REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARRIER AIR CONDITIONING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8393

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 13 2015 2:44 pm

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RESOLUTION

CASANOVA, *J.*:

For this Court's resolution is respondent's **Motion for Reconsideration**, filed through registered mail on April 08, 2015, with petitioner's **Comment (On Respondent's Motion for Reconsideration filed on April 8, 2015)**, filed on May 15, 2015.

Respondent assails the Decision promulgated on March 17, 2015, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱11,395,574.20, representing petitioner's final withholding tax on the excess cash dividends paid

in 2009 which was erroneously withheld and remitted to the BIR.

SO ORDERED."[1]

In her Motion for Reconsideration, respondent raises the following arguments:

1. BIR Ruling No. DA-ITAD 044-11, issued on February 10, 2011 and BIR Ruling No. ITAD-343-12 issued on September 18, 2012 cannot be relied upon by petitioner;

2. Petitioner failed to comply with Revenue Memorandum Order (RMO) No. 1-2000;

3. Petitioner has no legal personality to file a case for refund; and

4. There is no erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected.

On the other hand, petitioner in her Comment contends that:

1. Respondent's Motion for Reconsideration should be dismissed for having been filed out of time;

2. Respondent's argument that petitioner has no legal standing to file the case on behalf of its parent, Carrier HVACR Investments B.V., is patently erroneous and is being raised by respondent for the first time in her Motion for Reconsideration;

3. Respondent's arguments that CACPI has no right to claim the 10% preferential tax rate on dividends and that it had failed to comply with Revenue Memorandum Order No. 1-2000 are clearly misplaced; and

4. Contrary to respondent's unsubstantiated assertion, there was an erroneous payment of tax by CACPI that the BIR should return to CACPI by way of refund or issuance of a TCC.

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[1] Docket (Vol. III), p. 1592.

After due consideration of the parties' arguments, the Court denies respondent's Motion for Reconsideration.

Respondent's motion was filed out of time.

The period for filing a Motion for Reconsideration of a decision of this Court is provided under Section 1, Rule 15 of The Revised Rules of the Court of Tax Appeals, as amended, to wit:

> "SECTION 1. *Who may and when to file motion.* — Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

Under the rules, an aggrieved party is given fifteen (15) days from receipt of the Court's decision within which to seek reconsideration of the said ruling.

Respondent, in her motion, admitted that she received a copy of the assailed Decision on **March 19, 2015**. Counting the fifteen (15)-day period, the last day for the filing of the Motion for Reconsideration was on April 3, 2015. Since April 3, 2015 was declared a regular holiday, and April 4 and 5, 2015 fell on Saturday and Sunday, respectively, **the last day was on April 6, 2015**.

Upon verification of the records of this case, respondent filed her Motion for Reconsideration, *via* registered mail on April 8, 2015, as shown by the post office stamp on the envelope attached to the motion[2].

As a rule, if the filing of the motion is done through registered mail, the date of mailing as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of its filing. This rule is governed by Section 3, Rule 13 of the Rules of Court, to wit:

[2] Docket (Vol. III), p. 1602.

> SEC. 3. *Manner of filing.* – The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, **the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court**. The envelope shall be attached to the record of the case. (*Emphasis supplied.*)

While there was no registry receipt presented, the date of the filing of the respondent's motion can still be verified since it was corroborated by the post office stamp on the envelope attached to the motion. The date appearing on the envelope is **April 8, 2015**, thus, it is the date the motion was deemed filed. Evidently, respondent's Motion for Reconsideration was belatedly filed.

"To stress, the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of a decision in his favor."[3]

Even assuming the motion was timely filed, respondent's arguments are bereft of merit.

Respondent's arguments lack merit.

[3] *Apex Mining Co. Inc. vs. Commissioner of Internal Revenue and Court of Appeals*, G.R. No. 122472, October 20, 2005, 473 SCRA 490, 497.

First, as correctly pointed out by petitioner, respondent advanced an issue that was raised for the first time on appeal. This particularly refers to the issue on petitioner's legal personality to file a refund which was neither raised in the respondent's Answer (with Motion to Dismiss)[4] nor in the Stipulation of Issues[5]. Settled is the rule that "issues not previously ventilated cannot be raised for the first time on appeal"[6] "much less raised in the Motion for Reconsideration of a decision"[7].

Second, the claim did not arise from the erroneous application of tax rates involving the tax treaty. The claim for refund arose from the erroneously withheld and remitted tax to the BIR on the excess cash dividend paid in 2009. At any rate, as borne out by the records of this case, petitioner indeed complied with Revenue Memorandum Order (RMO) No. 1-2000, or the Procedures for Processing Tax Treaty Relief Application.

In the recent case of *CBK Power Company Ltd. vs. Commissioner of Internal Revenue*[8], the Supreme Court resolved that the failure to strictly comply with RMO No. 1-2000 will not deprive the persons or corporations of the benefit of a tax treaty. The High Court stressed that "the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000,"[9] and held to wit:

> "Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 **should not operate to divest entitlement to the relief** as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative

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[4] Docket (Vol. I), pp. 219-228.
[5] Joint Stipulation of Facts and Issues, Docket (Vol. I), p. 297.
[6] *Bank of the Philippine Islands vs. Shembergh Biotech Corporation and Benson Dakay*, G.R. No. 162291, August 11, 2010, 628 SCRA 70, 76; *National Association of Electricity Consumers for Reforms, Inc. (NASECORE) vs. Energy Regulatory Commission* (ERC), G.R. No. 190795, July 6, 2011, 653 SCRA 642, 651, citing *Rasdas vs. Estenor*, G.R. No. 157605, December 13, 2005, 477 SCRA 538, 551.
[7] *Polanco vs. Cruz,* G.R. No. 182426, February 13, 2009, 579 SCRA 489, 495.
[8] G.R. Nos. 193383-84 & 193407-08, January 14, 2015 citing the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue,* G.R. No. 188550, August 19, 2013, 704 SCRA 216, 228-229.
[9] *Ibid.*

> issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should **merely operate to confirm** the entitlement of the taxpayer to the relief."
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> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000**. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.**

> The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment."

Third, *Section 229 of the National Internal Revenue Code of 1997,* which governs refund of erroneously or illegally assessed or collected taxes, finds application here since the said provision applies even to overpaid taxes as held in the cases of *Collector of Internal Revenue vs. Prieto* [10] and *Accra Investments Corporation vs. Court of Appeals,*[11] where the Supreme Court used the two (2)-year prescriptive period even when the issue involved was overpayment of taxes.

The Court emphasizes that "while the taxpayer has an obligation to honestly pay the right taxes, the government has a

[10] No. L-11976, August 29, 1961, 2 SCRA 1007.
[11] G.R. No. 96322, December 20, 1991, 204 SCRA 957.

corollary duty to implement tax laws in good faith; to discharge its duty to collect what is due to it; and to justly return what has been erroneously and excessively given to it"[12].

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent's Motion for Reconsideration is hereby **DENIED** for having been filed out of time and for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[12] *CBK Power Company Ltd. vs. Commissioner of Internal Revenue* G.R. Nos. 193383-84 & 193407-08, January 14, 2015.