REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

STRADCOM CORPORATION,
Respondent.

CTA EB NO. 1949
(CTA Case No. 9125)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 27 2021 4:12 p.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Reconsideration (Re: Decision dated 23 July 2020)"[1] (**MR**) filed by petitioner Commissioner of Internal Revenue (**CIR**) on 01 September 2020. He seeks the reversal of the Decision[2] reached by this Court in the above-captioned case. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE,** the foregoing considered, the Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision of the First Division dated 29 May 2018 and its Resolution dated 24 September 2018, respectively, are hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

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[1] *Rollo*, pp. 201-219.
[2] Id., pp. 172-188.

A perusal of the MR shows that petitioner does not raise new issues. Rather, his arguments are a mere rehash of those already considered and discussed exhaustively by the Court in the assailed Decision.

Petitioner's only substantial point of contention rests on his argument that the two-year prescription period under Section 204[3] of the National Internal Revenue Code (**NIRC**) within which to file a claim for refund should be counted from respondent's filing of its Income Tax Return (**ITR**) for taxable year (**TY**) 2011 on 16 April 2012 and not from its actual payment on 29 August 2013.

Even after another assiduous review of the case records, as well as of petitioner's arguments, the Court still finds no cogent reason to deviate from its prior ruling.

First, as previously discussed in the assailed Decision, it is clear from Section 204 of the NIRC, as amended, that the right to claim a tax refund arises from the time of the erroneous payment or illegal collection thereof. Expounding on the said provision, the Court ratiocinated to wit:

> ...
>
> Respondent's view that the two-year prescription period should be tacked from the due date for petitioner's filing of its ITR for TY 2011, which in this case is 16 April 2012, is untenable. As the First Division explained in the assailed Decision, relying on the principle laid down in *Metropolitan Bank and Trust Company v. The Commissioner of Internal Revenue*, "tax refunds are based on the general premise that taxes have either been erroneously or excessively paid". Granting that payment of the alleged unwarranted taxes were made only on 29 August 2013, the same should be considered as the reckoning date from which respondent's right to the refund arose.
>
> Moreover, if petitioner's contention were to be sustained, it would result to an absurd scenario wherein a taxpayer's right to a

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3 **SEC. 204**. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

...

(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.

...

> refund would accrue *prior* to the actual collection or payment of the taxes.[4]
>
> ...

Given respondent's tax payment on 29 August 2013, the subsequent filing of its administrative claim for refund of the same on 15 May 2015 and its judicial claim on 25 August 2015 shows that it was able to comply with the jurisdictional two-year period for this Court to take cognizance of its case.

Second, petitioner violated respondent's right to due process when the former failed to issue a Letter of Authority (**LOA**) prior to the Bureau of Internal Revenue's (**BIR's**) assessment of the latter. The issue of this Court's jurisdiction having been settled, the Court ultimately upheld respondent's right to a tax refund on the basis of such tax having been illegally collected in violation of, among others, the provisions of Section 13 in relation to Section 228 of the NIRC, which provide:

> ...
>
> **SEC. 13**. *Authority of a Revenue Office[r]*. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[5]
>
> ...
>
> **SEC. 228**. *Protesting of Assessment*. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...
>
> ...

Even petitioner does not contest that no LOA was issued to respondent (only that he claims that it is somehow exempt from such requirement by the sheer reason of respondent's previous ITR filing). However, as already explained in the assailed Decision, such fact alone could not justify his disregard of procedure. As held in the assailed Decision:

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4 *Rollo*, p.182; Citation omitted.
5 Emphasis supplied.

> . . .
>
> Although petitioner is of the opinion that due to respondent's previous filing of its ITR for TY 2011, a formal assessment can be dispensed given the circumstances surrounding the present case, the Court, however, remains unconvinced. Section 6 of the NIRC of 1997, as amended, states:
>
> > . . .
> >
> > **SEC. 6.** ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** –
> >
> > **(A)** ***Examination of Returns and Determination of Tax Due.*** – <u>After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
> >
> > The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.
> >
> > . . .
>
> Taking the above-quoted provision with the mandate of the CIR to inform the taxpayer in accordance with Section 228 clearly shows that a formal assessment is still necessary despite a taxpayer's previous filing of an ITR. Therefore, petitioner's claim of exemption from compliance with the process outlined in Section 228 of the NIRC of 1997, as amended, is unfounded.[6]
>
> . . .

WHEREFORE, the foregoing considered, petitioner's "Motion for Reconsideration (Re: Decision dated 23 July 2020)" filed on 01 September 2020 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision of this Court dated 23 July 2020 is hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[6] *Rollo*, p. 185-186; Citation omitted, emphasis supplied and underscoring in the original text.

x- -x

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With all due respect,
I maintain my CDO)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice