REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

FIRST DIVISION

**CBK POWER COMPANY LIMITED,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 6699**

x-----------------------------------------------x

**CBK POWER COMPANY LIMITED,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 6884**

x-----------------------------------------------x

**CBK POWER COMPANY LIMITED,**
Petitioner,

-versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 7166**

Members:
**ACOSTA,** *Chairperson*
**BAUTISTA,** and
**CASANOVA,** JJ.

**Promulgated:**
FEB 12 2009 10:25 AM

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# AMENDED DECISION

**CASANOVA, J.:**

Before Us are respondent's *Motion for Reconsideration* filed on September 16, 2008, assailing this Court's *Decision* dated August 28, 2008, and petitioner's *Opposition* [to

*Respondent's Motion for Reconsideration dated September 15, 2008]* filed on October 20, 2008. The dispositive portion of the *Decision* states:

> "**WHEREFORE,** the Petitions for Review are hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount of **FIFTEEN MILLION SIX HUNDRED SEVENTY TWO THOUSAND NINE HUNDRED FIFTY EIGHT AND FORTY TWO CENTAVOS (P15,672,958.42)** representing its excess final withholding tax for the years 2001 to 2003.
>
> **SO ORDERED."**

Respondent moves for reconsideration of the assailed *Decision* based on the following grounds:

"1. This Honorable Court has no jurisdiction over the petitions.

2. Petitioner should have invoked the provisions of the tax treaty and prove that indeed the provisions of the tax treaty applies, before the benefits may (be) extended to petitioner."

In its *Opposition,* petitioner counters the following arguments:

"1. Section 112 of the National Internal Revenue Code is not applicable to the present case.

2. Prior to the application for tax treaty relief is not necessary for purposes of this judicial claim for refund."

Anent the first assigned error, respondent contends that the *Petitions for Review* were filed prematurely. The period provided by Section 112 of the National Internal Revenue Code (NIRC) of 1997 gives respondent the opportunity to act on administrative claims for refund. And when petitioner filed the refund claim before this Court, petitioner in effect arbitrarily denied this opportunity to respondent.

Respondent's argument is untenable.

Section 112 of the NIRC, which refers to "refunds or tax credits of input tax", is not applicable to the present case, which involves final withholding tax on interest income. Likewise, it must be pointed out that this issue was thoroughly explained and resolved in the assailed *Decision,* which states as follows:

"The relevant provisions in the 1997 Tax Code, as amended, are Sections 204 (C) and 229 which provide as follows:

> **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. (Emphasis supplied)
>
> 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 therefore, 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)

In the computation of the two-year prescriptive period, a 'year' is understood to be of twelve (12) calendar months, irrespective of the number of days in a month.

From the foregoing, the two-year prescriptive period should be reckoned from the date of filing of petitioner's monthly remittance return of final income taxes withheld.

Thus, petitioner withheld and filed its monthly remittance return of final income taxes withheld, as follows:

xxx xxx xxx

With the administrative claim filed on April 14, 2003, petitioner filed (1) Petition for Review on June 6, 2003 which was docketed as CTA Case No. 6699, a Supplemental Petition filed on September 10, 2003, then subsequently an Amended Petition for Review on February 18, 2004; and (2) Petition for Review filed on March 5, 2004 which was docketed as CTA Case No. 6884. While the administrative claim filed on March 4, 2005, petitioner filed its Petition for Review on March 9, 2005 which was docketed as CTA Case No. 7166.

Thus, based on the above illustrations, the claims both under the administrative and judicial levels were made within the two-year prescriptive period."

Going now to the second assigned error, this Court agrees with respondent.

In the Supreme Court Resolution dated February 18,2008 for *Mirant (Philippines) Operations Corporation (formerly: Southern Energy Asia-Pacific Operations [Phils.], Inc. vs. CIR*[1], the High Court requires that an ITAD ruling must be obtained prior to availing a preferential tax rate. Considering this, the refund claim must be reduced.

The record shows that petitioner only failed to obtain an ITAD-ruling with respect to its transactions with Fortis Bank (Nederland ) N.V. Thus, the initial refund granted in the amount of P15,672,958.42 shall be reduced to P14,835,720.39 computed as follows:

| | | |
|---|---|---|
| **Initial Refund Awarded** | P | 15,672,958.42 |
| **Less:** | | |
| **<u>CTA Case No. 6699:</u>** | | |
| 06/11/01<br>Fortis Bank (Nederland) N.V. | | 416,248.95 |
| 09/10/01<br>Fortis Bank (Nederland) N.V. | | <u>420,989.08</u> |
| **Reduced Amount of Refund** | **P** | **14,835,720.39** |

[1] G.R. No. 168531.

**WHEREFORE**, respondent is **ORDERED** to **REFUND** to petitioner the reduced amount of **FOURTEEN MILLION EIGHT HUNDRED THIRTY FIVE THOUSAND SEVEN HUNDRED TWENTY PESOS AND 39/100 (P14,835,720.39).**

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**LOVELL R. BAUTISTA**
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's Division.

**ERNESTO D. ACOSTA**
Presiding Justice
Chairperson, First Division