REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TECHNOGAS PHILIPPINES MANUFACTURING CORPORATION, *Petitioner,*	**CTA Case No. 9509**
	Members:
-*versus*-	**CASTAÑEDA, JR.**, *Chairperson and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 04 2018 1:00 p.m.

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D E C I S I O N

MANAHAN, *J.*:

This involves the Petition for Review filed by Technogas Philippines Manufacturing Corporation appealing the inaction of the Commissioner of Internal Revenue on its claim for refund of capital gains tax (CGT) amounting to Php19,283,040.00, paid on sale of property back in 2004. Such sale was subsequently cancelled in year 2014.

FACTS

Petitioner is a corporation duly organized and existing under Philippine laws with business address at Dr. A. Santos Ave., Sucat, Parañaque City, represented in this case by its duly authorized representative, Francis T. Tan. Petitioner may be served with processes of this Honorable Court through its counsel at the latter's address at Suites A&B, 10th Floor, Strata 100 Building, F. Ortigas Jr. Road (formerly Emerald Avenue) Ortigas Center, Pasig City.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) represented in this case by the legal officers of

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[1] Docket, Joint Stipulation of Facts and Issue (JSFI), p. 466.

the BIR Legal Division, with office address at 2/F BIR Bldg. No. 313 Sen. Gil Puyat Ave., Makati City.[2]

Petitioner is the absolute and registered owner of a parcel of land located at Lot 4531-A-1, No. 8295 Dr. A Santos Avenue (formerly Sucat Road), Brgy. San Dionisio, Parañaque City, previously covered by TCT No. 122533 (the property).[3]

Sometime in February 1992, petitioner mortgaged the property to Philippine National Bank (PNB) to secure a loan in the principal amount of Php49,000,000.00.[4]

Petitioner defaulted on its payments to the PNB.[5] On September 7, 2001, petitioner received a notice of extrajudicial sale over TCT No. 122533 on August 20, 2001 at the Parañaque City Hall.[6]

Aggrieved, petitioner filed a complaint,[7] dated September 18, 2001, against PNB for a Temporary Restraining Order, Injunction, and Annulment of Extrajudicial Foreclosure Sale before Branch 196 of the Regional Trial Court of Parañaque City.[8]

Another extrajudicial sale was conducted on August 24, 2004 by the Clerk of Court and the *Ex-Officio* Sheriff, Atty. Clemente Boloy, wherein PNB was adjudged the winning bidder over the property. A Certificate of Sale[9] dated September 14, 2004 was purportedly executed and an Application for Consolidation of Title was filed with the Register of Deeds.[10]

The payment of capital gains tax (CGT) was withheld by PNB for the account of the BIR on October 4, 2004, in favor of petitioner.[11] The CGT amount paid was Php19,283,040.00.[12]

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[2] Docket, JSFI, p. 467.
[3] Docket, Petition for Review (PFR), p. 13.
[4] Docket, PFR, p. 13.
[5] Docket, PFR, p. 13.
[6] Docket, Exhibit "P-6" Decision of RTC Branch 196-Parañaque City, p. 416.
[7] Docket, Exhibit "P-5", pp. 289-328.
[8] Docket, PFR, p. 14, Memorandum, p. 538.
[9] Docket, Exhibit "P-3", p. 507.
[10] Docket, Memorandum, p. 538.
[11] Docket, JSFI, p. 467.
[12] Docket, Exhibit "P-4", pp. 508-509.

On November 24, 2011, RTC Branch 196-Parañaque City rendered a Decision annulling the Notice of Extrajudicial Sale dated August 16, 2001.[13]

On December 4, 2014, petitioner and PNB entered into a Compromise Agreement,[14] for the full settlement of petitioner's outstanding loan with PNB.[15] Subsequent to the execution of the Compromise Agreement, petitioner filed with the Register of Deeds of Parañaque City a request for the cancellation of the Certificate of Sale. On December 23, 2014, the Register of Deeds, by way of annotation at the back of TCT No. 122533, registered the Compromise Agreement.[16]

Petitioner filed an administrative claim for refund through a letter addressed to OIC-Revenue District Officer Christina C. Barroga, BIR-RDO No. 52-Parañaque on August 2, 2016.[17] Petitioner likewise filed an administrative claim for refund through a letter addressed to the Office of the Commissioner of Internal Revenue on December 2, 2016.[18] However, said claim has not been decided upon.[19]

On December 21, 2016, petitioner filed the instant appeal before the Court of Tax Appeals (CTA) alleging the inaction of the CIR on its claim for refund of CGT paid amounting to Php19,283,040.00 which arose from a sale of property that was subsequently cancelled.

Respondent, instead of filing his Answer, filed a Motion to Dismiss,[20] arguing that the claim for refund was filed out of time. In its Comment/Opposition [To Respondent's Motion to Dismiss dated 15 February 2017],[21] petitioner argues that at the time the CGT was collected and paid, it was legally due. However, the cancellation of the sale transaction put the parties back to their positions prior to the sale, hence, there was no obligation to pay the CGT, and the BIR has no right to receive and retain the said CGT.

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[13] Docket, Exhibit Exhibit "P-6" Decision of RTC Branch 196-Parañaque City, p. 436.
[14] Docket, Exhibit "P-7", pp. 515-518.
[15] Docket, Memorandum, p. 538.
[16] Docket, Memorandum, p. 538.
[17] Docket, JSFI, p. 467.
[18] Docket, JSFI, p. 467.
[19] Docket, JSFI, p. 467.
[20] Docket, pp. 197-200.
[21] Docket, pp. 204-217.

On April 7, 2017, the Court denied respondent's Motion to Dismiss, ruling that the factual and legal issues may best be proved through the conduct of a full-blown trial.[22] Respondent's Motion for Reconsideration was likewise denied on June 21, 2017.[23]

On July 26, 2017, the Court received respondent's Answer[24] which was filed through registered mail on July 13, 2017.

The case proceeded to pre-trial. On September 15, 2017, the parties filed their Joint Stipulation of Facts and Issues (JSFI)[25] which was approved and adopted in the Pre-Trial Order[26] dated September 25, 2007.

During trial, petitioner presented its sole witness, Mr. Francis T. Tan[27] on October 2, 2017. On the same date, respondent manifested that it will not present any evidence.[28]

On December 15, 2017, petitioner filed its Formal Offer of Evidence (FOE),[29] which was resolved in the Resolution[30] dated January 24, 2018 wherein all the exhibits were admitted.

Petitioner filed its Memorandum[31] on February 26, 2018, on the other hand, respondent failed to file his memorandum.[32] Thus, the case was submitted for decision on March 20, 2018.[33]

ISSUE

> Whether or not petitioner is entitled to a refund or tax credit in the amount of Php19,283,040.00 representing CGT paid on October 4, 2004.

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[22] Docket, pp. 219-221.
[23] Docket, pp. 244-245.
[24] Docket, pp. 246-249.
[25] Docket, pp. 466-472.
[26] Docket, pp. 475-478.
[27] Docket, Judicial Affidavit (of witness Mr. Francis T. Tan), pp. 260-276; Minutes of Hearing on October 2, 2017, p. 479.
[28] Docket, Minutes of Hearing on October 2, 2017, p. 479; Order dated October 2, 2017, pp. 480-481.
[29] Docket, pp. 490-10.
[30] Docket, pp. 532-533.
[31] Docket, pp. 534-551.
[32] Docket, Records Verification dated March 12, 2018, p. 552.
[33] Docket, Resolution dated March 20, 2018, p. 553.

Petitioner's Arguments

Petitioner submits that legally paid taxes can likewise be refunded when a supervening event occurs entitling the taxpayer to a refund. In this case, the transaction which gave rise to petitioner's obligation to pay the tax has been cancelled with the cancellation of the certificate of sale. As petitioner and PNB reverted to their previous positions, petitioner became entitled to claim for a refund and the BIR became duty-bound to return the remitted CGT.

Petitioner also states that it timely filed its claim for refund, citing *Insular Lumber Company v. Court of Tax Appeals, et al.,*[34] where the Supreme Court ruled that when the tax was legally paid, the prescriptive period commences to run from the time of the occurrence of the supervening event entitling the taxpayer to claim for a refund and not from the time of payment thereof.

Petitioner further argues that while the 1997 National Internal Revenue Code, as amended (NIRC) provides for a period to file the claim for refund of taxes erroneously or illegally paid, the law failed to contemplate a situation wherein, initially, taxes were legally collected, but then later on, the "basis" for collecting such taxes becomes inexistent. Thus, petitioner invokes equity and the principle of *solutio indebiti* to bolster its claim that respondent has no right to receive the said CGT and should therefore return it as a refund to petitioner.

Respondent's Counter-Arguments

Respondent argues that petitioner failed to demonstrate that the tax subject of this case was erroneously or illegally collected. Respondent also states that taxes paid and collected are presumed to have been made in accordance with law; that in an action for refund/credit, the burden of proof is on the petitioner to establish its right to claim for refund and failure to adduce sufficient proof is fatal to such claim.

Respondent also points out that the prescriptive period under Section 229 of the NIRC is mandatory regardless of any supervening cause that may arise after payment. In the instant case, petitioner had only until October 4, 2006, counted from the date of payment on October 4, 2004 regardless of any

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[34] G.R. No. L-31057, May 29, 1981.

supervening cause that may arise after payment, within which to file its claim for refund. When the claim was filed on August 2, 2016, it was clearly filed beyond the period allowed by law, hence, the Court has no jurisdiction to take cognizance of the case.

RULING OF THE COURT

The instant case involves a claim for refund of CGT which was legally and validly paid and collected on October 5, 2004. However, petitioner alleges that on December 23, 2014, or the date of cancellation of the sale from which said CGT arose, it became entitled to claim for refund of the said CGT.

The cancellation of the sale gives rise to a right to claim for refund of the CGT paid on such sale.

In one case, the Court of Tax Appeals First Division has resolved that upon the rescission of a sale previously subject to CGT, the capital gains tax paid must be refunded. It reasoned:

> Respondent likewise argues, in effect, that the capital gains taxes paid in these cases cannot be considered as erroneously or illegally collected taxes because at the time the same were paid, the contract is very much legal and valid.
>
> We do not agree with respondent.
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> Capital gains tax is a tax on the gain from the sale of the taxpayer's property forming part of capital assets. Thus, in the absence of a gain from, or the absence of, a sale, disposition or conveyance of real property considered as capital assets, the imposition of capital gains tax does not arise.
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> In case of rescission of a contract, any resulting gain will have the effect of not being realized, since the proceeds of the sale will eventually be returned to the seller. When a contract is rescinded, it is deemed inexistent, and the parties are returned to their *status quo ante*. Hence, there is mutual restitution of benefits received. In other words, rescission abrogates the contract from its inception and requires a mutual restitution of benefits received.

> Considering the rescission of the contracts evidencing the subject transactions in these cases, the supposed gain that could have been realized therefrom had been abrogated, and the basis for the imposition of capital gains tax failed to exist. Correspondingly, the capital gains taxes paid must be refunded.
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> xxx xxx xxx
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> An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property *not subject to taxation* or by some officer having no authority to levy the tax, or one which i[n] some other similar respect is illegal.
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> As mentioned earlier, considering that there is no gain realized in the subject transactions, as the same were rescinded by mutual agreement of the contracting parties, the collected capital gains taxes are considered as "*levied without statutory authority*."[35] (*Citations omitted*)

In the instant case, the parties executed a Compromise Agreement[36] dated December 4, 2014. A portion of the recital of antecedents are quoted below:

> WHEREAS, the Defendant extended in favor of the Plaintiff certain loans and credit accommodations (the "Credit Facilities"), secured by a real estate mortgage on a parcel of land, together with the improvements thereon, located at Lot 4531-A-1, No. 8295 Dr. A. Santos Avenue (formerly Sucat Road), Brgy. San Dionisio, Parañaque City, with an area of 15,842 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. 122533 of the Registry of Deeds for Parañaque, Metro Manila, registered in the name of the Plaintiff (the "Property");
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> WHEREAS, for failure of the Plaintiff to pay the outstanding obligation under the Credit Facilities, the Defendant filed a Petition for Extrajudicial Foreclosure of the Property on August 16, 2001;

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[35] *Spouses Genato v. Commissioner of Internal Revenue*, CTA Case No. 8919 & 8920, March 30, 2017.
[36] Docket, Exhibit "P-7", pp. 515-518.

> xxx xxx xxx
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> WHEREAS, on November 24, 2011, the RTC rendered a judgment nullifying the Defendant's foreclosure sale of the Property, which decision was reversed by the Court of Appeals on September 10, 2013;
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> WHEREAS, the Plaintiff appealed the Court of Appeals' decision to the Supreme Court by way of a Petition for Review dated May 2, 2014 and docketed as G.R. No. 211743, which is pending resolution to date;
>
> WHEREAS, the parties have agreed to the compromise settlement of the Civil Case, in accordance with the terms and conditions hereinafter set forth;
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> xxx xxx xxx[37]

In the said Compromise Agreement, the petitioner and PNB agreed to the following terms of settlement:

> 1.01 Compromise Settlement. In settlement of the Plaintiff's obligations to the Defendant under the Credit Facilities, and the Civil Case, the parties hereby agree as follows:
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> (a) Simultaneous with the execution of this Agreement, the Plaintiff shall pay the Defendant the amount of Pesos: TWO HUNDRED SIXTY-SEVEN MILLION SIX HUNDRED THIRTY THOUSAND (P267,630,000.00)[the "Compromise Amount"], payable in cash or check in readily available funds, in full settlement of its obligations under the Credit Facilities.
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> (b) Upon receipt of the full proceeds of the Compromise Amount in cleared funds, the Defendant shall:
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> (1) release the owner's duplicate copy of TCT No. 122533;
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> (2) issue the original Release of Real Estate Mortgage to cancel the Defendant's mortgage liens under Entry Nos. 5078 and 1456

[37] Docket, Exhibit "P-7", p. 515.

annotated on February 4, 1992 and April 22, 1997, respectively;

(3) give its written conformity to the Plaintiff's Notice of Withdrawal of Lis Pendens to cancel Entry No. 3233 annotated on August 12, 2004;

(4) issue the Affidavit of Cancellation of the Certificate of Sale ("COS") to cancel Entry No. 4724 annotated on September 22, 2004;

(5) issue the Application for Withdrawal of the Consolidation of TCT No. 122533.

(c) In connection with the foregoing, the parties shall jointly cause the approval by the Court of (1) the termination/withdrawal with prejudice of the Civil Case by filing the necessary motions/manifestations for the said purpose, and (2) the cancellation by the Register of Deeds of Parañaque City of the annotations on the title to the Property corresponding to the COS under Entry No. 4724, the Defendant's mortgage liens under Entry Nos. 5078 and 1456, and the Plaintiff's Lis Pendens under Entry No. 3233.

xxx xxx xxx[38]

Based on the foregoing provisions of the Compromise Agreement, the parties therein intended to cancel the Certificate of Sale in favor of PNB and recorded in TCT No. 122533 as Entry No. 4724. In return, petitioner will pay PNB the amount of Php267,630,000.00 as settlement of its obligations under the credit facilities extended to it by PNB.

Thus, the Court finds that the effect of the Compromise Agreement is analogous to that of rescission, and petitioner and PNB are returned to their *status quo ante*.

The foreclosure sale of the property under TCT No. 122533 having been canceled by virtue of petitioner's and PNB's Compromise Agreement, there is no obligation to pay the CGT.

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[38] Docket, Exhibit "P-7", pp. 515-516.

The Court will now examine if petitioner filed its claim for refund within the time prescribed.

The claim for refund was not timely filed and should be denied.

Petitioner argues that its claim for refund is timely filed within two years from the occurrence of the supervening event (the cancellation of the sale) which gave rise to its right to claim for refund of the previously paid CGT.

The Court disagrees. Section 204 (C) and 229 of the NIRC provide:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchases, 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 filed in writing 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.
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or

> proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (*Underscoring supplied*)

In *Commissioner of Internal Revenue v. Manila Electric Co.*,[39] the Supreme Court already explained the mandatory nature of the 2-year period within which to claim for refund:

> As can be gleaned from the foregoing, the prescriptive period is mandatory regardless of any supervening cause that may arise after payment. It should be pointed out further that while the prescriptive period of two (2) years commences to run from the time that the refund is ascertained, the propriety thereof is determined by law (in this case, from the date of payment of tax), and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes.[40]

The 2-year period, therefore, cannot be stretched to allow for other special circumstances, when none has been provided. Where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. The Court may not construe a statute that is free from doubt.[41] Considering the clear and explicit provision of Section 229 that refunds must be claimed within two years after the date of payment, regardless of any supervening cause that may arise after such payment, relaxing the rule on the mandatory nature of the 2-year prescriptive period for reasons of equity would be tantamount to overruling or supplanting the express provision of the law.[42]

Thus, when the CGT was withheld and paid on October 5, 2004, the 2-year period to file a claim for refund has already

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[39] G.R. No. 181459, June 9, 2014.
[40] *Id.*
[41] *Commissioner of Internal Revenue v. Manila Electric Co., Inc.*, CTA EB No. 773, May 8, 2012.
[42] *Id.* on

started. The execution of the said Compromise Agreement on December 4, 2014, and the subsequent cancellation of the sale of property from which the CGT arose, is precisely a "supervening cause that occurs after payment" which should be disregarded in determining the prescriptive period. This is in accordance with the clear provision of Section 229 that claims for refund must be filed within two years after the date of payment of the tax, regardless of any supervening cause that may arise after such payment.

Clearly, petitioner's claim for refund was filed out of time and must be denied.

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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