REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TRUMP MARKS PHILIPPINES, LLC,
Respondent.

CTA *EB* NO. 1826
(CTA Case No. 8969)

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TRUMP MARKS PHILIPPINES, LLC,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1830
(CTA Case No. 8969)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUN 3 0 2020
4:00 p.m.

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RESOLUTION

For this Court's resolution are the following:

1. Petitioner Trump Marks Philippines, LLC's *Motion for Reconsideration (of the Decision dated 8 November 2019)* filed on November 28, 2019 in CTA *EB* No. 1830 without respondent CIR's Comment.
2. Petitioner Commissioner of Internal Revenue's (CIR) *Motion for Partial Reconsideration (En Banc Decision dated 08 November 2019)* filed on November 29, 2019 in CTA *EB* No. 1826 with respondent Trump Marks Philippines LLC's (Trump Marks) *Comment (to Petitioner's Motion for Partial Reconsideration dated 29 November 2019)* filed on January 17, 2020.

Both parties seek reconsideration of the Decision (assailed Decision) of the Court *En Banc* promulgated on November 8, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** the consolidated Petitions for Review filed by Trump Marks Philippines, LLC and the Commissioner of Internal Revenue are hereby **DENIED** for lack of merit.
>
> **Accordingly,** the assailed Decision dated November 3, 2017 and the assailed Resolution dated March 21, 2018 are hereby **AFFIRMED.**

Trump Marks' Motion for Reconsideration

Petitioner Trump Marks refutes the conclusion of the Court *En Banc* (the Court) that its claim for refund of erroneously withheld income taxes for the period January 10, 2012 to November 12, 2012 was filed out of time. It further contradicts the Court's position of the inapplicability of the principle of *solutio indebiti* to the nature of the instant claim and maintains and prays that the Court should have granted the entire claim for refund in the amount of Php19,778,995,24.

The arguments of Trump Marks are summarized as follows:

1. Revenue Memorandum Order No. 72-2010 ("RMO 72-10") imposed a wrongful precondition for the entitlement to the preferential tax rate under the R.P.-US Tax Treaty;

2. The two-year prescriptive period for filing administrative and judicial claims for refund as provided under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, is not absolute as it may be suspended for reasons of equity and other special circumstances;
3. The excess withholding tax remitted on behalf of respondent should be returned to avoid unjust enrichment on the part of the government at the expense of the taxpayer;

CIR's Motion for Partial Reconsideration

The CIR assails the decision of the Court *En Banc* on the ground that the entire claim for refund of Trump Marks should be denied because, being a non-resident foreign corporation, Trump Marks is subject to the thirty percent (30%) income tax on royalties from Philippine sources and that availment of Tax Treaty provisions are not *ipso facto* granted to just anyone who wishes to avail of the benefits of the tax treaty as certain procedures must be complied with to be entitled to the benefits of said tax treaty. The CIR further contends that Revenue Memorandum Order (RMO) No. 01-2000 requires that any availment of tax treaty relief must be preceded by an application Form (Form 0901) filed with the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) at least fifteen (15) days before the transaction, accompanied by supporting documents justifying the relief sought. The CIR maintains that Trump Marks only secured ITAD Ruling No. 026-14 on April 4, 2014 granting the preferential tax rate of 10% on royalties, hence taxes collected prior to said ruling were properly collected in favor of the government. Based on the above reasons, coupled with the well-settled rule that tax refunds are strictly construed against the taxpayer, the CIR asserts that the claim for refund of Trump Marks must be denied.

In its *Comment* to the Motion for Partial Reconsideration of the CIR, Trump Marks avers that the arguments embodied therein are mere repetitions of those already presented in its Petition for Review with the Court *En Banc* and which have already been addressed and ruled upon by said Court in the decision dated November 8, 2019. Being in the nature of a *pro forma* motion, Trump Marks seeks the outright denial of the Motion for Partial Reconsideration filed by the CIR.

THE COURT *EN BANC'S* RULING

Petitioner Trump Marks links its argument against the prescription of its right to claim a refund with the principles of justice, equity and unjust enrichment. It claims that it was prevented from filing a claim for refund within the two-year prescriptive period because it would have been futile as an approved Tax Treaty Relief Application (TTRA) was still a prerequisite before one can avail of the preferential tax rate under an applicable tax treaty. Petitioner claims that at that time, the Supreme Court ruling in the case of *Deutsche Bank AG Manila Branch vs. CIR*[1] (*Deutsche* case) has not yet reached finality and that the requirements under RMO No. 72-2010 were still being followed not only by the BIR but also by the courts. Trump Marks opines that to file a claim for refund during the administrative and jurisprudential milieu at that time would prove to be futile and ineffective. Trump Marks insists that the two-year period for filing a claim for refund during the period prior to the promulgation of the *Deutsche* case, should be suspended because claims for refund of taxes of such nature would surely be denied. Trump Marks also calls for the application of the principle of *solutio indebiti*, i.e, taxes erroneously paid/remitted to the government must be returned to the taxpayer as a matter of right.

On his part, petitioner CIR asserts that the entire claim for refund of Trump Marks should have been denied for its failure to comply with the legal and documentary requirements provided under Section 229 of the National Internal Revenue Code (NIRC), as amended, which includes the timely filing of the administrative and judicial claims for refund within the two-year period. The CIR also firmly reiterates that Trump Marks being a non-resident foreign corporation, is subject to the 30% income tax on royalties from Philippine sources.

We find the arguments of both parties to be without merit.

The legal arguments proposed by both parties have already been exhaustively passed upon in the assailed Decision but we shall nevertheless deal with them again in order to emphasize our rulings on the matters raised.

The futility in filing the applications for refund prior to the finality of the ruling in the *Deutsche* case is the

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[1] G.R. No. 188550, August 19, 2013.

justification behind Trump Marks call for the suspension of the two-year prescriptive period for filing a claim for refund under Section 229 of the 1997 NIRC, as amended.

At this point, it is worthy to emphasize the clear wordings of Section 229 of the 1997 NIRC, as amended, and we quote:

> "Section 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 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)

Settled is the rule that the two-year prescriptive period for claiming a refund of erroneously or illegally collected taxes shall be filed from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.

A reading of the provisions of the aforequoted Section 229 clearly illustrates that the two-year period to claim a refund is a strict and categorical requirement that it precludes any supervening event or cause that may arise after payment of the tax or penalty. Such a strict requirement is not without its valid reasons. This Court in the case of *Atlanta Land Corporation vs. CIR*,[2] expressed the rationale of including the phrase "regardless of any supervening cause" to the two-year period for filing a claim of erroneously paid taxes, and we quote:

> "Section 229 explicitly states that the two-year prescriptive period is not affected by any supervening cause, hence the phrase "regardless of any supervening cause". This phrase was originally added by P.D. No. 69 dated November 24, 1972 and

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[2] CTA EB No. 79, May 23, 2006.

was retained in both the 1977 and 1997 National Internal Revenue Code. The intent of the law is unmistakable, to establish as a condition *sine qua non* that all claims and actions for refund of any tax or penalty shall be filed within two years from the date of payment of such tax or penalty, "even if the taxpayer had no cause for refund as the tax or penalty, was legally collected, and even after the lapse of the two year period, a supervening cause should arise which would entitle the taxpayer to refund."

We concur with the ruling of the Court in Division that the two-year prescriptive period for filing an action for tax refund was purposely included in Section 229 of the 1997 NIRC to enable the government to settle claims for refund at the earliest possible time considering that taxes are the lifeblood of the government and their prompt and certain availability is an imperious need (Commissioner of Internal Revenue vs. Pineda , 21 SCRA 105). The availability of funds from the collection of taxes cannot forever be left subject to the contingency of refund brought about by certain acts which are solely within the exclusive control of the private contracting parties, otherwise, fiscal adequacy cannot be achieved."

The right to claim a refund is well-entrenched in Section 229 of the 1997 NIRC, as amended, but like all rights, this may be waived or lost. We quote the decision of the Supreme Court in the case of *CIR vs. Manila Electric Company*[3], to wit:

"Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. **Though the Tax Code recognizes the right of a taxpayer to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period**. Further, a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and judicial claims would result in the denial of his claim." (emphasis supplied)

On the assertion of Trump Marks that the application of the principle of *solutio indebiti* should be primordially applied instead of the strict application of Section 229 of the NIRC, as amended, we quote the decision of the Court *En Banc* in the case of *Technogas Philippines Manufacturing Corporation vs. CIR*,[4] thus :

"Between the New Civil Code, on one hand, which is a general law and the National Internal Revenue Code (NIRC) of 1997,

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[33] G.R. No. 181459, June 9, 2014.
[4] CTA *EB* No. 2002 (CTA Case No. 9509), November 26, 2019, quoting *CIR vs. PAL*, G.R. No. 180066, July 7, 2009.

which is a special law governing national internal revenue taxes, effective January 1, 1998, the latter prevails. It has always been the rule that on a specific matter, the special law shall prevail over the general law, which, shall be resorted only, to supply deficiencies in the former. Also, where there are two (2) statutes, the latter a special law and the former a general law- it shall be construed to mean that the terms of the general law is broad enough to include the matter provided for in the special law. The fact that one is special and the other general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other, as the law of a particular case. It is a canon in statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute."

Further, the principle of *solutio indebiti* applies only when payment is made without any binding relation existing between the payor, who has no duty to pay, and the person who received the payment. Clearly, Trump Marks had a duty to pay the taxes on the royalties it received. We again quote the *En Banc* decision in the *Technogas* case, quoting the ruling of the Supreme Court in *CIR vs. Manila Electric Co.,*[5] thus:

"In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi-contract or *solutio indebiti* under Article 1145 of the New Civil Code. **There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment;** and (2) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund of taxes erroneously paid.

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within

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[5] Supra.

> which to file the administrative and the judicial claims would result in the denial of the claim." (emphasis supplied)

This Court also reiterates its ruling in the assailed Decision that the principle of *solutio indebiti* and doctrine of justice and equity are inapplicable in this case and we quote portions of said Decision, thus:

> "Trump Marks must be reminded that equity, which has been aptly described as "justice outside legality", is applied only in the absence of, and never against statutory law." The subject claim for refund is based on the clear provisions of the aforequoted Section 204 (C) and Section 229 of the 1997 NIRC, as amended, and taxpayer claimants are expected to comply with the requisites and conditions therein. Calls for the application of justice and equity may be considered only in the absence of law and not as its replacement."

We therefore affirm that a portion of the claim for refund of Trump Marks be denied for failure to comply with the two-year prescriptive period provided under Section 229 of the 1997 NIRC, as amended.

As regards the contention of the CIR that Trump Marks being a non-resident foreign corporation, is subject to the 30% income tax on royalties from Philippine sources, we find this to be without merit for the following reasons already discussed in the assailed Decision, to wit:

1. A comprehensive evaluation of the evidence conducted by the Court in Division leads us to the conclusion that Century City remitted royalties to Trump Marks for the period December 2011 to July 2012 and consequently paid 30% final withholding taxes on various dates.
2. Trump Marks, a corporation duly registered pursuant to the laws of the United States of America (USA) and the recipient of the royalties paid by Century City is legally entitled to the preferential income tax rate of 10% under Article 13 (2) (b) (iii) of the RP-US Tax Treaty, in relation to Article 12 (2) of the Philippines – United Arab (UAE) Tax Treaty.
3. The BIR itself confirmed the applicability of the preferential income tax rate of 10% on royalties paid by Century City to Trump Marks beginning November 23, 2011 based on ITAD Ruling No. 026-14 issued on April 4, 2014 which contradicts the position of the CIR in its Motion for Partial Reconsideration.

WHEREFORE, premises considered, Trump Marks' *Motion for Reconsideration* filed on November 28, 2019 in CTA *EB* No. 1830 and the CIR's *Motion for Partial Reconsideration filed* on November 29, 2019 in CTA *EB* No. 1826 are hereby **DENIED** for lack of merit. Accordingly, the Decision promulgated by the Court *En Banc* on November 8, 2019 is **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice