REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*THIRD DIVISION*

**NETREPRENEUR CONNECTIONS ENTERPRISES, INC.,**
**Petitioner,**

**CTA CASE NO. 9037**

**-versus-**

**Members:**

**BAUTISTA,** Chairperson;
**FABON-VICTORINO,** and
**RINGPIS-LIBAN,** ***JJ.***

**COMMISSIONER OF INTERNAL REVENUE,**
**Respondent.**

**Promulgated:**

NOV 2 1 2017
2:34 p.m.

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# DECISION

**RINGPIS-LIBAN, J.**

## STATEMENT OF THE CASE

This Petition for Review filed by Netrepreneur Connections Enterprises, Inc. prays for the refund or issuance of a tax credit certificate (TCC) in the aggregate amount of Two Million Two Hundred Ninety-Nine Thousand Three Hundred Thirty-Five Pesos and 74/100 (₱2,299,335.74), allegedly representing its erroneous documentary stamp tax (DST) payments.[1]

## THE FACTS

Petitioner Netrepreneur Connections Enterprises, Inc. is a duly registered corporation organized and existing under Philippine laws.[2] It is

[1] Summary of the Case, Pre-Trial Order, docket, p. 281
[2] Exhibit "P-1", docket, p. 302

primarily incorporated to develop and/or operate internet-base or online applications or systems which can be used for personal, entertainment, informational, communication or business purposes, which has ₱1,000,000.00 authorized capital stock divided into ten thousand (10,000) shares with par value of ₱100 per share.[3] It is also a registered taxpayer with Certificate of Registration No. OCN 3RC0000637147.[4]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refunds and tax credits of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 19, 2013, petitioner entered into a Subscription Agreement with Intervision (Services) Holdings B.V. ("Intervision" for brevity) and Ronald John R. David and Arianne Rose D.S. David ("Management Shareholders" for brevity).[5] Petitioner subsequently paid the corresponding DST of the said subscription of shares of stock in the amount of ₱2,300,251.24 on May 6, 2013.[6]

On January 6, 2015, petitioner filed an administrative claim for refund in the amount of ₱2,299,335.74 for the erroneous overpayment of the afore-mentioned DST.[7]

Respondent did not act on the said administrative claim for refund. Consequently, petitioner filed this Petition for Review[8] on May 4, 2015.

On July 6, 2015, respondent filed his Answer,[9] interposing as his defenses, that the Court has no jurisdiction over the case; that petitioner must prove compliance with the governing rules relative to tax recovery or refund as provided under Sections 204 (C) and 229 of the 1997 NIRC, as amended; that petitioner failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected, hence, not refundable; that the Petition for Review lacks proper verification and a valid certification against forum shopping in accordance with the applicable rules; and that it is not signed by an authorized representative.

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[3] Exhibits "P-2", "P-2-A", and "P-2-B", docket, pp. 303 to 309
[4] Exhibit "P-3", docket, p. 313
[5] Exhibit "P-4", docket, pp. 314 to 318
[6] Exhibits "P-5" and "P-6", docket, pp. 328 to 329 and p. 330, respectively
[7] Exhibits "P-7" and "P-8", docket, pp. 331 to 334 and p. 335, respectively
[8] Docket, pp. 12 to 21
[9] Docket, pp. 94 to 98

Petitioner replied to respondent's Answer on July 24, 2015.[10]

Respondent's Pre-Trial Brief[11] and the Pre-Trial Brief (of Petitioner Netrepreneur Connections Enterprises, Inc.)[12] were submitted on September 4, 2015 and on September 3, 2015, respectively.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[13] on September 23, 2015. Consequently, the Court issued a Pre-Trial Order[14] on October 28, 2015 and terminated the pre-trial conference.

Petitioner presented Ms. Niellen G. Obispo, Atty. Rowena S. Disini, and Atty. Carlos T. Carado II as its witnesses. Thereafter, petitioner formally offered its documentary evidence as well as its testimonial evidence, which were all admitted by the Court.[15]

On the other hand, respondent's counsel manifested during the hearing on September 19, 2016 that he has no evidence to present since there was no report of investigation.[16]

The case was declared submitted for decision on November 28, 2016,[17] considering the filing of the Memorandum (of Petitioner Netrepreneur Connections Enterprises, Inc.)[18] on October 19, 2016 and the Records Verification Report of the Judicial Records Division dated November 22, 2016, stating that no memorandum was filed by respondent.

## THE ISSUES

The parties stipulated the following issues[19] to be resolved by this Court:

1. Whether or not petitioner complied with Sections 204(C) and 229 of the 1997 NIRC, as amended;

2. Whether or not Arianne Rose Delos Santos David is authorized to sign the Verification and Certification Against Forum Shopping at the time she executed the document;

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[10] Docket, pp. 102 to 107
[11] Docket, pp. 262 to 264
[12] Docket, pp. 202 to 208
[13] Docket, pp. 270 to 274
[14] Docket, pp. 281 to 285
[15] Resolution dated July 18, 2016, docket, pp. 366 to 367
[16] Order dated September 19, 2016, docket, p. 369
[17] Resolution, docket, p. 391
[18] Docket, pp. 370 to 384
[19] Stipulation of Issues, Joint Stipulation of Facts and Issues (JSFI), docket, p. 271

3. Whether or not the Court has jurisdiction over the case;

4. Whether or not the Petition complies with Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals;

5. Whether or not there is a legal basis for the claim for refund; and

6. Whether or not petitioner is entitled to a refund.

The above-enumerated issues may be summarized into three main issues, to wit:

1. Whether this Court has jurisdiction over the present case;

2. Whether Arianne Rose Delos Santos David is authorized to sign the Verification and Certification Against Forum Shopping at the time she executed the document; and

3. Whether petitioner is entitled to a claim for refund.

## THE RULING OF THE COURT

Petitioner argues that its administrative and judicial claims for tax refund were filed within the two-year prescriptive period; and that the date of payment is the reckoning date of the counting of the two-year prescriptive period.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide:

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

"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 supplied)*

It is clear that the afore-quoted Sections 204(C) and 229 of the NIRC of 1997, as amended, govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally.[20] Section 204(C) applies to administrative claims filed with the BIR; while Section 229 refers to judicial actions for the recovery of the tax. However, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[21]

The present claim pertains to the DST purportedly overpaid by petitioner due to the Subscription Agreement it entered into on April 19, 2013.

In relation thereto is Section 200(B) of the NIRC of 1997, as amended, which states:

"SEC. 200. *Payment of Documentary Stamp Tax.* –

[20] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue vs. Insular Lumber Co., et al.*, G.R. No. L-24221, December 11, 1967

[21] *Manila North Tollways Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 812 (CTA Case No. 7864), October 11, 2012

xxx xxx xxx

> (B) *Time for Filing and Payment of the Tax.* – Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed."

Based on the aforesaid provision, the DST must be paid within ten days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred.

Petitioner filed its original BIR Form No. 2000 for the transaction dated April 19, 2013 and paid the corresponding DST of ₱2,300,251.24 through its Authorized Agent Bank, Unionbank, on May 6, 2013.[22] Counting two years from this date, petitioner had until May 6, 2015 within which to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim[23] for refund filed on January 6, 2015 and the subsequent filing of this Petition for Review on May 4, 2015 fell within the reglementary period. Therefore, the Court has jurisdiction over this case.

As regards the issue of authority of Ms. Arianne Rose Delos Santos David to sign the Verification and Certification of Non-Forum Shopping, petitioner claims that the Petition for Review contains proper verification and valid Certification of Non-Forum Shopping. Petitioner explains that in corporate management, all business and properties of the corporation shall be conducted and controlled by the Board of Directors (BOD). As such, actions of the BOD are allegedly expressed in resolutions passed in its meetings. Petitioner insists that as early as April 6, 2015, the BOD conferred the necessary authority to Ms. David to institute the appropriate judicial action relative to the appeal of the inaction by respondent on petitioner's administrative claim for refund.

Section 23 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines, provides:

> "SEC. 23. *The board of directors or trustees.* – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the

[22] Exhibits "P-5" and "P-6", docket, pp. 328 to 329 and p. 330, respectively
[23] Exhibits "P-7" and "P-8", docket, pp. 331 to 334 and p. 335, respectively

board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified."

In the case of *University of Mindanao, Inc. vs. Bangko Sentral ng Pilipinas, et al.*[24], the Supreme Court ruled that corporate powers may be delegated through a board resolution, to wit:

> "Being a juridical person, petitioner cannot conduct its business, make decisions, or act in any manner without action from its Board of Trustees. The Board of Trustees must act as a body in order to exercise corporate powers. Individual trustees are not clothed with corporate powers just by being a trustee. Hence, the individual trustee cannot bind the corporation by himself or herself.
>
> The corporation may, however, delegate through a board resolution its corporate powers or functions to a representative, subject to limitations under the law and the corporation's articles of incorporation."

Further, in the case of *Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila*[25], a Secretary's Certificate that was submitted managed to prove one's authority to execute the Verifications and/or Certifications of Non-Forum Shopping on behalf of a corporation, *viz*:

> "xxx In a number of cases, however, we have recognized exceptions to this rule. *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue* provides:
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> > In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an 'employment specialist' who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc., v. CA*, we ruled that a personnel

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[24] G.R. Nos. 194964-65, January 11, 2016

[25] G.R. No. 181277, July 3, 2013

> officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd. (Lepanto)*, we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.
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> **In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.**
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> While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. **The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being 'in a position to verify the truthfulness and correctness of the allegations in the petition.'** (Emphases supplied)

Given the present factual circumstances, we find that the liberal jurisprudential exception may be applied to this case.

A distinction between noncompliance and substantial compliance with the requirements of a certificate of non-forum shopping and verification as provided in the Rules of Court must be made. In this case, it is undisputed that the Petition filed with the RTC was accompanied by a Verification and Certification of Non-Forum Shopping signed by Ms. Beleno, although without proof of authority from the board. However, this Court finds that the belated submission of the Secretary's Certificate constitutes substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure.

> A perusal of the Secretary's Certificate signed by petitioner's Corporate Secretary Rafael Khan and submitted to the RTC shows that not only did the corporation authorize Ms. Beleno to execute the required Verifications and/or Certifications of Non-Forum Shopping, but it likewise ratified her act of filing the Petition with the RTC. The Minutes of the Special Meeting of the Board of Directors of petitioner-corporation on 19 May 2004 reads:"

In this case, a perusal of the Secretary's Certificate[26] signed by Mr. Jesus M. Disini, Jr., the Corporate Secretary of petitioner, shows that Ms. Arianne Rose Delos Santos David, Head of Operations, has been duly authorized by petitioner's BOD to institute this Petition for Review and to execute the Verification and Certification of Non-Forum Shopping. It also states that resolutions were passed by the BOD at a special meeting on April 6, 2015, specifically granting the said authority. Hence, Ms. David has the authority to sign the Verification and Certification of Non-Forum Shopping on behalf of petitioner.

The Court shall now determine whether petitioner's claim is meritorious.

Based on the afore-quoted provision of Section 229 of the NIRC of 1997, as amended, to be entitled to a refund of erroneously or illegally collected tax, the taxpayer must comply with the following requisites:

> (1) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and
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> (2) that the claim for refund or credit has been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

As earlier discussed, the administrative and judicial claims for refund were filed by petitioner within the two-year prescriptive period.

***Petitioner erroneously overpaid DST in the amount of ₱2,229,335.74 on the issuance of its original shares to Intervision***

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[26] Docket, p. 21

On April 19, 2013, a Subscription Agreement[27] was made and executed by petitioner, Intervision, and the Management Shareholders, wherein they have agreed, among others, that:

> "(1) For and in consideration of Intervision's agreement to pay an aggregate subscription price of ₱460,050,248.68 (the '*Subscription Price*'), or of ₱251,256.28 per share, and the receipt by the Company from Intervision on the date hereof of the amount of ₱115,012,562.17 in cash (being 25% of the Subscription Price), the Company hereby issues to Intervision 1,831 common shares of stock, with a par value of ₱100.00 per share, out of the Company's existing but unissued authorized capital stock. Any and all documentary stamp taxes that may arise in connection with the issuance of such shares shall be for the account of and paid by the Company."[28]

Pursuant to the subject Agreement, Intervision subscribed to 1,831 common shares of stock of petitioner, with a par value of ₱100.00 per share, from the latter's unissued authorized capital stock. In consideration thereof, the total subscription price to be paid by Intervision amounts to ₱460,050,248.68 (or ₱251,256.28 per share).

Consequently, petitioner paid and remitted the amount of ₱2,300,251.24 as DST due on the issuance of such shares pursuant to Section 174 of the NIRC of 1997, as amended. Petitioner submitted its duly stamped Documentary Stamp Tax Declaration/Return (BIR Form No. 2000)[29] and Unionbank's BTR-BIR Deposit Slip[30] dated May 6, 2013 as proof of remittance and payment.

Section 174 of the NIRC of 1997, as amended, provides for the imposition of DST on original issue of shares of stock, to wit:

> "SEC. 174. *Stamp Tax on Original Issue of Shares of Stock*. – On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of One peso (₱1.00) on each Two hundred pesos (₱200), or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of the original issue of shares of stock without par value, the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration

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[27] Exhibit "P-4", docket, pp. 314 to 327
[28] Exhibit "P-4-A", docket, p. 314
[29] Exhibit "P-5", docket, pp. 328 to 329
[30] Exhibit "P-6', docket, p. 330

for the issuance of such shares of stock: *Provided, further,* That in the case of stock dividends, on the actual value represented by each share."

According to the foregoing provision, a DST of ₱1.00 for every ₱200.00, or fractional part thereof shall be imposed on every original issuance of shares of stock based on either (a) the par value of such shares for shares with par value, (b) the actual consideration for such issuance of shares for shares without par value, or (c) the actual value represented by each share for shares without par value issued as stock dividends.

Documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationships through the execution of specific instruments.[31] Its imposition is essentially addressed and directly brought to bear upon the document evidencing the transaction of the parties which establishes its rights and obligations.

In the case at bench, the rights and obligations between petitioner and Intervision were established upon the execution of the Subscription Agreement, hence, the right to tax such document evidencing the transaction is in order.

As clearly shown in petitioner's Amended Articles of Incorporation, its authorized capital stock is ₱1 Million divided into 10,000 shares *with the par value of ₱100.00 per share.* [32] It was also categorically stated in the Subscription Agreement that petitioner issued to Intervision 1,831 common shares of stock, *with a par value of ₱100.00 per share.*[33]

Applying the provision of Section 174 of the NIRC of 1997, as amended, and considering that the issuance by petitioner of its shares of stock to Intervision involves 1,831 common shares of stock with a par value of ₱100.00 per share, the DST due thereon should be ₱915.50, computed as follows:

| | |
|---|---|
| Common shares issued/subscribed | 1,831 shares |
| Multiply by Par value per share | ₱ 100.00 |
| Par Value of common shares issued/subscribed | ₱ 183,100.00 |
| Multiply by DST rate | x 1.00/200.00 |
| **DST due** | **₱ 915.50** |

[31] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue,* G.R. No. 167962, September 19, 2008, citing *Philippine Home Assurance Corporation vs. Court of Appeals,* G.R. No. 119446, January 21, 1999

[32] Exhibit "P-2-B", docket, p. 305

[33] Exhibit "P-4-A", docket, p. 314

However, as mentioned earlier, petitioner paid and remitted DST in the amount of ₱2,300,251.24[34], based on the actual consideration of ₱460,050,248.68. Since petitioner erroneously used the actual consideration for the subscribed shares instead of the par value of such shares in computing the DST liability, petitioner, indeed, had an overpayment of ₱2,299,335.74 from what is actually due, as shown below:

| | |
|---|---|
| DST Remitted | ₱ 2,300,251.24 |
| DST Due | 915.50 |
| **Overpayment** | **₱2,299,335.74** |

In sum, the Court finds petitioner entitled to the refund or issuance of a TCC in the amount of ₱2,299,335.74.

**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱2,299,335.74** in favor of petitioner representing overpaid DST on the original issued shares to Intervision.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**WE CONCUR:**

**LOVELL R. BAUTISTA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

[34] Actual consideration [(₱460,050,248.68) x DST rate (₱1.00/₱200.00)]

## ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## CERTIFICATION

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