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

**SECOND DIVISION**

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| **MATEX INTERNATIONAL, INC.**, Petitioner, | **CTA CASE NO. 10180** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.**, *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE**, Respondent. | Promulgated: FEB 15 2022 4:30 p.m. |

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## DECISION

***CASTAÑEDA, JR., J.:***

The *Petition for Review* filed on October 4, 2019 prays for the refund of the amount of ₱10,694,149.20, allegedly representing petitioner's erroneous payment of final withholding taxes (FWTs) on dividends.[1]

## THE PARTIES

Petitioner Matex International, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws.[2] It is registered with the Bureau of Internal Revenue (BIR), under Taxpayer Identification Number (TIN) 004-142-653-000, with address at No. 16 Mountain Drive LISP II, La Mesa, Calamba, Laguna 4027.[3]

Respondent Commissioner of Internal Revenue is the chief of the BIR who, under the law, is empowered to perform the duties of

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[1] Summary of the Case, Pre-Trial Order dated March 10, 2020, Docket – Vol. I, p. 292.
[2] Exhibits "P-1" and "P-2", Docket – Vol. I, pp. 344 to 368.
[3] Exhibit "P-3", Docket – Vol. I, p. 369.

his office, including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

## ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 14, 2019, petitioner filed with the BIR its *Application for Tax Credit/Refunds* (BIR Form No. 1914)[5] and letter dated April 29, 2019[6], relative to its claim for refund or credit of alleged erroneously paid FWTs on the excess distribution of cash dividends to its shareholders, in the amount of **₱10,694,124.00**, for the period from September 6, 2017 to October 12, 2017.

## PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review* on October 4, 2019,[7] praying that judgment be rendered ordering respondent to refund the amount of **₱10,694,149.20**,[8] supposedly representing the erroneous payment of FWTs on dividends.

On January 2, 2020, respondent filed his *Answer*,[9] interposing the following special and affirmative defenses, to wit: (1) petitioner is not entitled to refund of the alleged erroneously paid FWTs on dividends in the amount of ₱10,694,149.20; (2) the Court has no jurisdiction over the instant petition; and (3) assuming without conceding that the Court has jurisdiction, the instant petition should be dismissed for utter lack of merit.

Respondent transmitted the *BIR Records* for the instant case on January 15, 2020.[10]

The Pre-trial Conference was set and held on February 13, 2020.[11] Prior thereto, *Respondent's Pre-Trial Brief* was filed on

[4] Par. 1, Admitted Facts, *Joint Stipulation of Facts & Issues* (JSFI), Docket – Vol. I, pp. 277 to 278.
[5] Exhibit "P-9", Docket – Vol. I, p. 402.
[6] Exhibit "P-10", Docket – Vol. I, pp. 403 to 405.
[7] Docket – Vol. I, pp. 6 to 31.
[8] Notably, this amount is higher than the amount stated in the administrative claim by ₱25.20.
[9] Docket – Vol. I, pp. 160 to 166.
[10] *Compliance* dated January 15, 2020, Docket – Vol. I, pp. 169 to 171.

February 6, 2020;[12] while *Petitioner's Pre-trial Brief* were submitted on February 7, 2020.[13]

On February 27, 2020, the parties filed their *Joint Stipulation of Facts & Issues*,[14] which was approved in the Pre-Trial Order dated March 10, 2020,[15] thereby deeming the termination of the pre-trial.

Trial ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Cherrylyn Cataag,[16] petitioner's Accounting Manager; (2) Mr. Norio Oshima,[17] Vice-President and General Manager of petitioner; and (3) Mr. Fidel Lomibao,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).

Petitioner filed its *Formal Offer of Evidence* on June 29, 2020.[19] Respondent posted his *Comment/Opposition (to Petitioner's Formal Offer of Evidence with Manifestation)* on July 6, 2020,[20] praying that certain exhibits be denied admission; and manifesting that in view of the confirmation of the office conducting an investigation/audit on petitioner's claim for refund that there is still no report on the investigation, he will no longer present his witness, but instead requested that the Court allow him to submit his memorandum, to further support his defense.

In the Resolution dated July 27, 2020,[21] the Court admitted petitioner's Exhibits, *except* for Exhibits "P-13", "P-14", "P-15", "P-23" and "P-23-1", for failure to submit the originals or certified true copies of these documents to the Court for comparison.

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[11] *Notice of Pre-Trial Conference* dated January 7, 2020, Docket – Vol. I, pp. 167 to 168; Minutes of the hearing held on, and Order dated, February 13, 2020, Docket – Vol. I, pp. 275 to 276.
[12] Docket – Vol. I, pp. 174 to 176.
[13] Docket – Vol. I, pp. 178 to 189.
[14] Docket – Vol. I, pp. 277 to 283.
[15] Docket – Vol. I, pp. 292 to 297.
[16] Exhibit "P-25", Docket – Vol. I, pp. 191 to 204; Order dated June 3, 2020, Docket – Vol. I, p. 321.
[17] Exhibit "P-24", Docket – Vol. I, pp. 309 to 320; Order dated June 3, 2020, Docket - Vol. I, p. 321.
[18] Exhibit "P-26", Docket – Vol. I, pp. 298 to 305; Order dated June 3, 2020, Docket – Vol. I, p. 321.
[19] Docket – Vol. I, pp. 328 to 343.
[20] Docket – Vol. II, pp. 499 to 502.
[21] Docket – Vol. II, pp. 505 to 506.

On August 17, 2020, respondent posted his *Manifestation and Ex-Parte Motion*,[22] manifesting, again, that there is still no report on the investigation of petitioner's claim for refund, and hence, he will no longer present his witness and further requesting to allow him to submit his memorandum, to further support his defense. Thus, in the Resolution dated September 4, 2020,[23] the Court noted the said *Manifestation* and granted the said motion.

Petitioner filed its *Motion for Partial Reconsideration (of Resolution dated July 27, 2020)* on October 6, 2020.[24] Respondent then filed his *Comment/Opposition (Re: Petitioner's Motion for Partial Reconsideration dated 06 October 2020)* on October 22, 2020.[25] In the Resolution dated December 4, 2020,[26] the Court denied petitioner's *Motion for Partial Reconsideration.*

Respondent's *Memorandum* was filed on October 12, 2020;[27] while petitioner's *Memorandum* was filed on February 10, 2021.[28]

On February 15, 2021, this case was considered submitted for decision.[29]

## THE ISSUE STIPULATED BY THE PARTIES

The parties stipulated the following issue for the Court's resolution, to wit:

> "...Whether or not Petitioner is entitled to refund the amount of Ten Million Six Hundred Ninety-Four Thousand One Hundred Forty-Nine Pesos and Twenty Centavos (Php10,694,149.20) representing the alleged erroneously paid final withholding taxes on erroneously declared cash dividends?"[30] *jr*

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[22] Docket – Vol. II, pp. 507 to 509.
[23] Resolution dated September 4, 2020, Docket – Vol. II, p. 513.
[24] Docket – Vol. II, pp. 514 to 517.
[25] Docket – Vol. II, pp. 578 to 580.
[26] Docket – Vol. II, pp. 590 to 591.
[27] Docket – Vol. II, pp. 565 to 575.
[28] Docket – Vol. II, pp. 594 to 616.
[29] Resolution dated February 15, 2021, Docket – Vol. II, p. 618.
[30] Stipulated Issues, JSFI, Docket – Vol. I, p. 278.

***Petitioner's arguments:***

Petitioner argues that as a withholding agent and the wholly-owned subsidiary of Matex Co., Ltd., it has the personality to file a refund of the amount representing the erroneous payment of FWTs on the dividends distributed; that the claim for refund was filed by petitioner within the two (2)-year prescriptive period; that petitioner has erroneously paid the FWT corresponding to dividends declared in excess of the unrestricted retained earnings; and that the erroneous dividend declaration was purely an error and was made in good faith.

***Respondent's counter-arguments:***

Respondent counter-argues that the Court has no jurisdiction over the instant petition; and that assuming without conceding that the Court has jurisdiction, the instant petition should be dismissed for utter lack of merit.

## THE COURT'S RULING

The present *Petition for Review* lacks merit.

For an orderly disposition of this case, We shall first address the issue of jurisdiction being raised by respondent. Relative thereto, the latter contends that petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund *pro-forma*; that this *pro-forma* administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund; and that without a validly and duly filed administrative claim for refund, this Court is without jurisdiction to entertain the *Petition for Review*. Respondent has come up with the said contentions on the basis of the following ruling of the Supreme Court in *Atlas Consolidated Mining and Development Corporation vs. Commissioner* ("*Atlas* case"),[31] to wit:

> "Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful

[31] G.R. No. 145526, March 16, 2007.

> administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**." *(Emphases and underscoring are of respondent)*

However, the contentions of respondent and his reliance on the foregoing pronouncements are untenable.

A careful reading of the above-quoted ruling in the *Atlas* case would reveal that nowhere is it stated that an administrative claim with incomplete supporting documents should be treated as *pro-forma*, so as to oust this Court of jurisdiction upon appeal thereof by the refund claimant. Neither are We aware of any provision of law or jurisprudential pronouncement to support the said notion.

At best, an administrative claim not supported by complete documents will only result in the denial or dismissal of the said claim, and upon appeal thereof before this Court, certain evidence may not be given credence. In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case"),[32] the High Court has made the same clear, and elaborated on the above-quoted ruling in the *Atlas* case, to wit:

> "A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit support documents. **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level.** When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful

[32] G.R. No. 207112, December 8, 2015.

> administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund of tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> **In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim." *(Emphasis added)*

Based on the foregoing jurisprudential pronouncements, it is clear that if an administrative claim was dismissed by respondent due to the taxpayer's failure to submit complete documents <u>despite notice/request</u>, then the judicial claim before this Court would be dismissible, <u>not for lack of jurisdiction</u>, but for the taxpayer's failure to substantiate the claim at the administrative level. As such, when the corresponding judicial claim is already lodged in this Court, the taxpayer has to convince the latter that respondent had no reason to deny its claim. Such taxpayer cannot cure its failure to submit a documented <u>requested by the BIR at the administrative level</u> by filing the said document before this Court. It is therefore implied that, in such case, there are documents presented by the taxpayer that cannot be given credence in this Court. However, this is not so when the judicial claim was due to the inaction of the BIR. When the administrative claim was never acted upon, this Court may give credence to all evidence presented by the taxpayer, including those that may not have been submitted to respondent, as the case is being essentially decided in the first instance.

Significantly, it is noteworthy that whether in the *Atlas* case or in the *Pilipinas Total Gas* case, no ruling was made that in case of incomplete documents, the corresponding administrative claim should be treated as *pro-forma,* the appeal of which before this Court would result in its lack of jurisdiction.

Correspondingly, respondent's contention that this Court is without jurisdiction is clearly has no leg to stand on.

***Governing provisions for refund claims.***

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 read:

> "SEC. 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 added)*
>
> "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." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. **Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional**, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[33] Thus, so long as the judicial claim was filed within two (2) years from the date of payment of the tax or penalty, and within such period, an administrative claim was filed before filing such judicial claim, this Court has jurisdiction to entertain the latter.

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. 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 is some other similar aspect is illegal.[34]

Thus, for the instant claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject FWTs paid fall under the above-stated definition of "erroneous or illegal tax".

At any rate, this Court agrees with petitioner that it has the personality to file the present refund claim. It is settled that the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.[35]

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[33] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[34] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[35] *Commissioner of Internal Revenue vs. Smart Communication, Inc*, G.R. Nos. 179045-46, August 25, 2010.

***Petitioner complied with the two-year prescriptive period under the law.***

In this case, the payment or remittance of the subject FWTs were made on October 7, 2017.[36] Correspondingly, the two-year prescriptive period under the aforequoted Sections 204(C) and 229 will end on October 7, 2019. Considering that petitioner's administrative claim and the present judicial claim were filed on June 14, 2019,[37] and October 4, 2019,[38] respectively, petitioner complied with the two-year prescriptive period under the law.

***However, petitioner failed to prove that the FWTs imposed on the subject dividends are erroneous or illegal.***

Petitioner is of the position that it has erroneously paid the FWT corresponding to the dividends declared in excess of the unrestricted retained earnings.

Records reveal that in a special meeting held on September 6, 2017, the Board of Directors of petitioner approved a resolution to declare a cash dividend of ₱1.41, per share or a total amount of ₱175,504,496.34 out of petitioner's undivided profits, payable to its common stockholders of record as of August 31, 2017, and distributable on September 26, 2017.[39] Thereafter, on the said latter date, petitioner remitted to its parent company and controlling stockholder, Matex Co., Ltd., the amount of JP¥336,214,160.00, representing the payment of dividends.[40] Petitioner then filed a *Monthly Remittance Return of Final Income Taxes Withheld*, and paid the FWT in the amount of ₱17,550,379.13 (as a *Total Tax Required to be Withheld based on Tax Treaty Rates*), on October 7, 2017.[41]

Subsequently, petitioner opined that it had erroneously remitted cash to its common stockholders as of August 31, 2017, amounting to ₱106,940,858.00 in the form of dividends.[42] Thus, *jc*

[36] Exhibits "P-5", "P-6", and "P-7", Docket - Vol. I, pp. 396 to 400.
[37] Exhibits "P-9" and "P-10", Docket - Vol. I, pp. 402 to 405.
[38] Docket - Vol. I, pp. 6 to 31.
[39] Exhibit "P-20", Docket - Vol. I, p. 426.
[40] Exhibits "P-16", Docket – Vol. I, p. 413; Exhibit "P-20", Docket - Vol. I, p. 426.
[41] Exhibits "P-5" to "P-8", Docket - Vol. I, pp. 396 to 401.
[42] Refer to Exhibit "P-4-3", Docket - Vol. I, pp. 389 to 390.

under Note 18 of petitioner's audited financial statements for the fiscal year ended September 30, 2018, the following are stated, to wit:

"18. **PRIOR PERIOD ADJUSTMENT**

In a special meeting of the Board of Directors (BOD) on September 6, 2017, the board has approved a resolution declaring dividends in the total amount of P175,504,496 payable to the common stockholders of record of the Company as of August 31, 2017 and distributed on September 26, 2017, for which the Company withheld and remitted to the Bureau of Internal Revenue (BIR) the withholding taxes in the total amount of P17,550,513 on October 7, 2017.

Subsequently or on July 11, 2018, the BOD resolved to amend the foregoing resolution to correct the amount of the dividends declared to P68,563,638 only to the extent of its cumulative earnings as of September 30, 2017. The adjustment resulted in the reduction of the previously recorded dividend payment and corresponding increase in equity (share capital) by P106,940,858. Also, the foregoing adjustment gave rise to the recognition of a receivable of the same amount representing the excess and erroneous distribution to the said common stockholders of record and is presented as Due from Stockholders in the 2018 statement of financial position, thereby overpaying the withholding taxes due thereon by P10,694,124 and resulting to the recognition of a Due (refundable) from the BIR with a corresponding credit to Due to Shareholders in the same amount (see notes 6, 7, 10, 11, 16 and 21). The said adjustment does not have any impact on the recorded net loss for fiscal ended September 30, 2017."[43]

Relative thereto, in its *Memorandum*, petitioner argues as follows:

"...the dividend declaration made on 06 September 2017 by the Petitioner's Board of Directors under Board Resolution No. 2017-001 in the amount of Php 175,504,496.34 **(Exhibit 'P-20'), which** exceeded the Petitioner's unrestricted retained earnings of just Php 68,563,638 **(Exhibit 'P-4')** – is not allowed under the existing laws and regulations at the time of the said declaration. Said dividend declaration is therefore erroneous and ineffectual insofar as the dividends declared exceeded the Petitioner's unrestricted retained earnings, with the difference amounting to **Php106,940,858**. ٩ـ

[43] Refer to Exhibit "P-4", Docket - Vol. I, at p. 393.

49. Accordingly, the final withholding taxes paid by the Petitioner corresponding to the erroneously paid dividends in the total amount of **Php10,694,149.20** should be deemed erroneous as well.

50. In sum, since the dividend declaration is erroneous, the taxes paid thereon by the Petitioner on behalf of the recipients of the dividend payments should also be considered erroneous and therefore the proper subject of a tax refund."[44]

This Court, however, finds petitioner's reasoning as specious.

Undoubtedly, Section 43 of *Batas Pambansa Bilang* 68, also known as the *"The Corporation Code of the Philippines"*,[45] provides for the power of a corporation to declare dividends:

"Sec. 43. Power to declare dividends. – **The board of directors of a stock corporation may declare dividends <u>out of the unrestricted retained earnings</u>** which shall be payable in cash, in property, or in stock to all stockholders on basis of outstanding stock held by them: xxx" *(Emphasis and underscoring added)*

Relative thereto, the Securities and Exchange Commission promulgated its Memorandum Circular No. 11, Series of 2008,[46] pertinent portions thereof read:

"SECTION 2. Definition of Terms.

***Retained earnings* – the accumulated profits realized out of normal and continuous operations of the business after deducting therefrom distributions to stockholders and transfer to capital stock or other accounts.** The Retained Earnings shall be the amount as shown in the financial statements audited by the company's independent auditor. If applicable, such amount shall refer to the retained earnings of the parent company but not the consolidated financial statements.

***Unrestricted Retained Earnings* – the amount of accumulated profits and gains realized out of the normal and continuous operations of the company after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) <u>not</u>**

[44] Docket – Vol. II, p. 609.
[45] This is the law in force at the time of petitioner's dividend declaration, prior to the effectivity of Republic Act No. 11232, also known as the *"Revised Corporation Code of the Philippines"*, on February 23, 2019.
[46] GUIDELINES ON THE DETERMINATION OF RETAINED EARNINGS AVAILABLE FOR DIVIDEND DECLARATION.

**appropriated by its Board of Directors for corporate expansion projects or programs; (2) <u>not</u> covered by a restriction for dividend declaration under a loan agreement; and (3) <u>not</u> required to be retained under special circumstances obtaining in the corporation such as when there is a need for a special reserve for probable contingencies.**

xxx xxx xxx

SECTION 5. Retained earnings available for dividends. Dividends, whether cash, property or stock, shall be declared out of unrestricted retained earnings of the Corporation. Accordingly, a corporation cannot declare dividends when it has zero or negative retained earnings otherwise known as Retained Earnings deficit. **For such purpose, <u>the surplus profits or income must be a bona fide income founded upon actual earnings or profits</u>. The existence, therefore, of surplus profits arising from the operation of corporate business is a condition precedent to the declaration of dividend.**

**For purposes of these Guidelines, the phrase 'actual earnings or profits' as mentioned above shall be the net income for the year based on the audited financial statements, adjusted for unrealized items discussed below, which are considered not available for dividend declaration.**

a. <u>Share/equity in net income</u> of the associate or joint venture accounted for equity method as the same is not yet actually earned or realized. It is only after the investee company declares such income as dividend that said income is actually realized or the earnings becomes available for dividend declaration. Due to the effect on the investment account, only cash or property dividends declared by the investee-company shall be considered as earnings declarable as dividends by the investor company;

b. <u>Unrealized foreign exchange gains, except those attributable to cash and cash equivalents,</u> for the time being that they are not yet actual income prior to realization of such foreign exchange gain;

c. <u>Unrealized actuarial gains which is the result when the company chooses the option of recognizing actuarial gains or losses directly to profit or loss statement;</u>

d. <u>Fair value adjustment</u> or the gains arising only from marked-to-market valuation which are not yet realized;

e. The amount of recognized <u>deferred tax asset</u> that reduced the amount of income tax expense and increased the net income and retained earnings, until realized;

f. Adjustment due to deviation from PFRS/GAAP of the audited financial statements which results to gain;

g. Other unrealized gains or adjustments to the retained earnings brought about by certain transactions accounted for under the PFRS such as accretion income under IAS 39, Day 1 gains on initial recognition of financial instruments, reversal of revaluation increment to retained earnings, and negative goodwill on investments in associate;

h. Other adjustments that the Commission may prescribe by amending the Annex 'A' of these Guidelines.

The items above are defined in accordance with the financial reporting framework, i.e., Generally Accepted Accounting Principles in the Philippines or Philippine Financial Reporting Standards (PFRS), followed by the company.

Additional Paid-In Capital Stock shall neither be declared as dividend nor shall it be reclassified to absorb deficiency except through an organizational restructuring duly approved by the Commission." *(Emphases and underscoring added)*

Based on the foregoing provisions, the term *"unrestricted retained earnings"* has been defined as *"the amount of accumulated profits and gains realized out of the normal and continuous operations of the company after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) not appropriated by its Board of Directors for corporate expansion projects or programs; (2) not covered by a restriction for dividend declaration under a loan agreement; and (3) not required to be retained under special circumstances obtaining in the corporation such as when there is a need for a special reserve for probable contingencies."* Furthermore, it is clear that *"the surplus profits or income must be a bona fide income founded upon actual earnings or profits"*; and the phrase *"actual earnings or profits"* refers to **the net income for the year based on the audited financial statements**, as adjusted for certain unrealized items, which are considered not available for dividend declaration.

In this case, it is noteworthy that the supposed distribution of the subject dividends was *not* founded upon petitioner's net income for any year. Neither is there any indication that it is based on any audited financial statements. This is clearly shown in petitioner's Board Resolution No. 2017-11, to wit:

> "RESOLVED, as it hereby resolved, that a cash dividend of One Peso and Forty One Centavos (Php1.41), Philippine Currency, per share or a total amount of One Hundred Seventy Five Million Five Hundred Four Thousand Four Hundred Ninety Six and 34/100 Pesos (Php175,504,496.34), Philippine Currency, is hereby declared out of the undivided profits of the Corporation, payable to the common stockholders of record as of August 31, 2017 and distributable on September 26, 2017."[47]

Considering that the said declaration of dividends is not shown to be founded upon petitioner's net income for any particular year, this Court cannot ascertain whether the same are excessive. This Court cannot then determine whether there was indeed a corresponding excess in the FWTs paid or remitted.

Moreover, it is here noted that petitioner's *Statements of Changes in Equity* for the year ended September 30, 2018[48] have the following information:

| | Share Capital (Notes 11 & 18) | Cumulative Earnings (Note 18) | Total Equity |
|---|---|---|---|
| Balances at September 30, 2017 | ₱ 17,530,416 | ₱ - | ₱ 17,530,416 |
| Erroneous Remittance to Shareholders | 106,940,858 | | 106,940,858 |
| Net Loss for the Year | - | (3,240,565) | |
| Balances at September 30, 2018 | ₱ 124,471,274 | ₱ (3,240,565) | (3,240,565) |
| | | | |
| Balances at September 30, 2016 | ₱ 124,471,274 | ₱ 58,402,372 | ₱182,873,646 |
| Adjustment on Allowance for Impairment Loss | - | 12,843,267 | 12,843,267 |
| Dividend Paid | (106,940,858) | (68,563,638) | (175,504,496) |
| Net Loss for the Year | - | (2,682,000) | (2,682,001) |
| Balances at September 30, 2017 | ₱ 17,530,416 | - | ₱ 17,530,416 |

As can be gleaned from the foregoing, petitioner's Share Capital was in the amount of ₱124,471.274.00 *(Balances at September 30, 2016)*, but the same was reduced in the year ended September 30, 2017 by the amount ₱106,940,858.00, as part of the amount of the dividends paid in the amount of ₱175,504,496.00. To be sure, such reduction in petitioner's capital runs counter to the Trust Fund doctrine. To recall, the said doctrine considers the subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Until the liquidation of the corporation, no part of the subscribed capital

[47] Refer to Exhibit "P-20", Docket – Vol. I, p. 426.
[48] Exhibit "P-4-2", Docket – Vol. I, p. 379.

may be returned or released to the stockholder (except in the redemption of redeemable shares) without violating this principle.[49] Thus, it is apparent that the said amount of ₱106,940,858.00 should not have been taken from the Share Capital in the amount of ₱124,471.274.00. Simply put, it was error for petitioner to have taken the said amount of ₱106,940,858.00 from the Share Capital. As a corollary, such error was rectified by petitioner when the same amount of ₱106,940,858.00 was restored in the year ended September 30, 2018.

Be that as it may, there is still no indication that the supposed balance of the dividend payment in the amount of ₱68,563,638.00 formed part of petitioner's unrestricted retained earnings prior to the declaration and payment of the subject dividends on September 6, 2017, and September 26, 2017, respectively. The said amount was merely determined by subtracting the amount of ₱106,940,858.00 with the earlier declared total amount of dividends to be distributed (*i.e.*, ₱175,504,496.00). Moreover, as already noted, petitioner has not clearly identified the amount of unrestricted retained earnings it had, prior to the payment of dividends in the amount of ₱175,504,496.00.

In fine, petitioner has not shown that the appropriate tax base for the subject refund claim.

More importantly, it must be pointed out that any error committed by petitioner in the determination of the appropriate tax base, or specifically, the total amount of dividends to be, or have been, distributed to its shareholders, does *not* automatically translate or result to an "*erroneous or illegal tax*", as jurisprudentially defined (*supra*). Surely, petitioner must still further prove that the collected or paid FWTs are indeed erroneous or illegal.

As alleged, petitioner's stockholders are composed of a corporate entity, and certain individuals.

On the basis of the pertinent provisions of the NIRC of 1997, as amended, the income tax rates to be imposed on dividends derived or earned by individuals on the basis of their categorization, are as follows:

[49] *Philippine Long Distance Company vs. National Telecommunications Commission*, G.R. No. 152685, December 4, 2007.

1) For individual citizens and resident aliens – 10%;[50]
2) For nonresident aliens engaged in trade or business within the Philippines – 20%;[51] and
3) For nonresident aliens engaged in trade or business within the Philippines – 25%;[52]

In this case, petitioner has not clearly established or identified as to which category its individual stockholders respectively belonged. Thus, this Court cannot determine which income tax rate should be individually applicable to the said stockholders, and in turn, cannot ascertain whether the FWTs imposed on them, respectively, are erroneous or illegal.

As for the taxation of dividends derived by nonresident foreign corporations, Section 28(B)(1) and (5)(b) of the NIRC of 1997, as amended, reads as follows:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.* —
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation.* —
>
> (1) *In General.* — **<u>Except as otherwise provided in this Code</u>, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as... <u>dividends</u>**...: ***Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).**
>
> xxx xxx xxx
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* —
>
> xxx xxx xxx
>
> (b) *Intercorporate Dividends.* — **A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation**, which shall be collected and paid as provided in Section 57(A) of this Code, **<u>subject to the condition that the country in which the nonresident foreign corporation is domiciled</u>, shall allow a credit against the tax** gr

[50] Section 24(B)(2), NIRC of 1997.
[51] Section 25(A)(2), NIRC of 1997.
[52] Section 25(B), NIRC of 1997.

> **due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph:** *Provided*, **<u>That effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%)</u>, which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends**;" *(Emphases and underscoring added)*

Based on the foregoing provisions, as a general rule, except as that provided in the same NIRC of 1997, as amended, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equivalent to thirty percent (30%)[53] of the dividends earned. Such income tax rate may be reduced to fifteen percent (15%), subject to the condition that the country in which the nonresident foreign corporation is domiciled, allows credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%),[54] which represents the difference between the said regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends.

In any case, it must be noted that Section 32(B) of the NIRC of 1997 recognizes, and adheres to, the treaty obligations entered into by the Philippine Government which grant income tax exemptions, to wit:

> "SEC. 32. *Gross Income.* –
>
> xxx xxx xxx
>
> (A) *Exclusions from Gross Income.* – **The following items shall not be included in gross income and <u>shall be exempt from taxation</u> under this Title**:
>
> xxx xxx xxx
>
> (5) ***Income Exempt under Treaty.*** – **Income of any kind, <u>to the extent required by any treaty obligation</u> binding upon the Government of the Philippines.**" *(Emphases and underscoring added)* Je

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[53] Beginning January 1, 2009.
[54] *Id.*

Based on the foregoing provision, an income may be exempted from taxation to the extent required by any treaty obligation binding upon the Government of the Philippines.

The said treaty obligation may be embodied in bilateral treaties for the avoidance of double taxation. The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.[55]

One such bilateral agreement is the Philippines-Japan Tax Treaty,[56] as amended,[57] which appears to be the treaty being invoked by petitioner anent its payment of dividends to Matex Co., Ltd, since petitioner applied the rate of 10%.[58] Article 10 thereof:

"Article 10

1. **Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.**

2. However, **such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends <u>the tax so charged shall not exceed</u>:**

   a) **<u>10 per cent</u> of the gross amount of the dividends if the beneficial owner is a company who holds directly at least 10 per cent either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends;**

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[55] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

[56] Formally known as the CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, which took effect on January 1, 1981.

[57] PROTOCOL AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, which took effect on January 1, 2009.

[58] Refer to Exhibits "P-5" to "P-8", Docket - Vol. I, pp. 396 to 401.

b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid." *(Emphases and underscoring added)*

Based on the foregoing provision, dividends paid by a company, which is a resident of the Philippines, to **a resident of Japan**, may be taxed in the latter State. However, the Philippines may impose income tax on the same dividends according to its laws, when the payor thereof is a resident of the Philippines, and the recipient is the beneficial owner of the dividends. The income tax so charged then shall not exceed:

1) 10% of the gross amount of the dividends, if the said beneficial owner is a company who holds directly at least 10% either of the voting shares of the said company or of the total shares thereof, during the period of six (6) months immediately preceding the date of payment of the dividends; or
2) 15% of the gross amount of the dividends, in all other cases.

In this case, while petitioner, a domestic corporation,[59] was able prove that its parent company and controlling stockholder, Matex Co. Ltd., owns 99.9996% of petitioner's common shares since September 27, 1996,[60] and thus, may also be considered as the beneficial owner of the dividends declared by petitioner pertinent to the said shares, **petitioner failed to prove that Matex Co. Ltd. is a resident of Japan**.

It is clear from Article 10 of the Philippines-Japan Tax Treaty that for the preferential tax rates of either 10% or 15%, the subject dividends must be **paid to a resident of the other Contracting State**, which, in this case, is Japan. Relative thereto, Article 1 of the said Tax Treaty is explicit that the same shall apply to residents of Philippines or Japan, or both, *viz.*: *gc*

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[59] Exhibits "P-1" and "P-2", Docket – Vol. I, pp. 344 to 368.
[60] Refer to Exhibit "P-20", Docket – Vol. I, p. 426.

"Article 1

**This Convention shall apply to persons who are residents of one or both of the Contracting States.**" *(Emphasis added)*

Furthermore, Article 4(1) of the Philippines-Japan Tax Treaty, as amended, reads as follows:

"Article 4

1. For the purposes of this Convention, **the term 'resident of a Contracting State' means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of incorporation or any other criterion of similar nature.** But this term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein." *(Emphasis added)*

Thus, a resident of Japan, for the purpose of the Philippines-Japan Tax Treaty, as amended, is a person who, under the laws of Japan, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of incorporation or any other criterion of similar nature.

On the basis of the admitted evidence, there is no indication, at all, that Matex Co. Ltd. is a resident of Japan, or specifically, that it is liable to tax in Japan, by reason of their domicile, residence, place of head or main office, place of incorporation or any other criterion of similar nature, as may be applicable. Such being the case, the dividends due or to be paid to petitioner's stockholders cannot enjoy the preferential tax rate of 10% under Article 10 of Philippines-Japan Tax Treaty, as amended.

In sum, petitioner has failed to establish that the subject FWTs being refunded are erroneous or illegal.

It bears stress that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[61] The burden of proof is upon the person who claims the exemption in the latter's favor, and such

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[61] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

person must be able to justify the claim by the clearest grant of organic or statute law.[62]

**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

**SO ORDERED.**

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

WE CONCUR:

*With due respect, please see Concurring and Dissenting Opinion.*
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

*With separate concurring opinion*
**LANEE S. CUI-DAVID**
Associate Justice

[62] Refer to *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, supra.

## CERTIFICATION

Pursuant to Section 13, Article VIII 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.

Juanito C. Castañeda Jr.
**JUANITO C. CASTAÑEDA, JR.**
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

SECOND DIVISION

**MATEX INTERNATIONAL, INC.,**
Petitioner,

CTA CASE NO. **10180**

Members:

- versus -

**CASTAÑEDA, JR.,** *Chairperson,*
**BACORRO-VILLENA,** *and*
**CUI-DAVID,** *JJ.*

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
FEB 15 2022
4:20 p.m.

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# CONCURRING AND DISSENTING OPINION

***BACORRO-VILLENA, J.:***

With all due respect to our distinguished Chairperson and colleague, Hon. Associate Justice Juanito C. Castañeda, Jr., I beg to differ with the conclusions reached in the *ponencia* relative to the findings that: (1) the subject distribution of dividends was not founded on petitioner's net income for *any particular year* hence the Court cannot ascertain whether the same is excessive; and, (2) there was no indication that the supposed balance of the dividend payment in the amount of ₱68,563,638.00 formed part of petitioner's unrestricted retained earnings prior to the declaration and payment of the subject dividends.

Section 2 of the SEC Memorandum Circular No. 11, Series of 2008[1] (**SEC MC 11-08**) partly provides that "unrestricted retained earnings" is "the amount of **accumulated** profits and gains realized out of the normal and continuous operations of the company". Thus, it is not necessary to pinpoint the specific year during which the income was earned before the same may be considered part of the unrestricted retained earnings available for distribution.

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[1] Guidelines on the Determination of Retained Earnings Available for Dividend Declaration.

In fact, Section 73(c) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, even provides for the presumption that "any distribution made to the shareholders or members of a corporation shall be deemed to have been made from the most recently accumulated profits or surplus". This only bolsters the conclusion that it is not necessary for petitioner to specify the year during which the income was earned.

As to the finding that there was no indication that the amount of ₱68,563,638.00 formed part of petitioner's unrestricted retained earnings prior to the declaration of dividends, a careful examination of petitioner's 2017 and 2018 Comparative Audited Financial Statements (**AFS**) would reveal otherwise.

The Statements of Changes in Equity[2] provide that petitioner's Cumulative Earnings Account only has a beginning balance of ₱58,402,372.00 and an ending balance, before dividend payments, of ₱68,563,638.00 for the fiscal year (**FY**) ended 30 September 2017, as shown below:

| | **Cumulative Earnings** |
|---|---|
| Balance at 30 September 2016 | ₱58,402,372.00 |
| Adjustment on Allowance for Impairment Loss | 12,843,267.00 |
| Net Loss for the FY 2017 | (2,682,001.00) |
| **Balance at 30 September 2017 (before payments of dividends)** | **₱68,563,638.00** |

Hence, petitioner may only declare cash dividends up to the extent of ₱68,563,638.00, which is the audited ending balance of its unrestricted earnings for the FY 2017.

Thus, any excess of such amount would violate Section 43[3] of the Corporation Code of the Philippines, Section 5[4] of SEC MC 11-08, and the Trust Fund Doctrine as discussed in *Philippine Long Distance Telephone*

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[2] Exhibit "P-4-2", Division Docket, p. 379.

[3] **SEC. 43.** *Power to Declare Dividends.* — The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings...

[4] **SEC. 5.** *Retained Earnings Available for Dividends.* — Dividends, whether cash, property or stock, shall be declared out of unrestricted retained earnings of the Corporation. Accordingly, a corporation cannot declare dividends when it has zero or negative retained earnings otherwise known as Retained Earnings deficit. For such purpose, the surplus profits or income must be a bona fide income founded upon actual earnings or profits. The existence, therefore, of surplus profits arising from the operation of corporate business is a condition precedent to the declaration of dividend.

For purposes of these Guidelines, the phrase "actual earnings or profits" as mentioned above shall be the net income for the year based on the audited financial statements, adjusted for unrealized items discussed below, which are considered not available for dividend declaration.

*Company v. National Telecommunications Commission, et al.*[5], where the Supreme Court ruled as follows:

> ...
>
> Crucial in point is our disquisition in G.R. No. 127937 entitled *National Telecommunications Commission v. Honorable Court of Appeals*, which we quote:
>
> > ... The "Trust Fund" doctrine considers this subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. **Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholder (except in the redemption of redeemable shares) without violating this principle. Thus, dividends must never impair the subscribed capital**; subscription commitments cannot be condoned or remitted; nor can the corporation buy its own shares using the subscribed capital as the considerations therefor.
>
> ...

Even assuming *arguendo* that the payment of dividends in excess of petitioner's cumulative earnings is valid, the excess will still not be subject to Final Withholding Tax (**FWT**) since such takes the form of return of capital. It is well settled in this jurisdiction that a capital differs from income in that capital constitutes the investment, which is the source of income, while income is any wealth which flows into the taxpayer **other than a return of capital.**[6]

This notwithstanding, I concur with the finding in the *ponencia* that petitioner was not able to clearly establish its right to use of the preferential tax treaty rate inasmuch as there was no admissible evidence to show that petitioner's major stockholder, Matex Co., Ltd., is a resident of Japan.

All told, I concur in the result.

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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[5] G.R. No. 152685, 04 December 2007; Citation omitted, italics in the original text and emphasis supplied.

[6] *Chamber of Real Estate and Builders' Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo, et al.*, G.R. No. 160756, 09 March 2010.

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

**SECOND DIVISION**

**MATEX INTERNATIONAL, INC.**
*Petitioner,*

CTA Case No. **10180**

Members:
**CASTAÑEDA,JR.,** *Chairperson*
**BACORRO-VILLENA,** *and*
**CUI-DAVID,** *JJ.*

-versus-

Promulgated:

FEB 15 2022 4:30 p.m.

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

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## SEPARATE CONCURRING OPINION

***CUI-DAVID, J.:***

I concur with the *ponencia* of our learned colleague and Chairperson, Associate Justice Juanito C. Castañeda, Jr.

Sections 204 and 229 of the National Internal Revenue Code (NIRC), as amended, provide for the refund of **erroneously** or **illegally collected taxes**. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund.[1]

Based on the said provisions, to be entitled to a refund or tax credit, the taxpayer has the burden of proving that the claim is filed on time, and that taxes are illegally or erroneously paid or collected.

I agree with the *ponencia* that "any error committed by the petitioner in the determination of the appropriate tax base, or specifically, the total amount of dividends to be, or have been distributed to its shareholders, does not **automatically**

[1] Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.). G.R. No. 231581, April 10, 2019

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translate to, or result in, an "*erroneous or illegal tax*"." The petitioner must prove that the collected or paid Final Withholding Taxes (FWTs) are indeed erroneous or illegal.

In the instant case, the records show that at the special meeting of the Board of Directors and Stockholders of the petitioner on September 6, 2017, the following Board Resolution[2] relative to the **cash dividend declaration** was passed, to wit:

BOARD RESOLUTION NO. 2017-001

> "RESOLVED, as it is hereby resolved, that a cash dividend of One Peso and Forty-One Centavos (Php1.41), Philippine Currency, per share or a total amount of One Hundred Seventy-Five Million Five Hundred Four Thousand Four Hundred Ninety-Six and 34/100 Pesos (Php175,540,496.34), Philippine Currency, is hereby declared out of the **undivided profits of the Corporation**, payable to the common stockholders of record as of August 31, 2017 and distributable on September 26, 2017." (Emphasis supplied)

The statement in the Board Resolution that "... a cash dividend of One Peso and Forty-One Centavos (Php1.41), Philippine Currency, per share or a total amount of One Hundred Seventy-Five Million Five Hundred Four Thousand Four Hundred Ninety-Six and 34/100 Pesos (Php175,540,496.34), Philippine Currency, is hereby declared out of the undivided profits of the Corporation," clearly shows that the petitioner had "**undivided profits**" as of September 6, 2017, out of which cash dividends may be declared and paid.

The records further show that: (1) The cash dividends amounting to Php175,540,496.34 were paid to the Petitioner's parent company, Matex Co. Ltd, and to the other stockholders on September 26, 2017; (2) The FWT amounting to Php17,550,513 was remitted to the Bureau of Internal Revenue (BIR) on October 7, 2017; (3) The Certificate of Residence for Tax Treaty Relief (CORTT)[3] Form required for

[2] Exhibit P-20, Docket pp. 426
[3] Required under Revenue Memorandum Order (RMO) No. 8-2017 dated March 28, 2017

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claiming tax treaty benefits was filed with the BIR; and (4) The cash dividends were paid out of the funds generated from operation and also from the beginning cash balance, as provided in the Statements of Cash Flows for the fiscal years ended September 30, 2017 and 2016[4], thus:

| | | **2017** | | 2016 |
|---|---|---|---|---|
| **CASH INFLOWS FROM OPERATING ACTIVITIES** | | | | |
| ... | | | | |
| Cash generated from (used for) operation | | **125,658,069** | | 32,228,049 |
| Dividends Paid | | **(175,504,496)** | | - |
| Interest Received | | **18,034** | | 5,563 |
| Income Tax Expenses | | **(24,068)** | | (34,967) |
| **Net cash generated from (used in) operating activities** | | **(49,852,461)** | | 32,198,645 |
| **INCREASE (DECREASE) IN CASH** | | **(49,852,461)** | | 32,198,645 |
| **CASH, BEGINNING OF YEAR** | | **69,714,852** | | 37,516,207 |
| **CASH, END OF YEAR** | ₱ | **19,862,391** | ₱ | 69,714,852 |

Given the foregoing, the only logical conclusion is that there was a valid declaration of cash dividends made by the Petitioner's Board of Directors and Stockholders on September 6, 2017. The fact that the petitioner was able to pay cash dividends on September 26, 2017 presupposes, and, in fact, clearly shows that it had actual earnings or surplus profits available for distribution to its stockholders. Section 73 of the NIRC, as amended, provides that any distribution made to the shareholders or members of a corporation shall be deemed to have been made from the most recently accumulated profits or surplus.[5]

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[4] Statements of Cash Flows for the fiscal years ended September 30, 2017 and 2016, Docket, p. 466

[5] NIRC, as amended, SECTION. 73. Distribution of Dividends or Assets by Corporations. —

> (A) Definition of Dividends.—The term "dividends" when used in this Title means any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property.
>
> ...
>
> (C) Dividends Distributed are Deemed Made from Most Recently Accumulated Profits.—<u>Any distribution made to the shareholders or members of a corporation shall be deemed to have been made from the most recently accumulated profits</u> or surplus and shall constitute a part of the annual income of the distributee for the year in which received.

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More, petitioner's Audited Financial Statements for the fiscal year ending September 30, 2017 (2017 AFS),[6] when the supposed erroneous declaration and payment of cash dividends took place, failed to show any error or "material misstatement" in the subject financial statements.

As testified by petitioner's witnesses, the alleged erroneous declaration of cash dividends was discovered and reported to the petitioner during the audit of its financial records for fiscal year 2017.[7] However, the resulting 2017 AFS and the related notes to the financial statements do not reflect the said error. Notes 8[8] and 15[9] merely provide that:

> "**8. SHARE CAPITAL**
>
> The authorized share capital of the Company is P130,000,000 divided into 130,000,000 shares at P1 par value per share. Subscribed and paid up share capital is P124,471,274 as of September 30, 2016 while the subscribed and paid up share capitals are P32,500,000 and P17,530,416, respectively, as September 30, 2017.
>
> ...
>
> **15. DIVIDENDS**
>
> In a special meeting of the Board of Directors on September 6, 2017, the board has approved a resolution declaring dividends in the total amount of P175,504,496 payable to the common stockholders of record of the Company as of August 31, 2017, and distributed on September 26, 2017, for which the Company withheld and remitted to the Bureau of Internal Revenue (BIR) the corresponding withholding tax in the total amount of P17,550,513 on October 7, 2017."

In addition, the Statement of Management's Responsibility for Annual Income Tax Return[10] and the

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[6] AFS for the fiscal year ending September 30, 2017, Docket pp. 454-480

[7] Exh. P-26, Offer of Testimont No. 2, Docket p. 298; Judicial Affidavit of Fidel Lomibao, Q. 22, Docket p. 303;Exh. P- 24, Offer of Testimont No. 5, Docket p. 310; Exh. P-25, Judicial Affidavit of Cherrylyn Cataag, Q. 15, Docket pp. 195

[8] Note 8, Docket p. 476

[9] Note 15, Docket p. 479

[10] Statement of Management's Responsibility for Annual Income Tax Return, Exh. P-23, Docket p. 454

...

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Independent Auditor's Report[11] that accompany the 2017 AFS provide that the said AFS are "**complete and correct** in all material respects" and are "**free from material misstatement, whether due to fraud or error**".

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In this regard, the management affirms that the attached audited financial statements for the year ended September 30, 2017 and the accompanying Annual Income Tax Return are in accordance with the books and records of MATEX INTERNATIONAL , INC. **complete and correct in all material respects.** Management likewise affirms that: ..." (Emphasis supplied)

[11] Independent Auditor's Report, Exh. P-23, Docket pp. 457-459

...

*Opinion*

I have audited the financial statements of Matex International, Inc. ("the Company"), which comprise the statements of financial position as at September 30, 2017 and 2016 and the related statements of income, statements of changes in equity and statements of cash flows for the years then ended, and notes to the financial statements, including a summary of significant accounting policies.

In my opinion, the accompanying financial statements **present fairly, in all material respects, the financial position of the Company as at September 30, 2017** and 2016 and its financial performance and its cash flows for the years then ended in accordance with Philippine Financial Reporting Standard for Small and Medium Sized Entities (PFRS for SMEs).

...

*Auditor's Responsibility for the Audit of the Financial Statements*

My objectives are to obtain reasonable insurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with PSAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with PSAs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. ...

- Conclude on the appropriateness of management's use of the going concern basis of accounting and based on the audit evidence obtained, ... . If I conclude that a material uncertainty exists, I am required to draw attention in my **auditor's report** to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report.

...

*Report on Other Legal and Regulatory Requirements*

- My audit was conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. ... Such supplementary information is the responsibility of management. The supplementary information has been subjected to the auditing procedures applied in the audit of the basic financial statements and **in my opinion**, is fairly noted in all material respects in relation to the basic financial statements taken as a whole."

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

Indeed, the petitioner failed to prove that the cash dividends declared and paid in September 2017, and the corresponding FWTs paid on the subject dividends, are erroneous.

It is well-entrenched in jurisprudence that tax refunds partake the nature of tax exemptions in that they are strictly construed against the claimant.[12] The burden of proof rests upon the taxpayer to establish by **sufficient and competent evidence** its entitlement to a claim for refund.[13] Since taxes are the lifeblood of the Government, tax laws must be faithfully and strictly implemented. They are not intended to be liberally construed.[14]

In this case, petitioner simply failed to discharge the burden of proving the factual and legal bases of its claim.

Accordingly, I reiterate my concurrence with the *ponencia*. I vote to DENY the instant Petition for Review.

**LANEE S. CUI-DAVID**
Associate Justice

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[12] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008; Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue, G.R. No. 182045, September 19, 2012, 681 SCRA 377, 389; Applied Food Ingredients Company, Inc. v. CIR, G.R. No. 184266, November 11, 2013, 709 SCRA 164, 169; Coca-Cola Bottlers Philippines, Inc vs. Commissioner of Internal Revenue, G.R. No. 222428, February 19, 2018.
[13] Philippine Airlines, Inc., vs. Commissioner of Internal Revenue, G.R. No. 231638, February 17, 2021
[14] Coca Cola Bottlers vs. Commissioner of Internal Revenue, G.R. No. 221694, January 19, 2021