REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2126
(CTA Case No. 9692)

Present:

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

Promulgated:
DEC 02 2020
3:58 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Bank of the Philippine Islands (**petitioner/BPI**) pursuant to Section 3(b)[2], Rule 8

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[1] *Rollo*, pp. 8-39.

[2] Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Section 3. *Who may appeal; period to file petition.* —

. . .

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks to nullify the Decision dated 31 May 2019[3] and the Resolution dated 13 August 2019[4], respectively, of the Court's Special Second Division in CTA Case No. 9692, entitled *Bank of the Philippine Islands v. Commissioner of Internal Revenue.*

The antecedent facts follow.

On 17 September 2015, petitioner entered into an Amended and Restated Peso Loan Agreement[5] (**Loan Agreement**) with SN Aboitiz Power-Benguet, Inc. (**SNAP-BI**) wherein petitioner, as Peso Lender, severally agreed, along with others, to advance SNAP-BI an aggregate sum not exceeding ₱15,000,000,000.00.

On 22 September 2015, petitioner again entered into an Omnibus Notes Facility and and Security Agreement[6] (**Facility Agreement**) with Hedcor Bukidnon (**Hedcor**) wherein it agreed, along with other entities, to advance Hedcor, as Note Issuer, an amount not exceeding ₱10,000,000,000.00.

Pursuant to the aforementioned agreements, SNAP-BI loaned from petitioner the amount of ₱4,340,085,597.14 for which the former issued a Promissory Note.[7] Similarly, Hedcor drew from petitioner the amount of ₱1,600,000,000.00 for which it issued a Rate Note to evince its indebtedness.

Thereafter, on 30 September 2015, Hedcor filed a Documentary Stamp Tax (**DST**) Return[8] in the amount of ₱25,000,000.00, covering petitioner's credit commitment of ₱5,000,000,000.00. On 02 October 2015, SNAP-BI also filed a DST Return[9] based on the amount of its loan in the amount of ₱21,700,428.00.

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additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 Division Docket, Volume II, pp. 847-863; Penned by Senior Associate Justice Juanito C. Castañeda, with Associate Justice Catherine T. Manahan, concurring.

4 Id., pp. 911-916.

5 Exhibit "P-8", id., Volume I, pp. 401-441.

6 Exhibit "P-3", id., pp. 156-390.

7 Exhibit "P-9", p. 442.

8 Exhibit "P-17", id., Volume II, p. 523.

9 Exhibit "P-18", id., p. 524.

On 05 October 2015, petitioner remitted to the Bureau of Internal Reveneue (**BIR**) the amounts of ₱8,000,000.00[10] and ₱21,700,428.00[11], both representing DST on its transactions with Hedcor and SNAP-BI, respectively.

On 01 February 2017, petitioner filed separate administrative claims with the BIR for the refund of the above amounts allegedly representing overpaid or erronenously paid DST on the subject transactions.[12]

Due to the BIR's inaction on petitioner's claims, the latter filed its judicial claim for refund of the aggregate amount of ₱29,700,428.00 before this Court *via* a Petition for Review on 28 September 2017. This was docketed as CTA Case No. 9692.

Trial thereafter proceeded accordingly where petitioner presented the testimonies of Ma. Cecilia S. Nazario (**Nazario**), its Senior Manager for Corporate Banking Systems Planning and Product Integration; and, Mark I. Gasingan (**Gasingan**), BPI's Assistant Vice President and Head of Corporate Loan Operations.[13]

On the other hand, respondent Commissioner of Internal Revenue (**respondent/CIR**) opted to not present any witnesses or evidence. The case was submitted for decision on 16 July 2018.[14]

In its now assailed 31 May 2019 Decision, the Special Second Division denied petitioner's petition. The dispositive portion thereof reads:

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> **WHEREFORE**, the present Petition for Review is **DENIED** for lack of merit.
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> **SO ORDERED.**
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> ...

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10 Exhibit "P-27", id., Volume I, p. 460.
11 Exhibit "P-28", id., p. 461.
12 Exhibits "P-12" and "P-13", id., pp. 451-458.
13 Order dated 19 February 2018, id., Volume II, pp. 541-542.
14 Id., p. 843.

The Special Second Division found petitioner's DST payment to be neither excessive nor erroneuous. Although it agreed that Hedcor's DST payments should have only been based on its loan of ₱1,600,000,000.00 and not petitioner's full commitment of ₱5,000,000,000.00, the same could not be said of petitioner.

In arriving at the assailed Decision, the Special Second Division relied on the pertinent portions of Revenue Regulations (**RR**) No. 9-2000[15], as follows:

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> SECTION 3. *Mode of Payment and Remittance of the Tax.* –
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> ...
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> (c) *Persons liable to remit DST.* – In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases:
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> ...
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>> (4) **When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code**: Provided, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding:
>>
>>> (a) A **bank,** a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company.[16]
>
> ...

Based on the foregoing provision, the Special Second Division found BPI (being a bank) to be the proper payor of DST as regards the subject loan transactions it separately entered with SNAP-BI and Hedcor. Thus, it could not claim any refund of its DST payments on the ground of error.

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15 Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions dated 22 November 2000.

16 Emphasis supplied.

Citing *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue*[17] (**MBTC**), the Special Second Division also held that since BPI did not prove to be exempt from DST payments on the subject agreements in a manner to constitute it as a mere collecting agent, the presumption is that it is bound to pay the same.

The assailed 31 May 2019 Decision further found that the principle of *solutio indebiti* has no application in petitioner's case. The Special Second Division held that two (2) requisites must concur for the foregoing principle to apply, to wit:

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> 1. Payment is made when there is no binding relation between the payor, who has no duty to pay, and the person who received the payment; and,
>
> 2. Payment is made through mistake, and not through liberality or some other cause.[18]
>
> ...

In disagreement with the Special Second Division's actions, petitioner filed its Motion for Reconsideration (**MR**) but it was likewise denied in the similarly assailed Resolution of 13 August 2019. Hence, this petition.

As respondent did not file a comment thereto, the Court *En Banc* submitted the case for decision in its Resolution dated 02 December 2019.[19]

Before the Court *En Banc*, petitioner assigns the following errors to the Special Second Division:

I.

THE SPECIAL SECOND DIVISION ERRED IN RULING THAT RESPONDENT MADE NO ERRONEOUS COLLECTION WHEN PETITIONER REMITTED DOCUMENTARY STAMP TAX (DST) ON ITS LOAN TRANSACTIONS WITH SN ABOITIZ POWER-

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17 G.R. No. 178797, 04 August 2009.

18 *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*, G.R. 182582, 17 April 2017.

19 *Rollo*, p. 77.

BENGUET, INC. (SNAP-BI) AND HEDCOR BUKIDNON (HEDCOR) AFTER SNAP-BI AND HEDCOR ALREADY PAID THE SAME TAX ON SAID LOAN TRANSACTIONS.

II.

THE SPECIAL SECOND DIVISION ERRED IN CITING THE CASE OF *METROPOLITAN BANK AND TRUST CO. V. COMMISSIONER OF INTERNAL REVENUE* AS SUCH CASE DOES NOT APPLY TO PETITIONER'S CLAIM.

III.

THE SPECIAL SECOND DIVISION ERRED IN RULING THAT THE PRINCIPLE OF *SOLUTIO INDEBITI* DOES NOT APPLY TO THIS CASE.

IV.

THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT ERRED IN ALLOWING THE GOVERNMENT TO UNJUSTLY ENRICH ITSELF.

The Court *En Banc* resolves below.

After a careful review of the records, We find no compelling reason to deviate from the assailed 31 May 2019 Decision and the 13 August 2019 Resolution.

It is noted that petitioner introduces no new arguments which have not been already adequately addressed in the assailed Decision. Regardless of the numerous errors ascribed by petitioner to the Special Second Division's Decision, the crux of its petition lies in whether it has a right to the refund it claims from respondent.

Section 3(c)(4)(a) of RR 9-2000[20] is more than clear. Petitioner, as the banking institution in the agreements it entered with SNAP-BI and Hedcor, has the obligation to pay the DST due thereon. As an exception, if petitioner is exempt from payment of DST, its payment of such taxes would only be in the capacity of a collecting agent. However, this is not petitioner's case.

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20 Supra at note 15.

On this note, the Special Second Division's application of the ruling in *MBTC*[21] could hardly be of issue. Although admittedly, the case of *MBTC* may not be on all fours with petitioner's case; the ruling insofar as a bank's obligation to pay DST on taxable documents absent any proof of exemption remains to be the bank's liability.

As the Special Second Division aptly found, petitioner claimed no exception from payment of the DST to warrant a refund thereof. It anchors its claim for refund on the sole allegation that SNAP-BI and Hedcor had already paid the DST on the subject loan transactions. However, considering the foregoing provisions of RR 9-2000, petitioner's DST payments on the subject loan transactions were only proper. As it would appear, it was SNAP-BI and Hedcor that mistakenly paid the DST on their transactions when the obligation to do so devolved upon petitioner. Whether SNAP-BI and Hedcor may properly claim a refund of their DST payments is not an issue in this case more so that both entitites have not been made parties to the present action.

Assuming *arguendo* that both SNAP-BI's and Hedcor's DST payments are erroneous and are properly the subject of a claim for refund, petitioner herein has no legal standing to bring such case on their behalf. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[22] Unless otherwise provided by law or rules, every action must be prosecuted or defended in the name of the real party in interest.[23] Clearly, petitioner would not be the errant taxpayer or the real party in interest in such case. Petitioner has neither been empowered by SNAP-BI and Hedcor to bring such suit on their behalf nor has the latter's rights to do so been assigned to petitioner by operation of law.

Now, assuming further that *solutio indebiti* is present in the case at bar, petitioner could not claim to be a payor by mistake under this quasi-contract.

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21 Supra at note 17.
22 *Ang v. Pacunio, et al.*, G.R. No. 208928, 08 July 2015.
23 Id.

The principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and, (2) the payment is made through mistake, and not through liberality or some other cause.[24]

As regards the first requisite, petitioner as a taxpayer is bound to remit DST due on its transactions to the BIR which, in turn, has the right to receive the same. As for the second requisite, payment must be made through mistake.[25] However, when petitioner paid the subject DST, it did so out of legal obligation and not through error.

A similar conclusion may be reached as regards petitioner's claim of unjust enrichment on the part of the government. Even assuming that the government has unjustly enriched itself, it was surely not at petitioner's expense.

As stated previously, petitioner is not the proper party to bring such claim before this Court given that its subject DST payments are neither erroneous nor excessive insofar as petitioner's remittances are concerned. Much like the first requisite for the principle of *solutio indebiti* to apply, the principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.[26]

All told, the Special Second Division was correct in concluding that there was no erroneous payment on petitioner's part to warrant a refund of its DST payments. Therefore, the Court *En Banc* finds no cogent reason to reverse nor modify its assailed Decision and Resolution.

WHEREFORE, premises considered, petitioner Bank of the Philippine Islands' Petition for Review filed on 13 September 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated 31 May 2019 and the Resolution dated 13 August 2019, respectively, of the Special Second Division in CTA Case No. 9692, entitled *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**

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24 *Moreño-Lentfer, et al. v. Wolff*, G.R. No. 152317, 10 November 2004, 484 Phil. 552.
25 Id.
26 *Filinvest Land, Inc., et al. v. Backy, et al.*, G.R. No. 174715, 11 October 2012.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice