REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8073

Members:

UY, *Chairperson; and*
FABON-VICTORINO, *JJ.*

Promulgated:

NOV 15 2013 ; 1:30 p.m.

x- x

RESOLUTION

Fabon-Victorino, J.:

Before the Court is the Motion for Reconsideration filed by respondent assailing the Decision promulgated on July 10, 2013, the dispositive portion of which reads as follows:

> **WHEREFORE**, finding merit, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the full amount of ₱56,075,812.45, representing the latter's erroneously paid income tax for taxable year 2007.
>
> **SO ORDERED.**

In her motion, respondent insists that the alleged Income Tax Holiday (ITH) incentive under Article 39(a) of Executive Order (E.O.) No. 226, as amended by Republic Act (R.A.) No. 7918, invoked by petitioner as a BOI-registered operator of a hydro-electric plant should not be countenanced. Allegedly, petitioner applied with the BOI for the ITH entitlement only in relation to its being an operator of a Hydro-Electric Power Plant. Thus, its Certificate of Income Tax Holiday Entitlement was granted solely for its operation of the Hydro-Electric Power Plant, which is considered as its registered activity. Respondent therefore considers petitioner's isolated operation of delivering water to NIA for agricultural purposes as a different engagement and was properly recorded as other income of the latter subject to regular corporate income tax rate of 35%.

Further, by virtue of petitioner's manifestation, the commercial operation of the Hydro-Electric Power Plant started on December 31, 1999. A *fortiori,* the six (6)-year entitlement for ITH for BOI recognized pioneer activity should be reckoned from the start of the commercial operation on December 31, 1998 or until December 31, 2004. That being the case, petitioner's claim for refund and/or exemption for income tax for taxable year 2007 is no longer within the coverage of the Omnibus Investment Code.

Even assuming that petitioner is entitled to ITH incentive, Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, allows recovery of tax erroneously or illegally collected when a taxpayer pays under a mistake of fact, as when he is not aware of an existing exemption in his favor at the time the payment is made citing *Commissioner of Internal Revenue vs. Acesite Hotel Corporation*.[1] However, in the instant case, respondent argues that petitioner's assertion of its ITH entitlement should have been known to the latter at the onset for the reason that it comes with its very existence. Thus, there was no mistake of fact and the tax was levied with statutory authority.

In reiteration, respondent posits that in an action for refund, the burden of proof is on the taxpayer who claims

[1] G.R. No. 147295, February 16, 2007.

the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications *BPI Leasing Corporation vs. Court of Appeals*.[2]

In opposing the motion, petitioner counters that:1) Petitioner is a BOI-registered operator of hydro-electric power plant with a registered capacity of 100 (MW) including water diversion and irrigation system, thus its income earned from its registered activities are entitled to ITH Incentive provided under Article 39(a) of E.O. No. 226, as amended by R.A. No. 7918 (or the Omnibus Investments Code); 2) for the same reason, petitioner is entitled to all the benefits accorded by the Omnibus Investments Code from the actual start of its commercial operation; and 3) it has presented all the evidence required for a valid claim for refund and having proved its entitlement thereto, respondent has the burden of proving otherwise.

A cursory reading of the motion reveals that no new matters or issues have been advanced by respondent in support of her plea for reconsideration of the assailed Decision dated July 10, 2013. Hence, respondent's motion must fail.

To reiterate, the assailed Decision provides:

> Article 39 of the Omnibus Investments Code provides:
>
> > Article 39. *Incentives to Registered Enterprise*. All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
> >
> > (a) Income Tax Holiday.
> >
> > (1) For six (6) years from commercial operation for pioneer firms and four (4) years

[2] G.R. No. 127624, November 18, 2003.

> for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

In the case recently decided by the Court's First Division[3], involving herein petitioner and respondent, it was ruled that the income payments made by NIA to petitioner upon which petitioner paid thirty-five percent (35%) income tax fell within the income tax exemption of petitioner under its BOI registration. The pertinent portion of which reads:

> In this case, petitioner has sufficiently proven that it has a BOI-registered 'PIONEER' status as evidenced by its BOI Certificate of Registration No. 94-388 *(Exhibit 'C')*, its General Terms and Conditions *(Exhibit 'C-1')*, its Specific Terms and Conditions *(Exhibit 'C-2')*, its Amended General Terms and Conditions *(Exhibit 'C-3')*, and its BOI Certificate of ITH Entitlement for taxable year 2006 with CE No. 2007-000032 *(Exhibit 'N')*.
>
> xxx xxx xxx
>
> A 'pioneer enterprise' shall mean a registered enterprise whose *status of registration is reflected as such in its BOI Certificate of Registration. (Rule II, Section 1, Revised Rules and*

3 *CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7917, August 23, 2012.

Regulations in the Availment of Income Tax Holiday)

In the Specific Terms and Conditions, petitioner's status is 'PIONEER', with registered capacity of 'ONE HUNDRED (100) MW INCLUDING WATER DIVERSION AND IRRIGATION SYSTEM'.

xxx xxx xxx

Evidently, the contract with NIA, which involved a 'water diversion and irrigation system' contemplated by the specific terms and conditions of the registration, is covered by the registration as such 'pioneer enterprise'.

xxx xxx xxx

Clearly, the water diversion supports the business of petitioner as a hydro-electric power company. If such diversion or supply of water also serves NIA for agricultural purposes, this circumstance should not be the cause to limit the exemption of petitioner as a 'pioneer enterprise'. To do so would be to render nugatory the purposes envisioned by the BOI incentives granted to pioneer enterprises.

xxx xxx xxx

Consequently, petitioner's income from the

> **delivery of water to NIA is covered by the income tax exemption.** *(Emphases supplied)*

Contrary to respondent's claim, petitioner is legally entitled to a refund or issuance of tax credit certificate in the amount of ₱56,075,812.45, representing its erroneously paid income tax for taxable year 2007 by virtue of its Income Tax Holiday entitlement as provided under Article 39(a) of Executive Order (E.O.) No. 226, as amended by Republic Act (R.A.) No. 7918. In fact, respondent misconstrued the pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Acesite Hotel Corporation* where it was held that Section 229 of the NIRC of 1997, as amended, allows recovery of tax erroneously or illegally collected when a taxpayer pays under a mistake of fact, as when he is not aware of an existing exemption in his favor at the time the payment was made.[4]

Additionally, the Court *En Banc*, in the case of *Commissioner of Internal Revenue vs. Semirara Mining Corporation*[5], has reiterated the rationale in granting refunds of erroneously or illegally collected taxes, in the following fashion:

> 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

---

[4] *Supra*, at Note 1.
[5] C.T.A. EB CASE NO. 752. March 22, 2012., (C.T.A. Case No. 7867).

> 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 184).
>
> 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 (*BPI Family Savings Bank vs. CA, CTA & CIR*, 330 SCRA 518). 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.

Finally, respondent never disputed nor contested petitioner's testimonial and documentary evidence. She even opted not to present any evidence on her behalf.

WHEREFORE, the Motion for Reconsideration (Re: Decision promulgated on 10 July 2013) filed by respondent on August 14, 2013 is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice