REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PMFTC, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8691

Members:

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

Promulgated:

JUL 27 2015
10:35 a.m.

x -- x

DECISION

BAUTISTA, J:

THE CASE[1]

This Petition for Review filed on August 12, 2013, pursuant to Section 7(a)(1)[2] of Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503, seeks for the Court to render judgment:[3]

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[1] *Records,* CTA Case No. 8691, p. 684.

[2] 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;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x

[3] *Records,* CTA Case No. 8691, p. 17.

1. Declaring that petitioner is entitled to the application of the preferential tax rate of 10% based on Article 13(2)(b)(iii) of the RP-US Tax Treaty in relation to Article 12(2)(b) of the RP-China Treaty and the RP-UAE Tax Treaty;

2. Declaring Section 14 of Revenue Memorandum Order ("RMO") 72-10 null and void for being contrary to the provisions of the RP-US Tax Treaty, existing laws and the Constitution; and

3. Ordering respondent to issue a cash refund or tax credit certificate ("TCC") in favor of petitioner in the amount of Php559,097,313.63 representing excess withholding tax on royalty payments to Philip Morris Global Brands, Inc. ("PMGB".)

THE PARTIES

Petitioner, PMFTC, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with offices at Lot 3, Phase 1B, First Philippine Industrial Park, Tanauan City, Batangas; and 27th Floor, Tower One, The Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas, Makati City.[4]

Respondent is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City.[5]

THE FACTS

The factual antecedents of this case are as follows:

On December 13, 2010, petitioner entered into a Trademark License Agreement ("TLA")[6], duly registered with and approved by the Intellectual Property Office ("IPO",)[7] whereby petitioner was

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[4] *Id.*, pp. 1395-1396.
[5] *Id.*, *JSFI*, p. 672.
[6] *Id.*, pp. 1412-1492.
[7] *Id.*, pp.1452-1455.

granted the exclusive right to use various trademarks and other intellectual property rights of PMGB within the Philippines.[8]

Pursuant to the provisions of the TLA, petitioner paid royalties to PMGB from July 2011 to October 2012 in the total gross amount of Php2,795,486,568.18.[9]

From August 15, 2011 to November 14, 2012, petitioner withheld and remitted to respondent income tax in the aggregate amount of Php838,645,970.45 representing the 30% withholding tax due on royalty payments under the TLA for the period July 2011 to October 2012.[10]

On July 31, 2013, as withholding agent of PMGB, petitioner filed with the Bureau of Internal Revenue ("BIR") Large Taxpayers Service an administrative claim for refund or issuance of a TCC in the total amount of Php559,097,313.63, corresponding to the excess withholding tax remittances on royalty payments it made to PMGB for the period of July 2011 to October 2012.[11]

Petitioner's claim for tax refund is based on Article 13(2)(b)(iii) of the RP-US Tax Treaty, in relation to Article 12(2)(b) of the RP-China and the RP-UAE Tax Treaties, which effectively provides a preferential rate of 10% on royalties remitted by a Philippine corporation to residents of the US.[12]

Due to the inaction of respondent on petitioner's claim, the latter filed the instant Petition for Review on August 12, 2013.

Respondent filed her Answer to the Petition for Review on October 11, 2013, interposing the following Special and Affirmative Defenses:[13]

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[8] *Id.*, p. 1415.
[9] *Id.*, pp. 1532, 1533, 1539, 1540, 1542, 1543, 1545, 1546, 1548, 1549, 1551, 1553, 1556, 1557, 1559, 1560, 1562, 1563, 1565, 1568, 1571, 1572, 1574, 1575, 1577, 1578, 1581, 1582, 1584, 1585, 1587, and 1588.
[10] *Id.*, pp. 1538, 1541, 1544, 1547, 1550, 1555, 1558, 1561, 1564, 1570, 1573, 1576, 1580, 1583, 1586, and 1589.
[11] *Id.*, pp. 1762-1933.
[12] *Id.*
[13] *Id.*, pp. 243-267.

"**<u>The subject matter is not within the jurisdiction of the Honorable Court.</u>**

4. With all due respect, it is the position of the respondent that the subject matter of the instant petition is not within the jurisdiction of the Honorable Court.

5. Petitioner asks the Honorable Court for the following reliefs:

> 'WHEREFORE, it is respectfully prayed this (sic) Honorable Court that a judgment be rendered:
>
> 1. Declaring that Petitioner is entitled to the application of the preferential tax rate of 10% based on Article 13(2)(b)(iii) of the PH-US Tax Treaty in relation to Article 12(2)(b) of the PH-China Treaty and the PH-UAE Tax Treaty.
>
> 2. Declaring that Petitioner is entitled to a tax refund or issuance of tax credit certificate in the amount of P559,097,313.63, corresponding to the excess withholding tax on royalty payments to PMGB;
>
> 3. Ordering Respondent to issue a cash refund or tax credit certificate in favor of Petitioner in the amount of P559,097,313.63, and
>
> 4. Declaring Section 14 of RMO 72-10 null and void for being contrary to the provisions of the PH-US Tax Treaty, existing laws and the Constitution.
>
> Petitioner prays for such other reliefs as may be just and equitable.'

6. Revenue Memorandum Order No. 72-10 was issued pursuant to the quasi-legislative or rule-making power of the respondent. The same was promulgated to interpret, clarify or explain statutory regulations. Thus, the regular courts, and not this Honorable Court has jurisdiction over the present petition.

7. The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. Section 7 of Republic Act (R.A.) No. 9282, amending R.A. No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals*, provides:

> 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;
>
> (2) Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

Also, Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals state:

RULE 4
Jurisdiction of the Court

xxx

SECTION 3. Cases Within the Jurisdiction of The Court in Divisions. - The Court in Divisions shall exercise:

(a) Exclusive original 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;

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the

> Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case, Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; x x x

8. In ***British American Tobacco vs. Jose Isidro N. Camacho, et al.*** the Honorable Supreme Court held that:

> **While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political**

departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

In Drilon vs. Lim, the High Court held that, at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, B.P. 129 vests in the regional trial court's jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. (Emphasis supplied)

9. In the same vein, the Honorable Court in ***1-UTAK, et. al. vs. Bureau of Infernal Revenue and Joel L. Tan-Torres*** ruled:

From the foregoing, it may be inferred that although the Supreme Court itself recognized the general jurisdiction of this Court over tax disputes as embodied in Section 7 of R.A. No.

1125, as amended by R.A. 9282, it nevertheless did not interpret the enumeration therein to include the issue regarding the validity of a rule or law issued by the administrative agency in the exercise of its quasi-legislative function. Instead, the Supreme Court categorically ruled that the jurisdiction over the issue of validity or constitutionality of a law or rule, such as those assailed in the present petition, is lodged with the Regional Trial Courts in the exercise of its general jurisdiction and not with this Court.

It must be pointed out that the quasi-legislative or rule-making power of an administrative agency should not be confused with its quasi-judicial or administrative adjudicatory power. Quasi-judicial or administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an 'act which is essentially of an executive or administrative nature, where the power to act in such-manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.

The Revenue Memorandum Circulars assailed in this case, RMC No. 52-2005, RMC No. 72-2009 and RMC No. 30-2010, are considered as rules issued by the Bureau of Internal Revenue as an administrative body exercising its rule-

> making or quasi-legislative function. Therefore, **this Court does not have the jurisdiction to rule on the validity of the above-mentioned Revenue Memorandum Circulars.** (Emphasis supplied)

10. Based on the foregoing, the jurisdiction of the Honorable Court is clearly limited to tax disputes arising from assessments or refunds. When petitioner questioned the validity and constitutionality of Revenue Memorandum Order (RMO) No. 72-10 by filing the instant petition, the Honorable Court did not acquire jurisdiction over the subject matter. Petitioner should have brought the matter to the Regional Trial Court.

Assuming ex gratia argumenti that the Honorable Court has jurisdiction, still the petition must fail for petitioner has no legal personality to claim for a refund.

11. The filing of a claim for refund or tax credit whether administrative or judicial, is appropriate only after the taxpayer subject to tax has paid the tax to the government or the government's duly authorized representative. Therefore, the proper person to claim for refund or tax credit is the person on whom the tax is imposed by the statute.

12. In fact, in the case of ***Silkair (Singapore) PTE. LTD., vs. Commissioner of Internal Revenue,*** the Honorable Supreme Court had the occasion to rule that:

> **[']The person entitled to claim a tax refund is the statutory taxpayer.** Section 22(N) of the NIRC defines a taxpayer as any person subject to tax.['] In Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp., the Court ruled that:

> **'A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote a legal obligation or duty to pay a tax.'**['](Emphasis and underscoring supplied)

13. In the case at bar, petitioner admitted in paragraph 7 of the Petition for Review that it is the **withholding agent** of Philip Morris Global Brands, Inc. (PMGB). Moreover, petitioner admitted that it is the one that **filed** the administrative claim for refund or issuance of a tax credit certificate in the total amount of P559,097,313.63 corresponding to the excess withholding tax remittances on royalty payments it made to PMGB for the period July 2011 to October 2012.

14. Being the withholding agent, petitioner is not required by law nor the person **statutorily** liable to pay the income tax on royalty income but PMGB, following the provision of Section 28(B)(1) of the 1997 NIRC, as amended. Petitioner's obligation is to withhold the tax as agent of the government. The taxes they withhold are held in trust for the government.

15. **Under the withholding tax system, the payee is the taxpayer upon whom the tax is imposed, while the withholding agent simply acts as an agent or a collector of the government to ensure the collection of taxes.** The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.

16. In ***Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue***, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

> [']The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold, whereas the Commissioner and his deputies are not made liable by law.[']

17. Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.

18. Corollary, Section 204 (c) of the NIRC 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 **<u>taxpayer</u>** 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 and underscoring supplied)

19. The abovementioned provision contemplates that it is the **taxpayer** who should file for refund or tax credit before the Commissioner of Internal Revenue.

20. In view of the foregoing, it bears stressing that petitioner has no legal standing to pursue the present petition since it is not a real party in interest. It is apt to state here that the real party in interest as provided in Section 2, Rule 3 of the Rules of Court is a party who stands to be benefitted or injured by the judgment in the suit or **the party entitled to avail of the suit.**

21. Section 2, Rule 3 of the 1997 Rules of Court provides:

> SEC.2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the

party entitled to the avails of the suit. Unless, otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

22. Accordingly, the present petition should be dismissed at the outset considering that the present suit is not brought in the name of the real party in interest which is PMGB. Simply put, the present petition states no cause of action. As a general rule, one having no right or interest to protect cannot invoke the jurisdiction of the court as a party plaintiff in an action.

Moreover, assuming arguendo that the Honorable Court acquired jurisdiction, and further assuming that petitioner has legal personality to pursue this cause of action still the petition must fail for the petitioner and PMGB slept on its rights.

23. Petitioner as the income payor failed to file any Tax Treaty Relief Application (TTRA) as well as the documentary requirements provided under Revenue Memorandum Order (RMO) No. 72-10 hence the preferential tax rate under the treaty was not applied.

24. RMO No. 72-10 was issued to streamline the processing of Tax Treaty Relief Applications (TTRA) and to prescribe the documentary requirements for the processing of applications for **relief from double taxation pursuant to existing Philippine tax treaties** in order to improve efficiency and service to the taxpayers.

25. Section 14 of RMO No. 72-10 provides:

SECTION 14. When and Where to File the TTRA. - All tax treaty relief applications (updated BIR Forms No. 0901-D, 0901-I, 0901-

> R, 0901-P, 0901-S, 0901-T, 0901-O and 0901-C) relative to the implementation and interpretation of the provisions of Philippine tax treaties shall only be submitted to and received by the International Tax Affairs Division (ITAD). If the forms or any necessary documents are submitted to any other BIR Office, the application shall be considered as improperly filed.
>
> Filing should always be made BEFORE the transaction. Transaction for purposes of filing the TTRA shall mean before the occurrence of the first taxable event.
>
> Failure to properly file the TTRA with ITAD within the period prescribed herein shall have the effect of disqualifying the TTRA under this RMO.

26. First fixable event for purposes of filing the Tax Treaty Relief Application (TTRA), shall mean the first or the only time when the income payor is required to withhold the income tax thereon or should have withheld taxes thereon had the transaction been subjected to tax; and for 0901-C applications, before the due date of the Documentary Stamp Tax (DST) on the sale of the shares of stock.

27. It must be pointed out that the earliest taxable event subject of the petition is the withholding of royalty payments on July 2011 and remitting of royalty payments on 15 August 2011, respectively. From 15 August 2011 up to October 2012, petitioner allegedly withheld and remitted to the BIR the amount of P838,645,970.45 corresponding to royalty payments to PMGB. Prior to or during the aforesaid period neither petitioner nor PMGB filed any TTRA with the ITAD.

28. Petitioner and PMGB slept on their right and therefore is in no position to file this petition to seek relief from the Honorable Court. In fact, several decisions have

been issued confirming the necessity of a prior application for tax treaty relief application before a taxpayer can avail of the preferential tax treaty treatments.

29. Petitioner and PMGB were remiss in their duty to file on time the necessary TTRA as provided for in RMO No. 72-10 verily petitioner is liable for withholding the regular tax rate of 30 percent on royalty payments as provided for in the Tax Code.

30. The gains realized by PMGB as royalty payments were subject to the regular tax rate due to the fact that petitioner failed to apply for TTRA during the prescribed period. Petitioner is penalized by its own doing - sleeping on its rights. It has been consistently ruled that **the law helps the vigilant but not those who sleep on their rights.**

BIR Rulings have the force and effect of law.

31. In paragraph 15 of the Petition petitioner admitted that respondent issued RMO No. 72-10 in accordance with her authority under the first paragraph of Section 4 of the 1997 NIRC, as amended which provides:

> SEC. 4. - Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - **The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner**, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner,

subject to the exclusive appellate jurisdiction of the Court of Tax Appeals. (Emphasis supplied)

32. Interpretations of the provisions of the Tax Code and other tax laws are made by the Commissioner through the issuance of the following administrative issuances:

X...X...X

b. BIR Rulings - There are now several types of rulings that are issued by the BIR. These are the (a) BIR Rulings; (b) Value Added Tax (VAT) Rulings; (c) International Tax Affairs Division (ITAD) Rulings; (d) Delegated Authorities (DA) or Unnumbered Rulings (UN).

X...X...X

c. Revenue Memorandum Orders (RMO) - These are directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow, and the like, which are necessary to carry out programs or to achieve policy goals and objectives. These instructions may be of general or of limited scope, yet in any case require definite compliance by those concerned. They are not addressed to any particular group of employees or offices because they are for general information, but those directly concerned with the compliance of these provisions are either definitely stated or unmistakably implied thereat.

33. It is crystal clear that the power of respondent CIR to interpret the law through revenue issuances particularly ITAD Rulings and Revenue Memorandum Orders is vested by law, specifically the 1997 NIRC, as amended and is therefore valid and constitutional. Hence,

the opinion or ruling of respondent CIR is accorded much weight.

34. Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to great respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.

35. Further, in the case of ***Commissioner of Internal Revenue vs. Court of Appeals, R.O.H. Auto Products Philippines, Inc., Court of Tax Appeals*** the Honorable Supreme Court had the occasion to rule:

> The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.

36. RMO No. 72-10 was issued in accordance with the power of the CIR to make rulings pursuant to tax treaties. The tax treaty subject of the instant case is the PH-US Tax Treaty. By reason of our bilateral negotiations with

US, we have agreed to have our right to tax reduced to a certain extent to attain the goals set forth in the treaty.

37. Petitioner conveniently argues that pursuant to the principle of *pacta sunt servanda* in relation to the PH-US Tax Treaty vis-à-vis PH-China Tax Treaty and PH-United Arab Emirates Tax Treaty the 10% preferential tax rate for royalty payments should be applied/granted. But it bears emphasis that petitioner and PMGB did not file a TTRA in accordance with RMC No. 72-10.

38. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same.

39. Petitioner's contention that the PH-US Tax Treaty is part of the law of the land and as such the aforesaid treaty assumes greater weight has no leg to stand on. It is a settled rule that in case of conflict between municipal law and international law, municipal law must prevail and should be upheld by our courts.

40. In several cases decided by the Supreme Court, the High Court held that in a situation where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that the municipal law should be upheld by the municipal courts for the reason that such courts are organs of municipal law and are accordingly bound by it in all circumstances. The fact that the international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere.

41. In fact in the case of ***Secretary of Justice vs. Lantion***, the High Court said that the doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments.

42. All told, BIR Rulings have the force and effect of law and must be accorded with great respect.

It is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not ipso facto granted upon filing of the claim.

43. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. It has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

44. Respondent submits that Petitioner failed to demonstrate that the amount of P559,097,313.63 which is the subject of the case at bar was erroneously or illegally collected. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law.

45. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of P559,097,313.63 representing alleged overpayment of royalty tax for the period July 2011 to October 2012.

46. In the case entitled ***Commissioner of Internal Revenue vs. Rosemarie Acosta,*** the Supreme Court had the occasion to say:

> [']xxx Noteworthy, the requirements under Section 230 (now Section 204) for refund claims are as follows:

1. A **written claim** for refund or tax credit must be filed by the taxpayer with the Commissioner;

2. The claim for refund must be a **categorical demand** for reimbursement;

3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court **within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.**

In our view, the law is clear. A claimant must first file a written claim for refund, **<u>categorically demanding recovery of overpaid taxes</u>** with the CIR, before resorting to an action in Court. This obviously is intended, first, **<u>to afford the CIR an opportunity to correct the action of subordinate officers</u>**; and second, to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure xxx.['] (Emphasis and underscoring supplied)

47. In order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites:

a.) That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(c) in relation to Section 229 of the NIRC of 1997;

b.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

N

c.) That the income upon which the taxes were withheld was included in the return of the recipient.

48. Further, Petitioner must prove that it has fully complied with the requirements of Revenue Memorandum Order No. 53-98, for purposes of submission of the supporting documents, otherwise, there would be no sufficient compliance with regard to the filing of an administrative claim for tax credit/refund.

49. Likewise, Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law, as provided in Sections 204(c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit, which provides:

> [']**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** - The Commissioner may -
>
> (A) xxx
>
> (B) 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. **<u>No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty</u>**: *Provided, however,* That a return filed showing an overpayment shall be

> considered as a written claim for credit or refund.
>
> **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, 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.[']

50. Petitioner alleged that it filed its initial administrative claim for refund on 31 July 2013 amounting to P559,097,313.63 representing alleged excess royalty payment for the period July 2011 to October 2012. It bears stressing that exactly twelve (12) days after the filing of the aforesaid alleged administrative claim or on 12 August 2013, it filed before the Honorable Court its Petition for Review. Respondent therefore, was not accorded the fullest opportunity to act appropriately on the matter. It would be highly improbable to grant or deny the claim for refund in a matter of twelve (12) days. In fact, petitioner was very much aware of the two (2) year prescriptive period embodied in Section 229 of the 1997 NIRC, as amended. As found in Paragraph 9 of its Petition for

Review, Section 229 of the NIRC of 1997, as amended, was even made the basis for the filing of the administrative claim for refund of the alleged excess royalty tax. Mindful of Section 229, petitioner should have at least filed its application for tax refund earlier than 31 July 2013, for that matter, so that respondent will be given ample time to review and evaluate its application for tax refund.

51. In cases such as this, before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under **substantive** law, it must first be proved that there was **procedural** compliance in pursuing the administrative claim leading to the **appellate** proceedings. As stated by the Honorable Supreme Court in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue***:

> [']Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. **First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by

> presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.**['] *(Emphasis and underscoring supplied)*

52. As can be seen, proper substantiation begins in the administrative level. So if the denial (by inaction) of the administrative claim is because of non-compliance with legal procedural requirements, then true to its appellate nature, the Honorable Court must sustain the decision of the BIR since it suffers no infirmity.

53. The purpose of requiring the filing of the administrative claim for refund/tax credit and submission of supporting documents relevant to a claim for tax refund/credit is to give the administrative agency concerned the opportunity to ascertain the veracity and validity of the claim. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board, or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with a condition precedent renders the Petition for Review dismissible.

54. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because there are matters

peculiarly within the competence of the administrative agency.

55. The failure of Petitioner to substantiate its claim for refund before the office of the respondent and the filing of the instant petition before the Honorable Court deprived respondent of the opportunity to fully exercise her function to decide claims for refund, correct, modify or affirm the findings of her subordinates. It must be remembered, that in the case of ***Jarol vs. Commission on Elections***, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

56. Finally, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

57. Based on the foregoing, petitioners claim for refund has no basis in fact and in law. Thus, the instant petition should be denied for lack of merit."

Petitioner then filed its Reply to respondent's Answer on October 29, 2013.[14]

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[14] *Id.*, pp. 270-288.

On December 4, 2013, the parties filed their Joint Stipulation of Facts and Issues ("JSFI",)[15] which was adopted by the Court in its Pre-trial Order dated December 16, 2013.[16]

On March 31, 2014, petitioner filed its Formal Offer of Evidence by registered mail.[17] Respondent then filed her Comment (re: Petitioner's Formal Offer of Evidence) on April 21, 2014 to inform the Court that she has no objection to the admission of petitioner's exhibits.[18]

In a Resolution dated April 29, 2014, the Court admitted all the exhibits offered by petitioner.[19]

On June 11, 2014, Memorandum for the Petitioner was filed,[20] followed by respondent's Memorandum filed on July 7, 2014 *via* registered mail.[21]

In a Resolution dated July 31, 2014, the instant case was considered submitted for decision.[22]

Hence, this decision.

THE ISSUES

Based on the JSFI[23] filed by the parties on December 4, 2013, the issues to be resolved are as follows:

1. WHETHER PETITIONER'S ROYALTY PAYMENTS TO PMGB UNDER THE TLA FROM JULY 2011 TO OCTOBER 2012 ARE ENTITLED TO THE APPLICATION OF THE PREFERENTIAL RATE OF 10% UNDER ARTICLE 13(2)(B)(III) OF THE RP-US TAX TREATY IN RELATION TO ARTICLE 12(2)(B) OF THE RP-CHINA AND THE RP-UAE TAX TREATIES.

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[15] *Id.*, pp. 672-679.
[16] *Id.*, pp. 684-691.
[17] *Id.*, pp. 1339-1374.
[18] *Id.*, pp. 1944-1946.
[19] *Id.*, pp. 1948-1949.
[20] *Id.*, pp. 1957-1991.
[21] *Id.*, pp. 2025-2048.
[22] *Id.*, p. 2051.
[23] *Id.*, pp. 672-673.

2. WHETHER PETITIONER IS ENTITLED TO A REFUND OR ISSUANCE OF A TCC FOR THE TOTAL AMOUNT OF PHP559,097,313.63, CORRESPONDING TO THE EXCESS WITHHOLDING TAX REMITTANCES ON ROYALTY PAYMENTS IT MADE TO PMGB FOR THE PERIOD OF JULY 2011 TO OCTOBER 2012.

PETITIONER'S ARGUMENTS:

Petitioner argues that the "Most Favored Nation" clause under Article 13(2)(b)(iii) of the RP-US Tax Treaty should apply to its royalty payments to PMGB under the TLA, which was duly registered with and approved by the IPO. In so determining the lowest rate granted to a third party, it alleges that the RP-China and the RP-UAE Tax Treaties, which grant the rate of 10%, should apply.

Petitioner further maintains that the failure to file an application for tax treaty relief does not preclude a qualified entity from enjoying the benefits provided therein; that the BIR issuances do not prevail over tax treaties for the latter have the status of statutes; that the withholding agent of a non-resident foreign corporation has the legal standing to file the present claim; that RMO 53-98[24] does not apply to claims for refund; and that petitioner complied with Sections 204(C) and 229 of the 1997 National Internal Revenue Code ("NIRC",) as amended, in filing its judicial and administrative claims.

RESPONDENT'S ARGUMENTS:

On the other hand, respondent argues that the constitutionality of RMO 72-10[25] cannot be questioned before the Court since the matter is outside its jurisdiction; that petitioner does not have legal personality to file its claim; that petitioner failed to prove that it remitted the correct amount to PMGB and to the BIR; and that petitioner did not file the required tax treaty application.

THE RULING OF THE COURT

[24] Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket, *Revenue Memorandum Order No. 53-98* (1998).
[25] Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties, *Revenue Memorandum Order No. 72-10* (2010).

The Court finds merit in the Petition for Review.

Timeliness of the filing of both the administrative and judicial claims for refund or issuance of a TCC

The relevant provisions of the 1997 NIRC are Sections 204(C) and 229, which provide the procedures governing the refund of erroneously paid taxes, to *wit*:

> "SECTION 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.
>
> xxx xxx xxx
>
> 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 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 ours]

Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of taxes erroneously or illegally collected and filed with the Court. Both administrative and judicial claims must be filed within two (2) years from the date of payment of the tax.

In the instant case, petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld or BIR Form No. 1601-F ("Monthly Remittance Returns") and made the following tax payments for the period covering July 2011 to October 2012:

PERIODS	EXHIBITS	FILING DATES	EXHIBITS	PAYMENT DATES
Jul-11	"P-31"	8/15/2011	"P-31-2"	8/15/2011
Aug-11	"P-32"	9/14/2011	"P-32-2"	9/14/2011
Sep-11	"P-33"	10/14/2011	"P-33-2"	10/14/2011
Oct-11	"P-34"	11/14/2011	"P-34-2"	11/14/2011
Nov-11	"P-35"	12/13/2011	"P-35-2"	12/14/2011
Dec-11	"P-36"	1/16/2012	"P-36-2"	1/16/2012
Jan-12	"P-37"	2/14/2012	"P-37-2"	2/14/2012
Feb-12	"P-38"	3/14/2012	"P-38-2"	3/14/2012
Mar-12	"P-39"	4/16/2012	"P-39-2"	4/16/2012
Apr-12	"P-40"	5/14/2012	"P-40-2"	5/14/2012
May-12	"P-41"	6/13/2012	"P-41-2"	6/15/2012
Jun-12	"P-42"	7/16/2012	"P-42-2"	7/16/2012
Jul-12	"P-43"	8/14/2012	"P-43-2"	8/14/2012
Aug-12	"P-44"	9/14/2012	"P-44-2"	9/14/2012
Sep-12	"P-45"	10/15/2012	"P-45-2"	10/15/2012

Oct-12	**"P-46"**	11/14/2012	**"P-46-2"**	11/14/2012

Counting from the dates when petitioner made its tax payments, it had, at the earliest, until August 15, 2013 within which to file its refund administratively and judicially.

Petitioner's administrative claim for refund was filed on July 31, 2013[26] and the Petition for Review was filed on August 12, 2013. Therefore, both claims were filed on time.

The preferential tax rate under the RP-US Tax Treaty apply to petitioner's royalty payments to PMGB.

The RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into for the avoidance of double taxation.[27] 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.[28] The 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.[29]

The purpose of a "Most Favored Nation" clause is to grant to the contracting party treatment no less favorable than that which has been or may be granted to the "most favored" among other countries. The "Most Favored Nation" clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the "Most Favored Nation."[30]

The "Most Favored Nation" clause in the RP-US Tax Treaty can be found in Article 13 thereof, which provides as follows:

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[26] *Records*, pp. 1762-1777, along with attachments.
[27] *Comissioner of Internal Revenue v. S.C. Johnson and Son, Inc. and Court of Appeals*, G.R. No. 127105, June 25, 1999, 309 SCRA 87.
[28] *Id.*
[29] *Id.*
[30] *Id.*

"**ARTICLE 13**

ROYALTIES

(1) Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

(2) However, the tax imposed by that other Contracting State shall not exceed —

(a) In the case of the United States, 15 percent of the gross amount of the royalties, and

(b) In the case of the Philippines, the least of:

(i) 25 percent of the gross amount of the royalties,

(ii) 15 percent of the gross amount of the royalties, where the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities, and

(iii) the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or other like right of property, or for information concerning industrial, commercial or scientific experience. [T]he term "royalties" also includes gains

derived from the sale, exchange or other disposition of any such right or property which are contingent on the productivity, use, or disposition thereof.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

(5) Where an amount is paid to a related person and would be treated as a royalty but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the amount as would have been paid to an unrelated person. In such a case, the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable."[31] [Emphases ours]

In order to take advantage of the "Most Favored Nation" clause, the following conditions should be met: *(1)* the payor must be a resident of the Philippines; *(2)* the payee must be a resident of the US; *(3)* royalties are paid by the payor to the payee; *(4)* the tax rate imposed on royalties paid to a third state is lower than 15%; and *(5)* the royalties are of the same kind and under the same circumstances as the ones paid to a resident of such third state.[32]

Anent the first and second conditions, Article 3 (Fiscal Residence) of the RP-US Tax Treaty provides that a resident of the Philippines includes a Philippine corporation and a US resident includes a US corporation.[33]

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[31] Convention Between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes in Income [RP-US TAX TREATY] (1983).
[32] Article 13 of the RP-US Tax Treaty.
[33] (1) In this Convention:

In the present case, petitioner is a resident of the Republic of the Philippines, as provided in its Amended Articles of Incorporation[34]. While the Certificate of Incorporation of Philip Morris International Finance Corporation[35] (now PMGB,) and the Certification by the Field Director of the Accounts Management Division of the Internal Revenue Service ("IRS",)[36] all show that PMGB is a resident of the State of Delaware, United States of America.

Anent the third condition, the Certifications of Bank Remittances[37] show that the total amount of royalties actually remitted by petitioner to PMGB is Php1,742,581,961.93,[38] as follows:

PERIOD	ACTUAL OUTWARD REMITTANCES PER BANK CERTIFICATIONS (in Php)	EXHIBITS
Jul-11	137,187,718.95	"P-26"
Oct-11	129,989,138.61	"P-28" & "P-30"
Nov-11	112,333,708.29	"P-25"
Dec-11	83,727,387.69	"P-26"
Jan-12	130,338,216.24	"P-24"
Feb-12	122,039,474.52	"P-26"
Mar-12	128,999,256.60	"P-26"
Apr-12	114,008,761.61	"P-24"
May-12	127,950,709.01	"P-24"
Jun-12	128,257,323.48	"P-27"
Jul-12	134,387,137.90	"P-24"

(a) The term "resident of the Philippines" means:
(i) A Philippine corporation, and
(ii) Any other person (except a corporation or any entity treated as a corporation for Philippine tax purposes) resident in the Philippines for purposes of Philippine tax, but in the case of a professional partnership, estate, or trust only to the extent that the income derived by such partnership, estate, or trust is subject to Philippine tax as the income of a resident either in the hands of the respective entity or of its partners or beneficiaries.
(b) The term "resident of the United States" means:
(i) A United States corporation, and
(ii) Any other person (except a corporation or any entity treated as a corporation for United States tax purposes) resident in the United States for purposes of United States tax, but in the case of a partnership, estate, or trust only to the extent that the income derived by such partnership, estate, or trust is subject to United States tax as the income of a resident either in the hands of the respective entity or of its partners or beneficiaries.

xxx xxx xxx

[34] *Records*, pp. 1396-1405.
[35] *Id.*, pp. 1495-1499.
[36] *Id.*, p. 1505.
[37] *Id.*, pp. 1524-1530
[38] Amounts in USD were converted to Philippine Pesos based on the exchange rates on the date of remittances: Php43.81 on November 29, 2011; Php43.68 on December 23, 2011; Php42.14 on July 26, 2012; and Php41.26 on October 31, 2012.

Aug-12	111,642,140.03	"P-23"
Sep-12	139,188,798.48	"P-29"
Oct-12	142,532,190.52	"P-23"
TOTAL	**1,742,581,961.93**	

Anent the fourth and fifth conditions, petitioner refers to the RP-China[39] and the RP-UAE[40] Tax Treaties for the lowest Philippine tax rate on royalties paid to a resident of a third state.

Article 12 of the RP-China Tax Treaty[41] provides the tax rate on royalties paid to a resident of a third state, as follows:

"**ARTICLE 12**

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

xxx xxx xxx

b) 10 per cent of the gross amount of royalties arising from the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

For as long as the transfer of technology, under Philippine law, is subject to approval, the limitation of the

[39] Effective January 1, 2002.
[40] Effective January 1, 2009.
[41] Effective January 1, 2002.

tax rate mentioned under (b) shall, in the case of royalties arising in the Republic of the Philippines, only apply if the contract giving rise to such royalties has been approved by the Philippine competent authorities."

In BIR Revenue Memorandum Circular No. ("RMC") 46-02[42], it was confirmed that the preferential tax rate of 10% on royalty payments to residents of US and China are paid under similar circumstances, provided the following requirements are met:

"1. It is necessary that there be an agreement or a contract whereby the royalties paid to the US must originate from the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process, or from the use, or the right to use, industrial, commercial or scientific experience; and

2. For as long as the contract or agreement is subject to approval under Philippine law, the same must be duly approved by the Philippine competent authorities."

These two (2) requirements were complied with. Petitioner entered into a TLA with PMGB. The former was granted by the latter the exclusive right to use the latter's trademarks and other intellectual property rights in the Philippines[43], and the former presented its IPO Certificate of Compliance No. 5-2012-00114[44], valid from December 13, 2010 to February 24, 2035.[45]

On the other hand, the RP-UAE Tax Treaty likewise imposes a rate of 10%, *viz.*:

"**ARTICLE 12**

Royalties

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[42] dated September 2, 2002.
[43] *Records*, pp. 1412-1451.
[44] *Id.*, pp. 1452-1455.
[45] The BIR has consistently allowed the application of the "Most Favored Nation" clause upon the claim that the agreement is registered with the IPO; *see ITAD Ruling No. 142-03*, September 23, 2003; and *ITAD Ruling No. 121-00*, August 29, 2000.

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, the royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall, by mutual agreement, settle the mode of application of this limitation. xxx"

In this regard, the BIR issued ITAD BIR Ruling No. 079-13[46] declaring that the royalties under the RP-US and the RP-UAE Tax Treaties are also of the same kind and paid under the same circumstances.

Having complied with all the requirements for the application of the preferential treaty rate of 10% under the RP-China Tax Treaty and/or the RP-UAE Tax Treaty, petitioner is entitled to the preferential final tax rate of 10% on its payments of royalties to PMGB.

Petitioner is entitled to a refund or issuance of a TCC corresponding to the excess withholding tax remittances on royalty payments it made to PMGB.

Applying the 10% preferential tax rate on the royalty payments made by petitioner to PMGB for the period from July 2011 to October 2012,[47] it is shown that out of the Php735,633,026.66 Final Withholding Tax withheld by petitioner and remitted to the BIR,[48] it overpaid the total amount of Php490,422,017.77.

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[46] *ITAD BIR Ruling No. 079-13*, April 3, 2013.
[47] Excluding August and September 2011 for not being properly substantiated.
[48] *Id.*, pp. 1532, 1539, 1542, 1545, 1548, 1551, 1556, 1559, 1562, 1565, 1571, 1574, 1577, 1581, 1584, and 1587; pp. *Id.*, pp. 1538, 1541, 1544, 1547, 1550, 1555, 1558, 1561, 1564, 1570, 1573, 1576, 1580, 1583, 1586, and 1589.

PERIOD	WITHHOLDING TAXES ACTUALLY PAID PER BIR FORM NO. 1601-F & EFPS DETAILS	EXHIBITS	WITHHOLDING TAXES AT 10% PREFERENTIAL RATE	EXCESS WITHHOLDING TAXES PAID
Jul-11	48,419,194.98	"P-31" & "P-31-2"	16,139,731.66	32,279,463.32
Oct-11	55,025,519.60	"P-34" & "P-34-2"	18,341,839.87	36,683,679.73
Nov-11	48,137,507.51	"P-35" & "P-35-2"	16,045,835.84	32,091,671.67
Dec-11	35,883,165.08	"P-36" & "P-36-2"	11,961,055.03	23,922,110.05
Jan-12	55,859,235.53	"P-37" & "P-37-2"	18,619,745.18	37,239,490.35
Feb-12	52,302,631.90	"P-38" & "P-38-2"	17,434,210.63	34,868,421.27
Mar-12	55,285,395.69	"P-39" & "P-39-2"	18,428,465.23	36,856,930.46
Apr-12	48,860,897.83	"P-40" & "P-40-2"	16,286,965.94	32,573,931.89
May-12	54,836,018.15	"P-41" & "P-41-2"	18,278,672.72	36,557,345.43
Jun-12	54,885,253.04	"P-42" & "P-42-2"	18,295,084.35	36,590,168.69
Jul-12	57,594,487.67	"P-43" & "P-43-2"	19,198,162.56	38,396,325.11
Aug-12	47,846,631.44	"-P-44" & "P-44-2"	15,948,877.15	31,897,754.29
Sep-12	59,611,863.72	"P-45" & "P-45-2"	19,870,621.24	39,741,242.48
Oct-12	61,085,224.51	"P-46" & "P-46-2"	20,361,741.50	40,723,483.01
TOTALS	**735,633,026.66**		**245,211,008.89**	**490,422,017.77**

Therefore, petitioner is entitled to a tax refund in the total amount of Php490,422,017.77.

The Court has no jurisdiction to rule on the constitutionality of Section 14 of RMO 72-10.

Finally, petitioner challenged the validity of Section 14 of RMO 72-10, which requires taxpayers availing of tax exemptions and preferential treaty rates to first file a Tax Treaty Relief Application before the occurrence of the first taxable event.

The constitutionality or validity of laws, orders, or rules (*e.g.* BIR issuances) cannot be attacked collaterally.[49] RMO 72-10, partaking the nature of an order or rule, can only be annulled in a direct proceeding.

In sum, petitioner's royalty payments to PMGB are entitled to the preferential tax rate of 10% under the RP-US Tax Treaty, in relation to the RP-China and the RP-UAE Tax Treaties. Consequently, it is entitled to a refund of the excessive withholding tax payments made.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE**

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[49] *Tan v. Bausch & Lomb, Inc.*, G.R. No. 148420, December 15, 2005, 478 SCRA 115.

A TAX CREDIT CERTIFICATE in favor of petitioner PMFTC, Inc. in the reduced amount of **Php490,422,017.77**, representing excess final withholding taxes on royalty payments to PMGB from July 2011 to October 2012.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division's 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice