REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE PLAZA HOLDINGS, INC., Petitioner,	**CTA CASE NO. 8609**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
HON. KIM S. JACINTO-HENARES, COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 1 2 2016 10:30 a.m.

x - x

AMENDED DECISION

CASANOVA, *J.*:

Before this Court is petitioner's **Motion for Reconsideration (Re: Honorable Court's Decision dated 6 April 2016)**, filed on April 20, 2016, with respondent's **Comment (Re: Petitioner's Motion for Partial Reconsideration)**, filed on May 12, 2016.

Petitioner seeks reconsideration of the Court's Decision promulgated on April 6, 2016 (assailed Decision)[1], the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Amended Petition for Review is hereby **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"[2]

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[1] Docket (Vol. II), pp. 655-677.
[2] Docket (Vol. II), p. 676.

In assailing the aforesaid Decision, petitioner anchors its arguments on the sole ground that this Court gravely erred in ruling that it has no jurisdiction over the Amended Petition for Review.

According to petitioner, it need not file an administrative claim because it already filed an application for abatement, and the refund case was a mere continuation of the abatement case following the ruling in the cases of *Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue* and *Vda. De San Agustin vs. Commissioner of Internal Revenue*[3] (*Vda. de San Agustin* case). As such, petitioner prays for the reversal and setting aside of the assailed Decision and the grant of the Amended Petition for Review dated September 2, 2013.

On the other hand, respondent counter-argues that the mode of action resorted to by petitioner was against the well-established procedure in claiming a refund/tax credit. Respondent contends that no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue taxes that have been erroneously or illegally assessed or collected, 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 pursuant to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent further insists that petitioner attempted to circumvent the rules and in doing so violated the doctrine of exhaustion of administrative remedies when no prior administrative claim was filed. Respondent asserts to have the original jurisdiction over refunds of erroneously collected tax.

The Court revisits the cases of *Vda. de San Agustin* case and *Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue*[4] (*Roman Catholic Archbishop of Cebu* case) which allowed the refund case to prosper even without a prior administrative claim.

In *Vda. de San Agustin* case, the Supreme Court modified the taxpayer's deficiency assessment for surcharge, interest and penalties and ordered the refund of excess payments made even if there was no prior administrative claim. The Supreme Court found no cogent reason to abandon the dictum in the *Roman Catholic Archbishop of Cebu* case which also allowed the refund case to prosper in the absence of an administrative claim. Both cases originally stemmed from deficiency tax

3 G.R. No. 138485, September 10, 2001.
4 G.R. No. L-16683, January 31, 1962.

assessments, and later on demanded a refund of the taxes/surcharges/interest/penalties paid.

According to the Supreme Court, the filing of an administrative claim for refund is a useless formality that can serve the interest of neither the government nor the taxpayer, *viz*:

> "The case has a striking resemblance to the controversy in *Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue.*
>
> The petitioner in that case paid under protest the sum of P5,201.52 by way of income tax, surcharge and interest and, forthwith, filed a petition for review before the Court of Tax Appeals. Then respondent Collector (now Commissioner) of Internal Revenue set up several defenses, one of which was that petitioner had failed to first file a written claim for refund, pursuant to Section 306 of the Tax Code, of the amounts paid. Convinced that the lack of a written claim for refund was fatal to petitioner's recourse to it, the Court of Tax Appeals dismissed the petition for lack of jurisdiction. On appeal to this Court, the tax court's ruling was reversed; the Court held:
>
>> 'We agree with petitioner that Section 7 of Republic Act No.1125, creating the Court of Tax Appeals, in providing for appeals from –
>>
>>> '(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue –
>>
>> allows an appeal from a decision of the Collector in cases involving 'disputed assessments' as distinguished from cases involving 'refunds of internal revenue taxes, fees or other charges, x x x'; that the present action involves a disputed assessment"; because from the time petitioner received assessments

> Nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court *a quo,* only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities.'

The Court sees no cogent reason to abandon the above *dictum* and to require a useless formality that can serve the interest of neither the government nor the taxpayer."[5]

Applying the above-cited cases, We reconsider our earlier ruling. Since petitioner filed the Application for Abatement[6] of the Value-Added Tax (VAT) Surcharge in the amount of ₱807,851.22[7] and the same was denied by respondent in the Letter dated September 25, 2012[8], the filing of an administrative claim for refund of the amount subsequently paid by petitioner, like that of *Vda. de San Agustin* and *Roman Catholic Archbishop of Cebu* cases would be a useless formality as it would also be disallowed by respondent in the same way as the application for abatement was disallowed.

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[5] *Vda. de San Agustin vs. Commissioner of Internal Revenue,* G.R. No. 138485, September 10, 2001.
[6] Exhibit "P-8
[7] The amount being claimed is ₱807,951.22 as per Amended Petition for Review, Docket (Vol. I), pp. 158-179.
[8] Exhibit "P-4"

We shall now resolve the issue on whether petitioner is entitled to its claim for refund of surcharge paid amounting to ₱807,951.22.

The provision of law on abatement cases is found under Section 204(B)(1) of the NIRC of 1997, as amended, *viz*:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (B) Abate or cancel a tax liability, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or"

In relation hereto are paragraphs 2.5 and 2.6, Section 2 of Revenue Regulations (RR) No. 13-2001, *viz*:

> "SEC. 2. INSTANCES WHEN THE PENALTIES AND/OR INTEREST IMPOSED ON THE TAXPAYER MAY BE ABATED OR CANCELLED ON THE GROUND THAT THE IMPOSITION THEREOF IS UNJUST OR EXCESSIVE. –
>
> xxx xxx xxx
>
> 2.5. When taxpayer fails to file the return and pay the correct tax on time due to circumstances beyond his control, provided, however, that abatement shall cover only the surcharge and the compromise penalty and not the interest;
>
> 2.6 Late payment of the tax under meritorious circumstances such as those provided hereunder:
>
> 2.6.1 One day late filing and remittance due to failure to beat bank cut-off time;
>
> xxx xxx xxx
>
> 2.7 Other cases similar or synonymous thereto."

To prove its claim, petitioner submitted the Letter dated April 18, 2012 signed by Ronald Vallesteros[9], BIR LTS Sub-Technical Working Committee Memorandum dated May 28, 2012[10], Application for Abatement or Cancellation of Tax, Penalties and/or Interest under Revenue Regulations No. 13-2001 dated July 26, 2011[11], Letter dated July 27, 2011 signed by Rose Gel Camus[12], BIR Payment Form No. 0605 dated July 16, 2013[13] and BIR Payment Confirmation Receipt dated July 16, 2013[14]. Also, petitioner presented its sole witness Ms. Rose Gel Camus.

On the other hand, respondent presented the testimony of his lone witness, Alma M. Vallada[15], Endorsement dated May 24, 2012 (with attached System Logs of the BIR-EFPS Facility for TP Philippine Plaza Holdings, Inc. [000-307-234-000] from July 25-26, 2012)[16] to debunk petitioner's claim that there was a system error on July 25, 2011.

The Court agrees with petitioner that the present case does fall within the provision of Section 2 (2.5) of RR No. 13-2001.

To begin with, it is reasonably expected that the volume of taxpayers filing/paying thru Electronic Filing and Payment System (EFPS) facility was heavy on July 25, 2011 on the ground that the said date was the last day to file the second (2nd) Quarterly VAT Return (2550Q Form) for 2011. Thus, the claim of petitioner's witness, Rose Gel Camus,[17] that there were "warnings from the BIR website, prompting 'idle for an hour' or 'server interruption"[18] caused by the "traffic or blocking in the website" of the BIR, is not unlikely. After all, even the respondent's head of ISOS Data Center, Raquel Cristina V. Baltazar, admitted in her Endorsement[19] dated May 24, 2012, that "system slowdown" may "be experienced during peak filing periods".

We also observed that the System Logs of the BIR-EFPS Facility for TP Philippine Plaza Holdings, Inc.[20], presented by respondent as his evidence, simply corroborates the testimony of petitioner's witness, Rose Gel Camus, that she exerted diligent effort to file petitioner's 2nd

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9 Exhibit "P-6"
10 Exhibit "P-7"
11 Exhibit "P-8"
12 Exhibit "P-9"
13 Exhibit "P-10"
14 Exhibit "P-11"
15 Exhibit "2"
16 Exhibit "1"
17 Exhibit "P-2"
18 Answer to Question No. 9, Ibid.
19 Exhibit "1"
20 Appended to Exhibit "1".

Quarterly VAT Return covering period April 1, 2011 to June 30, 2011 thru EFPS facility of BIR, from the morning of July 25, 2011 up to July 26, 2011, to wit:

SYSTEM LOGS OF THE BIR-EFPS FACILITY FOR TP PHILIPPINE PLAZA HOLDINGS, INC. (000-307-234-000)

FROM JULY 25 - 26, 2012

TIN DATE TIME

70026497691 3 07-25-2011 10:51:00 103

TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026497692 3 07-25-2011 10:51:00 103
TIN: 000307234 IP: 172.16.17.210 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026501192 3 07-25-2011 11:28:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026501193 3 07-25-2011 11:28:00 103
TIN: 000307234 IP: 172.16.17.210 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026501928 3 07-25-2011 11:36:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026501929 3 07-25-2011 11:36:00 103
TIN: 000307234 IP: 172.16.17.213 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026506580 3 07-25-2011 12:59:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026506581 3 07-25-2011 12:59:00 103
TIN: 000307234 IP: 172.16.17.210 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026513504 3 07-25-2011 02:15:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026513505 3 07-25-2011 02:15:00 103
TIN: 000307234 IP: 172.16.17.213 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026517776 3 07-25-2011 02:57:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026517777 3 07-25-2011 02:57:00 103
TIN: 000307234 IP: 172.16.17.210 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026526055 3 07-25-2011 04:24:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026526056 3 07-25-2011 04:24:00 103
TIN: 000307234 IP: 172.16.17.213 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026528970 3 07-25-2011 04:53:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026528971 3 07-25-2011 04:53:00 103
TIN: 000307234 IP: 172.16.17.213 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026529689 3 07-25-2011 05:00:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026529691 3 07-25-2011 05:00:00 103
TIN: 000307234 IP: 172.16.17.213 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026530004 3 07-25-2011 05:04:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026530005 3 07-25-2011 05:04:00 103
TIN: 000307234 IP: 172.16.17.213 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026530953 3 07-25-2011 05:15:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026530954 3 07-25-2011 05:15:00 103
TIN: 000307234 IP: 172.16.17.210 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026531549 3 07-25-2011 05:20:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026531551 3 07-25-2011 05:20:00 103
TIN: 000307234 IP: 172.16.17.210 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026532703 3 07-25-2011 05:36:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026532704 3 07-25-2011 05:36:00 103
TIN: 000307234 IP: 172.16.17.210 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026533607 3 07-25-2011 05:48:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026533608 3 07-25-2011 05:48:00 103
TIN: 000307234 IP: 172.16.17.210 115.85.14.130 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026534385 3 07-25-2011 05:59:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026534386 3 07-25-2011 05:59:00 103
TIN: 000307234 IP: 172.16.17.213 115.146.140.241 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026536135 3 07-25-2011 06:30:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026536136 3 07-25-2011 06:30:00 103
TIN: 000307234 IP: 172.16.17.213 115.146.140.241 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026541451 3 07-25-2011 10:23:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026541452 3 07-25-2011 10:23:00 103
TIN: 000307234 IP: 172.16.17.213 180.194.151.14 Mozilla/5.0 (Macintosh; U; Intel Mac OS X 10_6_7; en-us) AppleWebKit/533.20.25 (KHTML, like Gecko) Version/5.0.4 Safari/533.20.27

70026542361 3 07-25-2011 11:33:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026542362 3 07-25-2011 11:33:00 103
TIN: 000307234 IP: 172.16.17.210 180.194.196.1 Mozilla/5.0 (Macintosh; U; Intel Mac OS X 10_6_7; en-us) AppleWebKit/533.20.25 (KHTML, like Gecko) Version/5.0.4 Safari/533.20.27

70026542372 3 07-25-2011 11:34:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026542373 3 07-25-2011 11:34:00 103
TIN: 000307234 IP: 172.16.17.210 180.194.196.1 Mozilla/5.0 (Macintosh; U; Intel Mac OS X 10_6_7; en-us) AppleWebKit/533.20.25 (KHTML, like Gecko) Version/5.0.4 Safari/533.20.27

70026542662 3 07-26-2011 02:09:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026542663 3 07-26-2011 02:09:00 103
TIN: 000307234 IP: 172.16.17.210 180.194.196.1 Mozilla/5.0 (Macintosh; U; Intel Mac OS X 10_6_7; en-us) AppleWebKit/533.20.25 (KHTML, like Gecko) Version/5.0.4 Safari/533.20.27

70026542677 3 07-26-2011 02:37:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026542678 3 07-26-2011 02:37:00 103
TIN: 000307234 IP: 172.16.17.213 180.194.196.1 Mozilla/5.0 (Macintosh; U; Intel Mac OS X 10_6_7; en-us) AppleWebKit/533.20.25 (KHTML, like Gecko) Version/5.0.4 Safari/533.20.27

70026543629 3 07-26-2011 08:32:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026543630 3 07-26-2011 08:32:00 103
TIN: 000307234 IP: 172.16.17.210 115.146.140.241 Mozilla/5.0 (Windows NT 5.1) AppleWebKit/534.30 (KHTML, like Gecko) Chrome/12.0.742.122 Safari/534.30

70026543671 3 07-26-2011 08:33:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026543672 3 07-26-2011 08:33:00 103
TIN: 000307234 IP: 172.16.17.210 115.146.140.241 Mozilla/5.0 (Windows NT 5.1) AppleWebKit/534.30 (KHTML, like Gecko) Chrome/12.0.742.122 Safari/534.30

70026545274 3 07-26-2011 09:29:00 103
TIN: 000307234; BRANCH CODE: 000; MODULE: Challenge Question

70026545275 3 07-26-2011 09:29:00 103
TIN: 000307234 IP: 172.16.17.210 115.146.140.241 Mozilla/5.0 (Windows NT 5.1; rv:5.0) Gecko/20100101 Firefox/5.0

70026545513 501 07-26-2011 09:37:00 94
Payment Transaction were saved on the database for TIN: 000307234; BRANCH CODE: 000; PYMT_TRANS_NO: 113117386; REFERENCE_NO: 101100004969749 MODULE: Payment Form

The occurrence of such facts was also admitted in the Endorsement[21] issued by Ms. Raquel Cristina V. Baltazar, head of respondent's ISOS Data Center, in this wise:

> "x x x
>
> Per system, logs of the BIR-EFPS facility, said taxpayer has continuously been using the facility from July 25, 2011 10:51 AM up to July 26, 2011 09:37:00AM. Date and time stamps would show that the said taxpayer has constantly made attempts to complete its filing process in order to meet its deadline on July 25, 2011."

It is equally important to note that the foregoing facts were also acknowledged in the Memorandum[22] issued by the LTS Sub-Technical Working Committee on May 28, 2012, which prompted the latter to unanimously recommend the approval of petitioner's request for abatement and/or cancellation of surcharge in the amount of ₱807,951.22. Pertinent portions of the said Memorandum are reproduced below:

> "x x x
>
> IV. Explanations/Justifications of the Offer:
>
> Philippine Plaza thru its A/P Accountant filed on July 25, 2011, its 2nd quarter VAT Return covering the period April 01, 2011 to June 30, 2011 thru EFPS. However, due to intermittent internet connection resulting to system error, the filing was not successfully complied until 4:19am of July 26, 2011. The officer in-charge of filing the said quarterly VAT Return exerted diligent effort including staying overnight in the office just to file the said return within the prescribed

[21] Ibid.
[22] Exhibit "P-7"

period, however, it ended to no avail. Please refer to the attached Endorsement letter of Ms. RAQUEL CRISTINA V. BALTAZAR, Head, ISOS Data Center dated May 24, 2012, wherein system logs of the BIR-EFPS facility showed that the taxpayer started and was continuously using the facility from July 25, 2011 at 10:51 A.M. up to July 26, 2011 at 4:19 AM. Further, the taxpayer called up the EFPS hotline on July 25, 2011, between 1:00 pm to 6pm but failed to request for a trouble ticket from the BIR-EFPS Help Desk Facility. The said VAT Return was successfully filed only at 4:19am of July 26, 2011 and ITS verification showed that payment was posted on the same day. The computed interest and compromise penalty for one (1) day in the amount of Eleven Thousand Seven Hundred Seventy and 85/100 pesos (Ph.11,770.85) was voluntarily paid on July 25, 2011. It is for this reason that subject taxpayer is requesting for abatement of surcharge on late payment amounting to Eight Hundred Seven Thousand Nine Hundred Fifty One & 22/100 Pesos (Ph.807,951.22).

V. Recommended Action
A. Evaluator

In view of the foregoing, it is respectfully recommended that the taxpayers request for abatement and/or cancellation of surcharge amounting to Eight hundred seven thousand nine hundred fifty one and 22/100 pesos (P807,951.22) be approved pursuant to Section 204(B) of the NIRC and in relation to Section 2.5 of RR 13-2001 dated September 27, 2001.

(signed)
BELEN C. SEVILLA
Evaluator

(signed)
OSCAR A. SABLE
Group Supervisor

(signed)
MELINDA ANNE A. PEREZ
Section Chief

B. LTS, Sub-Technical Working Committee

In view thereof, it is hereby recommended that the aforesaid application for abatement of the surcharge in the amount of Eight hundred seven thousand nine hundred fifty one and 22/100 pesos (P807,951.22) be approved pursuant to Section 204 (B) and in relation to Section 2.5 of RR 13-2001 dated September 27, 2001.

(signed)
EDWIN T. GUZMAN
Chief, LTRAL 2

(signed)
AMELIA C. RIVERA
Asst. Chief, LT CED

(signed)
VIRGILIO R. CEMBRANO
Chief, LT CED

(signed)
MAGDALENA A. ANCHETA
Chief, LT Programs Div.

(signed)
BEATRIZ S. PELINO
Chief, LT DP QAD

(signed)
TERESITA M. DIZON
HREA, Large Taxpayers
Service

(signed)
ALFREDO V. MISAJON
OIC Assistant Commissioner
Large Taxpayers Service"

Evidently, the foregoing repeated attempts of petitioner's witness to complete the filing process with the BIR as well as the immediate payment of VAT, which was four hours late, manifests her strong desire to timely file the quarterly VAT Return and to pay the same.

Further, upon scrutiny of the Decision[23] dated September 25, 2016 of OIC-Assistant Commissioner Alfredo V. Misajon, denying petitioner's request for abatement, the Court observed that the same was not in compliant with the provision of Section 4 (4.1) of RR No. 13-2001, which requires the need to state the "reasons" in denying the taxpayer's application for abatement or cancellation of tax, penalties and/or interest. In the said Decision, petitioner's request for abatement was plainly denied on account of "lack of factual and legal basis", without actually specifying therein in detail the reason/s for the said denial. Furthermore, if there is really no factual or legal basis in granting petitioner's request for abatement, then how come he joined the rest of the members of the LTS Sub-Technical Working Committee in recommending[24] the approval of petitioner's request for abatement and/or cancellation of surcharge in the amount of ₱807,951.22?

The Court also observed that there is no basis for petitioner to request for any trouble ticket as being required by respondent because at the time the petitioner experienced several attempts of unsuccessful efiling on July 25, 2011, there was no BIR regulation, order or ruling requiring taxpayers mandated to use eFPS to print evidence/proof thereof (e.g., Trouble Ticket Log from the Helpdesk of the BIR), in order not to incur penalties. In fact, it was only in the year 2015 that the BIR issued Revenue Memorandum Circular Nos. 026-15[25], 022-15[26]; 021-15[27], 020-15[28] that require such proof, to wit:

> "Those taxpayers mandated to use eFPS (e.g., TAMP) after several attempts of unsuccessful efiling, must print evidence/proof thereof (print screen with the message as

[23] Exhibit "P-4"
[24] Exhibit "P-7"
[25] Alternative Mode in the Filing of Several Returns Using the Electronic Platforms of the Bureau of Internal Revenue (BIR) and Re-efiling of All Other Forms, issued on May 6, 2015
[26] Alternative Mode in the Filing of BIR Form Nos. 1601-C and 1601-E Using the Electronic Platforms of the Bureau of Internal Revenue (BIR), issued on April 28, 2015.
[27] Alternative Mode in the Filing of BIR Form Nos. 2551M, 2551Q, 2550M and 2550Q Using the Electronic Platforms of BIR, issued on April 15, 2015.
[28] Alternative Mode in the Filing of BIR Form Nos. 1701Q and 1702Q with Payments Using the Electronic Platform of BIR, issued on April 15, 2015.

given by the system). Further, to protect them from penalties to be imposed in the future, they should:

a. Report/call HELPDESK and get Trouble Ticket Log; or
b. Report to BIR CONTACT CENTER 981-8888 and get Reference Number of the call."

The principle is well entrenched, that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[29] Further, the prohibition against retroactive rulings cannot be any clearer. Section 246 of the NIRC provides that:

"SEC. 246. Non-Retroactivity of Rulings. — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the **rulings or circulars** promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, x x x." (Emphasis supplied)

By such reasons, petitioner cannot be faulted for not requesting any trouble ticket from the HELPDESK to prove the reported warnings from the BIR website, prompting "idle for an hour" or "server interruption", as the same was not mandatorily required at the time petitioner experienced several attempts of unsuccessful efiling.

Lastly, it is interesting to note that the ProInsight for EFPS (software system where logs of all technical issues are being recorded)[30] relied upon by respondent in claiming that there was no log of any technical problem on July 25, 2011, appeared only for the first time in BIR Revenue Memorandum Order No. 041-11[31], issued on October 10, 2011, or eighty one (81) days from the time petitioner had difficulty in filing petitioner's return and in paying the corresponding VAT therein. Thus, there is a possibility that the said software was not yet being used on the day petitioner encountered said system error.

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[29] BPI Leasing Corp. vs. Court of Appeals, G.R. No. 127624, November 18, 2003, citing Republic v. Sandiganbayan, 269 SCRA 316 (1997), citing Lee v. Rodil, 175 SCRA 100 (1989) and State Prosecutors v. Muro, 236 SCRA 505 (1994); Al-Amanah Islamic Investment Bank of the Philippines v. Civil Service Commission, 207 SCRA 801 (1992).
[30] Par. 9 of Exhibit "2".
[31] Consolidating and Enhancing the Guidelines and Procedure in Identifying, Handling, Closing and Monitoring Real/Actual and Invalid Stop-filer Cases.

Weighing all the testimonial and documentary evidence presented, petitioner has sufficiently proved that the late filing of its VAT return for the 2nd quarter of 2011 and payment of the corresponding tax therein can be attributed to the system error in the EFPS facility, a circumstance beyond its control. Thus, the penalties and/or interest incurred by petitioner for said late filing and and payment should be abated or cancelled pursuant to Section 2 (2.5) of RR No. 13-2001.

In view of the foregoing, **petitioner's Motion for Reconsideration (Re: Honorable Court's Decision dated 6 April 2016)** is hereby **GRANTED**. Accordingly, the dispositive portion of the Decision dated April 6, 2016 is hereby modified to read as follows:

> **WHEREFORE**, premises considered, the Amended Petition for Review, filed by Philippine Plaza Holdings, Inc., claiming for a refund of surcharge collected and paid in the amount of Eight Hundred Seven Thousand Nine Hundred Fifty One Pesos and 22/100 (₱807,951.22) is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of ₱807,951.22.
>
> **SO ORDERED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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 Amended 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