REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, ***Petitioner,*** -versus- PHILIPPINE NATIONAL BANK, ***Respondent.***	**C.T.A. EB NO. 499** **(C.T.A. CASE NO. 7203)** Present: ACOSTA, Presiding Justice CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ. **Promulgated:** NOV 26 2009

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DECISION

PALANCA-ENRIQUEZ, J.:

If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another *(BPI Family Savings Bank vs. CA, CTA & CIR, 330 SCRA 507).*

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner CIR") under *Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended*, which seeks to set aside the Decision dated February 18, 2009 and Resolution dated June 10, 2009 rendered by the First Division of this Court in C.T.A. Case No. 7203, the respective dispositive portions of which read, as follows:

> "**IN VIEW OF THE FOREGOING**, the Petition for Review is **PARTIALLY GRANTED**. Respondent is ordered to **REFUND** to petitioner the reduced amount of P42,456,668.96 representing unutilized excess creditable withholding taxes for the taxable year 2002.
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, finding no cogent reason to disturb, reverse or modify the *Decision* dated February 18, 2009, respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit.
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> **SO ORDERED.**"

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THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue vested with authority to administer and enforce national internal revenue taxes, including inter alia, the power to grant claims for refund or internal revenue taxes erroneously or excessively paid, assessed or collected. He holds office and may be served with summons and other court processes at the BIR National Office Building, Diliman, Quezon City.

Respondent Philippine National Bank (hereafter "respondent bank"), on the other hand, is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City.

THE FACTS

The facts, as culled from the records, are as follows:

On April 15, 2003, respondent bank manually filed an Annual Income Tax Return (BIR Form No. 1702) for calendar year 2002. However, in the Return, respondent bank failed to mark in Line 31 its choice, whether to be refunded, or to be issued a Tax Credit Certificate, or to be carried over as tax credit next year/quarter.

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On April 29, 2003, respondent bank electronically filed another Annual Income Tax Return (BIR Form No. 1702) for calendar year 2002 and reflected therein its choice to be issued a Tax Credit Certificate in view of overpayment.

Thereafter, respondent bank electronically filed its Quarterly Income Tax Returns *(BIR Form No. 1702Q)* for the first *(Exhibits "E" to "E-3")*, second *(Exhibits "G" to "G-3")*, and third *(Exhibits "H" to "H-4")* quarters for calendar year 2003 on May 30, 2003, August 29, 2003, and December 1, 2003, respectively; and reflected thereon prior year's excess credits in the amount of P5,106,339.00.

On August 20, 2004, respondent bank electronically filed its Amended Annual Income Tax Return (BIR Form No. 1702) and reflected therein its choice to be issued a Tax Credit Certificate, as there was overpayment of tax in the amount of P54,870,039.00.

On August 27, 2004, respondent bank filed with the Bureau of Internal Revenue ("BIR") its claim for refund or issuance of a tax credit certificate in the amount Php49,763,700.35, representing the creditable taxes withheld.

Alleging inaction of petitioner CIR on April 14, 2005, respondent bank filed with this Court a Petition for Review, docketed as C.T.A. Case No. 7203.

On June 9, 2005, petitioner CIR filed his Answer. Thereafter, respondent bank presented its testimonial and documentary evidence, and rested its case.

On April 10, 2008, counsel for petitioner CIR moved for the resetting of the scheduled initial presentation of the evidence for the respondent CIR, which the First Division granted and the initial presentation of the evidence for the CIR was reset to May 13, 2008. On May 13, 2008, counsel for petitioner CIR failed to appear, hence, the initial presentation of evidence for the CIR was again reset for the last time to May 29, 2008 with final warning. However, on May 29, 2008, counsel for petitioner CIR manifested that she is not ready for the presentation of her evidence and moved for the resetting of the initial presentation of the evidence for the CIR. Respondent bank objected and moved that petitioner CIR be considered to have waived his right to present his evidence, which the First Division granted. Thereafter, the parties were ordered to submit their simultaneous memoranda, within thirty (30) days from May 29, 2008.

On July 28, 2008, respondent bank filed its Memorandum, while petitioner CIR failed to file his memorandum despite notice. On February 18, 2009, the First Division rendered a decision partially granting the petition and ordered petitioner CIR to refund to respondent bank the reduced amount of P42,456,668.96, representing unutilized excess creditable withholding taxes for taxable year 2002.

Not satisfied, petitioner CIR filed a "Motion for Partial Reconsideration" which was denied by the First Division in a Resolution dated June 10, 2009.

Hence, this instant Petition for Review raising this sole:

ISSUE

WHETHER OR NOT THE RESPONDENT BANK IS ENTITLED TO P42,456,668.96 AS CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE REPRESENTING ITS UNUTILIZED EXCESS CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR 2002.

On August 3, 2009, without necessarily giving due course to the petition, We required the respondent bank to file its comment, not a motion to dismiss, within ten (10) days from notice.

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On September 8, 2009, respondent bank filed its "Comment (to Petition for Review)". On September 16, 2009, the case was deemed submitted for decision.

Hence, this decision.

THE COURT *EN BANC'S* RULING

The petition has no merit.

After a careful examination of the arguments raised in the instant petition, the Court *En Banc* finds that the issues raised by petitioner CIR are a mere rehash of his Motion for Partial Reconsideration filed in C.T.A. Case No. 7203, and present no new arguments nor new matters which have not been considered and passed upon by the First Division in the assailed Decision dated February 18, 2009 and Resolution dated June 10, 2009. Nevertheless, the Court *En Banc* will discuss them in *seriatim*.

Petitioner CIR argues that the Petition for Review (C.T.A. Case No. 7203) was prematurely filed in violation of the doctrine of exhaustion of administrative remedies; that respondent bank's administrative claim for refund is merely *pro forma*, as respondent bank failed to submit all necessary documentary evidence to prove its alleged unutilized excess creditable withholding taxes for the taxable year 2002 to support its claim for refund; that such failure of respondent bank to submit relevant documents deprived petitioner CIR of the opportunity and time to study respondent bank's claim for refund and fully exercise its function; that it is only before this Court that respondent bank presented evidence supporting its claim for refund, hence, it should not be admitted, as matters not raised in the administrative level cannot be raised for the first time on appeal,

On the other hand, respondent bank counter-argues that as regards its administrative claim for refund, there is substantial compliance with the law as it attached supporting documents with the BIR when it filed its administrative claim for refund; that the principle of "issues not raised in the administrative level cannot be raised for the first time on appeal" is not applicable in this case, as it is contradicted by the evidence on record; noteworthy is the fact that petitioner CIR has not controverted nor disproved the veracity of respondent bank's evidence filed before the BIR and this Court; and it should not be prejudiced and penalized by the inaction of the BIR as regards its administrative claim for refund, considering that the two-year period was about to expire.

We rule for respondent bank.

Section 204 (C) of the NIRC of 1997, as amended, provides:

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

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(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.

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Corollary thereto, Section 229 of the same Code 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 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

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> the Commissioner may, even without a written claim therefore, 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."

It is clear that the aforequoted *Sections 204 and 229* govern all kinds of refund or credit of internal revenue taxes – imposed and collected erroneously or illegally, pursuant to the NIRC *(CIR vs. Central Azucarera Don Pedro, 49 SCRA 474; CIR vs. Insular Lumber Co., 21 SCRA 1237). Section 204* applies to administrative claims filed with the BIR, while *Section 229* refers to judicial actions for the recovery of the tax. However, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. These two requirements are mandatory and non-compliance therewith would be fatal to the action for refund or tax credit *(Johnston Lumber Co., Inc. vs. CTA, 101 Phil 151; Guagua Elec. Light Co., Inc. vs. Coll., 1 SCRA 1221).* The two-year period is a limitation of action not only in submitting the written claim for refund to the Commissioner, but likewise in instituting an action with the Court of Tax Appeals *(Tax Law and Jurisprudence, 2nd ed., Justice Jose Vitug and Presiding Justice Ernesto D. Acosta, p. 306).* Hence, the taxpayer must file its administrative claim for refund with the Commissioner, within two (2) years after the payment of the tax; however, if the Commissioner takes time in deciding the claim and the period of two (2) years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period, without awaiting the decision of the Commissioner. This is so because of the positive requirement of *Section 204* and the doctrine that delay of the Commissioner in rendering decision does not extend the peremptory period fixed by the statute *(Gibbs & Gibbs vs. CIR and CTA, 15 SCRA 318, citing Gibbs vs. Collector of Internal Revenue, G.R. No. L-13453, February 29, 1960).* Thus, when the two-year period is already about to prescribe and the claim for refund with the Commissioner has not yet been acted upon, the taxpayer should file a petition for review with the CTA in order to preserve his right to seek judicial recourse.

We, therefore, concur with the First Division's ruling that the two (2) year period to file a claim for refund of respondent bank's unutilized creditable withholding taxes commences on the filing of the adjustment return. In this case, where the claimed excess creditable withholding taxes pertain to taxable year 2002, for which petitioner originally filed its income tax return on April 15, 2003, respondent bank had until April 15, 2005 to file both its administrative and judicial claims. Records show that respondent bank filed its administrative claim for refund on August

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27, 2004 *(Exhibit "J")*, and as the two (2) year period was about to expire, on April 14, 2005 respondent bank timely filed its judicial claim with this Court. Respondent bank need not wait for the decision of petitioner CIR to elevate its claim to this Court, as the two- year period to claim for refund was about to expire. Therefore, respondent bank did not violate the doctrine of exhaustion of administrative remedies when it elevated its claim for refund to this Court.

As regards petitioner CIR's contention that respondent bank failed to submit in its administrative claim for refund documents in support of its claim, allegedly in violation of the principle of exhaustion of administrative remedies, we find that respondent bank has substantially complied with the prescribed requisites for an administrative claim for refund.

Evidence on record shows that petitioner CIR, thru the Large Taxpayer's Division, received various certificates of creditable tax withheld on August 27, 2004 *(Exhibits "S-1.1 to S-1.547", "T-1.1 to T-1.25", "U-1 to U-1.34", "V-1.1 to V-1.102", "W-1.1 to W-1.18", "X-1.1 to X-1.37", "LL-1", "MM-1" and "NN-1.1 to NN-1.22")*, which were never contradicted by petitioner CIR. Evidently, it cannot be denied that respondent bank's administrative claim has substantially complied with the prescribed requisites. It must be emphasized that there is nothing in the law or rules, which provide for a list of documents required to be submitted for claims of unutilized creditable withholding taxes. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit *(CIR vs. First Express Pawnshop Company Inc., G.R. Nos. 172045-46, June 16, 2009)*. However, if the BIR finds the taxpayer's claim for refund unsupported, it may require the submission of additional documents, which it failed to do in this case. Undisputedly, petitioner CIR failed to act on respondent bank's administrative claim for refund, hence, it was not able to require from respondent bank other documents to prove the claim. Petitioner CIR questioned the insufficiency of attachments, only after the assailed Decision was rendered by the First Division. He did not even controvert the evidence presented by respondent bank during the trial before the First Division, as records show that petitioner CIR was considered to have waived his right to present evidence for his repeated failure to present his evidence during the scheduled presentation of evidence for the CIR on April 10, 2008, May 13, 2008 and May 29, 2008.

As aptly ruled by the First Division:

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"Respondent failed to fully appreciate the ruling of the High Tribunal in **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue**. The Court quotes the pertinent portion of the said case for ready reference, to wit:

> **"(S)econd, cases filed in the CTA are litigated de novo. Thus, a petitioner should have prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.** Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim." (Emphasis supplied)

Similarly, in **Commissioner of Internal Revenue vs. Manila Mining Corporation,** the Supreme Court declared that:

> "Under Section 8 of RA 1125, the CTA is described as a court of record. **As cases filed before it are litigated de novo, party litigants should prove every minute aspect of their cases. NO evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.**"

Petitioner's filing of a Petition for Review before this Court stemmed from respondent's failure to act on petitioner's administrative claim for refund. It is therefore erroneous for respondent to argue that petitioner should have exhausted of that it failed to exhaust all available remedies prior to elevating its refund claim before this Court. Petitioner was correct in filing a Petition for Review with this Court before the two-year prescriptive period lapsed, as provided in Section 229 of the National Internal Revenue Code of 1997."

In cases of judicial appeal to the Court in Division, where cases are litigated *de novo*, it is imperative for the taxpayer to meet the burden of proof required in order to establish the factual basis of its claim for tax refund by presenting all relevant documents for the proper determination of its claim, where the BIR has the opportunity to dispute the same. Further, while it is true that claims for refund are construed strictly against the taxpayer and thus cannot be based on mere inferences, the fact remains that mere preponderance of evidence is sufficient to justify their grant. In this case, We agree with the First Division that respondent bank has met the burden required of it to justify its claim for refund.

At any rate, tax refunds (or tax credits) are not founded principally on legislative grace, but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti,* which covers not only mistake in fact, but also mistake in law. The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any

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unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case *(Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, 559 SCRA 160).*

Finally, if the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another *(BPI Family Savings Bank vs. CA, CTA & CIR, 330 SCRA 507).*

Finding no reversible error, We affirm the assailed Decision dated February 18, 2009 and Resolution dated June 10, 2009 rendered by the First Division of this Court in C.T.A. Case No. 7203.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and accordingly **DISMISSED,** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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