23-000507-0024

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11297

JOSELITO M. LIZARONDO,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

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

ATTY. LUIS Z. CELESTINO
ATTY. CHRISTIAN WILFRED D. MORALES
ATTY. NAPOLES P. CAMPOS JR.
Bureau of Internal Revenue - Revenue Region No. 5 - Caloocan City
No. 10 General Concepcion Street, Brgy. 134
1400 Caloocan City

CABRERA & COMPANY
29th Floor, Philamlife Tower
8767 Paseo de Roxas, 1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **May 24, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 27, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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JOSELITO M. LIZARONDO,
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- versus -

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Respondent.

CTA CASE NO. 11297

Members:

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

Promulgated:
MAY 24 2024 11:30 am

x- x

RESOLUTION

For the Court's resolution is respondent's Motion to Dismiss (Motion) incorporated in his Answer filed on January 12, 2024.

In his Motion, respondent raised the following grounds:

> (1) The premature filing of petitioner's claim for refund of ₱25,176,149.85 before the Court of Tax Appeals (CTA) warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA; and,
>
> (2) The Petition for Review filed by petitioner before the CTA, being fatally defective in form and in substance, does not entitle petitioner to a judicial claim for refund.

Respondent asserts petitioner's failure to file a Motion for Reconsideration and/or appeal before the Commissioner of Internal Revenue (CIR), the denial of its administrative claim for refund by the Revenue District Officer renders the filing of the Petition for Review premature and the CTA has no jurisdiction to take cognizance of said appeal.

Respondent argues that petitioner's act of by-passing the authority of the CIR to render a final decision on the administrative claim for refund is a clear deprivation of the power and authority of the CIR to rule on the claim for refund as expressly provided in Sections 7, 204, and 229 of the National Internal Revenue Code of 1997 (NIRC), as amended. Accordingly, the condition precedent for the filing of the action was not complied with, for failure to exhaust all available administrative remedies, thereby violating the doctrine of primary administrative jurisdiction which is mandatory and jurisdictional.

Respondent further submits that the applications for refund of internal revenue taxes lie within the primary jurisdiction of the CIR, and the CTA may take cognizance of these claims only on appeal.

With respect to his claim that the Petition for Review is fatally defective, respondent argues that petitioner should have first shown that the first and original Share Purchase Agreement (SPA) with Binance Capital Management Co. Ltd. (Binance), the original Deed of Absolute Sale (DOAS) executed on July 12, 2022, and the electronic Certificate Authorizing Registration (eCAR) No. eCP201300066189 received on August 2, 2022 for the sale of petitioner's shares of stock in SwipeWallet Inc. were either cancelled or revoked. Having failed to do so, respondent argues that these documents are still valid, binding, and subsisting public documents as the same are either notarized or part of public records. Being public documents, respondent states that they remain valid and enforceable unless there is a Deed of Revocation or Cancellation for this purpose.

According to respondent, upon the filing of petitioner of the Petition for Review, there were still three (3) DOAS existing, bearing different dates: July 12, 2022, December 29, 2022, and January 17, 2023. Thus, respondent posits that petitioner's assertion that the reduced price reflected in the January 17, 2023 Amended DOAS shall be the basis of the capital gains tax (CGT) and documentary stamp tax (DST) should not be given due course, without proof of cancellation or revocation of the DOAS dated July 12, 2022 and December 29, 2022. Furthermore, respondent contends that petitioner cannot transfer the shares of stock to Binance even if the transaction is based on the Amended SPA since eCAR No. eCP201300066189, based on the first DOAS dated July 12, 2022, has not yet been revoked or amended to the alleged reduced price.

We resolve.

A Motion to Dismiss is a prohibited pleading[1] under the Revised Rules of Civil Procedure (Revised Rules) except when any of the following grounds are raised:

> (1) the court's lack of jurisdiction over the subject matter of the claim;
>
> (2) the pendency of another action between the same parties for the same cause; and,
>
> (3) the cause of action is barred by a prior judgment or by the statute of limitations.

To support his argument that the Petition for Review is fatally defective in form and in substance, respondent posits that petitioner should have first established the **cancellation or revocation** of the DOAS dated July 12, 2022 before it may file a Petition for Review before the CTA.

Foremost, the said ground raised by respondent is not one of the accepted grounds for a permissible motion to dismiss. Hence, such ground must be slain outright.

At any rate, there is no such requirement before a taxpayer-claimant may validly file a Petition for Review.

Section 2, Rule 6 of the RRCTA provides:

> SEC. 2. Petition for Review; contents. – the petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. A

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[1] Section 12, Rule 15 of the Revised Rules provides:

Section 12. *Prohibited motions.* — The following motions shall not be allowed:

(a) Motion to dismiss except on the following grounds:

1) That the court has no jurisdiction over the subject matter of the claim;

2) That there is another action pending between the same parties for the same cause; and

3) That the cause of action is barred by a prior judgment or by the statute of limitations.

> clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.

An examination of the Petition for Review and its attachments reveals that it complies with the foregoing Rule. Thus, the Petition for Review filed on October 27, 2023 is not fatally defective in substance or in form.

Anent respondent's contention that the CTA has no jurisdiction over the present case, the Court finds the same meritorious.

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[2] The jurisdiction of the CTA to review on appeal the decision of the CIR on refunds of internal revenue taxes, fees or other charges is provided under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, which reads:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx

In relation thereto, Section 3, Rule 4 of the RRCTA, as amended, specifically includes the decision of the CIR as one of the cases falling within the jurisdiction of the CTA in Division, to wit:

> 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

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[2] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

> Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx

Corollary thereto, Section 3(a), Rule 8 of the RRCTA, as amended, provides the period within which the decision of the CIR may be appealed with the CTA, to wit:

> 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 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. *(Boldfacing supplied)*

Pertinent to claiming a tax refund of erroneously paid tax are Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provide as follows:

> SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -The Commissioner may - xxx
>
> (C) **Credit or refund taxes erroneously or illegally received or penalties imposed without authority**, refund the value of internal revenue stamps when they are returned in good condition by the purchases, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.
>
> **No credit or refund of taxes or penalties shall be allowed unless the taxpayer filed in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided*, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied)
>
> xxx xxx xxx
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been **erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without

> authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been **excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax** or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphases supplied)

It is clear from the afore-cited provisions that the CTA in Division shall exercise exclusive original jurisdiction to review by appeal **decisions of the CIR** in cases involving disputed assessments, **refunds of internal revenue taxes**, fees, or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR.

The present Petition for Review seeks the review of the Denial Letter dated September 12, 2023, issued by Revenue District Officer Ranchez on petitioner's application for refund of alleged erroneously paid capital gains tax filed before RDO 25A- West Bulacan. Undeniably, the CIR has yet to render a decision on petitioner's claim for refund.

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her.[3]

While the authorized official to refund erroneously paid taxes is the CIR, Section 204 of the NIRC of 1997, as amended, further provides that **no credit or refund of taxes or penalties shall be allowed unless a taxpayer filed in writing with the Commissioner a claim for credit or refund.**

True, the CIR may delegate his powers vested upon him by law, pursuant to Sec. 7 of the NIRC of 1997, as amended.[4]

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[3] *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.,* G.R. No. 221780, March 25, 2019.

[4] SEC. 7. *Authority of the Commissioner to Delegate Power.* The Commissioner may delegate the powers vested in him under the pertinent provisions of this code to any or such subordinate officials with the rank equivalent to a division chief or higher subject to such limitations and restrictions as may be imposed under rules and regulations by the Secretary of Finance, upon

Nonetheless, the CIR's power can only be delegated to subordinate officials with the rank equivalent to a division chief or higher. The power to refund is not among the exceptions to the power of the CIR which may not be delegated.

Here, while a Revenue District Officer has the rank of a Division Chief, this does not *ipso facto* give said Revenue District Officer the power to decide on claims for refund of erroneously paid taxes, *sans* a clear and specific delegation of such power upon said officer.

The Court is aware of Revenue Memorandum Order (RMO) No. 30-2018[5] which states that the processing of claims for refund of erroneous payment of CGT is now under the RDO having jurisdiction over the place where the subject property is located regardless of whether or not the claimant is its registered taxpayer. However, nowhere is it stated in said RMO that the decision to be rendered by the RDO shall be the final decision on the taxpayer's administrative claim for refund which may be the subject of appeal before the CTA.

Relatedly, Revenue Memorandum Circular (RMC) No. 017-18[6] provides the guidelines for the processing of claims for refund of erroneously paid taxes, to wit:

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recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

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

[5] SUBJECT: Prescribing the Policy Regarding the Processing of Claims for Refund of Capital Gains Tax (CGT) or Creditable Withholding Tax (CWT)

[6] 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)

II. Claims for issuance of tax refund/TCC on income tax, erroneous payment of taxes under Section 204(C) and recovery of tax erroneously or illegally collected under Section 229 of the Tax code, as amended, and other taxes, except VAT under Section 112

xxx

B. Claims of taxpayers registered with the RDO

1. The RDO shall process all claims for tax refund/TCC filed by their registered taxpayers-claimants which shall be reviewed by the Assessment Division prior to transmittal to the Revenue Director.

2. xxx

3. The docket for claims exceeding 10M shall be transmitted to the TARD for further review prior to approval of the revenue officials in accordance with the thresholds set in item no. I.B.3 hereof. xxx

Item I.B.3 of RMC 017-18 reads:

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

xxx

B. Claims for VAT refund by direct exporters

xxx

3. The following are the authorized approving revenue officials based on the amount of claims:

Amount of claim	Approving Revenue Official
Not more than P50,000,000.00	ACIR- Assessment Service (AS)
More than P50,000,000.00 up to P150,000,000.00	DCIR-OG
More than P150,000,000.00	CIR

Prescinding from the foregoing, the proper approving revenue official to decide on petitioner's claim is the **Assistant Commissioner of Internal Revenue (ACIR)** of the Assessment Service as the claim for refund involves the amount of ₱25,176,149.85.

As afore-discussed, before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be availed of by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the court's intervention is fatal to one's cause of action.[7]

To reiterate, jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[8] Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action,[9] as is obtaining in this case.

WHEREFORE, premises considered, respondent's Motion to Dismiss incorporated in his Answer filed on January 12, 2024, is **GRANTED**. The Petition for Review filed on October 27, 2023 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[7] *Mendoza, et al. vs. Laxina, Sr.*, G.R. No. 146875, July 14, 2003.
[8] *Honorio Bernardo vs. Heirs of Eusebio Villegas*, G.R. No. 183357, March 15, 2010.
[9] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.