

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

SPECIAL FIRST DIVISION

**HEWLETT-PACKARD SINGAPORE (SALES)
PTE. LTD. (as successor-in-interest of
COMPAQ COMPUTER ASIA PTE. LTD.),**

Petitioner,

C.T.A. CASE NO. 6726

Members:

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 30 2010 ; 2:00 pm

X -----X

DECISION

CASANOVA, JJ:

Before this Court is a *Petition for Review* praying that judgment be rendered ordering respondent to refund or issue tax credit certificate in the amount of EIGHTY-FOUR MILLION ONE HUNDRED FORTY-SEVEN THOUSAND SIX HUNDRED THIRTY FIVE PESOS & 72/100 (PhP84,147,635.72), representing the erroneously withheld final tax on royalties for the year 2001.

The antecedent facts are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of Singapore, with principal office address at 450 Alexandra Road, 119960 Singapore.¹

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to

¹ Joint Stipulation of Facts and Issues (JSFI), par. 1, Docket, p. 92; Exhibit "B"

act on and approve claims for refund or issuance of tax credit certificate as provided by law, with office address at the BIR National Office Building, Diliman, Quezon City.²

Petitioner is the transferee of all the business assets of Compaq Computer Asia Pte. Ltd. ("Compaq"), a corporation duly organized and existing under and by virtue of the laws of Singapore, with principal office address at 450 Alexandra Road, 119960 Singapore.³

Neither petitioner nor Compaq is engaged and licensed to do business in the Philippines, per certifications issued by the Securities and Exchange Commission ("SEC"), dated July 17, 2003 and July 19, 2001, respectively.⁴

ePLDT ("ePLDT") is a corporation organized and existing under the laws of the Philippines, with office address at 5/F L. V. Locsin Bldg., Makati Avenue cor. Ayala Avenue, San Lorenzo, Makati City.⁵

Philippine Long Distance Telephone Co. ("PLDT") is an affiliate of ePLDT and also a corporation organized and existing under the laws of the Philippines, with principal office address at Ramon Cojuangco Bldg., Makati Avenue, San Lorenzo, Makati City.⁶

On December 15, 2000, Compaq and ePLDT entered into Project Consulting Services Agreement ("PCSA") in Singapore, whereby the former will provide the latter with a Cash Card Application System consisting of the supply and delivery by Compaq of hardware and software, as well as training, maintenance, technical support and other services relating to the Cash Card Application System.⁷

Pursuant to the PCSA, ePLDT shall pay Compaq a fee in the amount of US\$6,420,053.07, exclusive of value-added tax, in consideration for the supply of the hardware, software and services.⁸

On July 25, 2001, PLDT filed its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for June 2001, and paid the sum of 

² Ibid, par. 2

³ Petition for Review, par. 3, Docket, p. 1

⁴ Ibid, par. 4, Docket, p. 1; Annex "B" and "C" of Petition for Review, Docket, pp. 35-36

⁵ Ibid, par. 5, Docket, p. 2

⁶ Ibid, par. 6, Docket, p. 2

⁷ Ibid, par. 7, Docket, p. 2

⁸ Ibid, par. 8, Docket, p. 2

Php202,460,018.51, which included taxes withheld in the sum of Php188,253,829.72.⁹

On April 10, 2002, respondent, through its Legal and Inspection Group ("LIG") issued BIR Ruling No. DA-ITAD-46-02 stating, among others, that, pursuant to the RP-Singapore Tax Treaty, the income derived by Compaq under the PCSA is not in the nature of royalties which are subject to Philippine tax or final withholding tax, but consisted of business profits which are not subject to Philippine income tax because Compaq has no permanent establishment in the Philippines.¹⁰

On the basis of said ruling, Compaq filed an administrative claim for refund of the allegedly erroneously withheld final tax on royalties for the year 2001 on August 6, 2002.¹¹

Subsequently or on July 21, 2003, petitioner filed the instant *Petition*.¹²

On September 3, 2003, respondent filed his *Answer* and raised Special and Affirmative Defenses, as follows: (1) petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent; (2) taxes paid and collected are presumed to have been made in accordance with laws and existing revenue regulations, hence not refundable; (3) in an action for refund, the burden of proof is on the taxpayer to establish its right to a refund and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law because exemptions from taxation are highly disfavored in law; and (4) claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.¹³

After issues were joined, trial proceeded. Petitioner presented testimonial and documentary evidence while counsel for the respondent manifested that she shall be submitting the instant case for decision based on the pleadings.¹⁴

The present case was deemed submitted for decision after this Court received the parties' respective Memorandum on April 3, 2009 and April 24, 2009.¹⁵

⁹ Exhibit "C" to "C-1-a," "C-2" and "C-3."

¹⁰ JSFI, par. 8 Docket, p. 93; Annex "F" of Petition for Review, Docket, pp. 42-48

¹¹ JSFI, par. 9; Exhibit "UU."

¹² Ibid, pp. 1-5

¹³ Ibid, pp. 67-70

¹⁴ Manifestation filed on May 16, 2008, Docket, p. 292; TSN, June 5, 2008, p. 5

¹⁵ Resolution dated May 12, 2009, Docket, p. 498

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The issues of the case, as stipulated by the parties, are as follows:¹⁶

1. Whether or not petitioner filed its administrative and judicial claims for refund and/or issuance of tax credit certificate within the statutory period of two years as required under Section 204(C) and 229 of the Tax Code, as amended.
2. Whether or not PLDT is an affiliate of ePLDT.
3. Whether or not Compaq and ePLDT entered into a Project Consulting Services Agreement ("PCSA") in Singapore.
4. Whether or not PLDT paid Compaq the sum of Php336,590,542.88 pursuant to a PCSA and whether or not the same is for the account of ePLDT.
5. Whether or not the income derived by Compaq under the PCSA is in the nature of royalties subject to Philippine withholding tax.
6. Whether or not Compaq has a permanent establishment in the Philippines.
7. Whether or not PLDT withheld 25% final tax on royalties in the amount of Php84,147,635.72 from its payments to petitioner and whether or not the withholding was for the account of ePLDT.
8. Whether or not the amount of Php84,147,635.72 was remitted to respondent.
9. Whether or not the withholding of 25% final tax on royalties in the amount of Php84,147,635.72 from payments to Compaq was erroneous.
10. In the affirmative, whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of Php84,147,635.72 representing the erroneously withheld final tax on royalties.
11. Whether or not HP is the proper party to file the instant claim for refund. 

¹⁶ Docket, pp. 93-94

In his Memorandum, however, respondent raised only one issue, i.e. whether petitioner is entitled to a refund or issuance of tax credit certificate in the amount of PhP84,147,635.72, representing the withheld final tax on royalties.

Respondent submits that:

1. The profits of Hewlett-Packard Singapore are in the nature of royalties from payments made by ePLDT under the Project Consulting Services Agreement (PCSA);¹⁷

2. The corporation survivor in a merger absorbs the liabilities of the corporation with which it merged, including tax liabilities as they were incurred;¹⁸ and

3. Well-settled is the rule that tax refunds partake the nature of an exemption and is, thus, looked upon with disfavor.¹⁹

After consideration of the parties' respective arguments and after a scrutiny of the records of the case, this Court finds merit in the instant *Petition*.

Compaq and ePLDT entered into a Project Consulting Services Agreement,²⁰ wherein Compaq shall provide ePLDT a CashCard Application System consisting of the supply and delivery by Compaq of both hardware and software, including servers, access servers, encryption-decryption equipment, cryptoservers, and routers ("Hardware"), ACI BASE 24 and NETS-Cash Card Software which shall be customized by Compaq to meet the requirements of ePLDT as well as operating system software needed to operate the Hardware ("Software"); and training, maintenance, technical support and other services relating to the CashCard Application System. The supply and delivery of the Hardware is an outright sale and the same becomes the sole property of ePLDT. Further, Compaq grants ePLDT a nonexclusive, nontransferable, royalty free, internal use, license to copy, load, execute, modify or merge with other Software on processors owned, leased and under the control of ePLDT, any Custom Software, specification and/or Documentation provided or first developed by Compaq 

¹⁷ Respondent's Memorandum, Docket, p. 388

¹⁸ Ibid, p. 389

¹⁹ Ibid, p. 390.

²⁰ Exhibits "A" and "GG"; TSN, February 4, 2004, August 3, 2004, March 14, 2006, July 11, 2006, February 22, 2007.

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and its subcontractors and third party suppliers under the Agreement.²¹ As regards the training, maintenance, technical support and other services of Compaq, the same shall be done primarily outside the Philippines. To the extent that such services are performed in the Philippines, they will not involve activities that will continue for a period or periods aggregating more than 183 days.

In turn, ePLDT shall pay Compaq a fee in the amount of Six Million Four Hundred Twenty Thousand Fifty Three U.S. Dollars and Seven Cents (US\$6,420,053.07), payable as follows:

Tandem Himalaya	\$	558,662.80
Bracom Security		57,620.25
NAC Controller		159,235.05
NERA PC		26,150.25
ACI BASE (<i>software</i>)		630,000.00
NETS-CashCard license (<i>software</i>)		2,600,000.00
Proliant servers/storage/rack		114,984.50
AR cryptoserver		57,500.00
CISCO Routers		110,245.15
Foreign Services:		
ACI-customization		325,896.00
NETS-customization		600,000.00
Service Component		500,000.00
NETS-maintenance fee		400,000.00
Local Services:		
Service Component		754,519.26
Freight for CISCO		19,895.31
TOTAL	\$	6,914,708.87
Less Agreed Upon Discount		494,655.80
NET (exclusive of VAT)	\$	6,420,053.07

From the evidence presented by petitioner, it was established that ePLDT is a wholly owned subsidiary of PLDT, and that PLDT withheld the amount of P84,147,635.72 as final tax on royalties from ePLDT's payments to Compaq under the Project Consulting Services Agreement and remitted the same to BIR.²² The Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) filed by PLDT shows the following:²³ 

²¹ Section 2, Par. 13.2, Section 2, Project Consulting Services Agreement

²² Exhibit "C-2"

²³ Exhibit "C"; TSN dated November 25, 2004

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Treaty Code	ATC	Nature of Income Payment	Amount of Income Payment	Rate	Tax Required To Be Withheld
US	WC 180	Interest on foreign loans (bond discount)	1,679,593.87	15%	251,939.08
US	WC 180	Interest on foreign loans	549,447,952.27	15%	82,417,192.84
SP	WC 180	Interest on foreign loans	23,989,196.60	15%	3,598,379.49
SP	WC 230	Consultancy on foreign loans	7,810,098.88	25%	1,952,524.72
GY	WC 180	Interest on foreign loans	2,798,755.20	10%	279,875.52
US	WC 230	CPS License	104,041,882.33	15%	15,606,282.35
SP		Royalty	336,590,542.88	25%	84,147,635.72²⁴
TOTAL					<u>188,253,829.72</u>

The corresponding Certificate of Final Income Tax Withheld (BIR Form No. 2306) was issued by PLDT to Compaq.²⁵

Mr. Silverio S. Ibay, Jr., Head of the General Accounting Center of PLDT issued a certification dated January 14, 2003, stating thus:²⁶

"CERTIFICATION

This is to certify that Philippine Long Distance Telephone Company (PLDT) remitted the amount of **Eighty Four Million One Hundred Forty Seven Thousand Six Hundred Thirty Five Pesos and Seventy Two Centavos (Php84,147,635.72)** to the Philippine Government on July 25, 2001, as evidenced by its monthly Remittance Return of Final Income Taxes Withheld (B.I.R. Form 1601-F) with attachment for the month of June 2001 (Annex "A"). The above remittance represents the final tax on royalties withheld from ePLDT Inc.'s ("ePLDT") payments to Compaq Computer Asia Pty., Ltd. under the Project Consulting Services Agreement dated December 15, 2000.

This is to certify further that the above remittance was made for the account of **ePLDT a wholly owned subsidiary of PLDT** and that any right or cause of action that may arise therefrom belongs exclusively to Compaq Computer Asia Pty., Ltd. and ePLDT as the contracting parties to the Project Consulting Services Agreement.

Philippine Long Distance Telephone Company

By:

(Signed)

SILVERIO S. IBAY, JR.

Head – General Accounting Center"

(Emphasis supplied.) 

²⁴ Page 2 of Exhibit "C"

²⁵ Exhibit "E"

²⁶ Exhibit "G"

As regards the question on whether there was erroneous withholding and payment of final tax, this Court must refer to Revenue Regulations ("RR") No. 7-82, which implements the RP-Singapore Tax Treaty.²⁷ Section 4 of said Regulations No. 7-82 reads thus:

"SEC. 4. Availment of Treaty Benefits. — Any person availing of any benefits provided by the Convention shall file the appropriate BIR Form for Income Tax Convention, hereinbelow indicated with the International Operations Division,²⁸ Bureau of Internal Revenue, National Office Bldg., Quezon City. If the one availing the benefits resides outside Metro Manila, he may file the appropriate BIR Form with the Regional Office nearest his residence. It shall be the duty of the Regional Director to forward the said form to the International Operations Division for proper action.

xxx.

All other request for relief where the above forms are inapplicable, the party availing thereof, may write to the Commissioner of International Revenue Attn: The Chief of International Tax Affairs Division for a ruling on the relief requested."

The Court *En Banc* ruled in *Mirant vs. Commissioner of Internal Revenue*²⁹ and *CDL Hotels (Phils.) Corporation vs. Commissioner of Internal Revenue*³⁰ that:

"However, it must be remembered that a foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that indeed the provisions of the tax treaty applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provisions of the National Internal Revenue Code, unless it is shown that the treaty provisions apply to the said corporation, and that, in cases the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked."

²⁷ Or the "Convention between the Philippines and Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income"

²⁸ Now International Tax Affairs Division or ITAD

²⁹ CTA EB Case No. 40 (CTA Case No. 6382), June 7, 2005

³⁰ CTA, EB Case No. 339 (CTA CASE No. 6585), August 10, 2009

Under Revenue Memorandum Order ("RMO") 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of the tax treaty provision must be preceded by an application for a tax treaty relief with the International Tax Affairs Division (ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the grant of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled thereto.

In the present case, Compaq³¹ wrote the BIR "requesting a ruling regarding certain income characterization issues under the Philippine-Singapore [T]ax [T]reaty arising from the [P]roject [C]onsulting [S]ervices [A]greement between Compaq and Philippine Long Distance Telephone Company and/or ePLDT (ePLDT)."

In response, the BIR issued BIR Ruling No. ITAD-046-02 dated April 10, 2002, which reads:

"1. Whether the payments relating to the supply and delivery of Hardware and Software by Compaq are royalties.

"Payments for the outright sale of Hardware, by which the Hardware becomes the sole property of ePLDT, payments therefor are not being received by Compaq for the 'use of or right to use' the Hardware. Thus, such payments are not in the nature of 'royalties' under the RP-Singapore tax treaty but may constitute 'business profits' under Article 7 of the RP-Singapore tax treaty which provides that-

'1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.'

or alternatively, 'gains from the alienation of property' under Article 13 of the RP-Singapore tax treaty provides that-

'xxx.'

³¹ Through Tan Concepcion & Bawagan Law Offices.

'4. Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State of which the alienator is a resident.' (underscoring supplied)

Since Compaq does not have a permanent establishment or a fixed base of business in the Philippines, payments relating to the supply and delivery by Compaq of Hardware to ePLDT would fall under paragraph 4 of Article 13 of the RP-Singapore tax treaty and should be taxable only in Singapore.

As regards the payment relative to the supply of Software, it is noteworthy that the object of the contract between Compaq and ePLDT is not the delivery of Hardware and Software per se but rather the delivery of a system, more particularly the CashCard Application System. The Hardware and Software, though essential to the operation of such system, are merely components of the system. Further, inasmuch as Compaq uses the Software for its own products or use, it only granted a license, albeit royalty-free, to ePLDT so that ePLDT may make use of such system. However, in view of the features discussed above, the fact that such license is granted does not the payment for the Software royalty payment.

In this regard, the Commentaries of the ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD) Committee on Fiscal Affairs on the Model Tax Convention [par. 12-17, Commentary on Article 12 (Royalties), (c)1998, p. 152-153 provide as follows:

'12. Whether payments received as consideration for computer software may be classified as royalties poses difficult problems but is a matter of considerable importance in view of the rapid development of computer technology in recent years and the extent of transfers of such technology across national borders. Software may be described as a programme, or series of programmes containing instructions for a computer required either for the operational processes of the computer itself (operation software) or for the accomplishment of other tasks (application software). It can be transferred through a variety of media, for example in writing, on a magnetic tape or disc, or on a laser disc. It may be standardized with a wide range of applications or be tailor-made for single users. It can be transferred as an integral part of computer hardware or in an independent form available for use on variety of hardware. The rights in computer software are a form of intellectual property. Research into the practices of OECD Member countries has established that all but one protect software rights either

explicitly or implicitly under copyright law. Transfers of rights occur in many different ways ranging from the alienation of the entire rights to the sale of a product which is subject to restrictions on the use to which it is put. The consideration paid can also take numerous forms. These factors may make it difficult to determine where the boundary lies between payments that are properly to be regarded as royalties and other types of payment.

'13. Three situations are considered. The first is of payments made where less than the full rights in software are transferred. In a partial transfer of rights the consideration is likely to represent a royalty only in very limited circumstances. One such case is where the transferor is the author of the software (or has acquired from the author his rights of distribution and reproduction) and he has placed part of his rights at the disposal of a third party to enable the latter to develop or exploit the software itself commercially, for example by development and distribution of it. It should be noted that even where a software payment is properly to be regarded as a royalty there are difficulties in applying the copyright provisions of the Article to software royalties since paragraph 2 requires that software should be classified as a literary, artistic or scientific work. None of these categories seems entirely apt but treatment as a scientific work might be the most realistic approach. Countries for which it is not possible to attach software to any of those categories might be justified in adopting in their bilateral treaties an amended version of paragraph 2 which either omits all references to the nature of copyrights or refers specifically to software.

'14. In other cases, the acquisition of the software will generally be for the personal or business use of purchaser. The payment will then fall to be dealt with as commercial income in accordance with Articles 7 or 14. It is of no relevance that the software is protected by copyright or that there may be restrictions on the use to which the purchaser can put it.
(underscoring supplied)

'15. The second situation is where the payments are made as consideration for the alienation of rights attached to the software. It is clear that where the consideration is paid for the transfer of the full ownership, the payment cannot represent a royalty and the provisions of the Article are not applicable. Difficulties can arise where there are extensive but partial alienations of rights involving: *a*

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- *exclusive right of use during a specific period or in a limited geographical area;*
- *additional consideration related to usage;*
- *consideration in the form of a substantial lump-sum payment.*

'16. Each case will depend on its particular facts but in general such payments are likely to be commercial income within Article 7 or 14 or a capital gains matter within Article 13 rather than royalties within Article 12. That follows from the fact that where the ownership of rights has been alienated in full or in part, the consideration cannot be for the use of the rights. The essential character of the transaction as an alienation cannot be altered by the form of the consideration, the payment of the consideration instal[l]ments or, in the view of most countries, by the fact that the payments are related to a contingency.

'17. The third situation is where software payments are made under mixed contracts. Examples of such contracts include sales of computer hardware with built-in software and concessions of the right to use software combined with the provisions of services. The methods set out in paragraph 11 of above dealing with similar problems in relation to patent royalties and know-how are equally applicable to computer software. Where necessary the total amount of the consideration payable under a contract should be broken down on the basis of the information contained in the contract or by means of a reasonable apportionment with the appropriate tax treatment being applied to each apportioned part.' (underscoring supplied)

'xxx xxx xxx'

Hence, based on the above-quoted commentaries, the payment for the Software is not royalty for the following reasons, taken together:

1. ePLDT acquired a system, of which the Software is a component. The right to use is given to make the system useful to ePLDT;
2. The acquisition of the Software will generally be for the personal or business use of ePLDT and not for the purpose of development or exploiting the Software itself for its commercialization and distribution; 

3. The exclusive right of use by ePLDT is not for a specific period or in a limited geographical area;
4. The consideration is payable in full (*i.e.* on or before the delivery of the Cash Card Application System but not later than February 15, 2001), rather than in installments;
5. No additional consideration other than as part of the entire package is to be paid by ePLDT; and
6. Payment for the Software is made under mixed contracts whereas the delivery of the Cash Card Application System by Compaq to ePLDT includes the outright sale of Hardware with built-in Software and concessions of the right to use the Software combined with the provisions for services.

Such being the case, payments to Compaq arising from the supply of Software, the outright sale of Hardware and the rendition of training, maintenance, technical support and other services by Compaq in connection with the CashCard Application System are not in the nature of 'royalties' under the RP-Singapore tax treaty but rather 'business profits.' Therefore, since Compaq is deemed not to have a permanent establishment in the Philippines to which its business profits may be attributed to, the payments as abovementioned to Compaq are not subject to Philippine tax pursuant to Article 7(1) in relation to Article 5 of the RP-Singapore tax treaty.

2. *Whether payments for the rendition of training, maintenance, technical support and other services by Compaq through Compaq's employees or other personnel in connection with the CashCard Application System are exempt from Philippine income tax pursuant to the treaty.*

The rendition of training, maintenance, technical support and other services by Compaq through its employees or other personnel in connection with the CashCard Application System cannot be considered to constitute royalties as, based on the representation, there will be no transfer of technology in which Compaq has proprietary interest or know-how or any undivulged technical information, special knowledge, skills or expertise to ePLDT.

Not being royalties, such payments may constitute business profits and, as already stated in No. 1, the profits of a foreign corporation shall be subject to Philippine income tax, but only so much of them as is attributable to a permanent establishment situated in the

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Philippines. For that purpose, a corporation which is a resident of Singapore may be deemed to have a permanent establishment in the Philippines if, among others, the furnishing of consultancy or supervisory services by such corporation, through its employees or other personnel, in the same or connected project, continue within the Philippines for a period or periods aggregating more than 183 days.

Considering that Compaq does not carry on business in the Philippines as aforesaid, as evidenced by the certificate of non-registration of corporate/partnership issued by the SEC, and since the services to be performed by its personnel will be done primarily outside of the Philippines and will not involve activities that will continue within the Philippines for a period or periods aggregating more than 183 days, Compaq is deemed not to have a permanent establishment in the Philippines to which its business profits may be attributed to. Hence, income derived by Compaq which are in the nature of business profits are not subject to Philippine tax pursuant to Article 7(1) in relation to Article 5 of the RP-Singapore Tax Treaty (BIR Ruling No. 100-99 dated July 9, 1999 and BIR Ruling No. ITAD-144-00 dated September 28, 2000)". (Emphasis supplied.)

The above-mentioned request and the BIR Ruling sufficiently comply with RR No. 7-82 and RMO 01-2000. Income earned by Compaq from the Project Consulting Services Agreement with ePLDT is not subject to Philippine tax. And under Section 229 of the National Internal Revenue Code of 1997,³² a taxpayer may recover tax erroneously or illegally collected.

In the absence of controverting evidence, this Court shall give weight to the BIR Ruling. As found by this Court, the facts on which said BIR Ruling were based were the testimonial and documentary evidence presented by petitioner in this case. And, well-entrenched is the rule that findings of administrative officials and agencies who have acquired expertise because their jurisdiction is confined to specific matters 

³² 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.

are generally accorded not only respect but at times even finality – if such findings are supported by substantial evidence.³³

The next question is whether petitioner is entitled to the reliefs prayed for in the *Petition*.

Mr. Kwek Yong Pheng, Comptroller of Income Tax of the Inland Revenue Authority of Singapore confirmed in a letter dated October 18, 2004 that Compaq Computer Asia Pte. Ltd. did not make a claim for double taxation relief in respect of taxes paid on income it received from the Philippines.³⁴

However, prior to the filing of the instant *Petition*, Computer Asia Pte. Ltd. and herein petitioner entered into a Business Transfer Agreement³⁵ on November 1, 2002, wherein Compaq Computer Asia Pte. Ltd. agreed to sell its business assets³⁶ to herein petitioner. Hence, petitioner also acquired the right to pursue Compaq's claim for refund or tax credit.

Lastly, under Section 229 of the National Internal Revenue Code of 1997, the administrative and the judicial claim for refund or credit for the tax erroneously withheld and remitted to BIR were filed prior to the expiration of two years from date of payment of the subject tax. Hence, prescription has not set in.

IN VIEW OF THE FOREGOING, the instant *Petition for Review* is **GRANTED**. Respondent is hereby **ORDERED** to refund or issue tax credit certificate in favor of petitioner, in the amount of EIGHTY-FOUR MILLION ONE HUNDRED FORTY-SEVEN THOUSAND SIX HUNDRED THIRTY FIVE PESOS & 72/100 (Php84,147,635.72), representing the erroneously withheld final tax on royalties for the year 2001.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

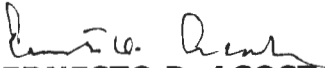
³³ *Taguinod and Aguila vs. Court of Appeals, et al.*, G.R. No. 154654, September 14, 2007

³⁴ Exhibit "X"

³⁵ Exhibit "B"

³⁶ Defined in paragraph 1.1 of the Agreement

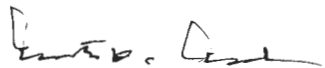
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.


ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice