REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ACE/SAATCHI & SAATCHI ADVERTISING, INC., *Petitioner,*	**CTA *EB* NO. 2645** (CTA Case No. 9622)
	Present:
-versus-	**DEL ROSARIO**, *PJ,* **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
THE HONORABLE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 15 2023 4:30 pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* filed by Ace/Saatchi & Saatchi Advertising, Inc. ("**Petitioner**"),[1] under Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals ("**RRCTA**").[4] It seeks the reversal of the Court's Third Division *Decision* dated October

[1] Dated June 24, 2022, received by the Court on June 24, 2022; *EB* Docket, pp. 6-46.
[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[3] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.
[4] A.M. No. 05-11-07-CTA.

28, 2021 ("**assailed Decision**"),[5] and *Resolution* dated May 31, 2022 ("**assailed Resolution**"),[6] in CTA Case No. 9622 entitled *Ace/Saatchi & Saatchi Advertising, Inc. v. The Honorable Commissioner of Internal Revenue.*

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Saatchi House, 2296 Don Chino Roces Ave., Makati City, Metro Manila.[7]

Respondent, on the other hand, is The Honorable Commissioner of Internal Revenue ("**CIR**"), with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code ("**NIRC**"), or other laws or portions thereof administered by the BIR. [8] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

The facts, as found by the Court in Division, are as follows:[9]

> On February 7, 2012, petitioner received a *Final Decision on Disputed Assessment* (or "2012 FDDA") dated January 24, 2012, finding it liable for deficiency income tax, value-added tax (VAT), withholding on VAT, withholding tax – compensation, withholding tax- expanded, final withholding tax (FWT), fringe benefits tax (FBT) and compromise penalty for taxable year (TY) 2006 in the total amount of ₱406,264,841.62, inclusive of surcharge, interest and compromise penalties, broken down as follows:
>
> Table 1. 2021 FDDA Breakdown

Income Tax	₱ 93,332,881.91
Value-Added Tax	296,683,844.35
Withholding on VAT	84,356.64
Withholding Tax – Compensation	5,145,539.84
Withholding Tax – Expanded	7,809,604.21
Withholding Tax – Final	1,807,254.37

[5] *EB* Docket, pp. 47-66; penned by Associate Justice Erlinda P. Uy, with Associate Justice Ma. Belen Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring.
[6] *Id.*, pp. 80-88.
[7] Paragraph 1.1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 319.
[8] Docket (CTA Case No. 9485) – Vol. 4, Joint Stipulation of Facts and Issues (JSFI), Stipulated Facts, Par. 1, p. 1673.
[9] Citations omitted.

Fringe Benefits Tax	1,376,360.30
Compromise Penalty	25,000.00
TOTAL ASSESSMENT	**₱406,264,841.62**

On March 8, 2012, petitioner filed a *Petition for Review* before the First Division of this Court, docketed as CTA Case No. 8439 (the 2012 Petition) seeking the reversal of the 2012 FDDA only with respect to the alleged deficiency taxes amounting to ₱403,438,088.36, broken down as follows:

Table 2. Breakdown of Contested Amount:

Income Tax	₱ 93,188,430.71
Value Added Tax	295,715,499.85
Withholding Tax – Compensation	5,145,539.84
Withholding Tax – Expanded	7,581,363.69
Final Withholding Tax	1,807,254.37
TOTAL TAXES DISPUTED	**₱403,438,088.46**

Thus, the amount of **₱2,826,753.16** was not contested by petitioner in CTA Case No. 8439, to wit:

Table 3. Computation of Uncontested Amount.

Assessed Amount	₱406,264,841.62
Contested Amount	(403,438,088.46)
Uncontested Amount	**₱ 2,826,753.16**

The proceedings arising from the 2012 Petition are currently pending with the Court *En Banc,* docketed as CTA *EB* Case No. 1403 and 1409.[10]

On March 2 and 7, 2012, petitioner made partial payment in the amount of **₱2,368.539.33** pertaining to the uncontested amount inclusive of interest and surcharge incurred as of the applicable dates. The breakdown of the partial payment is as follows:

Table 4. Breakdown of ACE's March 2 and 7, 2012 partial payments:

Nature	Uncontested Amount	Payment	Balance
Income Tax	₱ 144,451.20	₱ 182,272.29	0.00
VAT	**968,344.50**	**269,131.69**	**₱ 699,212.81**
Creditable VAT	84,356.64	90,029.32	0.00
WT-Compensation	0.00	74,126.08	0.00
EWT	228,240.52	246,948.52	0.00
FBT	1,376,360.30	1,481,031.42	0.00
Compromise	25,000.00	25,000.00	0.00
TOTAL	**₱ 2,826,753.16**	**₱ 2,368,539.33**	**₱ 699,212.81**

[10] The case has already been resolved by the Court *En Banc* in its Decision dated October 19, 2017, and Resolution dated April 4, 2018. It is now pending with the Supreme Court as G.R. No. 238372-73, consolidated with G.R. No. 239427-28.

On March 13, 2012, petitioner informed the BIR of the said partial payments. As shown in Table 4, only the uncontested assessment for VAT of ₱968,344.50 was not fully paid by ACE as of March 7, 2012. On said date, petitioner only paid ₱269,131.69 of said amount, which left a balance of ₱699,212.81.

On June 3, 2015, petitioner fully settled the VAT Balance of ₱699.212.81 for TY 2006 by paying the BIR the amount of ₱1,870,877.07, inclusive of surcharge and interest as of said date.

Petitioner's 2014 Application for Refund subject of the instant Petition for Review.

On August 14, 2014, petitioner paid surcharges and interest penalties for "late payment" amounting to ₱3,630,741.00, covering the 3rd and 4th quarters of 2013 and the 1st quarter of 2014.

Thereafter, on October 23, 2014, petitioner filed a *Request for Cash Refund of Surcharge Penalties/Interest Paid in Error* with *Application for Tax Credits/Refund* (BIR Form No. 1914), requesting for cash refund in the amount of ₱3,630,741.00 representing its alleged erroneously paid surcharges and interest penalties.

On March 23, 2015, petitioner received Letter of Authority No. LOA-126-2015-00000001 dated March 12, 2015 authorizing Revenue Officers (RO) Aurora Alberto, Ryan Loon, Eric Sandoval, Cecile Uy and Group Supervisor (GS) Constante JR Reinante of LT Regular Audit Division 3 to examine its books of accounts and other accounting records for VAT for the period of August 14, 2014, pursuant to "Mandatory Audit - Claim for VAT Refund."

On December 1, 2015, the former Finance Manager of petitioner, Adonis Mendoza, received an electronic mail from RO Alberto, stating that a report has been reviewed and approved in their office and submitted to the Head Revenue Executive Assistant-Large Taxpayers Service (HREA-LTS) for review and approval.

On January 5, 2016, Adonis Mendoza received another electronic mail from RO Alberto, stating that the cash refund has been approved by the ACIR-LTS. In the same email, RO Alberto, however, informed petitioner that a report will still be forwarded to the Accounting Division and Department of Budget and Management (DBM), for funding.

On May 25, 2017, petitioner received a *Letter* from Teresita M. Angeles, OIC, ACIR-LTS, denying its claim for cash refund in the amount of ₱3,630,741.00 on the ground that it has a delinquent account relative to the uncontested portion of its tax liabilities under the 2012 FDDA.

On June 6, 2017, petitioner filed a *Request for Reconsideration* with the ACIR-LTS, praying for reconsideration of the denial of its claim for refund and alleging that it has no delinquent account that may bar its application for cash refund. According to petitioner, the uncontested portion of the 2012 FDDA has been fully paid and settled in view of the payments made on March 2 and 7, 2012, and June 3, 2015.

Thereafter, on June 27, 2017, petitioner filed the instant *Petition for Review* docketed as CTA Case No. 9622.

Respondent filed his *Answer* on September 20, 2017, interposing, among others, the following special and affirmative defenses: that petitioner's claim for cash refund was correctly denied by respondent; and that it is erroneous for petitioner to ask the Court to direct and control respondent on how to process and to resolve the application for refund considering that there was already a denial letter on petitioner's claim.

Further, respondent maintains that an administrative claim for refund is solely its prerogative subject to the review by the Court; and that administrative claim for refund and judicial claim for refund are two distinct remedies provided under the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent likewise contends that the Court has no jurisdiction over the subject of this case for failure of petitioner to file its judicial claim within the two-year period prescribed under Sections 204(C) and 229 of the NIRC of 1997, as amended.

On October 6, 2017, petitioner filed its *Reply,* arguing that the Court has jurisdiction to grant the reliefs prayed for in the instant case. According to petitioner, the denial of its claim for refund is a decision of the CIR which the Court may review. Further, petitioner maintains that the instant case is not a judicial claim, but merely seeks the reversal and setting aside of the finding of the CIR that it has a delinquent account. Hence, the prescriptive period for judicial claims under Section 229 of the NIRC of 1997, as amended, is allegedly not applicable to the case at bar.

After the Pre-Trial Conference on February 6, 2018, the parties filed their Joint Stipulation of Facts and Issues (JSFI) on February 21, 2018. Subsequently, the Court issued the *Pre-Trial Order* on March 15, 2018.

During trial, petitioner presented the following witnesses: (1) Felipe M. Barcelon, Jr., its Finance Director and Assistant Corporate Secretary; and (2) Adonis M. Mendoza, its former Finance Manager.

Thereafter, petitioner filed a *Motion to Admit (Formal Offer of Evidence)* with attached *Formal Offer of Evidence* on February 6, 2019. On February 12, 2019, respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence).* In the Resolution dated March 22, 2019, the Court granted petitioner's *Motion to Admit (Formal Offer of Evidence)* and admitted the attached *Formal Offer of Evidence.*

On May 14, 2019, the Court issued a Resolution, admitting some of petitioner's exhibits but denying the admission of Exhibits "P-10", "P-13", "P-13A", "P-16", and "P-16A", for failure to present the originals for comparison.

On June 3, 2019, petitioner filed a *Motion for Partial Reconsideration (of Resolution dated 14 May 2019),* stating that the exhibits which were denied admission by the Court were offered as secondary evidence and that it properly laid the basis for their admission. Further, petitioner alleged that it cannot present the originals of the said exhibits because these were lost and could not be located despite diligent search.

On July 11, 2019, a *Records Verification Report* was issued by the Judicial Records Division of this Court stating that respondent failed to file his comment on petitioner's *Motion for Reconsideration (of Resolution dated 14 May 2019).*

In the Resolution dated October 2, 2019, the Court admitted Exhibits "P-10", "P-16", and "P-16A"; but denied the admission of Exhibits "P-13" and "P-13A", for failure to lay the basis for their introduction as secondary evidence.

On January 3, 2020, petitioner filed a *Tender of Excluded Evidence (Ad Cautelam)* praying that Exhibits "P-13" and "P-13A" be attached to and made part of the records of the case.

On January 27, 2020, respondent filed his *Comment Re: Petitioner's Tender of Excluded Evidence,* stating that he objects to the admission of Exhibits "P-13" and "P-13A", considering that the documents presented by petitioner are not the original or certified true copies; and that this Court is correct in excluding such documents for failure of petitioner to lay the basis for their admission as secondary evidence.

In the Resolution dated February 13, 2020, the Court granted petitioner's *Tender of Excluded Evidence (Ad Cautelam)* and the denied exhibits were made part of the records of this case.

For his part, respondent presented as sole witness, Revenue Officer Aurora T. Alberto.

Thereafter, respondent filed his *Formal Offer of Evidence* on February 5, 2020. On February 20, 2020, petitioner filed its *Comment (on Formal Offer of Evidence) with Apologies*. In the *Resolution* dated June 11, 2020, the Court admitted all of respondent's exhibits.

Meanwhile, on March 2, 2020, petitioner filed a *Manifestation and Motion (Presentation of Rebuttal Evidence)*, praying that a hearing be set for the presentation of petitioner's rebuttal evidence.

On August 20, 2020, respondent filed a *Manifestation and Comment Re: Manifestation and Motion (Presentation of Rebuttal Evidence)*, praying that petitioner's *Manifestation and Motion* be denied; and stating that the presentation of rebuttal evidence is a mere afterthought considering that petitioner waived its right to cross-examine respondent's witness; and that there is no new matter that was not covered during the presentation of petitioner's evidence that would warrant the approval of the motion.

On September 2, 2020, petitioner filed a *Motion to Admit (Attached Counter-Manifestation and Reply to Comment)*, alleging that it has a right to present rebuttal evidence; and that it has a material rebuttal evidence to present. In the Resolution dated September 23, 2020, the Court granted petitioner's *Motion to Admit (Attached Counter-Manifestation and Reply to Comment)* and its *Motion (Presentation of Rebuttal Evidence)*.

On rebuttal, petitioner recalled its witness, Felipe M. Barcelon, Jr. during the hearing held on October 1, 2020. Upon completion of his testimony, petitioner's counsel orally offered petitioner's rebuttal evidence, consisting of Exhibit "P-19 and P-19-a". The Court admitted the said rebuttal evidence and ordered both parties to file their respective memoranda.

In the *Resolution* dated November 24, 2020, the instant case was submitted for decision, taking into account the simultaneous filing of petitioner's *Memorandum* and respondent's *Memorandum* on October 30, 2020.

On October 28, 2021, the Court in Division promulgated its *Decision* denying petitioner's *Petition for Review*, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**.

On December 10, 2021, petitioner filed a *Motion for Reconsideration (of Decision dated 28 October 2021),* to which respondent failed to file his comment per the *Records Verification Report* dated April 26, 2022.

On May 5, 2022, petitioner's *Motion* was submitted for resolution.

On May 31, 2022, the Court in Division denied petitioner's *Motion for Reconsideration (of Decision dated 28 October 2021).* The dispositive portion of the *Resolution* reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Petitioner filed its *Petition for Review* on June 29, 2022.[11]

The Court promulgated a *Resolution* on July 29, 2022, ordering respondent to comment on petitioner's *Petition for Review.*[12] Respondent failed to file his comment per *Records Verification Report* dated August 30, 2022.[13]

The case was submitted for decision on September 15, 2022.[14]

THE ISSUES

Petitioner assigns the following errors allegedly committed by the Court in Division:

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[11] *Supra* at note 1.
[12] *EB* Docket, pp. 149-150.
[13] *Id.*, p. 151.
[14] *Id.*, pp. 153-154.

A.

THE PETITION FOR REVIEW IS NOT A SUIT OR PROCEEDING TO RECOVER PENALTY AND INTEREST ERRONEOUSLY PAID BY ACE; IT IS AN APPEAL OF THE QUESTIONED DECISION OF THE CIR ERRONEOUSLY FINDING ACE TO HAVE AN UNPAID TAX ASSESSMENT AND THUS NOT ENTITLED TO THE PROCESSING OF THE CLAIM FOR REFUND.

B.

EVEN ASSUMING *ARGUENDO* THAT THE TWO-YEAR PERIOD WITHIN WHICH SUITS OR PROCEEDINGS FOR THE RECOVERY OF TAX OR PENALTY ERRONEOUSLY PAID APPLIES TO ACE, THE UNIQUE FACTUAL CONSIDERATIONS PRESENT IN THIS CASE CALL FOR THE SUSPENSION OF THE SAID PERIOD FOR REASONS OF EQUITY AND FAIRNESS.

C.

IT IS CLEAR THAT ACE HAD NO DELINQUENT ACCOUNT AT THE TIME IT FILED ITS CLAIM FOR REFUND WITH THE BIR. ACE HAS FULLY PAID AND SETTLED AS EARLY AS JUNE 3, 2015 ALL TAX ASSESSMENTS UNDER THE 2012 FDDA THAT WERE NOT CONTESTED IN THE 2012 PETITION PENDING BEFORE THIS HONORABLE COURT (CTA EB NOS. 1403, 1409).

Petitioner's arguments

Petitioner contends that its *Petition* "is not for the recovery of any penalty erroneously paid by [it] and collected by the BIR." Petitioner "simply prays that the finding of the CIR that [it] has a delinquent account be reversed and set aside and that the CIR be directed to continue processing [petitioner's] claim for refund."[15] As such, petitioner contends that its *Petition* is not covered by the two-year period within which suits or proceedings should be filed under Section 229 of the NIRC of 1997, as amended. Petitioner posits that it is not a judicial claim for refund.[16] Petitioner argues that the *Petition* is an appeal of decisions of the CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, and penalties in relation thereto under Section 7 of Republic Act ("**RA**") No. 9282.[17]

[15] *Petition for Review*, par. 6.3.
[16] *Id.*, par. 6.4.
[17] *Id.*, par. 6.9.

Petitioner further posits that even assuming arguendo that the two-year period within which suits or proceedings for the recovery of tax or penalty erroneously paid applies, the unique factual considerations present in the instant case call for the suspension of the said period for reasons of equity and fairness.

Finally, petitioner alleges that it had no delinquent account when it filed its claim with the BIR. According to petitioner, it has "more than fully paid" the uncontested amount of ₱403,448,088.46 as contained in the 2012 FDDA.[18]

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is *not* impressed with merit.

The Court En Banc has jurisdiction over the instant Petition for Review.

Before proceeding to the merits of the case, We shall first determine whether the present *Petition* was timely filed.

On May 31, 2022, petitioner's *Motion for Reconsideration* was denied by the Court in Division through the assailed *Resolution*, a copy of which was received by petitioner on June 14, 2022.

Under Section 3(b), Rule 8[19] of the RRCTA, petitioner had fifteen (15) days from receipt of the assailed *Resolution*, or until June 29, 2022, to file a *Petition for Review* with the Court *En Banc*.

On June 29, 2022, petitioner filed its *Petition for Review*.[20]

Having settled that the *Petition* was timely filed, We likewise rule that the Court *En Banc* has jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4[21] of the RRCTA.

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[18] *Id.*, par. 6.18.
[19] *Supra* at note 20.
[20] *Id.*, pp. 6-46.
[21] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

At the onset, We note that petitioner's arguments are mere rehashes of matters raised in its *Motion for Reconsideration* against the assailed *Decision,* which the Court in Division has duly considered, weighed, and passed upon. Nevertheless, the Court deems it proper to address the issues presented in this case, which can be summed up into one basic question: whether the Court in Division erred in dismissing its case for lack of jurisdiction.

This Court believes that it did not.

The Court in Division did not err in dismissing the original Petition for Review because of lack of jurisdiction.

Petitioner contends that its petition "is not for the recovery of any penalty erroneously paid by [it] and collected by the BIR." Petitioner "simply prays that the finding of the CIR that [it] has a delinquent account be reversed and set aside and that the CIR be directed to continue processing [petitioner's] claim for refund."

We are not convinced.

To recall, on August 14, 2014, petitioner paid surcharges and interest penalties for "late payment," amounting to ₱3,630,741.00 for the 3rd and 4th quarters of 2013 and the 1st quarter of 2014. It filed a *Request for Cash Refund of Surcharge Penalties/Interest Paid in Error with Application for Tax Credits/Refund* (BIR Form No. 1914) on October 23, 2014.[22]

Petitioner then received a *Letter* from Teresita M. Angeles, OIC, ACIR-LTS, denying its claim for cash refund in the amount of ₱3,630,741.00 on the ground that it has a delinquent account relative to the uncontested portion of its tax liabilities under the 2012 FDDA.[23]

[22] Exhibit "P-8", Division Docket, Vol. II, pp. 509-511.
[23] Exhibit "P-2", BIR Records – F1, pp. 114 to 115.

Petitioner wants this Court to be convinced that it is not contesting the *denial* of the refund but is contesting the existence of the delinquent account. Accordingly, petitioner prays that We find that the delinquent account has already been settled and, consequently, compel respondent to continue processing its claim for refund.

Simply put, **petitioner is contesting respondent's ground for denying its refund claim**.

The provision of law applicable in conferring jurisdiction to the Court is Section 7(a)(1) of RA No. 1125,[24] as amended by RA No. 9282,[25] in relation to Sections 204(C) and 229 of the NIRC of 1997, as amended.

Section 7(a)(1) of RA No. 1125, as amended, provides:

> Section 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ... ...
>
> **(1) <u>Decisions of the Commissioner of Internal Revenue in cases involving</u>** disputed assessments, **<u>refunds of internal revenue taxes</u>,** 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 and underscoring supplied.*]

On the other hand, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. –
>
> The Commissioner may –
>
> ... ...

[24] An Act Creating the Court of Tax Appeals, June 16, 1954.
[25] 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, March 30, 2004.

> (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 purchaser, 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.".
>
> ... ...
>
> "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**, 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." [*Emphasis and underscoring supplied*]

The afore-quoted provisions are applicable.

First, the instant case emanates from the erroneous payment of surcharges and interest.

Second, petitioner filed a *Request for Cash Refund of Surcharge Penalties/Interest Paid in Error with Application for Tax Credits/Refund* (BIR Form No. 1914), precisely invoking Section 204(C) of the NIRC of 1997, as amended.

Third, respondent's *Denial* of the said *Request* prompted petitioner to file its *Petition for Review* before the Court in Division.

Fourth, petitioner prays that "the CIR be directed to continue the processing of the payment of ACE's application for cash refund." Basically, petitioner prays for the **reversal of the denial** of its claim for refund.

It is clear that petitioner's cause of action is respondent's denial of its refund claim under Section 204(C) of the NIRC of 1997, as amended, and the declaration of the non-existence of the delinquent account is only incidental. The fact that the denial is based on the alleged existence of delinquent accounts and that such allegedly has already been settled is merely a ground or an argument at best, but such does not operate to remove the instant case from the ambit of Sections 204(C) and 229 of the NIRC of 1997, as amended.

Given the foregoing, We see no reason not to apply Sections 204(C) and 229 of the NIRC of 1997, as amended.

We now determine whether the *Petition for Review* before the Court in Division is timely filed.

Section 204 of the NIRC of 1997, as amended, refers to the administrative authority of the CIR to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from tax payment.

Section 229 of the same law, on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first, and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.[26]

The above provisions require administrative and judicial claims to be filed within the same two-year prescriptive period. To reiterate, with reference to Section 229 of the NIRC, the only requirement for a judicial claim of tax credit/refund to be maintained is that a claim of refund or credit has been filed before the CIR; there is no mention in the law that the claim before the CIR should be acted upon first before a judicial claim may be filed.[27]

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[26] *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021.
[27] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022.

Accordingly, to be entitled to a refund or credit of erroneously or illegally collected tax, the claim for refund or credit must be filed within two (2) years from the date of payment of tax or penalty, regardless of any supervening cause that may arise after payment.

The Supreme Court has previously declared that the "[t]imeliness of filing the claim is **mandatory and jurisdictional**. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time."[28]

Here, the Court in Division aptly found that the last day to file the *Petition for Review* before the Court in Division was on August 14, 2016, *viz.*:[29]

> In the instant case, the subject surcharges and interest penalties were paid by petitioner on August 14, 2014.[30] Thus, counting two (2) years from August 14, 2014, petitioner had until **August 14, 2016** within which to file both its administrative and judicial claims.
>
> Petitioner filed its administrative claim on October 23, 2014, while the instant *Petition for Review* was filed only on June 27, 2017. Details are as follows:

Date of payment	**Last day to file both administrative claim and judicial claim**	**Date of filing of Administrative Claim**	**Date of filing of Judicial Claim**
August 14, 2014	**August 14, 2016**	October 23, 2014	June 27, 2017

> Evidently, while the administrative claim was timely filed, **the judicial claim, however, was filed beyond the two-year prescriptive period provided by law**. Hence, the Court did not acquire jurisdiction over the instant case. [*Emphases and underscoring supplied*]

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[28] *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021, citing *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016, 802 SCRA 636-659.
[29] Assailed Decision, p. 14.
[30] BIR Records – F1, pp. 32 to 36.

Indeed, the *Petition for Review* was belatedly filed on June 27, 2017, or **317 days** after August 14, 2016, the end of the two-year period. Clearly, the Court in Division did not err in ruling that it had no jurisdiction over the subject Petition. To underscore, the periods under Sections 204(C) and 229 are **mandatory and jurisdictional**.

Petitioner need not wait for the denial of respondent before it elevated the matter to the Court in Division. It has been settled in numerous cases, such as *CIR v. Carrier Air Conditioning Philippines, Inc.*,[31] and *CBK Power Company Ltd. v. CIR*[32] that petitioner should have already filed a *Petition for Review* with the Court in Division if the two-year period is about to expire, notwithstanding the absence of a decision from respondent.

Further, We affirm the Court in Division's ruling that this Court cannot substitute its discretion in determining the manner in which respondent should decide petitioner's claim for refund. Such is within the prerogative of respondent on which the Court cannot encroach, *viz.*:[33]

> On the other hand, respondent counter-argues that it is erroneous for petitioner to ask the Court to direct or control respondent on how to process and to resolve its application for refund considering that there was already a denial letter issued and served to petitioner; and that the administrative claim for refund is solely a prerogative of respondent.
>
> We agree with respondent.
>
> Pursuant to the powers vested upon the CIR under Section 4 of the NIRC of 1997, as amended, to interpret tax laws and to decide tax cases, We agree with respondent that this Court cannot direct, control nor interfere with the CIR's exercise of his discretion in resolving petitioner's application for refund.

Strict compliance with the *mandatory and jurisdictional* conditions prescribed by law to claim such tax refund or credit is essential for such a claim to prosper. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[34]

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[31] G.R. No. 226592, July 27, 2021.
[32] G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 750 SCRA 748-766.
[33] Assailed Decision, p. 11.
[34] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 703 PHIL 310-434.

Being a court of special jurisdiction, the CTA can take cognizance only of matters clearly within its jurisdiction. Failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and also precluding the appellate court from acquiring jurisdiction over the case.[35]

It is a well-entrenched doctrine that an appeal is not a matter of right but is a mere statutory privilege. It may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirements of the rules; otherwise, the privilege is lost. [36] Appeal is a matter of sound judicial discretion.[37]

Accordingly, when a court or tribunal has no jurisdiction over the subject matter, the only power it has is to *dismiss* the action.

Considering all the foregoing, We see no compelling reason to depart from the ruling of the Court in Division. In addition, We find it unnecessary to discuss the other issues raised by petitioner.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit.

Accordingly, the *Decision* dated October 28, 2021, and the *Resolution* dated May 31, 2022, of the Court's Third Division in CTA Case No. 9622 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[35] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.
[36] *Lepanto Consolidated Mining Corp. v. Icao*, G.R. No. 196047, January 15, 2014, 724 SCRA 646-660, citing *BPI Family Savings Bank, Inc. v. Pryce Gases, Inc.*, G.R. No. 188365, June 29, 2011, 653 SCRA 42, 51; *National Power Corporation v. Spouses Laohoo*, G.R. No. 151973, July 23, 2009, 593 SCRA 564; *Philux, Inc. v. National Labor Relations Commission*, G.R. No. 151854, September 3, 2008, 564 SCRA 21, 33; *Cu-unjieng v. Court of Appeals*, 515 Phil. 568 (2006); *Stolt-Nielsen Services, Inc. v. NLRC*, 513 Phil. 642 (2005); *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil. 812 (2002); *Villanueva v. Court of Appeals*, G.R. No. 99357, January 27, 1992, 205 SCRA 537; *Trans International v. Court of Appeals*, 348 Phil. 830 (1998); *Acme Shoe, Rubber & Plastic Corporation v. Court of Appeals*, 329 Phil. 531 (1996); and *Ozaeta v. Court of Appeals*, 259 Phil. 428 (1989).
[37] *Muñoz v. People*, G.R. No. 162772, March 14, 2008, 572 SCRA 258-270.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice