Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

OCÉ HOLDING B. V.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8930

Members:
CASTAÑEDA, JR., *Chairperson*, *and*
CASANOVA, *JJ.*

Promulgated:

NOV 2 8 2016

3:15 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review filed by petitioner Océ Holding B.V. against respondent Commissioner of Internal Revenue prays for a refund of the amount of ₱14,586,827.10, allegedly representing petitioner's capital gains tax paid on November 22, 2012 in connection with the Deed of Transfer dated November 15, 2012.

Petitioner is a foreign corporation duly organized and existing under the laws of The Netherlands, with office address at Sint Urbanusweg 43, 5914 CA Venlo, The Netherlands.[1] It is formerly named as Océ N.V., and its primary objectives are to participate directly or indirectly in other companies and bodies corporate as well as to manage and to finance such, and to do all acts as are directly or indirectly connected with the aforesaid objects, are related or may be conductive thereto, such in the widest sense.[2] Petitioner is being represented by Atty. Cynthia L. dela Paz, Senior Partner of Picazo Buyco Tan Fider & Santos Law Offices for purposes of the petitioner's administrative and judicial claims for refund.[3]

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[1] Exhibits "P-1" and "P-1-A

[2] Exhibit "P-1-A"

[3] Exhibits "P-13", and "P-14"

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) upon whom the power to decide refund of internal revenue taxes and other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, is vested.[4]

On November 15, 2012, petitioner executed a Deed of Transfer[5] that relinquished all of its rights, title and interest over the one hundred thousand three hundred seventy-four (100,374) shares of stock of Océ Business Services Philippines, Inc. (now named Canon Business Process Services Philippines, Inc.)[6] in favor of Océ Business Services, Inc.

In view thereof, petitioner paid the documentary stamp tax on the said transfer of shares of stock in the amount of ₱376,402.50 and filed a Documentary Stamp Tax Declaration/Return on November 15, 2012.[7] Then, petitioner applied for relief from double taxation on capital gains on November 16, 2012.[8]

Notwithstanding of the aforesaid application for relief from double taxation, petitioner paid the capital gains tax in the amount of ₱14,586,827.10 and filed a Capital Gains Tax Return on November 22, 2012.[9]

On May 9, 2013, respondent issued a Certification[10], stating that the above-mentioned sale or transfer between Océ N.V. and Océ Business Services, Inc. of the shares of stock of Canon Business Process Services Philippines, Inc. are not subject to capital gains tax pursuant to Article 14 of the Philippines-Netherland Tax Treaty.

Consequently, petitioner filed an administrative claim for refund on July 8, 2014 for the capital gains tax it paid in the amount of ₱14,586,827.10.[11]

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[4] Par. (a), Joint Stipulation of Facts (JSF), Docket (Vol. II), p. 674
[5] Exhibit "P-5"
[6] Exhibit "P-6"
[7] Exhibits "P-10" and "P-11"
[8] Exhibit "P-7"
[9] Exhibits "P-8" and "P-9"
[10] Exhibit "P-12"
[11] Par. (b), JSF, Docket (Vol. II), p. 674

Due to the inaction of respondent on petitioner's administrative claim for refund,[12] the latter filed this Petition for Review[13] on November 19, 2014.

In the Answer[14] filed on February 13, 2015, respondent interposed the following special and affirmative defenses:

> "5. The claim for refund is still under review by the Respondent BIR.
>
> 6. The burden of proof is upon the Petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate.
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> 7. The grant of claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority.
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> 8. The taxes sought to be refunded were paid in accordance with law. The burden of proof to the contrary is upon the Petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

Then, Respondent's Pre-Trial Brief[15] and petitioner's Pre-Trial Brief[16] were submitted on April 7, 2015 and April 13, 2015, respectively.

The parties subsequently filed their Joint Stipulation of Facts[17] on May 6, 2015. Consequently, the Court issued a Pre-Trial Order[18] on May 12, 2015.

To prove its claim, petitioner presented Atty. Cynthia L. dela Paz as its sole witness, and formally offered the following documentary exhibits, which were all admitted in evidence by this Court on August 13, 2015:[19]

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[12] Par. (c), JSF, Docket (Vol. II), p. 674
[13] Docket (Vol. I), pp. 6-53
[14] Docket (Vol. I), pp. 339 to 341
[15] Docket (Vol. I), pp. 343 to 345
[16] Docket (Vol. I), pp. 350 to 365
[17] Docket (Vol. II), pp. 674 to 677
[18] Docket (Vol. II), pp. 679 to 683
[19] Resolution, Docket (Vol. III), pp. 1419 to 1420

Exhibits	*Description*
P-1	Deed of Conversion and Amendment of Articles of Association dated 1 July 2013
P-1-A	English translation of the Deed of Conversion and Amendment of Articles of Association dated 1 July 2013
P-2	Certification of Non-Registration of Company dated 12 November 2014 and issued by the Securities and Exchange Commission (SEC)
P-3	Certificate of Residence dated 26 June 2014 issued by the tax authority of the Netherlands
P-4	Claim for Refund (including all attachments thereof) dated 8 July 2014 that was filed by petitioner Océ with the Bureau of Internal Revenue (BIR) on 8 July 2014 and which bears the receiving stamp of BIR Revenue District Office No. 39
P-5	Deed of Transfer dated 15 November 2012
P-5-A	Signature of Rommel Regalado
P-6	Certificate of Filing of Amended Articles of Incorporation dated 17 December 2012 and issued by the SEC
P-7	Application for Relief from Double Taxation on Capital Gains (BIR Form No. 0901-C) dated 16 November 2012 that was filed with the BIR by petitioner Océ
P-7-A	Signature of Rommel Regalado
P-8	Capital Gains Tax Return-BIR Form 1707 dated 22 November 2012, which bears the receiving stamp of DBP-Quezon Avenue
P-8-A	Signature of Rommel Regalado
P-9	BIR Tax Payment Deposit Slip(DBP- Quezon Avenue) dated 22 November 2012
P-9-A	Signature of Cynthia L. dela Paz
P-10	Documentary Stamp Tax Declaration/Return-BIR Form 2000 dated 15 November 2012, which bears the receiving stamp of DBP-Quezon Avenue
P-10-A	Signature of Rommel Regalado
P-11	BIR Tax Payment Deposit Slip (DBP-Quezon Avenue) dated 15 November 2012
P-12	Certification dated 9 May 2013 and issued by respondent CIR

P-12-A	Signature of Kim Jacinto-Henares (or respondent CIR)
P-13	Special Power of Attorney dated 22 April 2014
P-13-A	Signature of A.H. Schaaf
P-14	Certification dated 6 April 2015 and issued by the Managing Partner of Picazo Buyco Tan Fider & Santos Law Offices
P-14-A	Signature of Atty. Silverio Benny J. Tan
P-15	Judicial Affidavit of Atty. Cynthia L. dela Paz
P-15-A	Signature of Atty. Cynthia L. dela Paz

On the other hand, respondent's counsel manifested in open court that respondent has no witness to present and that the same will no longer present evidence in this case.[20]

After the Court considered petitioner's Memorandum[21] filed through registered mail on November 4, 2015, and the Report[22] of the Records Division dated January 12, 2016, that no memorandum has been filed by the respondent, this case was deemed submitted for decision on January 18, 2016.[23]

The sole issue[24] to be resolved by this Court is whether petitioner is entitled for a claim of refund on the capital gains tax it paid.

Petitioner contends that it is entitled to a refund on the capital gains tax it paid pursuant to paragraph 4, Article 13 of the Tax Treaty between The Netherlands and the Republic of the Philippines (RP-Netherlands Tax Treaty). Petitioner claims that it has sufficiently established its exemption from Philippine capital gains tax on the transfer of its shares of stock to Océ Business Services, Inc.

According to petitioner, all of the requisites for the Philippine tax exemption based on the RP-Netherlands Tax Treaty are present in this case. Petitioner states that it is a resident of Netherlands and is not doing business in the Philippines. Petitioner has allegedly derived the capital gains from the transfer of the shares of stock of Canon Business Process Services Philippines, Inc. under the Deed of Transfer dated November 12, 2015. Petitioner also maintains that the said shares of

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[20] Resolution dated October 5, 2015, Docket (Vol. III), p. 1428
[21] Docket (Vol. III), pp. 1433 to 1457
[22] Docket (Vol. III), p. 1463
[23] Resolution, Docket (Vol. III), p. 1464
[24] Respondent's Pre-Trial Brief and petitioner's Pre-Trial Brief, Docket (Vol. I), p. 344 and 357, respectively

stock are neither (1) immovable property; (2) movable property that formed part of the business property of its permanent establishment in the Philippines; and (3) ships and aircraft. Being so, it is allegedly taxable only in Netherlands and is exempt from Philippine capital gains tax.

Petitioner further argues that respondent has already admitted that the former's transfer of the shares of stock is not subject to capital gains tax when the latter issued a Certification stating as such. Also, petitioner posits that the principle of *pacta sunt servanda* necessitates the refund to petitioner of the amount ₱14,586,827.10 which represents overpayment of tax.

The Court shall determine first the timeliness of the filing of this Petition for Review.

Section 204 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "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."

Pertinent hereto is Section 229 of the NIRC of 1997, as amended, which states:

> "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."

After a thorough scrutiny of the records, it shows that petitioner paid the capital gains tax on the transfer of its 100,374 shares of stock of Canon Business Process Services Philippines, Inc. on November 22, 2012.[25] From the said date, petitioner had two years or until November 22, 2014 within which to file its administrative and judicial claims for refund. Petitioner filed its administrative claim on July 8, 2014;[26] while its judicial claim was filed on November 19, 2014[27].

Based on the foregoing, petitioner has complied with the provisions of Sections 204 (C) and 229 of the NIRC of 1997, as amended, when it filed its administrative and judicial claims within the two-year prescriptive period.

The Court shall now proceed to determine whether petitioner is entitled for a refund.

Article 13 of the RP-Netherlands Tax Treaty expresses:

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[25] Exhibits "P-8" and "P-9"
[26] Exhibit "P-7"
[27] Docket (Vol. I), p. 6

"Article 13
Gains from the Alienation of Property

1) Gains from the alienation of immovable property as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.

2) Gains from the alienation of movable property, forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State, or of movable property pertaining to a fixed base available to a resident of one of the states in the other State for the purpose of performing professional services, including such gains from the alienation of such permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

3) Notwithstanding the provisions of paragraph 2, gains derived by an enterprise of one of the States from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4) Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, shall be payable only in the State of which the alienator is a resident.

5) The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its domestic law a tax on gains from the alienation of any property derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property."

Apparently, petitioner is a resident of Netherlands[28] and it is not registered to engage in business or is not doing business in the Philippines. [29] Considering that petitioner has no permanent establishment in the Philippines, its shares of stock in the Canon Business Process Services, Philippines, Inc. do not form part of its business property in the Philippines. Thus, the transfer/alienation of such shares of stock does not fall under paragraph 2, Article 13 of the RP-Netherlands Tax Treaty.

Further, since petitioner's shares of stock are neither immovable property, nor movable property that formed part of the business property of a permanent establishment in the Philippines, nor ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, the gains from the transfer of the subject shares of stock shall be payable only in Netherlands where the petitioner is a resident, in accordance with paragraph 4, Article 13 of the above-mentioned tax treaty.

Moreover, respondent has already issued a Certification stating that the gains from sale or transfer of shares of stock of Canon Business Process Services, Philippines, Inc. between petitioner and Océ Business Services, Inc. are not subject to capital gains tax pursuant to Article 14 of the RP-Netherlands Tax Treaty.[30]

The Philippine Constitution provides for adherence to the general principles of international law as part of the law of the land. The time honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. In this jurisdiction, treaties have the force and effect of law.[31]

In the case of *Air Canada vs. Commissioner of Internal Revenue*[32], the Supreme Court ruled that the application of the provisions of the National Internal Revenue Code must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries, to wit:

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[28] Exhibit "P-3"
[29] Exhibit "P-2"
[30] Exhibit "P-12"
[31] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, and *Commissioner of Internal Revenue vs. CBK Power Company Limited*, G.R. Nos. 193407-08, January 14, 2015
[32] G.R. No. 169507, January 11, 2016

"A tax treaty is an agreement entered into between sovereign states 'for purposes of eliminating double taxation on income and capital, preventing fiscal evasion, promoting mutual trade and investment, and according fair and equitable tax treatment to foreign residents or nationals.' *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.* explained the purpose of a tax treaty:

> The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.
>
> The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate. (Emphasis in the original, citations omitted)

Observance of any treaty obligation binding upon the government of the Philippines is anchored on the constitutional provision that the Philippines 'adopts the generally accepted principles of international law as part of the law of the land[.]' *Pacta sunt servanda* is a fundamental international law principle that requires agreeing parties to comply with their treaty obligations in good faith.

> **Hence, the application of the provisions of the National Internal Revenue Code must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries."** (*Emphasis supplied*)

Considering the foregoing, gains from the transfer of petitioner's shares of stock shall be payable in Netherlands where petitioner is a resident thereof.

WHEREFORE, premises considered, this Petition for Review is **GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱14,586,827.10** representing the capital gains tax paid by it on November 22, 2012 in connection with the Deed of Transfer dated November 15, 2012.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

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

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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