REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

Y&R PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2019
(CTA Case No. 9437)

x -- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

Y&R PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2020
(CTA Case No. 9437)

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

Promulgated:
MAR 1 1 2021 3:32pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

Before this Court *En Banc* are 1) Y&R Philippines, Inc.'s ("Y&R") Motion for Reconsideration ("Y&R's Motion for Reconsideration"), filed on 16 October 2020,[1] with the Commissioner of Internal Revenue's ("CIR")

[1] Records, CTA EB Case No. 2019.

Comment (To Petitioner's Motion for Reconsideration) ("CIR's Comment"), filed by registered mail on 23 November 2020;[2] and 2) CIR's Motion for Reconsideration (of the Decision dated 25 September 2020) ("CIR's Motion for Reconsideration"), filed by registered mail on 20 October 2020,[3] with Y&R's Comment/Opposition (To the Motion for Reconsideration dated 19 October 2020) ("Y&R's Comment"), filed on 9 December 2020.[4]

In Y&R's Motion for Reconsideration, it alleged that it is entitled to legal interest at 6% per annum on the garnished amount of Php17,202,373.31, from the actual date of collection on 3 October 2016 until the full refund thereof. As the CIR's actions in the assessment and collection of Y&R's Php17,202,373.31 were palpably arbitrary and unduly depriving against Y&R on the fair use of its property, he must be held liable and should compensate Y&R for the damages it had suffered and continues to suffer as a result of such acts.

On the other hand, in his Comment, the CIR counter-argues as follows:

1. Y&R is not entitled to an award of legal interest because it is not entitled to the claim of refund in the first place. Further, ***the National Internal Revenue Code of 1997, as amended ("Tax Code")*** does not hold the CIR liable for interest in case of taxes improperly collected. In the absence of any legal provision providing for interest, this Court cannot order the payment of the same on taxes refunded. Moreover, the CIR did not violate any law in collecting the garnished amount during the pendency of the proceedings on the Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax. As no order had yet been issued by this Court restraining collection, the CIR properly collected the taxes subject of the present case;

2. Y&R failed to exhaust administrative remedies under ***Section 204 (c) of the Tax Code*** when it prematurely filed its judicial claim with the Court in Division by only amending the original Petition for Review, depriving the CIR the opportunity to act on the administrative claim for refund.

In the CIR's Motion for Reconsideration, the CIR argued that the Honorable Court is bereft of jurisdiction to rule on Y&R's claim for refund, considering that Y&R failed to file a prior administrative claim for refund of taxes.

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[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*

In Y&R's Comment, it insists that this Court has jurisdiction to rule upon the CIR's assessment and collection procedures, and consequently, on Y&R's claim for refund arising from the CIR's void assessment and collection. Moreover, it alleged that the deficiency tax assessment which the CIR issued against it are void for lack of a Letter of Authority and since it did not receive a Preliminary Assessment Notice ("PAN") and a Final Assessment Notice. Finally, Y&R argued that it is entitled to legal interest due to the arbitrary actions of the CIR.

We deny both Motions for Reconsideration.

As to Y&R's Motion for Reconsideration, the arguments raised therein are similar to those raised in its Petition for Review. Consequently, these have already been sufficiently tackled and adjudicated upon in the Decision, dated 17 July 2020. As such, there is no more reason to disturb the same.

Indeed, in order for payment of interest to accrue on the amount to be refunded to taxpayer, either said taxpayer must be authorized by law or the collection of the tax was attended by arbitrariness.[5]

These two circumstances are not present in the case at bar. First, no law expressly grants the payment of interest as a form of damages in tax refund cases. Second, no arbitrariness attended the collection of the taxes subject of the present case. Pending the resolution of Y&R's Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax, the CIR is not precluded from collecting the garnished amount. This is because there is no order yet from the Court in Division suspending the collection of the alleged deficiency taxes against Y&R when the CIR proceeded with the collection of the garnished amounts. Consequently, the CIR did not disobey any lawful order from the Court in Division.

With respect to CIR's Motion for Reconsideration, the same is similarly futile. A perusal of the CIR's arguments in his Motion for Reconsideration would show that he adopted the theory posed in the Concurring and Dissenting Opinion penned by our esteemed colleague, Honorable Justice Catherine T. Manahan.[6]

The theory raised in the CIR's Motion for Reconsideration is that this Court has no jurisdiction to grant Y&R a tax refund because no prior administrative claim had been filed before the CIR. He insists that a mere amendment of the Petition for Review to convert an original case questioning the validity of a deficiency tax assessment to become a case for refund of

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[5] Atlas Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. Nos. L-26686 & L-26698, 30 October 1980.
[6] Records, CTA EB Case No. 2019, pp. 204-209.

erroneously and/or illegally paid taxes (as a result of the collection of the subject deficiency taxes) does not suffice.

The Supreme Court has already settled this matter. As distinctly elucidated upon by the Honorable Presiding Justice Roman G. Del Rosario in his Concurring Opinion[7] and as well-argued by Y&R, the present case does not require a prior filing of an administrative claim for refund before this Court can obtain jurisdiction over the same.

The original Petition for Review filed by Y&R before the Court in Division questioned the validity of the deficiency tax assessments issued by the CIR against it. It is important to note that the Court in Division already obtained jurisdiction over said issue. The Court in Division continued to possess such jurisdiction even when the CIR collected the subject deficiency taxes when the Hong Kong and Shanghai Banking Corporation released the amounts to the CIR. These developments did not rob the Court in Division of jurisdiction it already possessed to try and determine the validity of the subject deficiency tax assessment.

The amendment of the original Petition for Review to include a prayer for refund of erroneously and/or illegally paid taxes is merely to reflect such developments connected with the original Petition for Review, the primary objective of which is to declare the subject assessments as null and void. In fact, the refund of the alleged illegally and erroneously collected taxes can only be granted once the subject assessments have been declared null and void, which is, as stressed, the primary cause of action in the original Petition for Review.

To require Y&R to first obtain a ruling that the assessments issued against it are null and void and then necessitate the prior filing of an administrative claim for refund before it can resort to this Court to determine the propriety of its judicial claim for refund would be an excessive and useless formality.

In ***Y & R Philippines, Inc. v. Commissioner of Internal Revenue***,[8] which involved the same parties as and similar issues to the instant case, this Court's Third Division ruled it appropriate to resolve an issue of deficiency tax assessment with a claim for tax refund in a single proceeding:[9]

[7] *Id.*, pp. 200-203.
[8] CTA Case No. 9437, 31 August 2018.
[9] Citing Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals, G.R. No. 106611, 21 July 1994.

As regards the claim for refund by Petitioner, the Supreme Court ruled in the case of *Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals* that it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment be resolved jointly with a claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable, to wit:

> "Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after the discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
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> **Thus, to avoid the multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable**.
>
> In fact, as the Court of Tax Appeals itself has heretofore conceded, **it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case**. It is important to note that in determining whether or not Petitioner is entitled to the refund of the amount paid, it would be necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute *res judicata* on both parties as to all the matters subject thereof or necessarily involved therein.

(Emphasis and Underscoring, Ours)

Certainly, to require Y&R to first go through with the rigorous process of filing an administrative claim for refund with the CIR before this Court can grant its claim for refund is not only unduly burdensome on Y&R, but also an absurdity, considering that this Court has already found that the deficiency tax assessment issued against Y&R is null and void, which is the ultimate basis for Y&R's claim for refund of erroneously and/or illegally paid taxes. The proper way, therefore, would simply be for this Court to directly grant Y&R's

claim for refund based on its finding that the subject assessments are void to remove any unnecessary and useless formality that is only a detriment against the interest of the government and the taxpayer.

WHEREFORE, the Motions for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(On leave)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I reiterate my CDO dated Sept 25, 2020.)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice