REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SINGAPORE TELECOM INTERNATIONAL PTE. LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. Case No. 7406

Present:
Castañeda, Jr., Chairperson,
Uy, and
Palanca-Enriquez,JJ.:

Promulgated:
APR 7 2009 3:10 p.m.

x- x

DECISION

CASTAÑEDA, JR., J.:

THE CASE

This is a Petition for Review filed in order to claim the refund and/or tax credit of alleged erroneously paid final withholding tax of petitioner for 2004 amounting to PhP 100,864,836.00, pursuant to Section 229 of the National Internal Revenue Code (NIRC) of 1997, in relation to Sections 7(a)(1) and 11 of Republic Act No. (RA) 1125, as amended by RA 9282 and Section 3(a)(1), Rule 4 and Section 3(a), Rule 8, Revised Rules of the Court of Tax Appeals.

FACTS

Petitioner is a company incorporated under the laws of Singapore, with business address at No. 31 Exeter Road, Singapore 0923.[1] It was granted a license to transact business in the Philippines under Securities and Exchange Commission (SEC) Registration No. AF094-000093.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, vested by law to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes, including excess final withholding taxes. He may be served with summons and other legal processes of this Honorable Court at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[3]

On January 29, 2004, the Board of Directors of Globe Telecom, Inc. (Globe Telecom) unanimously passed and approved the following resolution:

> *RESOLVED, to declare and distribute a cash dividend of Php18 per common share to all stockholders of record as of February 18, 2004 and payable on March 15, 2004.*[4]

Based on the records of Globe Telecom maintained by the office of its Corporate Secretary, petitioner and its nominee-directors owned the following number of common shares:[5]

[1] Exhibit "A-3", *Rollo,* pp. 399 to 458.
[2] Exhibit "O-2", *Rollo,* pp. 529 to 533.
[3] *JOINT STIPULATION OF FACTS AND ISSUES,* paragraph 1, *Rollo,* p.111.
[4] Exhibit "I", *Rollo,* p. 509.
[5] *Id.*

	No. of common shares	% over total outstanding voting shares
Singapore Telecom International Pte. Ltd. (petitioner)	56,036,016	18.78%
Lucas Chow	2	0.00%
Lim Chuan Poh	2	0.00%

On March 15, 2004, the net proceeds of the cash dividends accruing on the above shares were remitted to the account of petitioner in the amount of ₱ 756,486,216.00, computed as follows:

Cash Dividends (56,036,016 @ ₱ 18 per share)	₱ 1,008,648,288.00
Tax Withheld @ 25%[6]	252,162,072.00
Net Dividend Paid to petitioner	₱ 756,486,216.00[7]

On April 15, 2004, Globe Telecom withheld and remitted to the BIR, on behalf of petitioner, the amount of Two Hundred Fifty Two Million One Hundred Sixty Two Thousand Ninety Pesos (₱ 252,162,090.00) through the BIR's Electronic Filing and Payment System (EFPS). The withholding and remittance of the tax is shown in the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) filed by Globe Telecom through the EFPS.[8]

On September 14, 2004, petitioner filed a letter dated September 10, 2004 before the International Tax Affairs Division (ITAD) of the BIR,

[6] This rate was based on Article 10(2)(b) of the *Convention Between the Government of the Republic of the Philippines and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.* (Petitioner's Memorandum, paragraph 8, *Rollo,* pp. 570 to 571.) Without the said tax treaty, petitioner would normally be taxed at the regular rate of 32%, pursuant to Section 28(B)(1) of the NIRC of 1997.

[7] Exhibit "I", *Rollo,* p. 509.

[8] *JOINT STIPULATION OF FACTS AND ISSUES,* paragraph 2, *Rollo,* pp.111 to 112.

requesting confirmation that dividends to be paid by Globe Telecom to petitioner are subject to 15% income tax, pursuant to Section 28(B)(5)(b) of the NIRC of 1997.[9]

On November 3, 2004, the BIR issued BIR Ruling No. DA-ITAD-124-04 declaring that the dividends to be paid to petitioner beginning June 1, 2003 and onwards are subject to 15% Philippine income tax, pursuant to Section 28(B)(5)(b) of the NIRC of 1997.[10]

On October 6, 2005, acting on the ruling issued by the ITAD and within the two-year statute of limitations, petitioner filed with the BIR a written application for refund and/or tax credit, pursuant to Section 204(C) of the NIRC of 1997. Citing BIR Ruling No. DA-ITAD-124-04, petitioner requested a refund or the issuance of a tax credit certificate (TCC) in the amount of One Hundred Million Eight Hundred Sixty Four Thousand Eight Hundred Thirty Six Pesos (₱ 100,864,836.00) representing overpaid final withholding tax on the dividends distributed by Globe Telecom to petitioner, computed as follows:

Cash Dividends (to petitioner)	₱ 1,008,648,360.00
Tax Rate Used	25%
Tax Withheld and Remitted	₱ 252,162,090.00
Less: Correct Tax that should have been Withheld and Remitted (based on the 15%)	151,297,254.00
Excess Remittance/Over-withholding	₱ 100, 864,836.00[11]

On January 2, 2006, petitioner, through its tax consultant, received respondent's letter dated December 16, 2005 issued through the Head

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[9] *Id.*, paragraph 3, *Rollo,* p.112. See also Exhibit "E" (*Rollo*, pp. 472 to 477).
[10] *Id.*, paragraphs 4 and 8, *Rollo,* pp.112 and 113. See also Exhibit "F" (*Rollo*, pp. 479 to 481).
[11] *Id.*, paragraph 5, *Rollo,* pp.112 to 113. See also Exhibit "G" (*Rollo*, pp. 482 to 486).

Revenue Executive Assistant (HREA) of the BIR's Large Taxpayers Service which denied petitioner's claim for refund,[12] solely on the issue of whether petitioner is the proper party to claim the refund.[13] Such denial of the HREA was made pursuant to a delegated authority under Revenue Delegation Authority Order (RDAO) No. 03-03, and thus, constitutes a decision of the respondent in a case involving the refund of internal revenue taxes.[14]

It must be noted that the parties admitted the genuineness and due execution of the Certificate of Authentication issued by the Philippine Embassy in Singapore dated September 1, 2004 with the following attachments all sealed with the Embassy Seal:

1. Attestation of Notary Public Chia Choon Yang dated August 30, 2004 (1 page);
2. Power of Attorney issued by petitioner dated August 16, 2004 (1 page);
3. Petitioner's Memorandum and Articles of Association dated February 4, 1988 (56 pages);
4. Certification issued by the Inland Revenue Authority of Singapore dated August 30, 2004 (1 page) with attachment (see below); and
5. Relevant portions of the Singapore Income Tax Act (revised edition 2004) duly certified by the Inland Revenue Authority of Singapore (1 page) and attached to Certification issued by the Inland Revenue Authority of Singapore dated August 30, 2004.[15]

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[12] *Id.*, paragraph 6. *Rollo,* p.113. See also Exhibit "H" (*Rollo*, p. 487).
[13] *Id.*, paragraph 9. *Rollo,* p.113. *Id.*
[14] *Id.*, paragraph 7. *Rollo,* p.113.
[15] *JOINT STIPULATION OF FACTS AND ISSUES*, paragraph 10, *Rollo,* pp.113 to 114.

On February 1, 2006, petitioner filed with this Court the instant Petition for Review.

By Answer[16] filed on April 10, 2006, respondent alleged by way of special and affirmative defenses the following:

> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
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> 5. The amount of ₱ 100,864,836.00 being claimed by petitioner as overpaid final withholding tax on the dividends for the year 2004 is not properly documented.
>
> 6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim.
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
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> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)*.

On August 31, 2006, the parties filed their Joint Stipulation of Facts and Issues. The case thereafter proceeded to trial.

On July 7, 2008, counsel for respondent manifested that respondent is waiving her right to present evidence and is submitting the case for decision. Upon motion of both counsels, the parties were granted thirty (30) days from the said date to file their simultaneous memoranda.

[16] *Rollo*, pp. 64 to 66.

Upon motion, respondent was granted an extension to file a Memorandum until September 5, 2008, per the Court's Order dated August 5, 2008.

Also upon motion, petitioner was likewise granted an extension to file a Memorandum until September 5, 2008, per the Court's Order dated August 7, 2008.

On September 4, 2008, petitioner filed its Memorandum.

On September 8, 2008, respondent filed a Motion to Admit Attached Memorandum.

Per the Court's Resolution dated September 10, 2008, said motion of respondent was granted and accordingly, respondent's Memorandum was admitted, hence, the case was considered submitted for decision.

ISSUES

The issues as stipulated by the parties[17] are as follows—

(a) Whether or not petitioner is the proper party to claim the refund of overpaid final withholding tax on the dividends;

(b) Whether or not petitioner's inter-corporate dividends received from Globe Telecom are subject to a final tax on income at the rate of 15% in accordance with Section 28(B)(5)(b) of the NIRC of 1997;

(c) Whether or not there was an overpayment of withholding tax on dividends in the total amount of One Hundred Million Eight Hundred Sixty-Four Thousand Eight Hundred Thirty-Six Pesos (₱ 100,864,836.00); and

(d) Whether or not petitioner is entitled to a refund or the issuance of a tax credit certificate of overpaid final withholding tax on the dividends distributed by Globe Telecom to petitioner in the

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[17] *JOINT STIPULATION OF FACTS AND ISSUES. Rollo,* pp.114 to 115.

amount of One Hundred Million Eight Hundred Sixty-Four Thousand Eight Hundred Thirty-Six Pesos (₱ 100,864,836.00).

However, the foregoing can be reduced to two basic but essential issues, viz:

1. WHETHER OR NOT PETITIONER IS THE PROPER PARTY TO CLAIM THE REFUND OF THE ALLEGED OVERPAID WITHHOLDING TAX ON THE SUBJECT DIVIDENDS; and

2. WHETHER OR NOT PETITIONER IS ENTITLED TO THE PREFERENTIAL INCOME TAX RATE OF 15% ON DIVIDENDS, PURSUANT TO SECTION 28(B)(5)(b) OF THE NIRC OF 1997.

THE COURT'S RULING

PETITIONER IS A PROPER PARTY TO CLAIM THE REFUND

Under Section 229 of the NIRC of 1997, a claim for refund or tax credit filed with the Commissioner of Internal Revenue is essential for maintenance of a suit for recovery of taxes allegedly erroneously or illegally assessed or collected:

> **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. (Emphasis supplied)
> xxx

Section 204(C) of the NIRC of 1997, in turn, provides:

> **SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** — The Commissioner may — xxx
>
> (C) xxx. **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: xxx (Emphases supplied)

It is clear from the foregoing that *"the taxpayer"* is the proper party to file a written claim for refund of taxes allegedly erroneously or illegally assessed or collected.

Thus, upon a denial of such claim for refund, *"the taxpayer"* is the *"party adversely affected"* who is given the right to appeal the decision or ruling of the Commissioner before this Court via petition for review, pursuant to Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals in relation to Sections 7(a)(1) and 11of RA 1125, as amended by RA 9282.

Parenthetically, the term *"taxpayer"* is defined as *"any person subject to tax imposed by"* Title II- TAX ON INCOME[18] of the NIRC of 1997.

In view thereof, since petitioner, being a nonresident foreign corporation insofar as the subject transaction is concerned, was taxed on the basis of Section 28(B)(1) of the NIRC of 1997, which is under Title II thereof, at the reduced rate of 25%, pursuant to the Philippines-Singapore tax treaty, it is undoubtedly a proper party to file the instant claim for refund.

Although jurisprudence[19] are to the effect that withholding agents are allowed to claim for refund on behalf of the payee, the same does not preclude direct resort by the payee himself. To rule otherwise, as correctly

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[18] Section 22(N), NIRC of 1997.

[19] *Commissioner of Internal Revenue vs. Wander Philippines, Inc. et al.*, G.R. No. L-68375, April 15, 1988, 160 SCRA 573.

pointed out by petitioner, would result to an absurd situation where the agent is being authorized to act where the principal is not.[20]

Our system of laws and procedures abhors ambiguity.

Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted.[21] For Congress could not have intended an absurd interpretation of the law.[22]

PETITIONER IS ENTITLED
TO THE PREFERENTIAL TAX RATE OF 15%

Section 28(B)(1) and (5)(b) of the NIRC of 1997 provides as follows:

> **SEC. 28. *Rates of Income Tax on Foreign Corporations.—***
> xxx
>
> (B) *Tax on Nonresident Foreign Corporation.—*
>
> (1) *In General.* — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as xxx **dividends** xxx: *Provided,* That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).
> xxx
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* —
> xxx
>
> (b) *Intercorporate Dividends.* — A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, *gc*

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[20] Petitioner's Memorandum, paragraph 35, p. 15, *Rollo,* p. 582.
[21] *Commissioner of Internal Revenue vs. TMX Sales, Inc., G.R. No. 83736, January 15, 1992,* 205 SCRA 184.
[22] *Dargani vs. Republic of the Philippines, G.R. No. L-11525, December 24, 1959,* 106 Phil. 735.

which shall be collected and paid as provided in Section 57(A) of this Code, **subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines** equivalent twenty percent (20%) for 1997, nineteen pecent (19%) for 1998, eighteen percent (18%) for 1999, and seventeen percent (17%) thereafter, which represents the difference between the regular income tax of thirty-five percent (35%) in 1997, thirty-four percent (34%) in 1998, thirty-three percent (33%) in 1999, and thirty-two percent (32%) thereafter on corporations and the fifteen percent (15%) tax on dividends as provided in this subparagraph; (Emphasis supplied.)

In the case of *Commissioner of Internal Revenue vs. Wander Philippines, Inc. et al.*[23], the Supreme Court explained the provision of Section 28(B)(5)(b) of the NIRC of 1997 which was previously Section 24(b)(1) of the 1977 Tax Code, in this wise:

> On July 5, 1977, Wander filed with the Appellate Division of the Internal Revenue a claim for refund and/or tax credit in the amount of P115,400.00, contending that it is liable only to 15% withholding tax in accordance with Section 24(b)(1) of the Tax Code(now Section 28(B)(5)(b) of the 1997 NIRC), xxx and not on the basis of 35% which was withheld and paid to and collected by the government. xxx xxx xxx
>
> In the instant case, Switzerland did not impose any tax on the dividends received by Glaro. Accordingly, Wander claims that full credit is granted and not merely credit equivalent to 20%. Petitioner, on the other hand, avers the tax sparing credit is applicable only if the country of the parent corporation allows a foreign tax credit not only for the 15 percentage-point portion actually paid but also for the equivalent twenty percentage-point portion spared, waived or otherwise deemed as if paid in the Philippines; that private respondent does not cite anywhere a Swiss law to the effect that in case where a foreign tax, such as the Philippine 35% dividend tax, is spared, waived or otherwise considered as if paid in whole or in part by the foreign country, a Swiss foreign-tax credit would be allowed for the whole or for the part, as the case may be, of the foreign tax so spared or waived or considered as if paid by the foreign country.

[23] Supra note 19.

> While it may be true that claims for refund are construed strictly against the claimant, nevertheless, the fact that Switzerland[24] did not impose any tax on the dividends received by Glaro[25] from the Philippines should be considered as a full satisfaction of the given condition. For, as aptly stated by respondent Court, to deny private respondent the privilege to withhold only 15% tax provided for under Presidential Decree No. 369, amending Section 24(b)(1)[26] of the Tax Code, would run counter to the very spirit and intent of said law and definitely will adversely affect foreign corporations' interest here and discourage them from investing capital in our country.
>
> Besides, it is significant to note that the conclusion reached by respondent Court is but a confirmation of the May 19, 1977 ruling of petitioner that "since the Swiss Government does not impose any tax on the dividends to be received by the said parent corporation in the Philippines, the condition imposed under the above-mentioned section is satisfied. Accordingly, the withholding tax rate of 15% is hereby affirmed."[27]

The preferential tax treatment of 15% of the final withholding tax on dividends received by a non-resident foreign corporation from a domestic corporation applies if the domiciliary law of the non-resident foreign corporation allows 17% tax credit[28] for the taxes deemed paid in the Philippines.

In the instant case, respondent's denial of petitioner's claim for refund is unmeritorious. Considering that Singapore does not impose tax on the dividends received by petitioner from a domestic corporation in the Philippines, and taking into account its due compliance with the requirements provided in Section 28(B)(5)(b) of the 1997 NIRC and the *Wander* case, petitioner is entitled to the 15% preferential tax treatment on dividends.

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[24] The domiciliary country of the foreign stockholder corporation.
[25] The foreign stockholder corporation.
[26] Now Section 28(B)(5)(b) of the 1997 NIRC.
[27] See also BIR-Ruling 030-80, February 15, 1980.
[28] Difference between regular income tax of 32% and 15% tax on dividends.

WHEREFORE, the Petition for Review is hereby **GRANTED**. Respondent is hereby ordered to refund petitioner the amount of One Hundred Million Eight Hundred Sixty Four Thousand Eight Hundred Thirty Six Pesos (P100,864,836.00) representing overpayment of final withholding taxes on dividends for taxable year 2004.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division