Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

NANOX PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8320

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *J.J.*

Promulgated:
DEC 04 2014 9:02 Am

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RESOLUTION

CASANOVA, *J.*:

For Resolution of this Court is respondent's Motion for Reconsideration (Re: Decision Promulgated 26 September 2014), filed on October 14, 2014, with petitioner's Comment/Opposition (Re: Respondent's Motion for Reconsideration), filed on November 3, 2014, praying for this Court to reverse and set aside the Decision promulgated on September 26, 2014 (Assailed Decision) and a new one be entered denying petitioner's Petition for Review for lack of merit.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of P9,495,774.38, representing petitioner's erroneously paid final withholding tax.
>
> **SO ORDERED.**"

In the subject Motion, respondent raised this sole issue for the consideration of the Court:

> "THE INSTANT PETITION IS NOT WARRANTED FOR LACK OF JURISDICTION AS PETITIONER PREMATURELY ELEVATED THIS CASE TO THE HONORABLE COURT.

To support her Motion, respondent claims that petitioner failed to exhaust the administrative remedies when it did not submit the necessary supporting documents to substantiate its claim for refund. Respondent also argues that petitioner by-passed its administrative remedy when it is only now at the judicial stage that petitioner submits and proposes to present documentary evidence allegedly establishing its entitlement to a tax refund. Respondent further claims that petitioner failed to prove that the amount of P9,755,502.97 was actually credited to the Bureau of Internal Revenue's account. Lastly, respondent insists that the jurisdiction of this Court over tax refunds/credits is in the nature of tax exemption, hence, laws relating to them call for a strict application against the claimant.

Petitioner, on the other hand, posits that respondent's failure to seasonably raise petitioner's alleged non-compliance with a condition precedent in a proper Motion to Dismiss is deemed a waiver of such defect. Thus, respondent may not now belatedly raise said defect in a Motion for Reconsideration. It further adds that this Court, in a number of cases, has ruled that the non-submission of documents at the administrative level is not fatal to a judicial claim for refund. Petitioner, likewise, contends that the payment of the 10% final withholding tax on cash dividends was duly supported by a Transaction Acknowledgment Receipt; Secretary's Certificate; Judicial Affidavit of Atty. Maria Imelda Tuazon; e-mail letter of the President of Nanox, Japan, Mr. Jin Tetsuo; and, petitioner's Audited Financial Statements for the fiscal year ended March 31, 2010. Finally, petitioner submits that the rule of construction that an action for a tax refund partakes of the nature of an exemption and is strictly construed against the claimant is true only when the claim is based either on a tax exemption statute or a tax refund statute. But when the claim for refund or credit is premised on the erroneous payment of tax, the rule of strict construction against the claimant will not apply.

We find no valid reason to grant respondent's Motion.

Anent respondent's contention that the instant Petition should be dismissed due to petitioner's failure to exhaust administrative remedies on account of its failure to submit necessary supporting documents in the administrative level, suffice it to say that in the case of *Commissioner of Internal Revenue vs. Philippine Bank of Communications*[1], citing the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*,[2] the Court *En Banc* ruled that the failure to submit documents in support of the taxpayer's administrative claim is not fatal to his judicial claim, to wit:

> "It has been settled in several CTA *en banc* cases that **judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund.** In the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue.* We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:
>
> > '**Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated de novo and decided based on what has been presented and formally offered by the parties during the trial.** In the case of *CIR vs. Manila Mining Corporation*, it was explained 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.' Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.
>
> x x x The CTA being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of their cases. Otherwise stated, **judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR."** (citations omitted)

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[1] CTA EB Case No. 933 (CTA Case No. 7915), October 7, 2013.
[2] CTA EB Case No. 775 (CTA Case No. 7828), November 13, 2012.

In this case, even if petitioner failed to submit the necessary documents before the BIR to support its claim for refund, records will still show that petitioner was able to sufficiently substantiate its judicial claim in accordance with law and to the satisfaction of the Court. In fact, petitioner was able to establish that it paid to the BIR on August 13, 2009, the amount of P9,755,502.97 FWT (including the claimed amount of P9,495,774.38) as reflected in its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of July 2009. The amount of P9,495,774.38 (10% FWT) was supposed to be declared and distributed as cash dividends by petitioner to its stock holder, Nanox Japan, in July 2009. But the same did not materialize as satisfactorily shown in the following evidence of petitioner: Secretary's Certificate[3], Judicial Affidavit[4] of petitioner's witness, Ms. Maria Imelda Tuazon, and email letter[5] of Mr. Jin Tetsuo, President of Nanox Japan. By such reason, *We* find the amount of P9,495,774.38 refundable to petitioner under Sections 204(C) and 229 of the 1997 NIRC, as amended.

We also find no merit in respondent's argument that petitioner failed to exhaust the administrative remedies provided by law. Records reveal that petitioner timely filed its administrative claim for refund within the reglementary period provided by the 1997 National Internal Revenue Code, as amended. Thus, the Commissioner of Internal Revenue was given ample opportunity to resolve petitioner's claim for refund.

Lastly, with regard to respondent's insistence that the claim for refund should be strictly construed against the claimant, *We* reiterate *Our* finding that petitioner was able to discharge such burden convincingly as discussed above.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision Promulgated 26 September 2014), filed on October 14, 2014, is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[3] Annex "P" to the Petition for Review, Docket (Vol. I), p. 67.
[4] Exhibit "KK", Docket (Vol. II), pp. 659-662.
[5] Annex "M-1" to the Petition for Review, Docket (Vol. I), pp. 61-62.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.	**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice	Associate Justice