REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special First Division

HAVILAH PROPERTIES, INC.,
Petitioner,

CTA Case No. 10269

Members:

-versus-

DEL ROSARIO, *P.J., Chairperson*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 2 4 2023 2:00PM

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DECISION

MANAHAN, *J.*:

Before this Court is the *Petition for Review*[1] filed by petitioner Havilah Properties, Inc., praying for this Court to order respondent Commissioner of Internal Revenue (CIR) to refund the total taxes it paid, amounting to ₱4,618,440.76, and to toll or stop the running of the prescriptive period as provided under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended.

THE PARTIES

Petitioner Havilah Properties, Inc. is an enterprise registered with the Board of Investments (BOI) as a New Developer of Low-Cost Mass Housing Projects.[2]

On the other hand, respondent CIR is the Chief Executive Officer of the Bureau of Internal Revenue (BIR), with office address at BIR National Office Building, Agham Road, Diliman, Quezon City, Philippines.[3] Under Section 4 of the 1997 NIRC, as amended, respondent as the Chief of the BIR

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[1] Docket, CTA Case No. 10269, Vol. I, pp. 6-15.

[2] *Id.*, Vol. I, Exhibits "P-1", "P-2", "P-3", and "P-4", pp. 167 to 170, 172 to 176, 178 to 182, and 184 to 189, respectively.

[3] *Id.*, Vol. I, Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 390.

has "the power to decide disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto." Accordingly, respondent is authorized to grant tax credit and/or refund of taxes erroneously or illegally received.[4] Respondent is represented by the Litigation Division of the BIR National Office, and may be served with court processes at Room 703, Litigation Division, BIR National Office, BIR Road, Diliman, Quezon City. [5]

THE FACTS

On June 15, 2011, the BOI issued Certification of Registration (COR) No. 2011-119 to petitioner as new developer of low-cost mass housing project for Manna Residences in San Fernando, La Union.[6]

Petitioner applied for Income Tax Holiday (ITH) incentives on its four BOI CORs, which included COR No. 2011-119's application for ITH incentive for the year 2012. However, out of 4 ITH applications, only two were approved and the other two were denied, which include petitioner's application under COR No. 2011-119 for its failure to comply with the terms and conditions under the said CORs.[7] Petitioner eventually moved for the reconsideration of the said BOI ruling.[8]

During the pendency of petitioner's BOI motion for reconsideration, Mr. Arnel S. Guballa, then the Regional Director of Revenue Region (RR) No. 1 – Calasiao, Pangasinan, issued the *Letter of Authority* (LOA) No. eLA201100020883 dated June 21, 2013,[9] authorizing Revenue Officer (RO) Myla Ramos / Group Supervisor Lolita Salayog of Revenue District Office (RDO) No. 3 – San Fernando, La Union, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes, for the period covering January 1, 2012 to December 31, 2012.

Thereafter, the BIR, through OIC – Regional Director Marina C. De Guzman, issued the *Preliminary Assessment*

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[4] Docket, Vol. I, Par. 2, Summary of Admitted Facts, JSFI, p. 390.
[5] *Id.*, Vol. I, Par. 3, Summary of Admitted Facts, JSFI, p. 390.
[6] *Id.*, Vol. I, Exhibit "P-3", p. 178.
[7] *Id.*, Vol. II, Petitioner's Memorandum, p. 623.
[8] *Id.*, Vol. II, Par. 20, Petitioner's Memorandum, p. 626.
[9] BIR Records, Exhibit "P-5", p. 14.

Notice (PAN) dated September 14, 2016,[10] stating petitioner's tax liabilities, specifically for income tax, including interest, and compromise penalties, for taxable year 2012.

On September 27, 2016, petitioner filed with the BIR the Letter dated September 26, 2016,[11] informing the BIR of petitioner's outstanding Letter of Reconsideration dated September 14, 2016 with the BOI, and asking them to hold in abeyance any action on the PAN, pending the receipt of the BOI resolution on the said Letter of Reconsideration.

The BIR, again through OIC – Regional Director Marina C. De Guzman, then issued the *Formal Letter of Demand* (FLD) dated October 12, 2016,[12] assessing petitioner of income tax, including interest, and compromise penalties, for taxable year 2012.

On November 24, 2016, petitioner filed with the BIR the Letter dated November 21, 2016,[13] requesting again to hold in abeyance collection of the tax deficiencies mentioned in the FLD, pending the resolution of their Motion for Reconsideration filed with the BOI.

Subsequently, the BIR, through OIC-Regional Director Marina C. De Guzman, issued the Letter dated December 5, 2016 addressed to petitioner,[14] informing the latter as follows:

> "We are pleased to inform you that your request was favorably acted upon. We will hold the posting of our assessments of your 2012 internal revenue tax deficiencies in Form 40.00 as delinquent account until January 27, 2017. You are, therefore, required to present Certificate or any document showing your Income Tax Holiday Entitlement for Manna 1 and 2 issued by Board of Investments for taxable year 2012 within 60 days from filing of your protest/request but not later than January 25, 2017. In case of your failure to submit such documents on that day, the assessments of your 2012 deficiency taxes will be posted in Form 40.00 as delinquent account and the docket of the case will be forwarded to Revenue District Office No. 3, San Fernando City, La Union for enforcement of collection."

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[10] Docket, Vol. I, Exhibits "P-6" and "P-6-a", pp. 192 to 194.
[11] *Id.*, Vol. I, Exhibit "P-7", p. 195.
[12] *Id.*, Vol. I, Exhibits "P-8", "P-8-a", and "P-8-b", pp. 196 to 198.
[13] Docket, Vol. I, Exhibit "P-9", p. 199.
[14] *Id.*, Vol. I, Exhibit "P-10", p. 203.

On May 19, 2017, respondent issued *Final Notice Before Seizure* (FNBS) by Revenue District Officer Ernesto I. Manabat,[15] informing petitioner that the BIR is giving petitioner again an opportunity to make the necessary settlement of its tax liabilities in the amount of ₱7,866,349.29, within ten (10) days from receipt of the said FNBS.

On August 15, 2017, the BIR, through Ms. Lourdes P. Anteneo, OIC-Chief of the Collection Division of RR No. 1, issued another FNBS,[16] informing petitioner to settle their tax liabilities in the same amount of ₱7,866,349.29, within ten (10) days from the receipt of the same.

Petitioner then paid the basic income tax deficiency assessment on October 19, 2017, and on March 15, 2018, in the aggregate amount of ₱4,618,440.76.[17]

On August 16, 2019, petitioner filed with the BIR a *Tax Amnesty Return on Delinquencies* (BIR Form No. 2118-DA),[18] covering taxable year 2012.

On September 23, 2019, the Court of Appeals issued its Decision in *"Havilah Properties, Inc. vs. Incentive Service/Board of Investments"*, which was docketed as CA-G.R. No. SP No. 149417 (*BOI* case),[19] the dispositive portion of which, reads as follows:

> "**WHEREFORE**, this appeal by [petitioner] Havilah Properties, Inc. is **GRANTED**.
>
> The following Resolutions of the Board of Investments, to the extent that they deny Havilah Properties, Inc.'s application for Income Tax Incentive for Taxable Year 2012 under C.R. Nos. 2011-119 and 2011-249, are hereby REVERSED and SET ASIDE:
>
> 1. Resolution No. 30-47, series of 2015
> 2. Resolution No. 30-48, series of 2015
> 3. Resolution No. 35-26, series of 2016
> 4. Resolution No. 35-27, series of 2016
>
> Respondent Board of Investments is DIRECTED to grant the application of Havilah Properties, Inc. for Income

[15] *Id.*, Vol. I, Exhibit "P-11", p. 204.
[16] *Id.*, Vol. I, Exhibit "P-12", p. 205.
[17] *Id.*, Vol. I, Vol. I, Exhibits "P-13", "P-13-a", "P-14", and "P-14-a", pp. 206 to 209.
[18] Docket, Vol. I, Exhibit "P-19", p. 229.
[19] *Id.*, Vol. I, Exhibit "P-15", pp. 210 to 222.

Tax Incentive for Taxable Year 2012 under C.R. Nos. 2011-119 and 2011-249.

SO ORDERED."

On October 17, 2019, petitioner filed with the BIR the Letter dated October 15, 2019[20] requesting for the refund of the income taxes which it paid for taxable year 2012 in the amount of ₱4,618,440.76. Petitioner also informed the BIR that it filed an application for Tax Amnesty on August 8, 2019 and that the Court of Appeals has decided the BOI case in its favor.

Petitioner filed with the BIR another Letter dated December 7, 2019[21] on December 9, 2019 which reiterated its request for refund and the other information stated in the earlier Letter dated October 15, 2019.

In view of Letters dated October 15, 2019[22] and December 7, 2019,[23] petitioner filed an *Application for Tax Credit/Refunds* (BIR Form No. 1914)[24] on January 22, 2020, with a covering Letter dated January 21, 2020[25] in the amount of ₱4,618,440.76, for taxable year 2012.

On February 13, 2020, the Court of Appeals (CA) issued its Resolution in the *BOI* case,[26] the dispositive portion of which, reads as follows:

"**WHEREFORE**, premises considered, the Motion for Reconsideration is **DENIED**. Our *Decision* dated September 23, 2019 **STANDS**.

SO ORDERED."

The CA ruling was subsequently elevated by the BOI in the Supreme Court under the case entitled "*Board of Investments v. Havilah Properties, Inc.*" under G.R. No. 252200, hence, the case is still pending.[27]

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20 Docket, Vol. I, Exhibit "P-17", p. 227.
21 *Id.*, Vol. I, Exhibit "P-18", p. 228.
22 *Supra*, Note 20.
23 *Supra*, Note 21.
24 Docket, Vol. I, Exhibit "P-22", p. 386.
25 *Id.*, Vol. I, Exhibit "P-21", p. 385.
26 *Id.*, Vol. I, Exhibit "P-16", pp. 223 to 226.
27 *Id.*, Vol. II, Petitioner's Memorandum, p. 647.

On March 13, 2020, petitioner filed a *Petition for Review*.[28]

In the Order dated September 7, 2020,[29] the Court granted respondent's *Motion to Admit Attached Answer* filed on July 24, 2020,[30] thereby admitting respondent's *Answer*,[31] which interposed the following special and affirmative defenses, to wit:

1. The Honorable Court does not have jurisdiction over the instant case. The assessment has become final, executory and demandable; and

2. Petitioner is not entitled to refund and/or issuance of tax credit certificate representing alleged erroneously paid income tax, considering it is liable to pay such tax; hence, there is no basis to its claim.

On November 10, 2020, petitioner filed an *Omnibus Motion (1) To Amend Petition for Review and Admit Attached Amended Petition, (2) For Production of Documents and (3) To Suspend Proceedings*.[32] However, respondent failed to file his comment to the said *Omnibus Motion*.[33] In its Resolution dated January 27, 2021,[34] the Court partially granted the same *Omnibus Motion*, and admitted petitioner's *Amended Petition for Review*, as well as gave respondent fifteen (15) days from notice to file his *Amended Answer*. Respondent, however, failed to do so.[35]

Petitioner's Pre-Trial Brief was submitted on November 9, 2020,[36] while *Respondent's Pre-Trial Brief* was filed *via* electronic mail on April 30, 2021.[37] Subsequently, on May 17, 2021, *Respondent's Amended Pre-Trial Brief* was filed *via* electronic mail.[38]

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[28] *Supra*, Note 1.
[29] Docket, Vol. I, p. 76.
[30] *Id.*, Vol. I, pp. 61 to 64.
[31] *Id.*, Vol. I, pp. 66 to 75.
[32] *Id.*, Vol. I, pp. 239 to 263.
[33] *Id.*, Vol. I, *Records Verification* dated December 1, 2020 issued by the Judicial Records Division, p. 311.
[34] *Id.*, Vol. I, pp. 318 to 320.
[35] Docket, Vol. I, *Records Verification* dated March 15, 2021 issued by the Judicial Records Division, p. 323.
[36] *Id.*, Vol. I, pp. 86 to 104.
[37] *Id.*, Vol. I, pp. 329 to 332.
[38] *Id.*, Vol. I, pp. 355 to 358.

The Pre-Trial Conference was initially set on November 12, 2020.[39] However, on November 9, 2020, respondent filed an *Urgent Motion to Reset Pre-Trial Conference (Set on November 12, 2020)*,[40] which was granted by the Court in its Resolution dated December 11, 2020,[41] thereby resetting the said schedule to March 11, 2021. Nevertheless, the Pre-Trial Conference was further reset to, and was held on, May 6, 2021.[42]

During the Pre-Trial Conference, the Court, acting on petitioner's *Omnibus Motion For Production of Documents*, ordered respondent's counsel to produce and deliver to the petitioner the following documents, *i.e.*, (i) Investigation Report allegedly prepared by RO Myla Ramos on which petitioner's tax liability for taxable year 2012 is supposedly based; and (ii) the Revenue Travel Assignment Order or any document pertaining to RO Myla Ramos' transfer from RDO 3 to a different RDO or BIR Office.[43]

On May 21, 2021, the parties filed their *Joint Stipulation of Facts and Issues*,[44] which was approved in the Resolution dated June 11, 2021,[45] thereby deeming the termination of the Pre-Trial. Thereafter, the Pre-Trial Order dated October 27, 2021 was issued.[46]

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following individuals, namely: (1) Mr. Conrado D. Agtani,[47] petitioner's Executive Vice President; and (2) Ms. Jean G. Mejia,[48] petitioner's Accounting and Tax Consultant.

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[39] *Id.*, Vol. 1, *Notice of Pre-Trial Conference* dated September 14, 2020, pp. 78 to 80.
[40] *Id.*, Vol. I, pp. 235 to 237.
[41] *Id.*, Vol. I, pp. 314 to 315.
[42] *Id.*, Vol. I, *Notice of Resetting* dated March 8, 2021; Minutes of the hearing held on, and Order dated, May 6, 2021, pp. 336 to 345.
[43] *Id.*, Vol. I, refer to the Minutes of the hearing held on, and Order dated, May 6, 2021, pp. 336 to 345.
[44] *Id.*, Vol. I, pp. 390 to 394.
[45] *Id.*, Vol. I, pp. 403 to 404.
[46] Docket – Vol. I, pp. 428 to 440.
[47] *Id.*, Vol. I, Exhibits "P-20" and "P-23", pp. 150 to 166, and 376 to 383, respectively; Docket, Vol. I, Minutes of the hearing held on, and Order dated, November 25, 2021, pp. 452 to 458.
[48] *Id.*, Vol. I, Exhibit "P-24", pp. 359 to 367; Docket, Vol. I, Minutes of the hearing held on, and Order dated, November 25, 2021, pp. 452 to 458.

On November 29, 2021, respondent filed a *Manifestation,*[49] stating that he will no longer be presenting any witness.

Parenthetically, on December 1, 2021, petitioner filed a *Motion for Partial Reconsideration (Re: Order dated 25 November 2021),*[50] praying that the items previously ordered stricken off from Conrado D. Agtani's Judicial Affidavit dated November 4, 2020 and Supplemental Judicial Affidavit dated May 18, 2021, and Ms. Jean G. Mejia's Judicial Affidavit dated May 18, 2021, be retained and allowed to stand. Respondent failed to file his comment thereto.[51] In its Resolution dated March 21, 2022, the Court, *inter alia,* granted the said *Motion.*[52]

On March 10, 2022, respondent transmitted the *BIR Records,*[53] consisting of one (1) folder, consecutively numbered from page 1 to 601.

Petitioner's Formal Offer of Evidence was filed on March 22, 2022.[54] Respondent failed to file his comment thereto.[55] In the Resolution dated June 1, 2022,[56] the Court admitted all the exhibits offered by petitioner.

Respondent's *Memorandum* was filed on July 11, 2022,[57] while *Petitioner's Memorandum* was submitted on August 12, 2022.[58]

The present case was submitted for decision on August 25, 2022.[59]

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[49] *Id.*, Vol. I, pp. 462 to 464.
[50] *Id.*, Vol. I, pp. 466 to 471.
[51] *Id.*, Vol. I, *Records Verification* dated February 10, 2022 issued by the Judicial Records Division, p. 483.
[52] *Id.*, Vol. II, pp. 522 to 524.
[53] *Submission* dated March 10, 2022, Docket – Vol. II, pp. 501 to 503.
[54] *Id.*, Vol. II, pp. 525 to 537.
[55] *Id.*, Vol. II, *Records Verification* dated April 7, 2022 issued by the Judicial Records Division, p. 544.
[56] Docket, Vol. II, pp. 568 to 571.
[57] *Id.*, Vol. II, pp. 589 to 598.
[58] *Id.*, Vol. II, pp. 621 to 649.
[59] *Id.*, Vol. II, Minute Resolution dated August 25, 2022, p. 651.

ISSUES

The parties submitted the following issue for this Court's resolution, to wit:

> "Whether or not petitioner is entitled to a refund of Four Million Six Hundred Eighteen Thousand Four Hundred Forty Pesos and 76/100 (₱4,618,440.76) by way of erroneously paid alleged deficiency income tax for taxable year 2012."[60]

Petitioner's Arguments

Petitioner argues that it filed its administrative and judicial claims for refund within two (2) years from date of payment of the tax; that it erroneously paid the amount of ₱4,618,440.76; that petitioner has complied with the 20% Social Housing Requirements (SHR), and is entitled to Income Tax Holiday (ITH) for 2012 as confirmed by the Court of Appeals in the *BOI* case; and that *solutio indebiti* applies to the government.

Respondent's Counter-arguments

Respondent, on the other hand, contends that this Court has no jurisdiction over the claim for refund of the payment made on October 19, 2017; that even assuming, *arguendo,* that the court has jurisdiction over the claim for refund of the amount paid on October 19, 2017, respondent submits that petitioner is not entitled to the entire amount of refund sought; and that taxes are strictly construed against the claimant.

RULING OF THE COURT

The Court has jurisdiction over the present case, but only insofar as the amount of ₱2,771,064.46 is concerned.

Sections 204(C) and 229 of the 1997 NIRC, as amended, read as follows:

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60 *Id.*, Vol. I, Statement of the Issue, JSFI, p. 391.

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

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. **Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.** It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "**regardless of any supervening cause that may arise after payment**."[61] Such being the case, this Court sees no legal basis to grant petitioner's prayer to toll or stop the running of the said prescriptive period.

In any event, it must be noted that the suit or proceeding for the refund claim may be maintained, whether or not such tax, penalty, or sum, has been paid under protest or duress.

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[62]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the amount of tax paid are "erroneous or illegal".

In this case, the aggregate amount of ₱4,618,440.76 being claimed for refund consists of two (2) payments made by petitioner, to wit: (1) the amount of ₱1,847,376.30, which was paid on October 19, 2017;[63] and (2) the amount of ₱2,771,064.46, which was paid on March 15, 2018.[64]

Correspondingly, applying the two (2)-year prescriptive period within which to lodge the administrative and judicial claims, the payment of ₱1,847,376.30 may be the subject of claim for refund until October 19, 2019, while the payment of ₱2,771,064.46 may be the subject of such claim until March 15, 2020.

Considering that petitioner filed its *administrative* claim on October 17, 2019,[65] the same was timely filed for the whole amount of ₱4,618,440.76. However, anent the filing of the

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[61] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[62] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[63] Docket, Vol. I, Exhibits "P-13", and "P-13-a", pp. 206 to 207.
[64] *Id.*, Vol. I, Exhibits "P-14", and "P-14-a", pp. 208 to 209.
[65] *Id.*, Vol. I, Exhibit "P-17", p. 227.

judicial claim pertaining thereto on March 13, 2020,[66] the portion of such claim, *i.e.*, the payment made on October 19, 2017 amounting to ₱1,847,376.30, can no longer be taken cognizance of by this Court, since the claim was made beyond the prescriptive period of two (2) years. Thus, this Court's jurisdiction to entertain the present judicial claim pertains only to the portion relative to the amount of ₱2,771,064.46 paid on March 15, 2018.

Petitioner cannot validly invoke this Court's ruling in *Eagle II Holdco, Inc. vs. Commissioner of Internal Revenue,*[67] because the tax subject of the case pertains to refund of erroneously paid documentary stamp tax unlike in the instant case where the claim for refund pertains to income tax. Moreover, this Court's decisions do not constitute precedents.[68] Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[69]

The ruling of the Supreme Court relied upon in the said case by this Court cannot be applied to the present case because of different factual milieu. Indeed, in *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*[70] (*TMX* case), the Supreme Court held that when a tax is paid in installments, the prescriptive period of two (2) years provided in the NIRC should be counted from the date of the final payment. However, such jurisprudential pronouncement was made under different circumstances.

In the *TMX* case, the High Court held as follows:

> **"<u>In a case involving corporate quarterly income tax</u>, does the two-year prescriptive period to claim a refund of erroneously collected tax provided for in Section 292 (now Section 230) of the National Internal Revenue Code <u>commence to run from the date the quarterly income tax was paid</u>, as contended by the petitioner, <u>or from the date of filing of the Final Adjustment Return (final payment)</u>, as claimed by the private respondent?**
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> xxx xxx xxx

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[66] *Id.*, Vol. I, pp. 6 to 15.
[67] CTA Case No. 9637, September 10, 2019.
[68] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, quoting *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[69] *Id.*
[70] G.R. No. 83736, January 15, 1992.

> Therefore, the filing of quarterly income tax returns required in Section 85 (now Section 68) and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. **These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year.** This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. Consequently, **the two-year prescriptive period provided in Section 292 (now Section 230 of the Tax Code should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax.**
>
> In the case of *Collector of Internal Revenue v. Antonio Prieto* (2 SCRA 1007 [1961]), this Court held that **when a tax is paid in installments, the prescriptive period of two years provided in Section 306 (Section 292) of the National Internal Revenue Code should be counted from the date of the final payment.** This ruling is reiterated in *Commissioner of Internal Revenue v. Carlos Palanca* (18 SCRA 496 [1966]), wherein this Court stated that **where the tax account was paid on installment, the computation of the two-year prescriptive period under Section 306 (Section 292) of the Tax Code, should be from the date of the last installment.**" *(Emphases and underscoring added)*

Notably, unlike in the present case, the *TMX* case involved corporate quarterly income tax, and the issue that was addressed is whether the two (2)-year prescriptive period commence to run from the date of payment of the said corporate quarterly income tax or from the date of filing of the Final Adjustment Return (final payment of the annual corporate income tax). The present case, however, does *not* involve payment of corporate quarterly income tax, and the eventual filing of the pertinent Final Adjustment Return or the final payment of consequent annual corporate income tax; but only involves *partial* payments of assessed tax liabilities, for taxable year 2012.

Furthermore, the *TMX* case contemplated a tax being **paid in installments**, and on that premise, held that the reckoning of the two (2)-year prescriptive period begins from the date of the **last installment or final payment**. In this case, the amount that was assessed against, and was being collected from, petitioner is ₱7,866,349.29,[71] and petitioner has made **partial payments**, *i.e.,* ₱1,847,376.30 and ₱2,771,064.46 or in the total amount of ₱4,618,440.76.[72] Thus, **no "last installment or final payment"** has yet been made by petitioner.

Be that as it may, even granting that this Court may take cognizance of the whole amount of ₱4,618,440.76, the present refund claim must still fail.

There is no erroneous or illegal collection of tax to warrant the refund being claimed.

In its *Memorandum*, petitioner avers, among others, that the BOI denied petitioner's 2012 ITH application for non-compliance with the 20% Social Housing Requirement (SHR) under CR Nos. 2011-119 and 2011-249 but the Court of Appeals in the BOI Case found that petitioner had already complied with the 20% SHR and is, therefore, entitled to the grant of the ITH for 2012.[73]

Petitioner also alleged that the BOI Case is still pending with the Supreme Court but the Court of Appeals, a court equal in rank as the Honorable Court, has ruled that petitioner is entitled to the ITH incentive for taxable year 2012, hence, its decision in the BOI case remains valid and binding until and unless reversed or set aside by the Supreme Court.

The Court does not agree.

The ruling of the Court of Appeals reversing the findings of the BOI anent petitioner's entitlement to ITH is still pending with the Supreme Court[74] and therefore, has not yet attained finality. Hence, **there was no erroneous or illegal collection of tax at the time of the partial income tax payment on said assessment** in the amount of ₱2,771,064.46 due to the denial by the BOI of petitioner's ITH incentive for TY 2012.

Moreover, petitioner's contention that the subject assessment is void for lack of authority on the part of the RO

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[71]Docket, Vol. I, Exhibits "P-11" and "P-12", pp. 204 to 205.
[72] *Id.*, Vol. I, Exhibits "P-13", "P-13-a", "P-14", and "P-14-a", pp. 206 to 209.
[73] *Id.*, Vol. II, Petitioner's Memorandum, pp. 641-647.
[74] *Id.*, Vol. II, Petitioner's Memorandum, p. 647.

who conducted the examination of petitioner's books of accounts and other accounting records for taxable year 2012 is of no moment since the instant petition is a claim for refund and not an appeal against a final decision on disputed assessment.

In fine, petitioner has not shown that the subject refund claim covers an "erroneous or illegal" tax payment.

Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[75]

Further, the prescriptive period under Section 229 of the 1997 NIRC, as amended, is fixed by law and this Court has no power to toll or stop the running of the same. Thus, such request cannot be granted.

WHEREFORE, in light of the foregoing considerations, petitioner's *Petition for Review* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(with Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[75] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

HAVILAH PROPERTIES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10269

Members:

Del Rosario, *P.J., Chairperson,*
Manahan, *and*
Reyes-Fajardo, *JJ.*

Promulgated:
AUG 24 2023; 2:00PM

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review, albeit on another ground.

I am of the view that petitioner is not entitled to refund of its payment of basic deficiency income tax in the amount of ₱4,618,440.76 for taxable year (TY) 2012 on the ground that the Final Notice Before Seizure (FNBS)[1] dated August 15, 2017 issued by the Bureau of Internal Revenue (BIR) had already become final and executory.

The records of the case disclosed the following:

- **August 15, 2017** – petitioner received an FNBS signed by Officer-in-Charge Chief, Collection Division, Revenue Region No.1, Lourdes P. Anteneo;

[1] Exhibit "P-12", CTA Docket, Vol. I, p. 205.

- **October 19, 2017** – petitioner made a 40% partial payment of its basic deficiency income tax liability in the amount of ₱1,847,376.30;[2]

- **March 15, 2018** – petitioner paid the balance of the basic deficiency tax liability in the amount of ₱2,771,064.46;

- **October 17, 2019** – petitioner filed a Request for Refund, dated October 15, 2019, before the BIR Revenue District Office 3, San Fernando, La Union, anent its payment of its basic tax liability for TY 2012 amounting to ₱4,618,440.76;[3]

- **December 9, 2019** – petitioner filed a similar Request for Refund dated December 7, 2019, before Regional Director Thelma S. Milabao, BIR Region I.[4]

Since petitioner received the FNBS dated **August 15, 2017** on even date, it had only until **September 14, 2017** to appeal the same before the Court of Tax Appeals (CTA).

The records show that, instead of elevating its case to the CTA, petitioner proceeded to make partial payments of its basic income tax liability on October 19, 2017 and March 15, 2018. These partial payments were not sufficient to toll the running of the 30-day period within which to contest the validity of the FNBS before the CTA.

As petitioner never exercised the remedy of appeal as provided for in Section 7(a)(1) of Republic Act (RA) No. 1125, as amended,[5] and Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA),[6] the FNBS became final, executory, and

[2] Exhibits "P-13" and "P-13-a", CTA Docket, Vol. I, pp. 206 and 207.
[3] Exhibit "P-17", CTA Docket, Vol. I, p. 227.
[4] Exhibit "P-18", CTA Docket, Vol. I, p. 228.
[5] Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.]
[6] RULE4
JURISDICTION OF THE COURT
SEC. 3. Cases within the jurisdiction of the Court in Divisions. - The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, 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[.]

demandable. **Thus, petitioner cannot now question the legality or validity of the collection in the guise of claiming a refund on the partial payments made. Petitioner's claim for refund is not a substitute for the lost remedy of appeal to question the validity of the collection by the BIR of its tax liability.**

Indeed, the payments made by petitioner of its deficiency income tax pursuant to the FNBS, were **not in the nature of "illegal or "erroneous" collection** by respondent, more so, considering that **the correctness, validity, or legality of the FNBS can only be contested in an appropriate appeal before the CTA**. Conversely, the validity of the said deficiency income tax pursuant to a final and executory FNBS may not be assailed nor be the subject of a claim for refund under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The Supreme Court's discussion in the case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*[7] is instructive:

> "At the outset, it must be pointed out that petitioner availed of the wrong remedy. Section 228 of the NIRC governs the rules on protesting an assessment, while Section 229 provides the rules on refund of tax erroneously or illegally collected. Under Section 228, a taxpayer has **30 days** from receipt of the disputed assessment to appeal to the CTA. Otherwise, the assessment shall become final, executory, and demandable. Meanwhile, under Section 229, a taxpayer is allowed to claim a refund within **two years** from its payment of the tax erroneously or illegally collected.
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> Since petitioner received the FDDA on 19 September 2012, petitioner had only until 19 October 2012 to file an appeal before the CTA to question the FDDA. Considering that petitioner did not exercise the remedy of appeal as provided in Section 228, the FDDA became final, executory and demandable. Petitioner is thereby precluded from questioning the legality or validity of the assessment in the guise of claiming a refund of the DST and penalties it paid under protest. Simply put, petitioner's administrative claim for refund is not a valid substitute for the lost remedy of appeal to question the final decision of the CIR on the disputed assessment. Conversely, **the validity of the said deficiency DST and penalties pursuant to a final and executory FDDA may not be assailed nor be the subject of a claim for refund under Section 229**.
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> We note that in its Resolution dated 27 February 2017, the CTA First Division stated that there is no law prohibiting the refund

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[7] G.R No. 239260, March 6, 2023.

of what has been paid by virtue of the said assessment. **According to the CTA, since it was not prohibited, it is allowed. To be clear, this Court does *not* prohibit the payment of taxes under protest. Nonetheless, to validly claim a refund, the disputed assessment must have been appealed before the CTA within the 30-day period from receipt of the FDDA, especially when the cited ground for refund is the erroneous or illegal assessment. The failure to appeal the disputed assessment to the CTA within the 30-day period will render it final, executory and demandable**.

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Parenthetically, if petitioner's present claim for refund will be permitted, effectively, this Court granted it additional two-year period to challenge the validity of FDDA and allowed it to enjoy two administrative recourses with the BIR, namely: protest on the assessment and administrative claim for refund. As pointed out by Presiding Justice Del Rosario, the proper remedy for the petitioner was to appeal the FDDA before the CTA within the 30-day period and pray for the cancellation of the FDDA and the refund of the deficiency DST and penalties that it paid under protest." (Additional boldfacing supplied)

The proper remedy for petitioner was to appeal before the CTA the FNBS as "other matter" under Section 7(a)(1) of RA 1125, as amended, and Section 3(a)(1), Rule 4 of RRCTA and pray for the cancellation of the FNBS and refund of the basic deficiency income tax that it paid under protest.

For petitioner's failure to timely appeal the FNBS before the CTA, it is thereby precluded from questioning the legality or validity of the FNBS in the guise of claiming a refund of the taxes it paid on October 19, 2017 and on March 15, 2018 in the aggregate amount of ₱4,618,440.76. Simply put, petitioner's judicial claim for refund is not a valid substitute for the lost remedy of contesting the FNBS.

All told, I VOTE to **DENY** petitioner's Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice