P-4602",	Receipts and invoices for sale of goods and services without exceptions noted.

Notwithstanding the foregoing FOE Resolution[61], on 20 May 2022, petitioner filed another "Motion to Set Commissioner's Hearing"[62], therein asking the Second Division to set a Commissioner's Hearing for

"P-4642", "P-4643", "P-4644", "P-4648", "P-4652", "P-4653", "P-4654", "P-4655", "P-4659", "P-4721", "P-4730", "P-4739", "P-4740", "P-4743", "P-4744", "P-4746", "P-4751", "P-4756", "P-4759", "P-4762", "P-4764", "P-4766", "P-4803", "P-4817", "P-4824", "P-4835", "P-4878", "P-4879", "P-4885", "P-5025", "P-5027", "P-5030", "P-5031", "P-5038", "P-5059", "P-5065", "P-5071", "P-5089", "P-5090", "P-5103", "P-5105", "P-5113", "P-5125", "P-5126", "P-9982 to P-9983", "P-18978", "P-18981", "P-18986", "P-19001", "P-19002", "P-19021", "P-19038", "P-19049", "P-19052", "P-19054", "P-19060", "P-19065", "P-19066", "P-19075", "P-19076", "P-19078", "P-19081", "P-19082", "P-19083", "P-19084", "P-19086", "P-19088", "P-19089", "P-19092", "P-19093", "P-19094", "P-19095", "P-19099", "P-19104", "P-19106", "P-19108", "P-19110", "P-19113", "P-19123", "P-19135", "P-19136", "P-19137", "P-19138", "P-19140", "P-19141", "P-19144", "P-19147", "P-19148", "P-19151", "P-19152", "P-19153", "P-19154", "P-19155", "P-19157", "P-19158", "P-19160", "P-19167" and "P-19168"	
"P-19293"	Receipt/invoice for sale of goods/services with unreadable items.
"P-20533 to P-20534", "P-20536 to P-20537", "P-20543", "P-20650", "P-20655", "P-20658", "P-20682", "P-20812", "P-20832" and "P-21000"	Compliant VAT-registered SIs/ORs

61 Supra at note 55.
62 Division Docket, Volume II, pp. 848-850.

the presentation of the original Exhibit "**P-37396**".[63] The Second Division granted the same and set the requested Commissioner's Hearing on 13 June 2022.[64]

Meanwhile, after two (2) resettings[65], the initial presentation of respondent's evidence finally proceeded on 24 November 2022. Respondent offered the testimony of his or her lone witness, Revenue Officer Mo-Amar A. Acmad (**RO Acmad**).[66]

During the 24 November 2022 hearing, RO Acmad identified his Judicial Affidavit dated 06 September 2019[67], where he declared that: (1) after the splitting of BIR RR No. 8 in June 2019, he was assigned at the Assessment Division of RR No. 8B – South NCR; (2) as an RO, his duties and responsibilities include, among others, the review and evaluation of all audit/verification reports, including claims for tax credit/refund of internal revenue taxes, and the preparation of written reports on his findings; (3) he was tasked with reviewing and evaluating petitioner's claim for a refund of alleged excess and unutilized input VAT for FY 2017 in the aggregate amount of ₱165,249,865.62; (4) he recommended the denial of petitioner's refund claim after finding that it was not entirely substantiated as required under Section 113[68] of the NIRC of 1997, as amended; (5) he also noted various disallowances; (6) he prepared the Denial Letter[69] addressed to petitioner, informing it of the details of the disallowances and allocation of input VAT as well as the computation of the refundable amount; and, (7) he submitted a Memorandum Report dated 06 June 2019[70], detailing the results of his investigation on petitioner refund claim covering FY 2017.

Petitioner did not conduct any cross-examination.[71]

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63 Petitioner's administrative claim for refund filed with RDO No. 50 – South Makati last 31 July 2018.
64 See Order dated 24 May 2022, Division Docket, Volume II, p. 852.
65 See Notices of Resetting dated 09 June 2022 and 30 August 2022, id., pp. 853 and 855, respectively.
66 See Order dated 24 November 2022, id., p. 857.
67 Exhibit "R-3", id., Volume I, pp. 161-177, with attached copies of exhibits.
68 SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*
69 Exhibit "R-1", supra at note 9.
70 Exhibit "R-2", BIR Records, pp. 9-14.
71 TSN dated 24 November 2022, p. 7.

On 05 December 2022, respondent filed his or her FOE[72] consisting of Exhibits "R-1" to "R-3-A", inclusive of sub-markings. Petitioner filed its Comment[73] thereto on 16 December 2022.

On 09 December 2022, petitioner filed a "Motion to Admit Exhibits"[74] (**Motion to Admit**), therein asking the Second Division to admit, in the interest of justice, Exhibits "**P-24044**", "**P-24650**", "**P-25749 to P-25750**", "**P-27845 to P-27846**", "**P-28050 to P-28054**", "**P-29023**", "**P-29043 to P-29123**", "**P-29125 to P-29231**", "**P-29233 to P-29350**", "**P-29352 to P-29942**", "**P-30222**", "**P-30229**", "**P-31390 to P-31396**", "**P-31890**", "**P-31895**, "**P-31906**", "**P-31986**", "**P-32040**", "**P-32086**", "**P-32126**", "**P-32167**", "**P-32178**", "**P-32190**", "**P-32200**", "**P-32256**", "**P-32309 to P-32310**" and "**P-35490**"[75], which were among the Denied Exhibits that were not found in the case records. These exhibits contained in the Universal Serial Bus (**USB**) attached to the Motion to Admit were allegedly examined and marked by ICPA Bambao but inadvertently excluded from the scanned copies in the earlier submission. Petitioner also reiterated its request for the setting of another Commissioner's Hearing for the presentation of the original Exhibit "**P-37396**".[76]

In the Resolution dated 10 January 2023[77], the Second Division admitted all of respondent's documentary exhibits and directed respondent to file a comment on petitioner's Motion to Admit within five (5) days from notice. Additionally, petitioner was instructed to provide the password for the USB or replace it with one that is not password-protected within ten (10) days from notice.

In compliance with the Court's directive, on 30 January 2023, respondent filed his or her "Comment and Opposition"[78] to petitioner's Motion to Admit. Respondent pointed out that petitioner's Motion to Admit is essentially a Motion for Reconsideration (**MR**) of the Second Division's FOE Resolution[79] and was filed out of time on 09 December

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[72] Division Docket, Volume II, pp. 858-862.
[73] Id., pp. 871-872.
[74] Id., pp. 865-868.
[75] Supra at note 59.
[76] Supra at note 63.
[77] Division Docket, Volume II, pp. 875-876.
[78] Id., pp. 877-880.
[79] Supra at note 55.

2022, since petitioner had only until 07 June 2022 (reckoned from receipt of the FOE Resolution on 23 May 2022).

In the Resolution dated 20 February 2023[80] (**assailed Resolution**), the Second Division denied petitioner's Motion to Admit[81] (treated as an MR of the Second Division's FOE Resolution) for being filed out of time. Consequently, it rescinded its earlier directive for petitioner to provide the password for the USB attached to the Motion to Admit or replace it with one that is not password-protected. The Second Division also gave the parties thirty (30) days from notice to file their respective memoranda and submitted the case for decision.

On 14 March 2023, petitioner filed an MR[82] on the assailed Resolution, arguing that since the submission of documents examined by the ICPA is the sole responsibility of the ICPA and petitioner had no control over the preparation and marking of the exhibits, the Second Division should relax procedural rules to advance substantial justice. Respondent filed his or her Comment/Opposition[83] thereto on 18 April 2023.

Pending the resolution of its MR on the assailed Resolution, on 29 March 2023, petitioner filed a "Motion for Extension"[84], requesting a period of 15 days from receipt of the resolution on the said MR within which to file its memorandum.

In the Resolution dated 18 May 2023[85], the Second Division denied petitioner's MR for lack of merit and granted it 15 days to file its memorandum.

Earlier, on 20 March 2023, respondent filed his or her Memorandum.[86] Petitioner, on the other hand, filed a "Motion for

80 Division Docket, Volume II, pp. 884-888.
81 Supra at note 74.
82 Division Docket, Volume II, pp. 898-904.
83 Id., pp. 924-927.
84 Id., pp. 920-922.
85 Id., pp. 930-934.
86 Id., pp. 907-916.

Additional Time to File a Memorandum"[87], which the First Division[88] expunged from the records of the case for being a prohibited motion, as stated in the Resolution dated 14 July 2023.[89] In the same Resolution, the First Division likewise considered the case submitted for decision.

Notwithstanding the foregoing, petitioner filed a "Motion to Admit Memorandum *Ex Abundanti Cautela*"[90], with attached Memorandum[91], on 19 July 2023. The First Division noted the same without action in the Resolution dated 27 July 2023.[92]

ISSUE

As the parties so stipulated in their JSFI[93], the main issue for this Court's determination is —

> WHETHER PETITIONER HP PPS (PHILIPPINES), INC. IS ENTITLED TO A REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE AGGREGATE AMOUNT OF ₱165,249,865.62, REPRESENTING EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) INCURRED AND PAID ON PURCHASES OF SERVICES, GOODS OTHER THAN CAPITAL GOODS, CAPITAL GOODS, AND IMPORTATIONS WHICH ARE ATTRIBUTABLE TO ITS ZERO-RATED SALES OF GOODS AND SERVICES FOR THE PERIOD COVERING 1 NOVEMBER 2016 TO 31 OCTOBER 2017 OR THE FISCAL YEAR (FY) 2017 CONSISTING OF: (A) 1ST QUARTER OF FY 2017 AMOUNTING TO ₱37,588,093.09; (B) 2ND QUARTER OF FY 2017 AMOUNTING TO ₱40,950,773.40; (C) 3RD QUARTER OF FY 2017 AMOUNTING TO ₱48,277,942.17; AND, (D) 4TH QUARTER OF FY 2017 AMOUNTING TO ₱38,433,056.96.

ARGUMENTS

In the instant Petition for Review, petitioner argues that its excess and unutilized input VAT being claimed for refund, amounting to

87 Id., pp. 936-941.
88 Pursuant to CTA Administrative Circular No. 01-2023 dated 23 May 2023, which reorganized the Divisions of the Court effective 29 May 2023, this case was transferred to the First Division, chaired by Presiding Justice Roman G. Del Rosario.
89 Division Docket, Volume II, p. 945.
90 Id., pp. 946-949.
91 Annex "A" to Petitioner's Motion to Admit Memorandum *Ex Abundanti Cautela*, id., pp. 951-970.
92 Id., p. 974.
93 Supra at note 22.

₱165,249,865.62, are all attributable to its zero-rated sales of goods and services to its NRFC affiliates in the four (4) quarters of FY 2017 pursuant to Section 106(A)(1), 108(B)(2) and (3) of the NIRC of 1997, as amended. Considering that the said amount of excess and unutilized input VAT for FY 2017 has remained unutilized and/or unapplied against its output VAT liability, it is entitled to the refund and/or issuance of a TCC for the said amount under the said provisions of the NIRC of 1997, as amended.

Respondent, on the other hand, contends that petitioner is not entitled to the subject refund claim as it failed to offer and present sufficient evidence to establish the same considering the denial of and the discrepancies on petitioner's exhibits that affected their admissibility and competence. Respondent also avers that petitioner failed to show that the tax subject of the instant claim for refund was erroneous or illegally collected, applying the presumption of regularity in the performance of official duty. Lastly, a claim for refund is strictly construed against the taxpayer as it partakes the nature of a tax exemption.

RULING OF THE COURT

Before the Court proceeds to resolve the merits of the case, the Court finds it propitious to first discuss whether this Court has jurisdiction over the subject matter presented before it.

THE COURT OF TAX APPEALS (CTA) HAS NO JURISDICTION OVER THIS CASE AS PETITIONER FAILED TO ESTABLISH THE TIMELINESS OF ITS JUDICIAL APPEAL.

At the outset, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties. As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend on the validity of its entire proceedings. Therefore, even if there was no jurisdictional issue raised by any party, the Court may look into it at anytime of the proceedings, even during appeal.[94]

To be sure, the matter of jurisdiction may be ruled upon regardless of the stage of the proceedings, considering that a judgment rendered without jurisdiction is null and void, and a void judgment cannot be the source of any right whatsoever.[95]

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.**[96]

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125[97], as amended by RA 9282[98], provides that this Court has exclusive appellate jurisdiction over decisions of, or inaction by, the CIR in cases involving refunds of internal revenue taxes, *viz*:

> ...
> 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

94 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185969, 19 November 2014.

95 *El Greco Ship Manning and Management Corporation v. Commissioner of Customs*, G.R. No. 177188, 04 December 2008.

96 *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, 17 June 2015.

97 AN ACT CREATING THE COURT OF TAX APPEALS.

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

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 of action**, in which case the inaction shall be deemed a denial[.][99]

...

Moreover, Section 11 of RA 1125, as amended, states in part:

...

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 or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the [**Court of Tax Appeals**] **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.[100]

...

Under these provisions, this Court has appellate jurisdiction over decisions, rulings or inactions of respondent. The appeal must be filed within 30 days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action. This statutory privilege is re-echoed in Section 3(a), Rule 8 of the RRCTA, *viz*:

...

SEC. 3. *Who May Appeal; Period to File Petition.* —

(a) **A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on** disputed assessments or **claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed**

99 Emphasis supplied and italics in the original text.
100 Emphasis supplied and italics in the original text.

> **within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act** on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[101]
>
> ...

In this case, petitioner anchors the instant claim for refund or tax credit on Section 110(B), in relation to Section 112(A) and (C) of the NIRC of 1997, as amended, by RA 10963 or the Tax Reform for Acceleration and Inclusion (**TRAIN Law**). The said provisions read as follows:

> ...
>
> SEC. 110. *Tax Credits.* —
>
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes**, subject to the provisions of Section 112.
>
> 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: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one

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[101] Emphasis supplied and italics in the original text.

> of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ...
>
> (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.[102]
>
> ...

Based on the foregoing provisions, a VAT-registered person intending to file a claim for refund or tax credit of input VAT must file an administrative claim with the BIR within two (2) years after the close of the taxable quarter when the sales were made.[103] In case of full or partial denial of the refund claim, or if respondent or the BIR fails to act thereon within a period of ninety (90) days, the judicial claim must be filed with this Court within 30 days from receipt of the decision or after the expiration of the said 90-day period.[104]

In this case, petitioner filed its administrative claim on 31 January 2019 *via* the Letter Claim for Refund dated 18 January 2019.[105]

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102 Emphasis supplied and italics in the original text.

103 See *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, 03 August 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; and *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, 27 April 2007.

104 See *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, 29 March 2023; *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, 01 February 2023; and *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, 17 March 2021.

105 Exhibit "P-31", supra at note 7.

Respondent then has 90 days therefrom, or until 01 May 2019, within which to act on the said administrative claim.

Petitioner alleges that on 10 May 2019[106], it received respondent's Denial Letter dated 30 April 2019, purportedly referring to the Letter dated 30 April 2019 issued by then RD Geraldino.[107]

However, petitioner failed to provide proof that it indeed received the Denial Letter on 10 May 2019. Specifically, it did not present evidence of the Denial Letter itself, indicating receipt on that date. Firstly, a review of petitioner's FOE[108] confirms that the Denial Letter is not among the pieces of evidence offered by petitioner.

Secondly, none of petitioner's witnesses testified to that specific date of receipt. In fact, only ICPA Bambao mentioned, on page 9 of her Judicial Affidavit dated 14 January 2020[109], that according to petitioner, the Denial Letter was received on 10 May 2019 and referred to Exhibit "**P-3-b**" to be marked by petitioner's counsel. However, Exhibit "**P-3**", which was among the Denied Exhibits not admitted by this Court due to the failure to present the originals for comparison, is not the Denial Letter. Instead, it is described in petitioner's FOE[110] as the Application for Tax Credit/Refund (BIR Form No. 1914) and Checklist of Mandatory Requirements for Claim for Refund.

Thirdly, the Denial Letter[111] found in the BIR Records also does not bear the 10 May 2019 date of receipt alleged by petitioner.

Given these circumstances, there is no means for this Court to determine whether the instant judicial claim was timely filed, *i.e.*, within the 30-day period prescribed under the afore-quoted Section 11 of RA 1125, as amended by RA 9282, and Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law.

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106 Par. 14, Petition for Review, supra at note 1, p. 17.
107 Exhibit "R-1", supra at note 9.
108 Supra at note 47.
109 Exhibit "P-37402", supra at note 36.
110 Supra at note 47.
111 Exhibit "R-1", supra at note 9.

Undoubtedly, the party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. Verily, the party who asserts, not he who denies, must prove.[112]

In this case, the supposed receipt by petitioner of the Denial Letter dated 30 April 2019 on 10 May 2019 remained an allegation, for failure of petitioner to substantiate the same, and as such, it cannot be treated as fact.

It is worth noting that pursuant to Section 4, Rule 8 of the RRCTA, an appeal from a decision or ruling of the CIR shall be taken to the Court by filing before it a petition for review as provided in Section 2, Rule 42 of the Rules of Court (**ROC**), as amended, *viz*:

> ...
>
> Section 2. *Form and Contents*. - **The petition** shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and **<u>shall</u>** (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) **indicate the specific material dates showing that it was filed on time**; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) **be accompanied** by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and **other material portions of the record as would support the allegations of the petition.**[113]
>
> ...

The above provision of the ROC, as amended, clearly requires that the specific material dates shall be indicated in the petition for the purpose of showing that it was filed on time, and that the petition be accompanied, among others, of material portions of the record that would support petitioner's allegations.

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112 *Far East Bank & Trust Company v. Robert Mar Chante, a.k.a. Robert Mar G. Chan*, G.R. No. 170598, 09 October 2013.

113 Emphasis supplied and italics in the original text.

The timeliness of an appeal is a factual issue that requires a review of the evidence presented.[114] Since petitioner failed to provide supporting evidence (from any part of the record or other sources) showing that it received the Denial Letter on 10 May 2019, it did not establish that the Petition for Review, filed on 04 June 2019, was timely. As this is a jurisdictional requirement, this Court has no other recourse but to dismiss the petition for lack of jurisdiction.

Apropos, courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[115] It also bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[116] Relative thereto, when it appears from the pleadings or the evidence on record that the Court has no jurisdiction over the subject matter, the Court shall dismiss the claim. The Court could not decide the case on the merits.[117]

Accordingly, this Court will no longer belabor to discuss the merits of petitioner's refund claim or its compliance with the requirements for obtaining a refund of excess and unutilized input VAT attributable to zero-rated sales for the subject period.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner HP PPS (Philippines), Inc. on 04 June 2019, is hereby **DISMISSED** for lack of jurisdiction.

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114 *Republic of the Philippines, represented by The Presidential Commission on Good Government (PCGG) and Mid-Pasig Land Development Corp. v. Augustus Albert V. Martinez, et al.*, G.R. Nos. 224438-40, 03 September 2020.

115 See *Bureau of Customs v. The Honorable Agnes VST Devanadera, et al.*, G.R. No. 193253, 08 September 2015, citing *Ace Publication, Inc. v. The Commissioner of Customs and The Collector of Customs*, G.R. No. L-18808, 29 May 1964.

116 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

117 *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, 04 February 2015.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice