Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MANILA ELECTRIC COMPANY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7242

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
DEC 0 6 2010
4:30 p.m.

x--x

DECISION

MINDARO-GRULLA, J.:

This is an Amended Petition for Review (*Ad Cautelam*)[1] filed on November 22, 2005 by Manila Electric Company (MERALCO), as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA).

[1] Rollo, pp. 479-493

The said Amended Petition is an appeal from respondent CIR's inaction/denial on MERALCO's claim for a tax refund or credit of excess income tax payments for the taxable years **1994-1998 and 2000 in the total amount of P5,796,342,792.71**[2], broken down as follows:

Taxable Year	Original Tax Payments with CWTs[3]	Disallowed CWTs[4]	Adjusted Income Tax Payments with CWTs[5]	Adjusted Income Tax Due	Excess Income Tax Payments[6]
1994	P 1,847,186,617		P 1,847,186,617	P 1,149,772,719.52	P 697,413,897.48
1995	P 2,112,659,180		P 2,112,659,180	P 1,369,237,724.71	P 743,421,455.29
1996	P 2,601,323,036	P 15,544	P 2,601,307,492	P1,584,311,872.82	P 1,016,995,619.18
1997	P 2,591,310,020	P 54,568.24	P 2,591,255,451.76	P 1,496,450,692.45	P 1,094,804,759.31
1998	P 2,361,775,866	P 18,214	P 2,361,757,652	P 1,233,907,225.60	P 1,127,850,426.40
2000	P 1,558,159,055	P 2,687,466.29	P 1,555,471,588.71	P 439,614,953.66	P 1,115,856,635.05
Total	**P13,072,413,774**	**P 2,775,792.53**	**P13,069,637,981.47**	**P 7,273,295,188.76**	**P 5,796,342,792.71**

The original claim for a tax refund or credit of excess income tax payments for the taxable years 1994-1998 and 2000-2001 amounted to P7,107,534,282.00. Thereafter, respondent CIR partly granted MERALCO's claim for the taxable year 2001 to the extent of P894,473,932.58. Hence, the original claim in the sum of P7,107,534,282.00 less MERALCO's claim for the taxable year 2001 in the amount of P1,071,546,018.00 is equal to the original amended claim for

[2] Supplemental Joint Stipulation of Facts and Issues, Rollo, pp. 623-624
[3] Supplemental Joint Stipulation of Facts and Issues, Annexes "O", "P", "Q","R", "S" & "S-1"
[4] Supplemental Joint Stipulation of Facts and Issues, citing CIR's Decision dated September 21, 2005, Annex "A"
[5] Original Tax Payments with CWTs less Disallowed CWTs
[6] Supplemental Joint Stipulation of Facts and Issues, citing CIR's Decision dated September 21, 2005, Annex "A"- Recommended amount for TCC- For denial due to prescription.

L

a tax refund or credit of excess income tax payments for the taxable years 1994-1998 and 2000 amounted to P6,035,988,264.00.

MERALCO's claim for a tax refund or credit is due to the alleged overpayment of income taxes arising from the Decision of the Supreme Court in the consolidated cases of Republic of the Philippines, et. al. vs. Manila Electric Company, G.R. No. 141314 and Lawyers Against Monopoly, etc. vs. Manila Electric Company, G.R. No. 141369, which became final and executory on May 5, 2003, mandating MERALCO to refund the amount equivalent to P0.167 per kilowatt-hour of over billed electric charges to its customers for their electric consumption made from February 1994 up to December 2003. The dispositive portion of which reads as follows:

> "WHEREFORE, in view of the foregoing, the instant petitions are GRANTED and the decision of the Court of Appeals in C.A. G.R. SP No. 46888 is REVERSED. Respondent MERALCO is authorized to adopt a rate adjustment in the amount of P0.017 per kilowatthour, effective with respect to MERALCO's billing cycles beginning 1994. Further, in accordance with the decision of the ERB dated February 16, 1998, the excess average amount of P0.167 per kilowatthour starting with MERALCO's billing cycles beginning February 1994 is ordered to be refunded to MERALCO's customers or correspondingly credited in their favor for future consumption.
>
> SO ORDERED."

Petitioner MERALCO is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with

C

principal office address at Lopez Building, Ortigas Avenue, Pasig City, and engaged in the business of distributing and supplying electric power within its franchise area. MERALCO is a registered taxpayer with TIN 000-101-528-000 and Certificate of Registration No. OCN8RC00000 16119 issued by the Bureau of Internal Revenue on January 29, 1996.

Respondent CIR is the officer duly authorized by law to assess and collect all national internal revenue taxes, fees, and charges, including the power to decide refunds of internal revenue taxes, fees or other charges, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 23, 1993, MERALCO filed with the then Energy Regulatory Board (now Energy Regulatory Commission) an application for the revision of its rate schedules, docketed as ERB Case No. 93-118. On January 28, 1994, an Order granting a provisional increase of P0.184 per kwh, subject to the condition that after hearing and evaluation, should MERALCO be entitled to a lesser increase in rates, all excess collected by MERALCO shall be refunded to its customers or credited in their future consumption.[7]

---

[7] Joint Stipulation of Facts and Issues, Rollo, p. 533

L

Thus, MERALCO paid the income tax due on its taxable income based on gross electric revenue computed at an average basic distribution rate of P2.996 per kwh (i.e. existing average rate of P2.812 per kwh plus provisional increase of P0.184).

On February 16, 1998, the Energy Regulatory Board rendered a Decision granting only a rate increase of P0.17 per kwh and ordering MERALCO to refund or credit to its customers the average amount of P0.167 per kwh beginning February 1994.

MERALCO appealed the Decision of the Energy Regulatory Board to the Court of Appeals which ruled in its favor.

However, the Supreme Court reversed the Court of Appeals' Decision and upheld the previous Decision of the Energy Regulatory Board.[8]

On May 5, 2003, the Supreme Court's Decision became final and executory, after denying with finality MERALCO's Motion for Reconsideration therefrom. As a result, Meralco's gross electric revenue during the taxable years 1994-1998 and 2000-2001, taxable income

---

[8] Republic of the Philippines, represented by the Energy Regulatory Board vs. Manila Electric Company, G. R. No. 141314. and Lawyers Against Monopoly and Poverty (LAMP), et. al. vs. Manila Electric Company, G.R. No. 141369, November 15, 2002.

c

and income tax liability were reduced, thereby resulting to excess income tax payments as follows:

YEAR	ORIGINAL TAXABLE INCOME	REDUCED TAXABLE INCOME	INCOME TAX ORIGINALLY PAID	INCOME TAX ACTUALLY PAID	EXCESS INCOME TAX
1994	P5,277,676,049	P3,073,619,745	P1,847,186,617	P1,075,766,911	P 771,419,706
1995	6,036,169,086	3,447,481,566	2,112,659,180	1,206,618,548	906,040,632
1996	7,432,351,531	4,526,289,260	2,601,323,036	1,584,201,241	1,017,121,795
1997	7,403,742,914	4,275,202,476	2,591,310,020	1,496,320,866	1,094,989,154
1998	6,946,399,606	3,629,126,440	2,361,775,866	1,233,902,990	1,127,872,876
2000	4,869,247,048	1,373,796,730	1,558,159,055	439,614,954	1,118,544,101
2001	4,012,193,155	387,079,475	1,283,901,810	212,355,792	1,071,546,018
TOTAL	**P41,977,779,389**	**P20,712,595,692**	**P14,356,315,584**	**P7,248,781,302**	**P7,107,534,282**

On November 27, 2003, MERALCO filed a claim for tax refund or credit of excess income tax payments with respondent CIR.

On May 4, 2005, due to inaction, MERALCO appealed to this Court and filed a "Petition for Review (*Ad Cautelam*)" and principally anchored its claim for a tax refund or credit of excess income tax payments under the principle of *solutio indebiti* within the prescriptive period of six (6) years, pursuant to Art. 1145 of the New Civil Code or within two (2) years, as provided in Section 229 of the 1997 Tax Code.

On July 6, 2005, respondent CIR in his Answer[9] raised the special and affirmative defenses, as follows:

"xxx xxx xxx.

[9] Rollo, pp. 457-463

L

7.) This Honorable Court is without jurisdiction to entertain the instant petition. Petitioner hinges its cause of action on alternative provisions of law. One of these is the ordinary claim for refund under the 1997 National Internal Revenue Code(the "Tax Code"), particularly, Section 229 thereof, or the provision on recovery of taxes erroneously or illegally collected. Section 229 of the "Tax Code" emphatically states that "In any case, no such suit or proceeding [Recovery of Tax Erroneously or Illegally Collected] 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.... "The taxable years involved in this case are taxable years 1994, 1995, 1996, 1997, 1998 and 2000. The income tax returns for the said periods have been filed, and taxes due reflected thereon were paid, at dates which are, concededly, well-beyond the 2-year period granted by law within which recovery of alleged erroneously paid or collected taxes can be had. Thus, being that the law itself which petitioner invokes makes it crystal-clear that the petitioner is barred from even filing the instant petition for review, this Honorable Court should dismiss the instant petition.

8.) Indubitably, petitioner's assertion that the two (2) year period should be reckoned from the time the Supreme Court decision came out cannot be sustained. The Tax Code categorically states that the 2 year period should be reckoned from the date of payment of the tax or penalty. Petitioner's assertion is a *reductio ad absurdum* argument, which has no legal foundation.

9.) Petitioner likewise invokes Article 2154 of the Civil Code, of *solutio indebiti* which states that "if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises". Under Article 1145 (2) of the same Code, a cause of action arising from *solutio indebiti* should be brought within six (6) years from the time of payment. xxx.

10.) However, petitioner has no cause of action under the provision of *solutio indebiti*. There was a perfect legal right on the part of the respondent to demand the payment of these taxes during the taxable years where refund is being claimed. More important(ly), there was no delivery through mistake on the part of petitioner. It knew at the time it paid that the income taxes it was paying were actually due. Petitioner cannot feign ignorance. As early as February 1998, when the ERB decision

C

came out ordering petitioner to refund Php .167 to its consumers, petitioner already knew that it should not be charging the consumers with the extra amount, and was thus not liable for the income taxes on this excessive collection. At that point in time petitioner had an option. Either it restituted its consumers and continued with the *status quo ante* or continued charging the inofficious exaction while waiting for a court resolution. Petitioner knowingly exercises(d) its option to seek judicial recourse and continued charging the consumers with the higher rate, and paying the income taxes due thereon. Petitioner, thus, cannot be taken as one who was mistaken in payment. Thus, *solutio indebiti* does not apply.

11.) Moreover, equity belongs to those who come to court with clean hands. Petitioner had the opportunity to claim for refund as early as 1998 when the Energy Regulatory Board (ERB) issued its Decision ordering herein petitioner to refund Php .167 per kilowatthour to its consumers. At that point in time, petitioner should have ceased burdening the Filipino people, and refunded the excess amounts it collected. Instead, petitioner chose to go through the court processes. It exercised an option available to it, mindful of all its consequences, and continued charging its consumers with the already declared undue exaction. To reiterate, at that time, petitioner not only refused to comply with the ERB order of refund, it obstinately continued the collection of excessive electricity rates. For petitioner now to turn around and state that it had no opportunity to claim for refund of the allegedly excessive income taxes it paid, before the Supreme Court decision came out, is a falsity. The truth is that when petitioner chose to appeal the decision, it had already considered all the permutations of such decision. It had already foreseen that certain remedies will be lost to it, among which, is the right to claim for refund of income taxes it paid pertaining to the Php .167 refundable to consumers. Petitioner's whimper for equity should be muted by calling into mind the thunderous wails of the Filipino people's protests against the undue exactions when the ERB order was disregarded.

12.) The inequity of the petition is further exposed when it is considered that petitioner is praying for the entire amount of alleged erroneously collected income taxes it paid from 1994-1998, and 2000-2001, when it had not even showed proof that it had paid all of the amounts it should refund to consumers. As the party claiming for refund, it is incumbent upon the petitioner to show that every cent it had been ordered to return has been

L

duly returned before the taxes alleged to have been overpaid, pertaining to such amounts, can be claimed as refund.

13.) This Honorable Court should not be lulled into the attempts of the petition to cite seemingly parallel cases. The general pronouncements of the Supreme Court in the cited cases are all inapplicable to petitioner's case. The factual milieu of the instant situation is worlds apart from any of those cited cases in the petition.

14.) Furthermore, in action for refund, the burden of proof is on the taxpayer to establish its right to refund. Failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {PI} v. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil. 670);

15.) The government will not be unduly enriched by keeping the income taxes petitioner paid. The said amounts have already been presumably spent for the welfare of the Filipino people. These are the same people who had been extremely prejudiced by petitioner's undue exaction. The high cost of power during that time had already affected the government due to reduced income taxes paid to the government. Moreover, the impact of the undue exaction had closed innumerable businesses and had prevented the coming of investors. An analysis of the results of petitioner's exercise of discretion to disregard the ERB order cannot be made on simple addition and subtraction. But it is indubitable that petitioner's desire for profit has also taken its toll on the government's revenue generation efforts during those years, and even these days."

Thereafter, in a letter dated September 21, 2005 (which was received on October 3, 2005), respondent CIR partially granted MERALCO's claim for a tax refund or credit for the taxable year 2001 to

c

the extent of P894,473,932.58 but denied the claim with respect to the taxable years 1994-1998 and 2000 due to prescription.

On November 22, 2005, MERALCO filed the instant Amended Petition for Review (*Ad Cautelam*).

In the course of the proceedings, the parties submitted their "JOINT STIPULATION OF FACTS AND ISSUES" stating, among others, the issues for resolution.

Respondent CIR filed a "Supplemental Answer" and averred that a task force was created by the Large Taxpayers Service and upon audit, it found out that there were several discrepancies resulting to overstatement on MERALCO's claim for refund.

By way of a Reply, MERALCO maintains that it did not overstate its claim for refund.

Nonetheless, the parties filed a "SUPPLEMENTAL JOINT STIPULATION OF FACTS AND ISSUES" thereby integrating respondent CIR's Decision dated September 31, 2005, significantly changing some of their previously agreed facts and issues.

During trial, MERALCO presented two (2) witnesses, namely: Atty. Jose Ronald V. Valles (tsn., August 14, 2006, pp. 5-10), and Mr. Gener R.

L

Montemayor (tsn., November 12, 2007, pp. 4-12; tsn., February 20, 2008, pp. 4-10; tsn., March 31, 2008, pp. 4-9; tsn., May 12, 2008, pp.5-13; and tsn., July 30, 2008, pp. 4-8).

Likewise, respondent CIR presented two (2) witnesses, namely: Mr. Hercules M. Catapia (tsn., April 27, 2009) and Mr. Oscar A. Sable (tsn., June 8, 2009, pp. 9-15).

After trial, the parties were directed to file their Memoranda.

On January 25, 2010, the case was deemed submitted for decision.

Instead of the issues previously agreed upon, the parties have stipulated and agreed on the issues[10] to be resolved by this Court, as follows:

> "1. Whether or not petitioner's right to recover its excess income tax payments in the total amount of P5,796,342,792.71 for the taxable years 1994-1998 and 2000 has prescribed;
>
> 2. Whether or not petitioner has charged to expense or to loss or offset against reported revenues in its Income Tax Returns (ITRs) for the taxable years 2003-2005 the amounts refunded or credited to customers arising from the Supreme Court Decision in G. R. Nos. 141314 and 141369; and

---

[10] Supplemental Joint Stipulation of Facts and Issues, Rollo, p. 633

L

3. Whether or not petitioner's right to recover its excess income tax payments for the taxable years 1994-1998 and 2000 is subject to the condition that refund or credit to future consumption due the customers concerned in the average amount of P0.167 per kilowatthour has been actually given or credited to them by the petitioner.

We find the Petition meritorious.

We discuss the issues ***in seriatim.***

1. As to the first issue -

"Whether or not petitioner's right to recover its excess income tax payments in the total amount of P5,796,342,792.71 for the taxable years 1994-1998 and 2000 has prescribed"

Section 229 of the 1997 National Internal Revenue Code, as amended, provides that taxpayers seeking a refund of any national internal revenue tax hereafter alleged to have been:

(1) erroneously or illegally assessed or collected, or
(2) of any penalty claimed to have been collected without authority, or
(3) of any sum alleged to have been excessive or in any manner wrongfully collected,

must file within two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.[11]

---

[11] 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

However, under the New Civil Code, Article 22[12] and Article 2154[13] in relation to Article 1145[14] thereof provide that claims or an action based upon a quasi-contract shall be commenced within six (6) years thereafter under the principle of *solutio indebiti*, which apparently provides for a more lenient rule.

Thus, the question that arises is whether a taxpayer suing for a refund of taxes collected under the Tax Code may proceed as a claim for refund and anchor its claim under Article 22 and Article 2154 in relation to Article 1145 of the New Civil Code, citing the principle of *solutio indebiti* as justification and basis as to its prescription, when the

---

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.

[12] Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

[13] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return arises."

[14] Art. 1145. The following actions must be commenced within six years:

(1) Upon an oral contract;
(2) Upon a quasi-contract.

L

same has already prescribed under the Tax Code. The answer is in the negative.

But we rule *pro hac vice* that MERALCO's right to recover its excess income tax payments for the taxable years 1994-1998 and 2000 has not prescribed. MERALCO is entitled to its claim for a tax refund or credit for the taxable years 1994-1998 and 2000 due to the special circumstance in the instant case, pursuant to section 229 of the 1997 NIRC. The two (2) - year prescriptive period should commence to run on May 5, 2003, the date the Supreme Court's Decision in G.R. Nos. 141314 and 141369 became final and executory. It is only at that time that the right to claim for a tax refund or credit becomes determinable and the basis for the excessive or erroneous payment arises.

In G.R. Nos. 141314 &141369, the Supreme Court, in its desire to be an infallible advocate of truth for the protection of the general populace, ordered MERALCO to refund the amount it overcharged the public when it found out that MERALCO used a higher rate in billing the public, which evidently resulted into excessive income tax payments. It is therefore apparent that MERALCO cannot be faulted for seeking a claim for refund for the tax excessively paid to and collected by respondent CIR.

L

MERALCO contends that it would be absurd to reckon the running of the prescriptive period whether it be two (2) years or six (6) years, from the date of payment of the tax—that is, on or before 15 April, for the years 1995-1999 and 2000- when the excess payments and the right to recover the same came about only on 5 May 2003 which is the date the Decision of the Supreme Court in G.R. Nos. 141314 &141369 became final and executory.

Hence, MERALCO maintains that based on the special circumstance of the aforementioned cases and this petition, equity and fairness dictate that the filing of the original petition (May 4, 2005) and the amended petition (November 22, 2005) before this Court are well within the prescriptive period of two (2) years or six (6) years.

In sum, MERALCO states that its claim is within the prescriptive period because the prescriptive period for the recovery of erroneously or illegally collected tax under the principle of solutio indebiti is six (6) years, pursuant to Article 1145 of the New Civil Code. MERALCO states further that the counting of this period should be reckoned from May 5, 2003 when the Supreme Court Decision became final and executory since it was only then that MERALCO's right of action for the recovery of excess income tax payments accrued. Suffice it to say that the existence of any excess income tax payments arising from the

L

mandated refund could be determined only after the finality of the Supreme Court Decision. Thus, MERALCO invokes the application of Section 229 of the NIRC of 1997 and at the same time, anchors its claim for refund under the principle of *solutio indebiti*.

MERALCO, citing the cases of CIR vs. Philippine American Life Insurance Co.[15], CIR vs. PNB[16], and Ramie Textiles, Inc. vs. Mathay, Sr.[17], seeks the same treatment given in the above-mentioned cases due to the special circumstance in the instant case, such that "it would seem unedifying for the government, that knowing it has no right at all to collect or to receive money for alleged taxes paid by mistake, it would be reluctant to return the same".

Respondent CIR maintains that MERALCO's claim for a tax refund or credit was filed beyond the two (2) - year prescriptive period pursuant to Section 229 of the NIRC of 1997. A tax refund, being in the nature of an exemption, should be construed *strictissimi juris* against the taxpayer.

Suffice it to say that in the recent case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[18] the Supreme Court stated that -

---

[15] 244 SCRA 447, 453(1995)
[16] G.R. No. 161997, October 25, 2005, 474 SCRA 303 (2005)
[17] 89 SCRA 586 (1979)
[18] G.R. No. 184823, October 6, 2010.

L

> "A taxpayer is entitled to a refund either by authority of a statute expressly granting such right, privilege, or incentive in his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. In both cases, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."

Between the New Civil Code, on one hand, which is a general law and the NIRC of 1997, which is special law governing national internal revenue taxes, effective January 1, 1998, the latter prevails. It has always been the rule that on a specific matter, the special law shall prevail over the general law, which, shall be resorted only, to supply deficiencies in the former.

Also, where there are two (2) statutes, the latter a special law and the former a general law — it shall be construed to mean that the terms of the general law is broad enough to include the matter provided for in the special law. The fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon in statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. [19]

---

[19] Commissioner of Internal Revenue vs. PAL, G.R. No. 180066, July 7, 2009

L

The income tax which MERALCO seeks to refund falls under the National Internal Revenue Code, hence, it is only befitting to conclude that the Tax Code governs the period of limitation and not the Civil Code.

Evidently, the provisions of the National Internal Revenue Code shall necessarily govern the instant case.

But it is noteworthy to emphasize that MERALCO would have not invoked the special jurisdiction of this Court, which is dedicated exclusively for the resolution of tax problems, if the ground for which such claim is made does not involve a tax refund but rather an ordinary claim of *solutio indebiti*.

Also, it is not difficult to understand as to why the law provides for a shorter period of limitation in case of a claim for refund of national internal revenue taxes, as opposed to a claim based on *solutio indebiti*. If the period is longer as to the claim for refund of national internal revenue taxes, the same would certainly impede the effective administration of the revenue laws. Thus, the prescriptive period as to the claim for a tax refund or credit, as provided in the Tax Code, is geared towards achieving an effective tax collection system so as not to paralyze the operations of our government.

L

The case of United States vs. Clintwood Elkhorn Mining Co. et. al., decided by the U.S. Supreme Court[20] through Chief Justice Robert, is instructional and maintains the consistent interpretation of tax laws, the pertinent portion of which reads as follows:

> "Indeed, we all but decided the question presented over six decades ago in United States v. A. S. Kreider Co., 313 U. S. 443 (1941). Section 1113(a) of the Revenue Act of 1926, like the refund claim provision in §7422(a) of the current Code, prescribed that **"[n]o suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax 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 excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue," and established a time limit for bringing suit once the claim-filing requirement had been met.** 44 Stat. 116. Like the companies here, A. S. Kreider had failed to file a tax-refund action within that limitations period. See 313 U. S., at 446. And, like the companies here, A. S. Kreider argued that it was instead subject only to the longer 6 year statute of limitations under the Tucker Act. Id., at 447.
>
> **We rejected the claim, holding that the Tucker Act limitations period "was intended merely to place an outside limit on the period within which all suits must be initiated" under that Act**, and that "Congress left it open to provide less liberally for particular actions which, because of special considerations, required different treatment." Ibid. **We held that the limitations period in§1113(a) was "precisely that type of provision," finding that Congress created a shorter statute of limitations for tax claims because "suits against the United States for the recovery of taxes impeded effective administration of the revenue laws." Ibid. If such suits were allowed to be brought subject only to the 6-year limitations period in the Tucker Act, we explained, §1113(a) would have "no meaning whatever."** Id., at 448. So too here. The refund scheme in the current Code would have "no meaning whatever" if taxpayers failing to comply with it were

[20] No. 07-308, Argued March 24, 2008, decided April 15, 2008, 553 U.S. 1 (2008)

L

> nonetheless allowed to bring suit subject only to the Tucker Act's longer time bar."(Emphasis Supplied)

Considering that our "Tax Code", being a law of American origin, the above-mentioned decision pertaining to the period of limitation has a peculiar and persuasive force in the Philippines.[21]

In the consolidated cases of Republic vs. Manila Electric Company and LAMP vs. Manila Electric Company,[22] the Supreme Court had the occasion to state that:

> "While our tax laws were patterned and of foreign origin, American decisions and authorities are not *per se* controlling in this jurisdiction. At best, they are persuasive for no court holds a patent on correct decisions. Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language of each law and the context of other local legislation related thereto. More importantly, they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others."

In this jurisdiction, it is quite evident that a shorter statute of limitation to a claim for a tax refund under the Tax Code which is two (2) years best serves our public interest, as opposed to a claim based on *solutio indebiti* which is six (6) years. It is a necessary consequence in

---

[21] Commissioner of Internal Revenue vs. Juliane Baier-Nickel, as represented by Marina Q. Guzman (Attorney-in-fact), G.R. No. 153793, August 29, 2006, 500 SCRA 87 (2006)

[22] Republic of the Philippines, represented by the Energy Regulatory Board vs. Manila Electric Company, G. R. No. 141314. and Lawyers Against Monopoly and Poverty (LAMP), et. al. vs. Manila Electric Company, G.R. No. 141369, November 15, 2002

order to have an efficient tax collection system so as not to hamper the operations of our government considering that taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effect its functions for the welfare of its constituents.[23]

Thus, in the examination of Section 229 of the Tax Code and the jurisprudence thereon, the conclusion is inevitable.

The Tax Code provides that all suits or proceedings shall be filed before 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. This means that the two-year prescriptive period is reckoned from the filing of the final adjusted return.[24]

At first glance, it would appear that prescription has set in as the claim for refund for the taxable years 1994 to 1998 and 2000, both in the administrative level (November 27, 2003) and judicial level (May 4,

---

[23] Dayrit, et al. vs. Cruz, L-39910, September 21, 1988, 165 SCRA 571.

[24] Commissioner of Internal Revenue and Arturo V. Parcero in his official capacity as Revenue District Officer of Revenue District No. 049 (Makati) vs. Primetown Property Group, Inc., G.R. No. 162155. August 28, 2007. ; Philippine Bank of Communications vs. Commissioner of Internal Revenue, Court of Tax Appeals and Court of Appeals, G.R. No. 112024. January 28, 1999

2005) were both filed beyond the two-year reglementary period from the filing of the final adjusted return.

However, the special circumstance in the instant case demands that it be given a different treatment. While MERALCO diligently filed its final adjustment return and paid the income tax thereon, it is beyond cavil that neither the right to claim for refund can be determined nor there was basis for MERALCO to know that the income tax payments for the taxable years 1994-1998 and 2000 were erroneous and excessive. Such fact arose only when the Supreme Court's Decision in G.R. Nos. 141314 and 141369[25] became final and executory on May 5, 2003.

MERALCO aptly relied in the case of CIR vs. Philippine American Life Insurance Co[26], where the Supreme Court ruled that "*The prescriptive period of two(2) years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished, regardless of any supervening cause that may arise thereafter.*" This is so because at that

---

[25]Supra. Note 6.
[26] 244 SCRA 447, 453(1995)

point, it can already be determined whether there has been an overpayment by the taxpayer.[27]

In the instant case, it is clear that MERALCO's right to claim for a tax refund for the taxable years 1994-1998 and 2000 cannot yet be ascertained or determined at the filing of the final adjustment return. Hence, the two (2) - year period should not yet commence to run.

We are aware that equity is available only in the absence of law and not as its replacement.[28] Indisputably, at the time MERALCO filed its final adjustment return and paid the income tax thereon, the amount being claimed for refund cannot be said to be "excessively and wrongfully collected". It was only on May 5, 2003, that the income tax payments for the taxable years 1994-1998 and 2000 being claimed for refund were determined as "excessively and wrongfully collected".

Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adopt their judgments to the special circumstances of cases, are incompetent to do[29]. To reckon the running of the prescriptive period from the filing of the final adjustment

[27] CIR vs. Court of Appeals, et. al., G.R. No. 117254, January 21,1999.
[28] Aguila vs. Court of First Instance of Batangas, Branch 1, 160 SCRA 352
[29] Tamio vs. Ticson, G. R. No. 154895, November 18, 2004; citing Air Manila vs. CIR, 83 SCRA 579, 589, June 9, 1978.

L

return and payment of the tax thereon for the taxable years 1994-1998 and 2000 when the excess payments and the right to recover the same came about only on 5 May 2003, would be iniquitous. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of balancing the taxpayer and the government's interest. That is, if the circumstances warrant, the interpretation on the law on prescription may be relaxed for equitable reason.

The instant case is one of the special circumstances where the two (2) - year prescriptive period may be suspended. In the case of CIR vs. Philippine American Life Insurance Co.[30], the Supreme Court, held that -

> "**Moreover, even if the two-year period had already lapsed, the same is not jurisdictional and may be suspended for reasons of equity and other special circumstances. (Emphasis Supplied)**

As the Supreme Court renders justice to the general populace when it ordered MERALCO in G.R. Nos. 141314 &141369, to refund the amount it overcharged the public when it found out that MERALCO used a higher rate in billing the public, it is only but equitable that the excessive income taxes collected by respondent CIR thereon be

---

[30] 244 SCRA 447, 453(1995)

L

returned to MERALCO. Otherwise, taxpayers would be reluctant in paying their taxes. Considering the government's vigilance in collecting taxes, at least, the same standard shall be given to the taxpayers in refunding excess income tax payments. This is in accordance with the consistent pronouncement of the Supreme Court that:

> "...Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."[31]

Indeed, the government has no right to retain what does not belong to it. No one, not even the State, should enrich oneself at the expense of another[32], especially given the unmistakable bias of our tax laws in severely penalizing delinquent taxpayers with surcharges and interests. While taxes are the lifeblood of the government, this Court must likewise be sensitive of its responsibility to apply the principles of justice, equity and fairness as its guide in interpreting the period of limitation which is remedial in nature.

---

[31] Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, G.R. No.141973, June 28,2005, 461 SCRA 369 (2005), p. 390, citing BPI-Family Savings Bank, Inc. vs. Court of Appeals, G.R. No. 122480, April 12, 2000, 330 SCRA 507, 509-510
[32] Commissioner of Internal Revenue vs. Smart Communications, Inc., G.R. Nos. 179045-46, August 25, 2010.

Despite the continued, if not sometimes fatal, increase of monthly electric bills for consumers, clearly, substantial justice, equity and fair play are on the side of MERALCO. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens.[33]

In the case of Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)[34], the Supreme Court held that:

> "Verily, a claim for tax refund may be based on a statute granting tax exemption, or, as *Commissioner of Internal Revenue v. Fortune Tobacco Corporation* would have it, the result of legislative grace. In such case, the claim is to be construed *strictissimi juris* against the taxpayer, meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute. On the other hand, a tax refund may be, as usually it is, predicated on tax refund provisions allowing a refund of erroneous or excess payment of tax. ***The return of what was erroneously paid is founded on the principle of solutio indebiti, a basic postulate that no one should unjustly enrich himself at the expense of another. The caveat against unjust enrichment covers the government. And as decisional law teaches, a claim for tax refund proper, as here, necessitates only the preponderance-of-evidence threshold like in any ordinary civil case.*** " (Emphasis supplied)

---

[33] State Land Investment Corporation, vs. Commissioner of Internal Revenue, G.R. No. 171956, January 18, 2008, 542 SCRA 114 (2008)
[34] G.R. No. 172129, September 12, 2008, 565 SCRA 154 (2008)

L

Consequently, we will apply the foregoing elementary principles in our evaluation of the evidence presented.

2. As regards the second issue –

> "Whether or not petitioner has charged to expense or to loss or offset against reported revenues in its Income Tax Returns (ITRs) for the taxable years 2003-2005 the amounts refunded or credited to customers arising from the Supreme Court Decision in G. R. Nos. 141314 and 141369"

MERALCO alleges that it did not charge to expense or to loss or offset against reported revenues in its Income Tax Returns (ITRs) for the taxable years 2003-2005 the amounts refunded or credited to customers arising from the Supreme Court's Decision in G.R. Nos. 141314 and 141369.

The Notes to Financial Statements, attached to MERALCO's Audited Financial Statements[35] for the years ended December 31, 2003 and 2002, stated:

> "xxx The loss arising from the SC decision amounted to P28,728 million, which represents the amount of refund to its customers of P0.167 per kwh for billing cycles from February 1994 to December 31, 2002. The Company's 2002 financial statements have been restated to reflect the loss arising from the SC decision. Refunds covering the periods February 1994 to December 31, 2001, amounting to P23,817 million, net of tax effect for 1999 of P1,126 million (see Note 23), were accounted for as an extraordinary loss in the 2002 statement of income. Refunds covering the period January 1, 2002 to December 31,

[35] Exhibit "Y", Notes to Financial Statements, page 3, paragraph 4

L

> 2002, amounting to P3,785 million were reflected as a reversal of 2002 revenues. The related tax effect of P1,133 million is reflected as a reduction in the provision for income tax (see Note 23). The Company's revenues for the first five months of 2003 were adjusted to reflect a rollback of its distribution rates totalling approximately P1,595 million."

Based from the foregoing, the amounts to be refunded to or credited against future consumption of MERALCO's customers pursuant to the Supreme Court Decision in G.R. Nos. 141314 and 141369 totalled P30,323 million, broken down as follows:

Period Covered	Amount of Refund (in millions)	
Feb 1994 to December 31, 2001	P	24,943
Jan. 1, 2002 to Dec. 31, 2002		3,785
Jan. 1 to May 2003		1,595
	P	**30,323**

A scrutiny of MERALCO's Statement of Income (as restated) for the year ended December 31, 2002 shows that MERALCO treated the refundable amount covering the period of February 1994 to December 31, 2001 as an extraordinary loss but in the amount of P23,817 million, net of tax effect for 1999 of P1,126 million. Likewise, MERALCO reflected the refundable amount of P3,785 million as reduction from the revenues of P121,606[36] million originally reported by MERALCO, resulting in a reduced revenue amount of P117,821 million for the said

[36] Exhibit "W", Statement of Income for the year ended December 31, 2002

ᒪ

year. The related tax effect of P1,133 million was shown as a reduction from the provision for income tax.

However, in its Amended Annual Income Tax Return for the taxable year 2002[37], MERALCO did not charge to expense or loss nor deduct against its revenues for the year 2002 any of the refundable amounts of P23,817 million and P3,785 million covering the periods February 1994 to December 31, 2001 and January 1, 2002 to December 31, 2002, respectively. This can be clearly seen from MERALCO's Reconciliation of Net Income Per Books Against Taxable Income for the taxable year 2002, wherein MERALCO's net taxable income per return in the amount of P1,166,760,574.00 was based on MERALCO's net loss per books in the amount of P2,015,232,945.00. It must be noted that the net loss per books of P2,015,232,945.00 was the amount reported by MERALCO before it reflected the refundable amounts of P23,817 million and P3,785 million as extraordinary loss and revenue reversal for the year 2002, respectively.

In its Statement of Income for the year ended December 31, 2003, MERALCO reflected the refundable amount of P1,595 million as reduction of its revenues for the months of January to May 2003. With regard to the refundable amounts covering the periods February 1994

[37] Exhibit "V"

L

to December 31, 2001 and January 1, 2002 to December 31, 2002, MERALCO reflected the same in its Balance Sheet as of December 31, 2003 under the "Unappropriated Retained Earnings" account as "Prior period adjustments arising from customers refund" in the amount of P26,469 million[38] net of the tax effect for 1999 and 2002 in the respective amounts of P1,126 million and P1,133 million. In other words, in arriving at its net income per books of P907 million for the year ended December 31, 2003, MERALCO deducted from its revenues only the refundable amount of P1,595 million pertaining to the months of January to May 2003.

Inasmuch as it was the net income per books in the amount of P907 million which was reconciled with the net income per Annual Income Tax Return for the year ended December 31, 2003 and none of the reconciling items pertain to the amounts to be refunded/credited to MERALCO's customers, it may be safely concluded that MERALCO did not charge to expense/loss nor deduct against its revenues for the said year the amounts to be refunded or credited to its customers pertaining to the period February 1994 to December 31, 2002.

As for the taxable years 2004 and 2005, MERALCO's Audited Financial Statements[39] and Annual Income Tax Returns[40] for the said

---

[38] Exhibit "Y", Statement of Changes in Stockholders' Equity, page 3
[39] Exhibits "N" and "P"

L

years also proved that it did not charge to expense or loss nor deduct against its revenues for the said years the amounts it has refunded/credited to its customers pursuant to the Supreme Court's Decision in G.R. Nos. 141314 and 141369.

Based on its liability account for Customers Refund as reflected in its Audited Balance Sheets[41] as of the years ended December 31, 2002, 2003, 2004 and 2005, MERALCO refunded a total amount of P10,566 million as of December 31, 2005 which was charged to the said account and not to any expense/revenue account for the said years, as summarized below:

		2002	2003	2004	2005
		(AMOUNTS IN MILLIONS)			
Balance, January 1		P -	P 28,728	P 25,608	P 20,551
Add:	Set up of Refund	28,728	1,595	-	-
	Subtotal	P 28,728	P 30,323	P 25,608	P 20,551
Less:	Refunded	-	4,715	5,057	794
Balance, December 31		P 28,728	P 25,608	P 20,551	P 19,757
Present Value Effect					(4,234)
Balance as shown in Balance Sheet, Dec. 31 (Nominal)		P 28,728	P 25,608	P 20,551	P 15,523
Breakdown of AP-Customers Refund as shown in B/S					
	Current	P 22,594	P 6,919	P 5,409	P 3,787
	Non-Current	6,134	18,689	15,142	11,736
	Total	P 28,728	P 25,608	P 20,551	P 15,523
Total Refunded to customers to date		P -	P 4,715	P 9,772	P 10,566
Balance, December 31 (Real)		28,728	25,608	20,551	19,757
Total		P 28,728	P 30,323	P 30,323	P 30,323

[40] Exhibits "O" and "JJJ"
[41] Exhibits "Y", "N" and "P"

However, while MERALCO's Audited Balance Sheets show that MERALCO has refunded/credited to its customers a total amount of P10,566 million as of December 31, 2005, such amount does not reconcile with the figure of P10,565 million [42] shown in the Manifestation[43] dated September 25, 2006, which MERALCO filed with the Energy Regulatory Commission (ERC) on October 2, 2006. Apparently, there were discrepancies on the amounts actually refunded by MERALCO to the prejudice of the consuming public but this does not negate the findings of this Court that MERALCO did not charge to expense/loss nor deduct against its revenues for the said years the amounts to be refunded or credited to its customers pertaining to the period from February 1994 to December 31, 2002.

3. As to the third issue stipulated upon by the parties -

> "Whether or not petitioner's right to recover its excess income tax payments for the taxable years 1994-1998 and 2000 is subject to the condition that refund or credit to future consumption due the customers concerned in the average amount of P0.167 per kilowatthour has been actually given or credited to them by the petitioner."

MERALCO posits that the Supreme Court's mandated refund is separate and distinct from the present claim for a tax refund or credit considering that the legal basis and requirements for the Supreme

[42] Exhibit "EE", Annex "C"
[43] Exhibit "EE"

L

Court's mandated refund are different from the legal basis and requirements for the present claim for a tax refund or credit. MERALCO further argues that the Supreme Court's mandated refund is not dependent on the present claim for a tax refund or credit, or vice-versa.

Hence, MERALCO asserts that it's right to recover its excess income tax payments for the taxable years 1994-1998 and 2000 cannot be subjected to the condition that the refund or credit to future consumption due the customers concerned in the average amount of P0.167 per kilowatthour, has been actually given or credited to them by MERALCO.

We disagree.

It is true that neither is the Supreme Court's mandated refund dependent on the instant claim for a tax refund or credit, vice-versa, nor do the legal basis and requirements for the Supreme Court's mandated refund be the same as the instant claim for a tax refund or credit. If it were not due to the special circumstance in the instant case, specifically the finality of the Supreme Court's Decision in G.R. Nos. 141314 and 141369, MERALCO would not be entitled to the claim for a tax refund for the taxable years 1994-1998 and 2000. Thus, due to equity consideration, the two (2) - year prescriptive period under the

1997 National Internal Revenue Code is reckoned from the finality of the Supreme Court's Decision in G.R. Nos. 141314 and 141369.

MERALCO's claim for a tax refund was not granted or denied by respondent CIR on the condition that MERALCO should have credited to bill or refunded to customers the Supreme Court's mandated refund by MERALCO. It cannot be said that MERALCO's right to recover its excess income tax payments was subject to the condition that the tax refund or credit to future consumption due the customers concerned in the average amount of P0.167 per kilowatthour, has been actually given or credited to them by MERALCO.

While the above-mentioned Decision of respondent CIR was bereft of any legal justification to the conditional release/issuance of a Tax Credit Certificate (TCC) covering the granted tax refund, we find the same or that the **"releases or issuances of the TCC be proportionate to the amount actually disbursed"**, to be just and equitable not only for the MERALCO and the government but also the general public considering that there were discrepancies in the amount to be given and actually given or actually received by MERALCO's customers. This is supported by our findings and as pointed out by respondent CIR in its assailed Decision.

The pertinent portion of respondent CIR's Decision dated September 21, 2005, partially granting MERALCO's claim for a tax refund which is alleged to be subject to a condition, reads as follows:

> "In view of the foregoing, the Bureau has no recourse but to DENY your claim for tax credit for taxable years 1994 to 1998 and 2000 in the net amount of P5,796,342,792.71 because of prescription. The related refund dockets for these cases are now with the Legal Service for reference with your current pending appeal with the Court of Tax Appeals (CTA).
>
> On the other hand, your request for refund/issuance of tax credit certificate (TCC) for taxable year 2001 in the net amount of **P894,473,932.58** is hereby **GRANTED** since it was filed within the two-year prescriptive period but subject to the condition that credit to bill or refund to customers has actually been credited or given to the latter.
>
> Based on the above premise, the initial TCC to be issued to your company is "P343,746,332.29 as presented in the 2001 refund docket based on the projected estimated refund disbursement to customers belonging to Phases 1,2, and 3 in the amount of P11.648 billion submitted to the ERC. However, based on the Refund Summary Report as of August 31, 2005 that you submitted to this Office and the ERC, only P10,754,002,740.00 of the total P11,633,786,741.00 refund processed for Phases 1 to 3 were actually disbursed to date. Consequently, by applying the formula of the amount of refund actually disbursed per Refund Summary Report submitted over base amount of total refund P30.307 billion multiplied by the net amount of refund granted for 2001, the amount of TCC to be initially issued to your company in proportion to the amount of refund actually disbursed should only be **P317,391,200.77.**
>
> Finally, as a condition in the processing of the succeeding releases/issuance of TCC for refund granted in 2001 but to be given in 2005 to 2010 per refund schedule, you are required to submit to the Large Taxpayers Service within thirty (30) days after the end of every year of the refund schedule the Refund Summary Report for each year as submitted to ERC from where the actual TCC to be issued for a particular year shall be based."

L

Moreover, this Court is not only a Court of law but also a Court of equity. In the case of Gonzalez vs. Rizal Commercial Banking Corporation,[44] the Supreme Court held that:

> "Courts in this jurisdiction are not only courts of law but also of equity, and therefore cannot unqualifiedly apply a provision of law so as to cause clear injustice which the framers of the law could not have intended to so deliberately cause. In *Carceller v. Court of Appeals*, this Court had occasion to stress:
>
>> 'Courts of law, being also courts of equity, may not countenance such grossly unfair results without doing violence to its solemn obligation to administer fair and equal justice for all.' "

In the exercise of this Court's jurisdiction also as a court of equity, it is only but fair to allow MERALCO to recover its excess income tax payments for the taxable years 1994-1998 and 2000, which would have prescribed if not for the special circumstance in the instant case, in proportion to or that the refund or credit to future consumption due the customers concerned in the average amount of P0.167 per kilowatthour should have been actually given or credited to them by MERALCO. It would be the height of injustice if MERALCO can recover all the excess income tax payments when it did not refund all to the customers what MERALCO is mandated to refund from which the excess income tax payments would arise.

---

[44] G.R. No. 156294, November 29, 2006, 508 SCRA 459 (2006)

l

The reason for the exercise of this Court's jurisdiction also as a court of equity in the instant case is to prevent unjust enrichment and to ensure restitution.[45] If MERALCO did not overcharge its consumers, the Supreme Court's Decision in G.R. Nos. 141314 and 141369 would not have been rendered, and MERALCO would not have made excessive income tax payments. Justice is done if MERALCO was in good faith and if it had fully disbursed the amount it overcharged from its customers from which the excessive income tax payments would arise and which would be the basis of this claim for a tax refund.

To reiterate, we find that the **"releases or issuances of the Tax Credit Certificate (TCC) be (in) proportion to the amount actually disbursed or given to MERALCO's customers"**, to be just and equitable.

In fine, MERALCO admits and accepts the Audit Findings and Resolution[46] of respondent CIR as embodied in their "SUPPLEMENTAL JOINT STIPULATION OF FACTS AND ISSUES". Specifically MERALCO accepts the mathematical computations of respondent CIR except on the conclusions that the same has prescribed and subject to the condition that the credit to bill or refund to customers in the average

[45] David Reyes (Substituted by Victoria R. Fabella) vs. Jose Lim, Chuy Cheng Keng and Harrison Lumber, Inc., G.R. No. 134241, August 11, 2003]
[46] Supplemental Joint Stipulation of Facts and Issues.

L

amount of P0.167 per kilowatthour has actually been credited or given to customers.[47]

The pertinent portion and end result of respondent CIR's computation read as follows:

	Recommended amount for TCC-for denial	Recommended amount for TCC-To be Granted	Total amount of refund per audit
1994	P 697,413,897.48	-0-	**P 697,413,897.48**
1995	743,421,455.29	-0-	**743,421,455.29**
1996	1,016,995,619.18	-0-	**1,016,995,619.18**
1997	1,094,804,759.31	-0-	**1,094,804,759.31**
1998	1,127,850,426.4	-0-	**1,127,850,426.4**
2000	1,115,856,635.05	-0-	**1,115,856,635.05**
2001	-0-	P894,473,932.57	**894,473,932.57**
GRAND TOTAL	**P5,796,342,792.71**	**P894,473,932.57**	**P6,690,816,725.28**

Evidently, based on the joint stipulation and admission of facts and issues and from respondent CIR's decision dated September 21, 2005,[48] there were excessive collections for the taxable years 1994-1998 and 2000-2001.

Further, an examination of the records shows that MERALCO did not charge to expense or to loss or offset against reported revenues in its Income Tax Returns (ITRs) for the taxable years 2003-2005 the amounts refunded or credited to customers arising from the Supreme Court's Decision in G. R. Nos. 141314 and 141369.

[47] Ibid.
[48] Ibid.

According to jurisprudence, claimant has the burden of proof to establish the factual basis of his or her claim for a tax refund or credit. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. In the instant case, MERALCO was able to present sufficient evidence to prove its claim for a tax refund.

WHEREFORE, premises considered, the Amended Petition for Review is **GRANTED**, as follows:

1. Respondent's denial due to prescription of MERALCO's claim for a tax refund or credit for the taxable years 1994-1998 and 2000 is **REVERSED and SET ASIDE**;

2. Respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of MERALCO in the amount of **P5,796,342,792.71,** corresponding to the claim for a tax refund or credit for the taxable years 1994-1998 and 2000, subject to and in proportion that the refund or credit to future consumption due to the customers concerned in the average amount of P0.167 per kilowatthour arising from the Supreme Court's Decision in G. R. Nos. 141314 and 141369, has been actually given or credited to them by MERALCO.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(with dissenting opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice