REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE AND REVENUE DISTRICT OFFICER OF REVENUE DISTRICT OFFICE NO. 57 – CITY OF BIÑAN, BUREAU OF INTERNAL REVENUE,
Petitioners,

CTA EB NO. 2276
(CTA Case No. 9762)

Present:

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

\- versus -

EAST WEST BANKING CORPORATION,
Respondent.

Promulgated:

OCT 28 2021 2:55 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioners Commissioner of Internal Revenue (**CIR**) and Revenue District Officer of Revenue District Office (**RDO**) No. 57 – City of Biñan, Bureau of Internal

[1] Filed on 01 July 2020, *Rollo*, pp. 1-24.

Revenue (**BIR**) pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). The petition seeks the reversal of the Decision and Resolution dated on 03 October 2019[3] and 02 March 2020[4], respectively, which the Court's First Division[5] promulgated in CTA Case No. 9762, entitled *East West Banking Corporation v. Commissioner of Internal Revenue and Revenue District Officer of Revenue District Office No. 57 - City of Biñan, Bureau of Internal Revenue.*

FACTS OF THE CASE

Respondent East West Banking Corporation (**respondent/ EWBC**) acquired the following real properties from its borrowers:

Registered Owner/Borrower	**TCT Nos.**	**Acquisition Date**	**Mode of Acquisition**
Roberto C. Cerbo (**Cerbo**) married to Marissa Cerbo	T-738930[6]	13 May 2011	*Dacion En Pago*[7]
Mylin M. Aguinaldo (**Aguinaldo**)	T-666646[8] and T-666647[9]	08 July 2008	Extrajudicial Foreclosure[10]

In the course of applying for a Certificate Authorizing Registration (**CAR**) from the BIR, respondent was required to produce a copy of previous CARs covering the transfers of TCT Nos. T-738930, T-666646 and T-666647 (**subject properties**) to its borrowers Cerbo

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2 SEC. 3. *Who may appeal; period to file petition.* – ...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
...

3 Division Docket, pp. 459-480.

4 Id., pp. 518-526.

5 Penned by Associate Justice Catherine T. Manahan with Presiding Justice Roman G. Del Rosario and Associate Justice Esperanza R. Fabon-Victorino (Ret.), concurring.

6 Exhibit "P-3", Division Docket, pp. 367-370.

7 Exhibit "P-2", id., pp. 361-366.

8 Exhibit "P-11", id., p. 371.

9 Exhibit "P-12", id., p. 378.

10 Exhibit "P-15".

and Aguinaldo pursuant to Revenue Memorandum Circular (**RMC**) No. 76-2007.[11]

In a letter dated 26 January 2016[12], respondent filed a letter addressed to BIR RDO No. 57 – City of Biñan stating that, for its failure to locate the CARs relating to previous transfers of the subject properties to the borrowers, it decided to pay any taxes due on these prior transactions to secure the said CARs and expedite the transfer of the subject properties to it. In the said letter, respondent further reserved the right to question the legality of RMC No. 76-2007.

Subsequently, respondent proceeded to pay the Capital Gains Tax (**CGT**) and Documentary Stamp Tax (**DST**) due on the prior transactions, as follows:

Property	TCT No. T-738930	TCT Nos. T-666646[13] and T-666647[14]
Date of Payment	28 January 2016[15]	29 January 2016[16]
CGT	₱389,578.29[17]	₱404,870.55[18]
DST	₱101,911.85[19]	₱102,321.72[20]
Total	**₱491,490.14**	**₱507,192.27**

Thereafter, on 17 January 2018, respondent sent another letter[21] seeking a tax refund of the erroneously paid CGT and DST amounting to ₱998,682.41. On 25 January 2018, it filed a similar letter with RDO No. 57 – City of Biñan with four (4) Applications for Tax Credit/Refund (BIR Form No. 1914) and claimed the following amounts: ₱389,578.29[22]; ₱101,911.85[23]; ₱404,870.55[24] and ₱102,321.72.[25]

11 Prescribing Additional Mandatory Documentary Requirements for One-time Transactions Involving Transfers of Real Property.
12 Exhibit "P-1", Division Docket, p. 245.
13 Supra at note 8.
14 Supra at note 9.
15 Exhibit "P-8", id., p. 159.
16 Exhibits "P-22" and "P-23", id., pp. 165 and 171.
17 Supra at note 15.
18 Exhibits "P-18" and "P-18-A", id., pp. 384-385.
19 Supra at note 15.
20 Exhibits "P-21" and "P-21-A", id., pp. 388-389.
21 Exhibit "P-26", id., pp. 289-300.
22 Exhibit "P-29", id., p. 314.
23 Exhibit "P-28", id., p. 313.
24 Exhibit "P-30", id., p. 315.
25 Exhibit "P-31", id., p. 316.

Later, on 26 January 2018, respondent elevated its case *via* a Petition for Review[26] before the Court in Division. The case was raffled to the First Division.

PROCEEDINGS BEFORE THE FIRST DIVISION

In response to the Summons[27], petitioners filed their Answer[28] on 17 April 2018.

During the trial, respondent presented its lone witness, Kenny Junne L. Ybañez (**Ybañez**), the Administrative Officer at its Acquired Assets Department, who testified that: (1) petitioner acquired properties owned by Cerbo and Aguinaldo; (2) in the course of securing the CAR for the transfer of the titles of the subject properties, BIR RDO No. 57-Biñan, Laguna also required a copy of the CAR pertaining to the transactions between the former owners Cerbo and Aguinaldo, on the one hand, and the previous owners of the subject properties, on the other hand (**prior transactions**); (3) EWBC could not produce a copy of the previous CARs pertaining to the prior transactions hence, it was constrained to pay the previous CGT and DST including surcharges to secure the CAR of the prior transactions; (4) petitioner wrote a letter to the CIR and the Revenue District Officer, RDO No. 57 of the BIR, stating that its payment of taxes due on prior transactions is without prejudice to the right to question the legality of RMC No. 76-2007; and, (5) petitioner consolidated in its name the subject properties as a result of the payment of the taxes on the prior transactions.[29]

After resting its case, respondent filed its Formal Offer of Evidence[30] (**FOE**) on 16 July 2018.

In a Resolution dated 22 August 2018[31], except Exhibits "P-4"[32], "P-5"[33], "P-6"[34] and "P-7"[35] for respondent's failure to present the

[26] Id., pp. 12-28.
[27] Dated 09 February 2018, id., p. 183.
[28] Id., pp. 195-205.
[29] See Judicial Affidavit, Exhibit "P-33", id., pp. 228-242.
[30] Id., pp. 354-360.
[31] Id., pp. 408-409.
[32] BIR payment form of the CGT for TCT No. T-738930.

originals thereof for comparison, the First Division resolved to admit all of respondent's documentary evidence.

For their part, petitioners manifested that they had no report of investigation as regards respondent's case; thus, they waived the presentation of their evidence.[36]

Later, the parties were given thirty (30) days within which to file their respective memoranda. On 26 September 2018[37], respondent filed its Memorandum while petitioners filed theirs on 01 October 2018.[38] Thereafter, the case was submitted for decision.[39]

In the assailed Decision of 03 October 2019, the First Division granted respondent's claim for refund.[40] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, petitioner's claim for refund or issuance of tax credit certificate for erroneously imposed and collected CGT and DST in the amount of Php998,682.41 is **GRANTED.**
>
> **SO ORDERED.**
>
> ...

Aggrieved, on 31 October 2019, petitioners filed their Motion for Reconsideration[41] (**MR**). Unconvinced with petitioners' arguments, the First Division denied the MR in the now assailed Resolution dated 02 March 2020.[42]

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33 Deposit Slip of the CGT for TCT No. T-738930.
34 BIR payment form of the DST for TCT No. T-738930.
35 Deposit Slip of the DST for TCT No. T-738930.
36 See Order dated 29 August 2018, Division Docket, p. 411.
37 Id., pp. 415-439.
38 Id., pp. 445-454.
39 See Resolution dated 08 October 2018, id., p. 456.
40 Supra at note 3.
41 Division Docket, pp. 481-501.
42 Supra at note 4.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On 01 July 2020, petitioners filed the present Petition for Review[43] before the Court *En Banc*. Accordingly, in a Resolution dated 30 July 2020[44], respondent was ordered to file its comment thereto within ten (10) days from receipt thereof.

Respondent filed its Comment/Opposition[45] on 12 October 2020. On 17 November 2020, the case was submitted for decision.[46]

ISSUES

Petitioner submits the following issues for this Court's determination:

I.

WHETHER THE FIRST DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE ORIGINAL PETITION (CTA CASE NO. 9762); and,

II.

WHETHER THE FIRST DIVISION ERRED IN RULING THAT RESPONDENT EAST WEST BANKING CORPORATION IS ENTITLED TO THE CLAIM FOR REFUND OF ALLEGED ERRONEOUSLY COLLECTED CAPITAL GAINS TAX (CGT) AND DOCUMENTARY STAMP TAX (DST).

In support of the above issues, petitioners argue that the First Division erred in granting respondent's claim for refund. They insist that respondent's claim essentially challenges the validity of RMC No. 76-2007.[47] On this note, they posit that respondent failed to exhaust administrative remedies as any issue it has with legality of the said RMC should have been elevated to the Secretary of Finance in accordance with Section 4[48] of the National Internal Revenue Code

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43 Supra at note 1.
44 *Rollo*, pp. 60-61.
45 Id., pp. 68-79.
46 Id., pp. 82-83.
47 Supra at note 11.
48 **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.

(NIRC) of 1997, as amended. Due to this lapse on respondent's part, petitioners contend that the Court could not have validly acquired jurisdiction over respondent's claim for refund.

Petitioners further argue that assuming that the Court has jurisdiction, the subsequent issuance of RMC No. 105-2016[49] that eliminated the requirement for taxpayers to produce CARs covering previous transfers cannot be retroactively applied to respondent's case.

In retort, respondent argues that its judicial claim for refund falls within this Court's jurisdiction and the First Division was correct in finding that it was entitled to a refund.

RULING OF THE COURT *EN BANC*

After a careful study of the records and the parties' arguments, We find no reason to deviate from the First Division's findings.

Underlying petitioners' arguments lie a simple premise – that respondent cannot claim a refund of the CGT and DST it paid on previous transfers as the same were neither erroneously paid nor illegally collected by the government. In asserting this position, petitioners not only challenge the First Division's ruling insofar as it granted respondent's claim but also this Court's jurisdiction.

We maintain that this Court has jurisdiction over respondent's case.

It is settled that the jurisdiction of courts over the subject matter of the litigation is conferred by law and determined by the allegations in the complaint.[50] The Court's authority to adjudicate respondent's

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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.

49 Amending Certain Provisions of Revenue Memorandum Circular No. 76-2007, Relative to the Submission of Mandatory Documentary Requirements for One-time Transactions Involving Transfer of Real Property.

50 *Padlan v. Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.

claim for refund stems from Republic Act (**RA**) No. 1125[51], as amended by RA 9282[52], to wit:

> ...
> **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 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 provides a specific period of action, in which case the inaction shall be deemed a denial[.][53]
>
> ...

Moreover, Section 229 of the NIRC of 1997, as amended, requires that taxpayers seeking the refund of taxes erroneously paid must file a claim for refund within two (2) years from the date of payment of the tax sought to be refunded:

> ...
> **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 without authority, or of any sum alleged to have been

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[51] AN ACT CREATING THE COURT OF TAX APPEAL.

[52] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[53] Emphasis supplied.

> 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.[54]
>
> ...

Lastly, a taxpayer is also required to file an administrative claim for refund before resorting to a court action. In *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*[55] (**Univation**), the Supreme Court held:

> ...
>
> The law only requires that an administrative claim be priorly filed. That is, to give the BIR at the administrative level an opportunity to act on said claim. In other words, for as long as the administrative claim and the judicial claim were filed within the two-year prescriptive period, then there was exhaustion of the administrative remedies.
>
> ...

As regards petitioners' view that respondent's original Petition for Review sought the nullification of RMC No. 76-2007, a cursory reading thereof reveals otherwise. In its original Petition for Review before the First Division, respondent invoked the Court's jurisdiction by alleging "erroneously collected taxes"[56] and equally prayed that the same be refunded.

The First Division even clarified in the assailed Decision that it was not ruling on RMC No. 76-2007's legality in the following wise:

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54 Emphasis supplied.
55 G.R. No. 231581, 10 April 2019; Citations omitted.
56 Division Docket, p. 12.

> ...
>
> ...Henceforth, being mindful of Sec. 4 of the NIRC of 1997, as amended, this Court shall not pass upon the validity or constitutionality of RMC 76-2007, but will however determine whether RMC No. 105-2016 may indeed be applied considering that the former has been superseded by the latter.[57]
>
> ...

Having established that the controversy involved is unquestionably a claim for refund, what is merely left to be determined is whether respondent was able to file its claim within the two-year prescriptive period pursuant to Section 229[58] of the NIRC of 1997, as amended, *and* whether it was able to exhaust all administrative remedies available prior to elevating its case before the Court.

As culled from the records, respondent paid the taxes subject of the refund on the 28th and 29th of January 2016. Therefore, as regards its CGT and DST payments in relation to TCT No. T-738930, respondent had two (2) years from 28 January 2016, or until 28 January 2018, within which to file its administrative and judicial claim for refund. Likewise, respondent had until 29 January 2018 within which to file its claim as regards its tax payments on TCT Nos. T-666646 and T-666647. Respondent filed its administrative claim before the BIR on 17 January 2018, while its judicial claim was elevated to the CTA on 26 January 2018. Clearly, it filed its petition within the prescriptive period provided by the NIRC of 1997, as amended.

Since respondent was able to file an administrative claim before the BIR prior to filing its original Petition for Review before the First Division, it has clearly exhausted its administrative remedies consistent with the principle laid down in *Univation*.

Given the foregoing, the Court's jurisdiction over the respondent's action is indubitable.

Next, as the First Division correctly ruled, respondent is entitled to the refund claimed. RMC No. 76-2007, in its entirety, states:

57 Id., p. 475; Citation omitted.
58 Supra at pp. 8-9.

...

To ensure that all internal revenue taxes due on transfers of real property have been correctly paid and remitted to the government, the following mandatory documentary requirements shall be submitted in addition to the checklist of requirements prescribed under Revenue Memorandum Order No. 15-2003:

1. Photocopy of the official receipts issued by the seller, for purposes of determining whether the sale of real property is on cash basis, a deferred-payment sale (when payments in the year of sale exceed 25% of the selling price) or on installment plan (when payments in the year of sale do not exceed 25% of the selling price). The original copy of the official receipts shall be presented to the Bureau for authentication during the processing of the application for Certificate Authorizing Registration (CAR). However, if the seller is not engaged in business, the acknowledgement receipts issued by the seller to the buyer or any proof of payment shall be presented.

   While the Contract to Sell and official receipts of payments are among the documents required for installment sales in Annex A2 of Revenue Memorandum Order No. 15-2003, the taxpayer presents only the Deed of Absolute Sale which is, oftentimes, executed upon full payment. The purpose of requiring the submission of a photocopy of the official receipts is for the Revenue District Office to have a means of validating if the transaction is on cash basis, deferred payment or installment plan.

2. Certified true copy of the original CAR (copy of the Registry of Deeds) pertaining to the transfer of property prior to the issuance of Original/Transfer Certificate of Title (OCT/TCT) or Condominium Certificate of Title (CCT) which is the subject of the current sale/transfer, or certification issued by the Registry of Deeds indicating the serial number of the CAR, date of issuance of CAR, the Revenue District Office Number of the district office that issued the CAR, the name of the Revenue District Officer who signed the CAR, the type of taxes paid and the amount of payment per tax type.

   The aforementioned document shall be submitted for OCT/TCT/CCT issued starting 2007, in case the Register of Deeds fails to annotate the information contained in the CAR as prescribed under Section 5 of Revenue Regulations No. 24-2002 dated November 15, 2002 and Section 1 of

Memorandum Order No. 233 dated December 11, 2006 issued by President Gloria Macapagal-Arroyo, as circularized in Revenue Memorandum Circular No. 3-2007.

All internal revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

...

On the other hand, the subsequently issued RMC No. 105-2016 reads:

...

This Circular is issued to amend the mandatory documentary requirements provided in Revenue Memorandum Circular (RMC) No. 76-2007.

Item No. 2 of RMC No. 76-2007 cited hereunder shall no longer be required in the processing of one-time transactions involving transfer of real property and the issuance of electronic Certificate Authorizing Registration (eCAR):

"2. **Certified true copy of the original CAR (copy of the Registry of Deeds) pertaining to the transfer of property prior to the issuance of Original/Transfer Certificate of Title (OCT/TCT) or Condominium Certificate of Title (CCT) which is the subject of the current sale/transfer, or certification issued by the Registry of Deeds indicating the serial number of the CAR, date of issuance of CAR, the Revenue District Office Number of the district office that issued the CAR, the name of the Revenue District Officer who signed the CAR, the type of taxes paid and the amount of payment per tax type.**

The aforementioned document shall be submitted for OCT/TCT/CCT issued starting 2007, in case the Register of Deeds fails to annotate the information contained in the CAR as prescribed under Section 5 of Revenue Regulations No. 24-2002 dated November 15, 2002 and Section 1 of Memorandum Order No. 233 dated December 11, 2006 issued by President Gloria Macapagal-Arroyo, as circularized in Revenue Memorandum Circular No. 3-2007."

> All other circulars and revenue issuances inconsistent herewith are hereby amended, modified or revoked accordingly. All Revenue Officials are enjoined to give this Circular as wide a publicity as possible.
>
> This Circular shall take effect immediately.[59]
>
> ...

The foregoing circulars show that neither of the two (2) provides for the payment of CGT and DST on prior transfers in case the taxpayer cannot provide a copy of previous CARs. At this point, the applicability of either circular to respondent's case becomes a non-issue as neither sanctions the BIR's collection of CGT and DST on the previous transfers of real property from any party to a subsequent transaction over the same. As the First Division aptly found, "[t]he main rationale for the instant claim for refund is based on an erroneous payment or payment made without any legal basis"[60] and not whether RMC No. 105-2016 can be applied retroactively to respondent's case.

The payment of CGT and DST on transfers of real property is premised on the following provisions of the NIRC of 1997, as amended:

> ...
> **Section 24.** *Income Tax Rates.* –
> ...
>
> (D) *Capital Gains from Sale of Real Property.* –
>
> (1) *In General.* – The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, **is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines**, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts: *Provided*, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under

[59] Emphasis in the original text.
[60] Id., p. 476.

Section 24(A) or under this Subsection, at the option of the taxpayer.[61]

...

Section 56. *Payment and Assessment of Income Tax for Individuals and Corporations. –*

(A) *Payment of Tax. –*

...

(3) *Payment of Capital Gains Tax.* - **The total amount of tax imposed and prescribed under Section 24(c), 24(D), 27(E)(2), 28(A)(8)(c) and 28(B)(5)(c) shall be paid on the date the return prescribed therefor is filed by the person liable thereto**: *Provided,* That if the seller submits proof of his intention to avail himself of the benefit of exemption of capital gains under existing special laws, no such payments shall be required: *Provided, further,* That in case of failure to qualify for exemption under such special laws and implementing rules and regulations, the tax due on the gains realized from the original transaction shall immediately become due and payable, subject to the penalties prescribed under applicable provisions of this Code: *Provided, finally,* That if the seller, having paid the tax, submits such proof of intent within six (6) months from the registration of the document transferring the real property, he shall be entitled to a refund of such tax upon verification of his compliance with the requirements for such exemption.[62]

...

Section 196. *Stamp Tax on Deeds of Sale and Conveyances of Real Property.* - **On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value** determined in accordance with Section 6(E) of this Code, whichever is higher: *Provided,* That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration:

61 Emphasis and underscoring supplied.
62 Emphasis and underscoring supplied.

(a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed One thousand pesos (₱1,000), Fifteen pesos (₱15.00).

(b) For each additional One thousand pesos (₱1,000), or fractional part thereof in excess of One thousand pesos (₱1,000) of such consideration or value, Fifteen pesos (₱15.00).

When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement of the consideration in any conveyance, deed, instrument or writing subject to such tax the Commissioner, provincial or city Treasurer, or other revenue officer shall, from the assessment rolls or other reliable source of information, assess the property of its true market value and collect the proper tax thereon.[63]

...

In addition, Section 2 of Revenue Regulations (**RR**) No. 09-2000[64] specifies the persons liable for DST, to wit:

...

SEC. 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax.* —

(a) In General. - The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **<u>Any of the parties thereto shall be liable for the full amount of the tax due</u>**: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.

(b) Exception. - Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto, who is not exempt shall be the one directly liable for the tax.[65]

...

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63 Emphasis and underscoring supplied.

64 Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

65 Emphasis and underscoring supplied.

Clearly from the foregoing, a taxpayer is liable for CGT on the presumed gain or profit from the transfer of a certain real property. On the other hand, a taxpayer is liable for DST on the privilege of executing a certain transaction.

In this case, respondent's borrowers (from whom the subject properties were acquired) are liable for the payment of CGT and DST on their respective transactions with previous owners of the subject properties. Despite being merely a transferee of the subject properties, respondent appears to have assumed its borrowers' obligation of paying the CGT and DST on the prior transactions. While there is no question that respondent is obligated by law to settle the CGT and DST in relation to its transactions with the borrowers, it cannot be held liable for the said taxes on the previous transfers of the subject properties to the borrowers. This is simply because respondent was neither a party nor privy to the prior transactions.

To reiterate, the NIRC of 1997, as amended, does not require the payment of CGT and DST on the previous transfer of real property to the current transferor. Ascribing to this limitation in the imposition of CGT and DST, neither RMC Nos. 76-2007 and 105-2016 does the same. Therefore, there is no argument for the denial of respondent's claim for refund. On the other hand, there is no legal basis for petitioners' continuous retention of these erroneously paid taxes. In the case of *Manila Railroad Company v. Insular Collector of Customs*[66], the Supreme Court held:

> ...
>
> ...It is the general rule in the interpretation of statutes levying taxes or duties not to extend their provisions beyond the clear import of the language used. **In every case of doubt, such statutes are construed most strongly against the Government and in favor of the citizen, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import.** (U. S. vs. Wigglesworth [1842], 2 Story, 369; Froehlich & Kuttner vs. Collector of Customs [1911], 19 Phil., 461.)
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> ...

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[66] G.R. No. 30264, 12 March 1929; Emphasis supplied.

WHEREFORE, the foregoing considered, the Petition for Review filed by petitioners Commissioner of Internal Revenue and Revenue District Officer of Revenue District Office No. 57 – City of Biñan, Bureau of Internal Revenue on 01 July 2020 is hereby **DENIED.** Accordingly, the First Division's Decision and Resolution on 03 October 2019 and 02 March 2020, respectively, in CTA Case No. 9762, entitled *East West Banking Corporation v. Commissioner of Internal Revenue and the Revenue District Officer of Revenue District Office No. 57 – City of Biñan, Bureau of Internal Revenue*, are hereby **AFFIRMED.**

Petitioners are further **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to respondent East West Banking Corporation in the amount of ₱998,682.41, representing erroneously paid Capital Gains Tax and Documentary Stamp Tax.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, I have a D.O.)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE AND REVENUE DISTRICT OFFICER OF REVENUE DISTRICT OFFICE NO. 57 – CITY OF BIÑAN, BUREAU OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2276** *(CTA Case No. 9762)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
-versus-	
EAST WEST BANKING CORPORATION, *Respondent.*	Promulgated: OCT 28 2021 2:55 p.m.

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DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I respectfully dissent to the Decision penned by my esteemed colleague, Associate Jean Marie A. Bacorro-Villena, which denied the instant Petition for Review ("Petition") and affirmed the Decision ordering the refund or issuance of tax credit certificate in favor of respondent.

It is my opinion that respondent's claim for refund should have been barred for failure to exhaust administrative remedies. My reasons are as follows:

The procedure for filing of administrative and judicial claims for refund is governed by ***Sections 204(C) and 229 of the Tax Code***, respectively.

Section 204 provides:

"SEC 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may

(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 <u>unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment</u> 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 supplied)

Meanwhile, ***Section 229*** states:

"SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter **alleged to have been erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully 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, **<u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax</u>** or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."
(Emphasis supplied)

As may be gleaned from the foregoing provisions, a taxpayer-claimant must first file an administrative claim for refund before the Commissioner of the BIR prior to filing a judicial claim before the Court of Tax Appeals.[1] Both the administrative and judicial claims for refund should be filed within the two (2) year prescriptive period, and the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription.[2]

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[1] Metropolitan Bank & Trust Co. v. Commissioner of Internal Revenue, G.R. No. 182582, 17 April 2017.
[2] *Ibid.*

In the present case, it has been shown that petitioner paid the taxes subject of its refund claim on 28 and 29 January 2016. It, thus, had until 28 and 29 January 2018 within which to file its administrative and judicial claims for refund. Ostensibly, petitioner's administrative claim for refund, filed on January 17, 2018, and its judicial claim for refund, filed before this Court on 26 January 2018, both fell within the two (2) year prescriptive period.

While both claims were, indeed, filed within the two (2) year prescriptive period, it does not escape my attention that the administrative claim was filed with the BIR merely days before the lapse of the two (2) year period, and the judicial claim with the Court a mere nine (9) days after, two (2) days of which were non-working days. To my mind, this displayed a stark disregard of the rule requiring the exhaustion of administrative remedies. The rationale for the rule was elucidated in ***Ejera v. Merto***,[3] as follows:

> "Thirdly, **the rule requiring the exhaustion of administrative remedies rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly**. There are both legal and practical reasons for the rule. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, therefore, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum."
> (Emphasis supplied)

Certainly, with only nine (9) days (effectively only seven [7] days) given respondent, he was not "afforded a complete chance to pass upon the matter" nor "given an opportunity to act and correct the errors committed in the administrative forum."

In the recent case of ***Chin v. Maersk-Filipinas Crewing, Inc., et al.***,[4] the Supreme Court even cautioned, to wit:

> "The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, **every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice**."
> (Emphasis supplied)

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[3] G.R. No. 163109, 22 January 2014, citing Union Bank of the Philippines v. Court of Appeals, G.R. No. 131729, May 19, 1998

[4] G.R. No. 247338, 2 September 2020.

Judging from any perspective, with that nine (9) days (effectively only seven [7] days) period given to him, respondent cannot be said to have been given "every opportunity" "to resolve the matter and to exhaust all opportunities for a resolution" on the claim for refund of petitioner.

Obviously, the filing of the claim with respondent mere days before the two (2) year deadline, together with the filing with the claim before this Court a mere two (2) days before the two (2) year deadline, was simply to meet such deadline. Indeed, the filing of the judicial claim with the Court soon thereafter is a clear indication of a blatant disregard of respondent's administrative powers.

I cannot turn a blind eye to the procedural infirmity extant in the instant case, much less be a partner in petitioner's disregard of the concept of exhaustion of administrative remedies. Under the circumstances, then, I find that petitioner's case should be barred for failure to exhaust administrative remedies.

Premises considered, I vote that the instant Petition for Review filed by petitioners COMMISSIONER OF INTERNAL REVENUE AND REVENUE DISTRICT OFFICER OF REVENUE DISTRICT OFFICE NO. 57 – CITY OF BINAN, BUREAU OF INTERNAL REVENUE be **GRANTED**, the Decision and Resolution, dated 3 October 2019 and 2 March 2020, respectively, which the Court's First Division promulgated in CTA Case No. 9762, be **REVERSED AND SET ASIDE**, and the case be DENIED for failure to exhaust administrative remedies.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice