22-000300-0034

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10899

CAL-COMP PRECISION (THAILAND) LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MCLAIR D. GARCIA
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ROQUE LAW FIRM
19th Floor, Tower I, The Enterprise Center
6766 Ayala Avenue, Makati City

GREETINGS:

You are hereby notified by these presents that on **November 19, 2024,**a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CAL-COMP PRECISION (THAILAND) LIMITED, Petitioner,	**CTA CASE NO. 10899**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 19 2024 1:20PM

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Cal-Comp Precision (Thailand) Limited (**petitioner**), pursuant to Section 3(a)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the refund of the allegedly erroneously paid capital gains tax (**CGT**) in the total amount of ₱33,104,921.71, arising from petitioner's

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1 Filed on 24 June 2022, Division Docket, Volume I, pp. 7-41.

2 **SEC. 3.** *Who may appeal; period to file petition. –*
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

sale of its shares of stock in its domestic corporation, Cal-Comp Precision (Philippines), Inc. (**CPPH**).

PARTIES OF THE CASE

Petitioner is a nonresident foreign corporation (**NRFC**) duly organized and existing under the laws of Thailand[3], with principal place of business at 4 Moo 8 Sethakij Road, Klong Maduea Sub-district, Krathumbaen District, Samutsakhon 74110, Thailand.[4] Based on the Certification of Non-Registration of Company[5] from the Securities and Exchange Commission (**SEC**), petitioner is not registered as a corporation, partnership or a One Person Corporation (**OPC**) in the Philippines.

Respondent Commissioner of Internal Revenue (**respondent/ CIR**), on the other hand, is the head of the Bureau of Internal Revenue (**BIR**) who is vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

FACTS OF THE CASE

On 02 June 2020, petitioner and Cal-Comp Precision (Singapore) Limited (**CPSG**) executed a Share Transfer Agreement[6] (**STA**) where petitioner transferred its legal and beneficial ownership of all its CPPH's shares in CPSG's favor, for a total consideration of $55,097,897.46 or ₱2,795,667,317.12.[7] CPPH is a corporation duly organized under the Philippine laws[8] with principal office address at Lot 11 HY, Dimacali Avenue, FPIP II-SEZ, Barangay Sta. Anastacia, Sto.

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[3] See Exhibit "P-3", Division Docket, Volume II, pp. 869-873.
[4] See Exhibits "P-4" and "P-4-A", id., pp. 878-879.
[5] Exhibit "P-5", id., p. 880.
[6] Exhibit "P-16", id., pp. 937-940.
[7] Exhibit "P-16-B", id.
[8] See Exhibit "P-12", id., pp. 887-926.

Tomas, Batangas.[9] Petitioner owned about 24,645,681 of its common shares of stock with a par value of ₱100.00 *per* share.[10]

The STA between petitioner and CPSG was notarized on 24 June 2020.[11] As a result of the sale to CPSG, petitioner paid both Documentary Stamp Tax (**DST**) and CGT amounting to ₱18,484,260.75[12] and ₱33,104,921.71[13] (on the resulting net gain), respectively, on 26 June 2020.

On 20 June 2022, petitioner filed two (2) applications before the International Tax Affairs Division (**ITAD**) seeking for the refund of the allegedly erroneously paid CGT of ₱33,104,921.71. Petitioner filed the following: (1) "Tax Treaty Relief Application on Capital Gains"[14], together with BIR Form No. 0901-C[15] (Application for Treaty Purposes [Relief from Philippine Income Tax on Capital Gains]); and, (2) "Request for Tax Refund in Relation to the Tax Treaty Relief Application on Capital Gains"[16], together with BIR Form No. 1913[17] (Application for Refund of Excess Withholding Tax in Accordance with the Double Taxation Convention).

Petitioner anchored the aforesaid applications on its alleged tax exemption pursuant to Article 13(4)[18] in relation to Article 13(5)[19] of the "Convention between the Government of the Republic of the Philippines and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income" (**Philippines-Thailand Tax Treaty**) signed on 21 June 2013.

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9 Exhibit "P-15", id., pp. 927-936.
10 See Exhibits "P-6", "P-7", "P-8", "P-9", "P-10", and "P-11", id., pp. 881-886.
11 Supra at note 6, p. 940.
12 Exhibits "P-17" and "P-18", Division Docket, Volume II, pp. 941-944.
13 Exhibits "P-19" and "P-20", id., pp. 945-949.
14 Exhibit "P-23", id., pp. 964-976.
15 Exhibit "P-24", id., pp. 977-978.
16 Exhibit "P-25", id., pp. 979-986.
17 Exhibit "P-26", id., p. 987.
18 4. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.
19 5. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2, 3, 4 of this Article and paragraph 3 of Article 12 (Royalties) shall be taxable only in the Contracting State of which the alienator is a resident.

With the ITAD not acting on petitioner's applications, the latter then filed the instant Petition for Review before this Court on 24 June 2022.[20] The petition was raffled to the Second Division[21] and was docketed as CTA Case No. 10899.

PROCEEDINGS BEFORE THE COURT

On 27 June 2022, Summons[22] was issued to respondent. Thereafter on 30 August 2022 and within the allowed extended period[23], respondent filed his or her Answer.[24]

In the Answer, respondent interposed the following defenses, to wit: (1) petitioner did not exhaust the administrative remedies before filing its judicial appeal before this Court; (2) it did not obtain the required Certificate of Entitlement to Treaty Benefit as proof of its exemption under the Philippines-Thailand Tax Treaty; and, (3) it failed to establish that it is entitled to a tax refund because of the non-submission of the documentary requirements to prove that CPPH is a domestic corporation whose assets do not principally consist of immovable property in the Philippines as (of the date of the transfer of shares from petitioner to CPSG).

On 12 September 2022, respondent transmitted the BIR Records (consisting of one [1] folder) to this Court.[25] On 14 September 2022, the Court issued a Notice of Pre-Trial Conference[26] and scheduled the hearing on 01 December 2022. Prior to the said hearing, respondent filed his or her Pre-Trial Brief[27] on 24 November 2022, while petitioner filed its Pre-Trial Brief[28] on 28 November 2022.

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20 Supra at note 1.
21 Then composed of Associate Justice Erlina P. Uy (Ret.) as Chairperson, Associate Justice Jean Maria A. Bacorro-Villena and Associate Justice Lanee S. Cui-David as Members.
22 Division Docket, Volume I, p. 455.
23 See *Motion for Extension of Time to File Answer*, id., pp. 456-459; See also Order dated 02 August 2022, id., p. 461.
24 Id., pp. 463-477.
25 See *Compliance* dated 05 September 2022, id., pp. 479-481.
26 Id., pp. 483-484.
27 Id., pp. 486-489.
28 Id., pp. 491-505.

During the Pre-Trial proper, the Second Division granted the parties a period of 45 days to file their Joint Stipulation of Facts and Issues (**JSFI**).[29] After the parties submitted their JSFI[30], the Court issued a Pre-Trial Order that adopted the parties' JSFI.[31]

In the *interim*, the case was transferred to the First Division.[32] In the trial that ensued thereafter, petitioner presented two (2) witnesses, namely: (1) Her, Shih-Chang (**Shih-Chang**), CPPH's Finance Director; and, (2) Nikkolai F. Canceran (**Canceran**), a partner in Punongbayan & Araullo (**P&A**), the firm that handled petitioner's tax treaty relief applications in the administrative level.

By way of his Amended Judicial Affidavit[33], Shih-Chang testified that: (1) he is petitioner's authorized representative who filed the instant Petition for Review; (2) petitioner is a foreign corporation with official residence in Thailand; (3) petitioner previously owned CPPH's 24,645,681 common shares; (4) it sold all of its CPPH's shares to CPSG that resulted in a net gain; (5) it paid ₱33,104,921.71 as CGT on the resulting net gain, a requirement for the issuance of a Certificate Authorizing Registration[34] (**CAR**) for the transfer of shares; (6) petitioner's conveyance of CPPH's shares to CPSG should have been considered exempt from CGT since the former's assets do not principally consist of real property interest located in the Philippines (at the time of transfer) pursuant to Article 13(4)[35] in relation to Article 13(5)[36] of the Philippines-Thailand Tax Treaty; (7) based on that allegation, petitioner filed its tax treaty relief applications before the ITAD on 20 June 2022; (8) to support its contention, petitioner submitted CPPH's Audited Financial Statement (**AFS**) for 31 December 2019[37], Interim FS as of 31 May 2020[38] and the Lapsing Schedule as of 31 May 2020;[39] and, (9) with the BIR's inaction on the said applications

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29 See Order dated 01 December 2022, id., pp. 509-510.
30 The parties filed their JSFI on 16 January 2023, id., pp. 511-521.
31 See Order dated 15 February 2023, id., pp. 525-529.
32 Pursuant to the Resolution dated 29 May 2023, see Minute Resolution dated 29 May 2023, id., p. 547.
33 Exhibit "P-30", Amended Judicial Affidavit of Her, Shih-Chang, id., Volume II, pp. 607-624.
34 Exhibit "P-21", id., pp. 950-951.
35 Supra at note 18.
36 Supra at note 19.
37 Exhibit "P-27", Division Docket, Volume II, pp. 988-1032.
38 Exhibit "P-28", id., pp. 1033-1034.
39 Exhibit "P-29", id., pp. 1035-1098.

and prior to the expiration of the two (2)-year prescriptive period, petitioner filed the instant petition before this Court.

On cross-examination, Shih-Chang declared that he usually prepares the documentary requirements for tax treaty relief applications for CPPH.[40] No further examination followed.[41]

Canceran assumed the witness stand next. In his Amended Judicial Affidavit[42], he testified that: (1) petitioner engaged the services of P&A to file the tax treaty relief application subject of the instant case; (2) on 20 June 2022, petitioner (through P&A) filed two (2) refund applications[43] before the ITAD; and, (3) on 16 September 2022, he received the Certificate of Entitlement to Treaty Benefit[44] issued by the Assistant Commissioner for Legal Service, Larry M. Barcelo (**ACIR Barcelo**), stating that the income that petitioner derived from the transfer of the CPPH's shares to CPSG (made on 02 June 2020) is exempt from CGT pursuant to Article 13 of the Philippines-Thailand Tax Treaty.

During his cross-examination and when asked of the period that lapsed before the BIR issued the confirmation for the tax treaty application, Canceran replied that it ranged from three (3) to six (6) months depending on the type of application made. He added that the judicial claim was filed only after three (3) days from the submission of the administrative claim before the ITAD.[45]

Later, on redirect examination and upon the Court's inquiry, Canceran confirmed the following events that transpired: (*i*) the CGT was paid on 26 June 2020; (*ii*) the administrative claim was filed on 20 June 2022; (*iii*) the judicial claim was filed on 24 June 2022; and, (*iv*) the Certificate of Entitlement for Treaty Benefit was issued and received on 16 September 2022.[46]

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40 TSN dated 09 August 2023, pp. 14-16.
41 Id., p. 16.
42 Exhibit "P-31", Amended Judicial Affidavit of Mr. Nikkolai F. Canceran, Division Docket, Volume II, pp. 561-569.
43 Supra at notes 14, 15, 16 and 17.
44 Exhibit "P-32", Division Docket, Volume II, pp. 1126-1128.
45 TSN dated 09 August 2023, pp. 28-29.
46 Id., pp. 30-36.

After the presentation of petitioner's evidence, the First Division gave it ten (10) days to file its formal offer of evidence (**FOE**). Moreover, after the First Division noted respondent's manifestation that he or she will no longer present any witness, it gave the parties thirty (30) days to file their respective memoranda after receipt of the resolution of petitioner's FOE.[47]

Subsequently, on 18 August 2023, petitioner filed its FOE[48] wherein it offered Exhibits "**P-1**" to "**P-38**" (inclusive of sub-markings).[49] In the Comment, respondent admitted the existence of

[47] See Order dated 09 August 2023, Division Docket, Volume II, pp. 841-E-841-G.
[48] Id., pp. 842-857.
[49]

Exhibit	Description
"P-1"	Director's Certificate issued by Chen, Wei-Chang in favor of Her, Shih-Chang dated June 13, 2022.
"P-2"	Special Power of Attorney issued by Her, Shih-Chang authorizing Roque Law Firm dated June 20, 2022.
"P-3"	Cal-Comp Precision (Thailand) Limited (CPTH)'s Certificate of Registration issued by Thailand Ministry of Commerce dated 9 June 2022.
"P-4"	CPTH's Certificate of Residence for the taxable year 2020, issued by Thailand Revenue Regional Office No. 6 dated June 16, 2022.
"P-4-A"	Thailand Tax Identification Number of CPTH.
"P-5"	Philippine Security and Exchange Commission Certificate of Non-Registration dated 22 June 2022.
"P-6"	Stock Certificate No. 001 in Cal-Comp Precision (Philippines) Inc. (CPPH) issued under the name of CPTH.
"P-7"	Stock Certificate No. 007 in CPPH issued under the name of CPTH.
"P-8"	Stock Certificate No. 008 in CPPH issued under the name of CPTH.
"P-9"	Stock Certificate No. 009 in CPPH issued under the name of CPTH.
"P-10"	Stock Certificate No. 010 in CPPH issued under the name of CPTH.
"P-11"	Stock Certificate No. 013 in CPPH issued under the name of CPTH.
"P-12"	CPPH's Philippine Securities and Exchange Commission Certificate of Incorporation dated May 10, 2016.
"P-13"	CPPH's Philippine Securities and Exchange Commission Articles of Incorporation.
"P-14"	CPPH's By-laws.
"P-15"	CPPH's 2019 Amended General Information Sheet duly filed on March 16, 2020.
"P-16"	Share Transfer Agreement between CPTH and Cal-Comp Precision (Singapore) Limited dated June 2, 2020.
"P-16-A"	The amount of shares (*or the 24,645,681 Shares*) in CPPH subject of the Share Transfer Agreement between CPTH and CPSG.
"P-16-B"	The amount of consideration (*or the total consideration in the amount of USD55,097,897*) as stated in the Share Transfer Agreement between CPTH and CPSG.
"P-17"	Documentary Stamp Tax (DST) Return – BIR Form No. 2000-OT duly filed on June 26, 2020.
"P-18"	Official Receipt issued by Metrobank on June 26, 2020 in the amount of Php18,484,260.75.
"P-19"	Capital Gains Tax (CGT) Return-BIR Form No. 1707 duly filed on June 26, 2020.
"P-20"	Official Receipt issued by Metrobank on June 26, 2020 in the amount of Php33,104,921.71.

the exhibits that were duly identified and compared with the originals or certified true copies (of the offered documents).[50] In the Resolution dated 09 October 2023[51], the First Division admitted all of petitioner's offered exhibits.

Thereafter, complying with the First Division's directive, petitioner filed its Memorandum[52] on 16 November 2023, while respondent filed his or her Memorandum[53] on 17 November 2023. In the Minute Resolution of 28 November 2023[54], the case was submitted for decision.

"P-21"	Certificate Authorizing Registration – BIR Form No. 2313-P with eCAR No. C-2020-039-0605740M issued on August 18, 2020.
"P-22"	CPPH's 2020 Amended General Information Sheet filed on September 15, 2020.
"P-23"	Letter-Request for Tax Treaty Relief Application duly received by the BIR on June 20, 2022.
"P-24"	Application for Tax Treaty Purposes – BIR Form 0901-C filed on June 20, 2022.
"P-25"	Application for Tax refund duly received by the BIR on June 20, 2022.
"P-26"	Application for Refund of Excess Withholding Tax in Accordance with the Double Taxation Convention – BIR Form No. 1913 dule filed on June 20, 2022.
"P-27"	CPPH's 2019 Audited Financial Statements dule received by the BIR on June 5, 2020.
"P-28"	CPPH's Interim Financial Statements as of 31 May 2020.
"P-29"	CPPH's Lapsing Schedule as of May 2020.
"P-30"	Amended Judicial Affidavit of Mr. Her, Shih-Chang.
"P-30-A"	Signature of Mr. Her, Shih-Chang in the Judicial Affidavit.
"P-31"	Amended Judicial Affidavit of Mr. Nikolai F. Canceran.
"P-31-A"	Signature of Mr. Nikolai F. Canceran in the Judicial Affidavit.
"P-32"	Certificate of Entitlement to Treaty Benefit issued by the BIR on September 16, 2022.
"P-33"	Identification card issued by the Professional Regulation Commission on Nikolai F. Canceran.
"P-34"	Accreditation Certificate No. 0002 issued by the Board of Accountancy to Punongbayan & Araullo.
"P-35"	Accreditation Certificate No. 000-492-195 issued by the Bureau of Internal Revenue to Mr. Nikolai Canceran.
"P-36"	Accreditation Certificate No. 08-002511-042-2020 issued by the Bureau of Internal Revenue to Mr. Nikolai Canceran.
"P-37"	Petition for Review stamped received by the Court of Tax Appeals on June 24, 2022.
"P-38"	Consularized Minutes of Meeting of the board of directors of the Petitioner authorizing Punongbayan & [Araullo] to file the Tax Treaty Relief Application (TTRA) and Administrative Claim for Refund of erroneously paid capital gains tax.

50 Filed on 29 August 2023, Division Docket, Volume II, pp. 1176-1178.
51 Id., pp. 1185-1186.
52 Id., Volume III, pp. 1187-1215.
53 Id., pp. 1514-1528.
54 Id., p. 1530.

ISSUE

The sole issue for this Court's determination is –

WHETHER PETITIONER CAL-COMP PRECISION (THAILAND) LIMITED IS ENTITLED TO A REFUND OR TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) OF THE ALLEGEDLY ERRONEOUSLY PAID CAPITAL GAINS TAX (CGT) IN THE AMOUNT OF ₱33,104,921.71 ARISING FROM THE SALE OF ITS SHARE OF STOCK OF CAL-COMP PRECISION (PHILIPPINES), INC. TO CAL-COMP PRECISION (SINGAPORE) LIMITED PURSUANT TO ARTICLE 13 OF THE PHILIPPINES-THAILAND TAX TREATY.

ARGUMENTS

In support of the instant petition, petitioner insists that it has sufficiently established all the elements and/or requisites that will entitle it to a refund or to the issuance of a Tax Credit Certificate (**TCC**) under Sections 204[55] and 229[56] of the NIRC of 1997, as amended. Based on its documentary evidence, it declares that it filed both its administrative and judicial claims within the two (2)-year prescriptive period.

As for the legal basis for exemption, petitioner maintains that pursuant to Article 13(4)[57] in relation to Article 13(5)[58] of the Philippines-Thailand Tax Treaty, the Philippines may tax any gain from the disposition of an interest in a corporation if its assets consist *principally* of real property interest located in the Philippines. Under Revenue Regulations (**RR**) No. 4-86[59], the word *principally* means more than 50% of the entire assets in terms of value. Following the above provisions, petitioner contends that at the time of the STA's execution, CPPH's real property interest in the Philippines did not exceed 50% of its total assets based on its AFS for 2019 and Interim FS as of 31 May 2020 (which reflects a percentage of immovable properties

55 **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*
56 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*
57 Supra at note 18.
58 Supra at note 19.
59 Determination of Whether the Assets of a Corporation Consist Principally of Real Property Interest under the Philippine Tax Treaties.

over its total assets of 40.26% and 44.08% respectively). Thus, any gain derived from the said transfer of shares should be exempted from income taxes.

Petitioner also argues that a taxpayer is entitled to enjoy the tax exemption benefit from the tax treaty *sans* any prior confirmatory ruling from the BIR, as held in the case of *Commissioner of Internal Revenue v. Lucio L. Co, et al.*[60] However, notwithstanding such pronouncement, petitioner still endeavoured to secure a Certificate of Entitlement to Treaty Benefit (dated 16 September 2022) which indicated that the subject transfer transaction is exempt from income taxes. Hence, petitioner maintains that it is entitled to the refund of the erroneously paid CGT of ₱33,104,921.71.

As for respondent, he or she counters that petitioner failed to exhaust its administrative remedies before elevating its claim before this Court. Respondent also explains that petitioner did not afford him or her ample time or opportunity to act on petitioner's administrative claim even though under Revenue Memorandum Order (**RMO**) No. 14-2021[61], tax treaty relief applications are to be processed in four (4) months from the applications' submission. Thus, when petitioner filed its judicial claim only four (4) days after it filed its administrative claim, it effectively denied respondent a fair chance to rule on the same.

Respondent also posits that petitioner failed to prove that CPPH is a domestic corporation whose assets do not principally consist of immovable properties located in the Philippines (as of the date of sale pursuant to Article 13 of the Philippines-Thailand Tax Treaty). Without any concrete and convincing evidence to prove its tax exemption, petitioner's refund claim must perforce fail.

RULING OF THE COURT

Before the Court proceeds to resolve the assigned issue in the case at bar, it deems propitious to first decide on the timeliness of

60 G.R. No. 241424, 26 February 2020.
61 Streamlining the Procedures and Documents for the Availment of Treaty Benefits.

petitioner's administrative and judicial appeals as this is determinative of the Court's jurisdiction.

PETITIONER'S CLAIM FOR REFUND WAS TIMELY FILED, THUS THE COURT HAS JURISDICTION.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the refund of **erroneously or illegally** collected taxes. Particularly, Section 204 applies to administrative claims for refund, while Section 229 applies to judicial claims for refund.[62] Thus –

> ...
>
> **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.[63]
>
> ...

Relative thereto, Section 229 of the NIRC of 1997, as amended, provides:

> ...
>
> **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 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

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62 *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, 14 January 2015.

63 Emphasis supplied and italics in the original text.

> 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 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.[64]
>
> ...

Clearly from the foregoing, in cases of recovery of erroneously paid or illegally collected tax, *both* the administrative claim for refund and the filing of the judicial suit should be made before the lapse of two (2) years from the *date of payment* regardless of any supervening cause that may arise after payment.

In the case at bar, the CGT was paid on 26 June 2020 as shown in the machine validation portion of the deposit slip.[65] Counting two (2) years therefrom, petitioner's last day to file its administrative and judicial claims was on 26 June 2022. Thus, petitioner seasonably filed its claims for refund when it filed its administrative and judicial claims on 20 June 2022[66] and 24 June 2022[67], respectively.

The Court is also unconvinced that petitioner failed to exhaust the administrative remedies before elevating its claim to this Court. In the case of *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*[68], the Supreme Court ruled that Section 229 of the NIRC of 1997, as amended, does not require the taxpayer to await the CIR's resolution on the administrative claim before filing its judicial claim –

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64 Emphasis supplied and italics in the original text.
65 See Exhibit "P-20", supra at note 13.
66 For the administrative claim; see Exhibits "P-23" and "P-24", supra at notes 14 and 15.
67 For the judicial claim; supra at note 1.
68 G.R. No. 216130, 03 August 2016; Citations omitted, emphasis and underscoring in the original text.

...

At the onset, petitioner contends that by filing the administrative and judicial claims only 13 days apart, respondent, in effect, pursued an empty remedy before the BIR, and thereby deprived the latter of the opportunity to ascertain the validity of the claim. In this regard, petitioner maintained that the mere filing of the administrative claim before the BIR did not outrightly satisfy the requirement of exhaustion of administrative remedy.

The contentions are untenable.

Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR), *viz.*:

> 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 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** x x x.

Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – [then Section 306 of the old Tax Code] – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. In *CBK Power Company, Ltd. v. CIR*, the Court enunciated:

> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener)*, wherein it was held that in **no wise does the law,** *i.e.*, Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action.** In *Kiener*, the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow** x x x.

In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period. Notably, Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.

Thus, in view of the aforesaid circumstances, respondent correctly and timely sought judicial redress, notwithstanding that its administrative and judicial claims were filed only 13 days apart.

...

PETITIONER IS ENTITLED TO A TAX REFUND FROM ITS SALE OF CAL-COMP PRECISION (PHILIPPINES), INC.'S (CPPH's) SHARES TO CAL-COMP PRECISION (SINGAPORE) LIMITED (CPSG).

It is well-settled in our jurisprudence that the following requirements must be complied with to successfully claim a refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

(1) The taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his or her authority thereon;[69]

(2) If denied or not acted upon within said period, the petition for refund be filed with the Court of Tax Appeals (**CTA**) within 30 days from receipt of the denial AND within said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed;[70] and,

(3) The claim for refund must be a categorical demand for reimbursement.[71]

As previously stated, petitioner has followed the *first* and *second* requisites.

As to the *third* and last requisite, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with respondent CIR. Bearing in mind that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government, and as tax refunds involve a return of revenue from the government, the claimant must show indubitably the specific provision of law from which his or her right arises. Succinctly, the right cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund.[72]

Petitioner submits that the sale of CPPH shares is exempt from the CGT pursuant to the Philippines-Thailand Tax Treaty, entitling it to refund the CGT that it erroneously paid to respondent.

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69 See *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

70 See *Allison J. Gibbs, et al. v. Collector of Internal Revenue, et al.*, G.R. No. L-13453, 29 February 1960.

71 *Commissioner of Internal Revenue v. Rosemarie Acosta, as represented by Virgilio A. Abogado*, G.R. No. 154068, 03 August 2007.

72 Id.

For his or her part, respondent maintains that petitioner is not to be given redress after it failed to successfully or convincingly prove its entitlement under the said tax treaty.

The Court agrees with petitioner.

Section 28(B)(5)(c) of the NIRC of 1997, as amended (prior to Republic Act [**RA**] No. 11534 otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act" [**CREATE**]), capital gains realized during the taxable year from the sale or other disposition of shares of stock in a domestic corporation made outside the stock exchange and any gain derived from such dealings in property derived by a foreign corporation are subject to income tax as follows:

> ...
> **SEC. 28.** *Rates of Income Tax on Foreign Corporations.* —
> ...
>
> (B) *Tax on Nonresident Foreign Corporation.* —
>
> ...
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* —
> ...
>
> (c) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* — A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:
>
> | | |
> |---|---|
> | Not over P100,000 | 5% |
> | On any amount in excess of P100,000 | 10% |
>
> ...

However, under Section 32(B)(5) of the NIRC of 1997, as amended, such gains are exempt or partially exempt to the extent required by any treaty obligation on the Philippines, to wit: /

> ...
> **SEC. 32.** *Gross Income.* —
> ...

> (B) *Exclusions from Gross Income.* — The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> ...
>
> (5) *Income Exempt under Treaty.* — Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.
>
> ...

From the foregoing, the net capital gains (being gains from dealings in property) realized during the taxable year from the sale or other disposition of shares of stock in a domestic corporation made outside the stock exchange by an NRFC may be subject to CGT for being considered as gross income. As such, the same may be exempted therefrom *"to the extent required by any treaty obligation binding upon the Government of the Philippines"*. In other words, the application of the provisions of the NIRC of 1997, as amended, must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries.[73]

One of the treaty obligations that binds the Philippine government is the Philippines-Thailand Tax Treaty[74], Article 13 of which reads –

> ...
>
> **Article 13**
> **CAPITAL GAINS**
>
> 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income from Immovable Property) and situated in the other Contracting State may be taxed in that other State.
>
> 2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a

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[73] *Air Canada v. Commissioner of Internal Revenue*, G.R. No. 169507, 11 January 2016.

[74] Formally known as the "CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME".

resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. **Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.** Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

5. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2, 3, 4 of this Article and paragraph 3 of Article 12 (Royalties) shall be taxable only in the Contracting State of which the alienator is a resident.[75]

...

From the foregoing, the Philippine government may rightfully tax the gains that a Thailand resident derives from the alienation of shares of a domestic company only when there is a showing that the property of the said company consists principally of immovable properties situated in the Philippines. To determine whether a person is a "resident of a Contracting State", paragraph 1, Article 4 of the Philippines-Thailand Tax Treaty provides –

...

Article 4
RESIDENT

1. **For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any local authority thereof.** But

[75] Emphasis supplied.

> this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.[76]
>
> ...

In this case, petitioner presented the unrefuted *Certificate of Residence* dated 16 June 2022[77] to prove that it is a Thailand resident for tax purposes. The material parts thereof state –

> ...
>
> **<u>Certificate of Residence: R.O. 22</u>**
>
> To whom it may concern:
>
> | | |
> |---|---|
> | Name of Company | : **<u>Cal Comp Precision (Thailand) Limited</u>** |
> | Address | : 4 Moo 8 Sethakij Road, Klong Maduea Sub-district, Krathumbaen District, Samutsakhon 74110, Thailand |
> | Tax Identification Number | : 0105545000762 |
>
> **In compliance with the Convention between the Government of the Kingdom of Thailand and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, <u>we hereby certify that the above company is a resident of Thailand for tax purpose</u>.** The company is incorporated and taxable under the law of Thailand since the year 2002 and has already filed income tax return for the taxable year 2020 (January 1, 2020 – December 31, 2020).[78]
>
> ...

On what consists "immovable property" for purposes of the Philippines-Thailand Tax Treaty, paragraph 2, Article 6 states –

> ...
>
> **Article 6**
> **INCOME FROM IMMOVABLE PROPERTY**
>
> ...
>
> **2. The term 'immovable property' shall have the meaning which it has under the law of the Contracting State in**

76 Emphasis supplied.
77 Exhibit "P-4-A", supra at note 4.
78 Emphasis and underlining in the original text and supplied.

> **which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, fishery rights, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources**; ships, boats and aircraft shall not be regarded as immovable property.[79]
>
> ...

From the above-stated clause, the term "immovable property" shall be understood in the manner it is interpreted under the law of the Contracting State in which the property in question is situated. Corollarily, Article 415 of the Civil Code of the Philippines (**Civil Code**) enumerates the different kinds of immovable property, to wit –

> ...
> Article 415. The following are immovable property:
>
> (1) Land, buildings, roads and constructions of all kinds adhered to the soil;
>
> (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;
>
> (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
>
> (4) Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
>
> (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;
>
> (6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them

[79] Emphasis supplied.

permanently attached to the land, and forming a permanent part of it; the animals in these places are included;

(7) Fertilizer actually used on a piece of land;

(8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;

(9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;

(10) Contracts for public works, and servitudes and other real rights over immovable property.

...

RR No. 4-86[80] provides the guidelines in determining whether the assets of a corporation consist principally of real property interest under the Philippine tax treaties. The relevant parts read –

...

SECTION 1. *Objective.* — **Under Philippine tax treaties, capital gains derived by residents of other Contracting States from the disposition of a share or of an interest in a Philippine corporation are taxable in the Philippines only if the assets of the corporation consist principally of real property interest located in the Philippines**. The same rule applies with respect to the taxation of capital gains realized from the disposition of an interest in a partnership, trust or estate to the extent that such gains are attributable to a real property interest located in the Philippines. These regulations prescribe the guidelines for determining whether the assets of a corporation, partnership, trust or estate consist principally of real property interest.

SECTION 2. *Definitions.* — For purposes of these regulations, the following terms and phrases shall be understood to mean –

a) '**Real property interest' — interests on properties enumerated in Section 3 which are not, however, exclusive of others that are similarly situated. As used in the treaties in these regulations, it shall be understood to include real properties as understood under Philippines laws;**

80 Supra at note 59.

> b) **'Principally', 'wholly or principally', 'directly principally' or 'attributable' — more than fifty percent of the entire assets in terms of value;**
>
> ...
>
> SECTION 4. *Basis.* — **The value of all the assets of the subject corporation both real and personal as appearing in its financial statement on the date of sale of the share** or interest **in such corporation, as verified by the BIR, shall be used as the basis for determining the composition of its assets.**
>
> **In case the financial statement as of the date of the sale is not available, the most recent financial statement may be used, after the necessary adjustments are made to reflect transactions made during the period from the date of such financial statement to the date of the sale.**[81]
>
> ...

From the aforementioned, the term "real property interest" refers to real properties as understood under Philippines laws, while the term "principally" refers to more than 50% of the entire assets in terms of value. Moreover, the basis for determining the composition of a corporation's assets shall be the value of all the assets of the corporation, both real and personal, **as appearing on its FS at the time of the sale of the share or interest in such corporation**, as verified by the BIR. **If the FS as of the date of the sale is not available, the most recent FS may be used, after the necessary adjustments are made to reflect transactions made during the period from the date of such FS to the date of the sale.**

In this case, the STA was entered on **02 June 2020**.[82] As such, petitioner submitted CPPH's AFS for the year ended **31 December 2019**[83], CPPH's Interim FS as of **31 May 2020**[84], and CPPH's Lapsing Schedule as of **31 May 2020**[85] to establish that CPPH's assets do not consist principally of real property interest or immovable properties located in the Philippines.

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[81] Emphasis supplied.
[82] Exhibit "P-16", supra at note 6.
[83] Exhibit "P-27", supra at note 37.
[84] Exhibit "P-28", supra at note 38.
[85] Exhibit "P-29", supra at note 39.

Based on the AFS and the Interim FS, CPPH's noncurrent assets are comprised of the following:

Description	AFS as of 31 December 2019	Interim FS as of 31 May 2020
Property and equipment		
Machinery	$34,950,524.00	$33,957,475.58
Leasehold Improvements	6,926,369.00	7,364,867.81
Other Equipment	2,034,681.00	2,134,420.59
Transportation Equipment	26,007.00	22,326.79
Construction in Progress	2,133,860.00	12,192,399.14
Subtotal	*$46,071,441.00*[86]	*$55,671,489.91*[87]
Right-of-use asset	5,232,943.00	4,740,965.00
Advances to suppliers	8,561,567.00	-
Computer software license	40,609.00	-
Other noncurrent assets	-	29,075.00
Total Noncurrent Assets	**$59,906,560.00**	**$60,441,529.91**

Petitioner computed CPPH's immovable property or real property interest as follows:[88]

Description	AFS as of 31 December 2019	Interim FS as of 31 May 2020
Machinery	$34,950,524.00	$33,957,475.58
Leasehold Improvements	6,926,369.00	7,364,867.81
Other Equipment	-	-
Transportation Equipment	-	-
Construction in Progress	-	3,622,610.62
Total Immovable Property	**$41,876,893.00**	**$44,944,954.01**
Total Assets	**$104,128,067.00**	**$101,965,581.00**
% of immovable property interest	**40.22%**[89]	**44.08%**

86 Breakdown of the Property and Equipment is lifted from Note 7 from the Notes to the Financial Statement, Exhibit "P-27", supra at note 37, p. 1018.

87 Breakdown of the Property and Equipment is lifted from petitioner's Tax Treaty Relief Application on Capital Gains", supra at note 14, p. 970.

88 Exhibit "P-23", supra at note 14, pp. 969-970.

89 Based on petitioner's computation, the same is 40.26%. However, using the above values, the same yields to 40.22%.

It could not be over emphasized that the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence that it is entitled to a claim for refund.[90] We thus proceed to discuss each component of CPPH's noncurrent assets to find out whether petitioner's classification of the same as immovable property is correct.

As for the "Machinery" account, it may not fall under paragraph 5 of Article 415 of the Civil Code, which refers to immovables by destination. For a movable machinery to be immobilized in contemplation of this provision, the following conditions must be met:

1. It must be destined for use in the industry or works in the tenement and must be essential and principal elements of the industry or works[91];

2. Industry or works must be carried on in a building or on a piece of land[92], or even on waters; and,

3. The owner of the tenement placed the machinery, unless the tenant acts as an agent of the owner.[93]

Here, while CPPH's machineries satisfy the *first* and *second* requisites as CPPH uses them in its industry or business (particularly, in the manufacture, fabrication, and molding of plastic parts and tool[94]), the *third* requisite is conspicuously lacking.

In the case at bar, petitioner does not claim that CPPH is the owner of the land and/or building on which the machineries were placed. In fact, *per* CPPH's AFS (as of 31 December 2019) and Interim FS (as of 31 May 2020), it does not own any land or building. CPPH only leases warehouse spaces from Kinpo Electronics (Philippines), Inc. (**Kinpo**).[95] This being the case, the subject machineries may have

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[90] *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 250479, 18 July 2022.

[91] See *B.H. Berkenkotter v. Cu Unjieng E Hijos, et al.*, G.R. No. 41643, 31 July 1935; *Pastor D. Ago v. The Hon. Court of Appeals*, G.R. No. L-17898, 31 October 1962.

[92] *Mindanao Bus Company v. The City Assessor & Treasurer, et al.*, G.R. No. L-17870, 29 September 1962.

[93] See *Davao Saw Mill Co., Inc. v. Apronïano G. Castillo, et al.*, G.R. No. L-40411, 07 August 1935.

[94] Exhibit "P-27", supra at note 37, p. 998.

[95] As disclosed in the Notes to Financial Statements of the AFS. See Exhibit "P-27", id., p. 1023.

been placed within one of the leased spaces. To satisfy the *third* requisite, it must be shown that Kinpo placed the subject machineries or that CPPH did so on Kinpo's behalf as its agent. However, the records do not show either scenario. Thus, the "Machinery" account could not qualify as an immovable property.

On the other hand, the item on "Leasehold Improvements" account generally pertains to fixed improvements or additions to land or buildings, installed by and paid for by the tenant, *i.e.*, CPPH, to meet its needs.[96] Paragraph 3 of Article 415 of the Civil Code, which refers to permanent fixtures, or everything attached to an immovable in a fixed manner, only requires that the separation from the immovable is not possible without injury. It is irrelevant who caused the attachment. Here, petitioner included the said account as an immovable property in its computation.[97] It can be presumed that the removal of those recorded under the "Leasehold Improvements" account would cause injury to the immovable property to which they are attached. As such, the "Leasehold Improvements" account may be classified as immovable property.

Next, the "Transportation Equipment" and "Other Equipment" accounts normally refer to assets capable of being moved or relocated.[98] Here, CPPH's Lapsing Schedule as of 31 May 2020[99], shows that the "Other Equipment" account consists of computers, televisions, notebooks, and other office equipment assets. Hence, the said accounts could not be considered an immovable property as well.

As to the "Construction in Progress" account, it pertains to the costs incurred for machinery and equipment that are still under testing and installation phase and are expected to be available for use once completed.[100] From the foregoing, the same does not qualify as an immovable property.

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96 *Prescribing the Philippine Valuation Standards (1st Edition) — Adoption of the IVSC Valuation Standards Under Philippine Setting*, DOF Department Order No. 037-09, 19 October 2009.
97 Supra at note 88.
98 Id.
99 Exhibit "P-29", supra at note 39.
100 See paragraph 2 in Note 7 from the Notes to the Financial Statement, Exhibit "P-27", supra at note 37, p. 1018.

As to the "Right-of-[U]se" asset amounting to $5,232,943.00 as of 31 December 2019 and $4,740,965.00 as of 31 May 2020, petitioner contends that the same does not qualify as an immovable property. The "Right-of-[U]se" asset pertains to the present value of the future lease payments discounted using CPPH's incremental borrowing rate at the lease commencement date.[101]

Paragraph 10 of Article 415 of the Civil Code includes real right over immovable property as an immovable property. A real right or *jus in re* is the right or interest of a person over a specific thing, such as an immovable property, without a definite passive subject against whom such right may be personally enforced.[102] For a lease not to constitute as a real right, it must be shown that the lease of real property is not recorded with the Registry of Deeds.[103] In this case, petitioner did not proffer any evidence to show that the lease was unrecorded. In fact, petitioner did not provide any lease contract or agreement. Consequently, due to petitioner's failure to proffer any evidence to substantiate its allegations, the "Right-of-[U]se" asset may be classified as an immovable property.

Lastly, the "Advances to [S]uppliers" account referring to noncurrent receivables from suppliers and the intangible asset account of "Computer [S]oftware [L]icense" are inherently not considered an immovable property.

With the foregoing, CPPH's immovable properties or real property interest as of 31 December 2019 and 31 May 2020, are recomputed as follows:

Description	AFS as of 31 December 2019	Interim FS as of 31 May 2020
Machinery	$-	$-
Leasehold Improvements	6,926,369.00	7,364,867.81
Other Equipment	-	-
Transportation Equipment	-	-

101 Id., p. 1013.
102 Hector S. De Leon, Hector M. De Leon, Jr., *Comments and Cases on Obligations and Contracts*, 2010 Edition, p. 34.
103 See *George M. Saul v. Enrique Dalton Hawkins*, G.R. No. 66, 01 May 1902; Sections 54 and 60, Presidential Decree No. 1529 also known as the PROPERTY REGISTRATION DECREE.

Construction in Progress	-	-
Right-of-use	5,232,943.00	4,740,965.00
Total Immovable Property	**$12,159,312.00**	**$12,105,832.81**
Total Assets	**$104,128,067.00**	**$101,965,581.00**
% of immovable property interest	**11.68%**	**11.87%**

Considering that CPPH's assets do not consist principally of immovable property, the net capital gain that petitioner derived from the sale of 24,645,681 common shares of stock of CPPH to CPSG is thus outside the taxing jurisdiction of the Philippines, pursuant to Article 13(4) in relation to Article 13(5) of the Philippines-Thailand Tax Treaty. Consequently, with petitioner's payment of the CGT on the subject sale transaction in the amount of ₱33,104,921.71 on 26 June 2020 (as shown by the CGT Return[104] and Official Receipt (**OR**) issued by Metrobank on 26 June 2020[105]), the Court is constrained to rule that petitioner is entitled to a refund or to the issuance of a TCC for the said amount.

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed on 24 June 2022 by petitioner Cal-Comp Precision (Thailand) Limited is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner the total amount of **₱33,104,921.71**, representing the erroneously paid capital gains tax on its sale of Cal-Comp (Philippines), Inc.'s shares to Cal-Comp Precision (Singapore), by virtue of its exemption pursuant to the Philippines-Thailand Tax Treaty.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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104 Exhibit "P-19" supra at note 13.
105 Exhibit "P-20", id.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice