REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HEALTH PRODUCTS AND SERVICES B.V., *Petitioner,*	**CTA Case No. 10968** Members:
-versus-	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 28 2025 3:50 p.m.

x- -x

DECISION

ANGELES, *J.*:

Before the Court is a *Petition for Review*[1] filed by petitioner via registered mail on August 25, 2022, praying for the refund of Capital Gains Tax (CGT) in the amount of ₱7,382,449.50, allegedly erroneously paid to respondent, in relation to the sale of petitioner's shares of stock in Carestream Health Philippines Inc. (CHPI), a Philippine company, to Quantum Healthcare Pty Ltd (QHPL), an Australian company, pursuant the *Convention between the Kingdom of the Netherlands and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (Philippines-Netherlands Tax Treaty).

PARTIES

Petitioner is a private company with limited liability duly organized and existing under the laws of the Netherlands, with address at Prins Bernhardplein 200, 1097 JB Amsterdam,[2] and business registered in the Netherlands Chamber of Commerce with CCI number 34256516.[3] During the year 2020, petitioner was a tax resident of the Netherlands as evidenced by the *Certificate of Residence* duly issued

[1] Docket – Vol. I, pp. 7 to 26, with Annexes.
[2] Exhibit "P-5", Docket – Vol. 2, pp. 833 to 853.
[3] Exhibit "P-2", Docket – Vol. 2, pp. 822 to 824.

by The Inspector of the Tax Authorities Administration Office Arnhem, the Netherlands,[4] and was not registered as a corporation, partnership, or one person corporation with the Philippine Securities Exchange Commission (SEC).[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the authority to grant tax credit/refund under the law.[6]

ANTECEDENTS

Petitioner is the legal and beneficial owner of a total of 901,000 common shares of stock in CHPI.[7] The 900,400 common shares of stock are covered by a Stock Certificate in petitioner's name, while the remaining 600 common shares of stock are covered by Stock Certificates issued in the name of individual stockholders, to wit:

Name of Stockholder	Stock Certificate No.	No. of Shares	Exhibit No.
Health Products and Services B.V.	11	900,400	"P-13-5" [8]
Antonio T. Tan, Jr.	01	596	"P-13" [9]
Evelyn Abing Mueca	02	1	"P-13-1" [10]
Eric Reynaldo Santos	03	1	"P-13-2" [11]
Bryan Ralph C. Gregorio	04	1	"P-13-3" [12]
Armand Publico Sia	05	1	"P-13-4" [13]
Total		**901,000**	

Mr. Bryan Ralph C. Gregorio and Mr. Antonio T. Tan, Jr. executed *Declarations of Trust with Power of Attorney*[14] confirming petitioner as the legal and beneficial owner of their respective shares in CHPI.

On December 4, 2019, petitioner sold all 901,000 CHPI shares of stock to QHPL as evidenced by the *Sale and Purchase Agreement* executed on even date,[15] and the *Resolution Outside a Formal Meeting*

[4] Exhibit "P-6", Docket – Vol. 2, pp. 854 to 855.
[5] Exhibit "P-7", Docket – Vol. 2, p. 858.
[6] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 771.
[7] Exhibit "P-15", BIR Records, pp. 70 to 71.
[8] Exhibit "P-13-5", BIR Records, pp. 58 to 59.
[9] Exhibit "P-13", BIR Records, pp. 68 to 69.
[10] Exhibit "P-13-1", BIR Records, pp. 66 to 67.
[11] Exhibit "P-13-2", BIR Records, pp. 64 to 65.
[12] Exhibit "P-13-3", BIR Records, pp. 62 to 63.
[13] Exhibit "P-13-4", BIR Records, pp. 60 to 61.
[14] Exhibits "P-14" and "P-14-2", BIR Records, pp. 51 to 57.
[15] Exhibit "P-16", Docket – Vol. 2, pp. 927 to 989.

by the Management Board of Health Products and Services B.V. signed on December 31, 2019,[16] approving, ratifying and confirming the said sale.

Under the *Sale and Purchase Agreement*, in consideration of the purchase of the subject shares, QHPL undertook to pay petitioner in cash the aggregate amount of US$220,000.00 as the closing amount, and US$1,394,479.00 as the deferred consideration.[17] Petitioner's receipt of payments is confirmed by Citibank, N.A. London Branch.[18]

On August 24, 2020, petitioner filed a *Capital Gains Tax Return* (BIR Form No. 1707)[19] with BIR - Revenue District Office (RDO) No. 39 - South Quezon City, and paid CGT on the sale of the 901,000 CHPI shares of stock, amounting to ₱7,382,449.50, as shown in *Revenue Official Receipt* No. ROR 201402338720 dated August 24, 2020.[20]

Thereafter, on July 29, 2022, petitioner filed a letter-request of even date,[21] together with an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[22] with BIR RDO No. 39, requesting for the refund of the amount of ₱7,382,449.50 on the basis of its alleged exemption from payment of CGT under the Philippines-Netherlands Tax Treaty. In support of its request, petitioner submitted several documents.

On August 25, 2022, without waiting for respondent's action on its application for tax refund, petitioner filed the instant *Petition*.

PROCEEDINGS BEFORE THE COURT

On September 21, 2022, petitioner filed a *Manifestation and Submission*,[23] attaching thereto an original copy of the Apostilled Board Resolution dated August 18, 2022,[24] stating that it submitted a photocopy thereof with its *Petition for Review* to keep the sole original copy secure considering that the submission was then filed via registered mail. In the Resolution dated September 29, 2022,[25] the Court: (1) noted petitioner's *Manifestation and Submission*, and

[16] Exhibit "P-17", Docket – Vol. 2, pp. 990 to 999.
[17] Par. 3.3, Exhibit "P-16", Docket – Vol. 2, p. 943.
[18] Exhibit "P-18", Docket – Vol. 2, pp 1000 to 1003.
[19] Exhibit "P-19", Docket – Vol. 2, pp. 1004 to 1005.
[20] Exhibit "P-19-1", Docket – Vol. 2, p. 1008.
[21] Exhibit "P-3", BIR Records, pp. 186 to 190.
[22] Exhibit "P-4", BIR Records, p. 185.
[23] Docket – Vol. I, pp. 367 to 369.
[24] Docket – Vol. I, pp. 370 to 373.
[25] Docket – Vol. I, pp. 377 to 379.

admitted the attached Apostilled Board Resolution; and (2) ordered petitioner to comply with Section 6 (a) and (b), Rule 7 of A.M. No. 19-10-20-SC, within ten (10) days from notice.

In compliance thereto, petitioner filed the following: (1) *Compliance with Manifestation* on October 18, 2022;[26] (2) *Manifestation* on November 3, 2022;[27] (3) *Compliance to the Resolution dated November 07, 2022 with Manifestation* on January 9, 2023;[28] and (4) *Compliance to the Resolution dated February 3, 2023* on March 23, 2023.[29]

In the meantime, respondent filed a *Motion to Admit (Attached Answer to the Petition for Review dated August 25, 2022)* on February 14, 2023.[30] In the Resolution dated February 23, 2023,[31] the Court granted respondent's *Motion,* and admitted the attached *Answer.*[32] Respondent then transmitted the *BIR Records* of the case on August 16, 2023, consisting of 192 pages in one (1) folder.[33]

The Pre-Trial Conference was held on August 22, 2023.[34] Prior thereto, the *Pre-Trial Brief [For Petitioner Health Products and Services B.V.]* and *Respondent's Pre-Trial Brief* were both filed on August 17, 2023.[35] Respondent's counsel manifested that he will not be presenting any documentary and testimonial evidence for this case.

The parties filed their *Joint Stipulation of Facts and Issues* on September 21, 2023,[36] which was admitted and approved by the Court in the Minute Resolution dated September 27, 2023,[37] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated October 27, 2023 was then issued.[38]

---

[26] Docket – Vol. I, pp. 380 to 384; Noted in the Resolution dated November 7, 2022, Docket – Vol. I, pp. 397 to 398.
[27] Docket – Vol. I, pp. 386 to 388; Noted in the Resolution dated November 28, 2022, Docket – Vol. I, p. 401.
[28] Docket – Vol. I, pp. 406 to 408; Noted in the Resolution dated February 3, 2023, Docket – Vol. I, pp. 488 to 489.
[29] Docket – Vol. 2, pp. 503 to 505; Noted in the Minute Resolution dated March 24, 2023, Docket – Vol. 2, p. 713.
[30] Docket – Vol. I, pp. 490 to 493.
[31] Docket – Vol. I, p. 500.
[32] Docket – Vol. I, pp. 494 to 498.
[33] *Compliance* dated August 16, 2023, Docket – Vol. 2, pp. 725 to 726.
[34] Notice of Pre-Trial Conference dated February 23, 2023, Docket – Vol. I, pp. 501 to 502; Minutes of the hearing held on, and Order dated, August 22, 2023, Docket – Vol. 2, pp. 754 and to 758 to 759, respectively.
[35] Docket – Vol. 2, pp. 730 to 748 and 750 to 752, respectively.
[36] Docket – Vol. 2, pp. 771 to 779.
[37] Docket – Vol. 2, p. 780.
[38] Docket – Vol. 2, pp. 788 to 796.

Trial ensued. Petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Atty. Jenna Mary Leen L. Renong,[39] engaged by petitioner as its consultant; (2) Atty. Michael Ray R. Caisido,[40] Director in the Tax Division of SGV & Co, who assisted petitioner in its application for refund; and (3) Ms. Evelyn A. Mueca,[41] then Finance Manager of CHPI when the transaction subject of this case happened.

The *Formal Offer of Evidence (For Petitioner Health Products and Services B.V.)* was filed on December 4, 2023,[42] to which respondent filed his *Comment/Opposition to the Petitioner's Formal Offer of Evidence* on December 27, 2023.[43] Subsequently, *a Motion for Leave to Admit the Herein Incorporated Reply to the Respondent's Comment/Opposition to the Petitioner's Formal Offer of Evidence* was filed by petitioner on January 22, 2024.[44]

In the Resolution dated April 18, 2024,[45] the Court granted petitioner's *Motion for Leave*, thus, admitting the incorporated *Reply*, and admitted petitioner's offered exhibits, *except* pages 3 and 4 of Exhibit "P-6", for being written in an unofficial language not accompanied by a translation in English or Filipino, pursuant to Section 33, Rule 132 of the Revised Rules of Court.

Petitioner filed its *Memorandum (For Petitioner Health Products and Services B.V.)* on May 23, 2024,[46] while respondent filed his *Memorandum* on May 29, 2024.[47]

The case was submitted for decision on June 26, 2024.[48]

ISSUE

As stipulated by the parties, the issue to be resolved by this Court is as follows:

---

[39] Exhibit "P-20", Docket – Vol. I, pp. 161 to 171; Minutes of the hearing held on, and Order dated, November 14, 2023, Docket – Vol. 2, pp. 799 to 802.
[40] Exhibit "P-24", Docket – Vol. 2, pp. 506 to 513; Minutes of the hearing held on, and Order dated, November 14, 2023, Docket – Vol. 2, pp. 799 to 802.
[41] Exhibit "P-22", Docket – Vol. I, pp. 409 to 413; Minutes of the hearing held on, and Order dated, November 14, 2023, Docket – Vol. 2, pp. 799 to 802.
[42] Docket – Vol. 2, pp. 806 to 816.
[43] Docket – Vol. 2, pp. 1037 to 1044.
[44] Docket – Vol. 2, pp. 1046 to 1083.
[45] Docket – Vol. 2, pp. 1085 to 1087.
[46] Docket – Vol. 2, pp. 1088 to 1110.
[47] Docket – Vol. 2, pp. 1111 to 1116.
[48] Minute Resolution dated June 26, 2024, Docket – Vol. 2, p. 1117.

r

> "Whether Petitioner is entitled to a refund of Capital Gains Tax amounting to **Seven Million Three Hundred Eighty-Two Thousand Four Hundred Forty-Nine Philippine Pesos and 50/100 (Php7,382,449.50)** allegedly withheld on the sale of its shares of stock in Carestream Health Philippines Inc. to Quantum Healthcare Pty Limited under a Sale Purchase Agreement."[49]

<u>ARGUMENTS OF THE PARTIES</u>

Petitioner's arguments

Petitioner argues that it is entitled to a refund of CGT in the amount of ₱7,382,449.50 allegedly withheld in relation to the sale of its shares of stock in CHPI to QHPL under the *Sale and Purchase Agreement* dated December 4, 2019, for the following reasons:

First, based on jurisprudence, tax refunds are based on the principle of quasi-contract or *solutio indebiti* which applies to the government; as such, respondent must not be unjustly enriched by petitioner's erroneously paid CGT. Respondent must instead refund to petitioner such erroneously paid CGT.

Second, petitioner complied with all the requisites for the refund of erroneously paid taxes as provided under Section 204(C) of the National Internal Revenue Code (Tax Code), as amended, in relation to Section 229 thereof. Petitioner avers that both the administrative and judicial claims for refund were filed within two (2)-year prescriptive period.

Third, the capital gains derived by petitioner from the sale of its shares of stocks in CHPI to QHPL is exempt from income tax pursuant to paragraph 4, Article 13 of the Philippines-Netherlands Tax Treaty, in relation to Sections 28(B)(5)(c) and 32(B)(5) of the Tax Code, as amended; hence, petitioner is entitled to the refund of the CGT paid.

Finally, petitioner submitted all the supporting documents necessary to prove its claim for refund of erroneously paid CGT before the administrative level, and the same were admitted in evidence by the Court.

---

[49] Issue, JSFI, Docket – Vol. 2, p. 773.

r

Respondent's counter-arguments

Respondent contends that petitioner's claim for refund is subject to administrative investigation/examination by respondent, and pending the closure of such investigation, no grant of refund may be given to petitioner based on the filed claim. Respondent points out that petitioner paid the CGT on August 24, 2020 and filed its application for tax refund with respondent only on July 29, 2022; thus, respondent was deprived of his function to act on the administrative claim for refund. Respondent maintains that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions.

Respondent further argues that tax refunds are construed strictly against the taxpayer and in favor of the government.

Lastly, respondent submits that the BIR Rulings cited by petitioner is binding and applicable only between the BIR and the concerned party.

RULING OF THE COURT

After a careful review of the parties' respective arguments and evidence, We rule to **grant** the instant *Petition for Review*.

Provisions governing the refund of erroneously or illegally collected taxes

Sections 204(C) and 229 of the Tax Code, as amended, read:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (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. *(Emphasis added)*
>
> 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 the Commissioner may, even without a 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. *(Emphasis added)*

Based on the foregoing provisions, erroneously or illegally assessed or collected taxes may be credited or refunded provided that: **(1)** the taxpayer files as administrative claim for refund with respondent within two (2) years after the payment of the tax; **(2)** the filing of a judicial claim for refund is preceded by the filing of an administrative claim for refund; and, **(3)** the filing of a judicial claim for refund is also made within two (2) years after the payment of the tax.

To be sure, both the administrative and judicial claims must be filed within the two (2)-year reglementary period. Timeliness in the filing of both claims is mandatory and jurisdictional, and the Court cannot take cognizance of a judicial claim filed either prematurely or out of time.[50]

Moreover, an "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in

---

[50] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

some other similar aspect is illegal.[51] In this regard, in an application for credit or refund of taxes under Section 229 of the Tax Code, there must be a wrongful payment because what was paid, or part of it, was not legally due.[52]

Thus, for the present judicial claim for refund to prosper, petitioner must not only prove the timely filing of both the administrative and judicial refund claims, but must also prove that the payment of the subject CGT was erroneous, illegal, excessive, or wrongful.

Petitioner's administrative and judicial claims for refund were timely filed

Records show that petitioner paid CGT in the amount of ₱7,382,449.50, or the amount subject of the present *Petition*, on August 24, 2020.[53] Counting two (2) years therefrom, petitioner had until August 24, 2022, to file its administrative and judicial claims for refund.

As petitioner's administrative claim was filed on July 29, 2022,[54] the same was clearly made within the two (2)-year prescriptive period.

Anent petitioner's judicial claim, following the announcement of the Office of the President suspending government work in Metro Manila and nearby provinces from August 23, 2022 to August 24, 2022, the Supreme Court issued Office of the Court Administrator Circular No. 218-2022 declaring work suspension in all courts in Metro Manila from August 23, 2022 at 3:00pm to August 24, 2022.[55] Petitioner filed its judicial claim on August 25, 2022,[56] or the next working day after August 24, 2022. Hence, petitioner's judicial claim was likewise filed within the two (2)-year prescriptive period.

It is noted that respondent argues that petitioner failed to exhaust administrative remedies before seeking redress with the Court. Respondent asserts that the filing of the *Petition for Review*

---

[51] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[52] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[53] Exhibits "P-19" and "P-19-1", Docket – Vol. 2, pp. 1004 to 1005 and 1008, respectively.
[54] Exhibits "P-4", Docket – Vol. 2, pp. 830 to 831.
[55] Par. 1.2, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 771.
[56] Docket – Vol. I, pp. 7 to 30.

with the Court must be due to his denial of petitioner's administrative claim or his inaction on the same which is tantamount to a denial. Absent these circumstances, the judicial claim becomes a mere attempt by the taxpayer to circumvent the role and duties of respondent in evaluating the taxpayer's claim for refund.

Respondent's arguments lack merit.

In *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc.*,[57] the Supreme Court passed upon a similar legal dispute, proclaiming, *viz.*:

> This same issue has been squarely passed upon in *CBK Power Company Limited v. Commissioner of Internal Revenue*. **<u>The Commissioner argued that since the judicial claim was filed merely five days after the administrative claim had been filed, they were not given a reasonable time to act on the claim. The Commissioner contended that the taxpayer's filing of the judicial claim violates the doctrines of exhaustion of administrative remedies and primary jurisdiction.</u>**
>
> This Court rejected the Commissioner's argument. It ruled that Sections 204 and 229 of the 1997 National Internal Revenue Code require only that the administrative claim be filed before the judicial claim and that both claims be filed within two years from the payment of the tax. Hence, the taxpayer properly filed its judicial claim without awaiting the Commissioner's action on its administrative claim, as long as the judicial claim was filed within the two-year prescriptive period. Thus:
>
> xxx xxx xxx
>
> A closer reading of Sections 204 and 229 of the 1997 National Internal Revenue Code, in conjunction with Section 7 of Republic Act No. 9282, reveals a problem of what is considered a 'reasonable period' for the Commissioner of Internal Revenue to act on a claim for refund of taxes.
>
> Section 229, which requires a prior administrative claim before a judicial claim is filed, recognizes the Commissioner of Internal Revenue's primary jurisdiction to decide refunds of internal revenue taxes. It gives the Commissioner 'an opportunity to consider [their] mistake, if mistake has been committed,' or to investigate and ascertain the veracity of the claim, before they are sued. This Court in *CBK Power Company*, citing *P.J. Kiener*, held that the primary purpose of filing an administrative claim is to serve as a *notice or warning* to the Commissioner that *court action would follow unless the tax or penalty is refunded.* This necessarily implies that the

[57] G.R. No. 226592, July 27, 2021.

Commissioner has sufficient time to examine, evaluate, and act on the matter within their jurisdiction.

On the other hand, Section 7 of Republic Act No. 9282 grants the Court of Tax Appeals exclusive appellate jurisdiction over a decision or 'inaction deemed denial' of the Commissioner in a claim for refund. Under its clear wording, the Court of Tax Appeals can take cognizance of appeals in cases of the Commissioner's 'inaction' only where the 1997 National Internal Revenue Code specifically provides a period for the Commissioner to act on a claim for refund. However, unlike in claims for refund of input value-added tax, the 1997 National Internal Revenue Code does not prescribe a specific period within which the Commissioner must resolve the claim for refund or credit of erroneously paid taxes.

Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.

Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.

Thus, in *CBK Power Company*, as with subsequent cases, this Court upheld the propriety of the taxpayer's judicial claim instituted as early as five and 13 days after the administrative claim had been filed, on the ground that both claims were filed within the two-year prescriptive period.

xxx xxx xxx

These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim has led to delays, to the taxpayer's prejudice. On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.

Nonetheless, the silence or insufficiency in the law on the reasonable period for the Commissioner's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation. *(Emphases and underscoring added)*

As can be gleaned from the foregoing, as long as the filing of both the administrative and judicial claims for refund under Section 229 of the Tax Code, fall within the two (2)-year prescriptive period, and as long as the administrative claim was filed before the judicial claim, there is no legal impediment to the filing of the judicial claim with the Court.

In this case, as earlier discussed, both the administrative and judicial claims for refund of petitioner were filed before the lapse of the two (2)-year prescriptive period. Further, the administrative claim was filed before the filing of the judicial claim, albeit less than one (1) month later. Applying the ruling in *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc.*, and considering that the two (2)-year prescriptive period was about to lapse, petitioner was justified in filing its judicial claim without waiting for respondent's decision on its application for tax refund, to protect its interest.

Hence, petitioner's judicial claim, which was filed within the two (2)-year prescriptive period, is proper and can neither be dismissed nor denied on the ground of failure to exhaust administrative remedies.

Petitioner erroneously or illegally paid CGT on the sale of shares of stock in CHPI

Petitioner argues that the capital gains it derived from the sale of its shares of stocks in CHPI to QHPL is not subject to Philippine tax pursuant to paragraph 4, Article 13 of the Philippines-Netherlands Tax Treaty, in relation to Sections 28(B)(5)(c) and 32(B)(5) of the Tax Code. As such, its payment of CGT in the amount of ₱7,382,449.50 in relation to such sale was erroneous.

On the other hand, respondent simply argues that claims for refund are construed strictly against the taxpayer and in favor of the government, and that the BIR Rulings cited by petitioner are not binding on the part of respondent with respect to petitioner's case.

We rule for **petitioner**.

As a general rule, net capital gains derived by a non-resident foreign corporation (NRFC) from the sale of shares of stock in a domestic corporation, where such shares are not traded in the stock exchange, is subject to Philippine income tax. The pertinent portion of Section 28(B)(5)(c) of the relevant Tax Code is reproduced below:

> SEC. 28. *Rates of Income Tax on Foreign Corporations.* -
>
> xxx xxx xxx
>
> *(B) Tax on Nonresident Foreign Corporation.* -
>
> xxx xxx xxx
>
> *(5) Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* -
>
> xxx xxx xxx
>
> *(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% |
>
> *(Emphases and underscoring added)*

However, Section 32(B)(5) of the relevant Tax Code provides that income of any kind may be exempt from Philippine income tax to the extent provided under an applicable treaty, *viz.*:

> SEC. 32. *Gross Income.* -
>
> xxx xxx xxx
>
> *(B) Exclusions from Gross Income.* - The following items shall not be included in gross income and **shall be exempt from taxation under this Title:**
>
> xxx xxx xxx
>
> *(5) Income Exempt under Treaty.* **- Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.** *(Emphases and underscoring added)*

In *Air Canada vs. Commissioner of Internal Revenue*,[58] the Supreme Court held that a tax treaty, entered into by the Philippines with a foreign country, must be taken into consideration when determining the proper tax rate of a taxable transaction. The High Court elucidated the rationale and legal basis for complying with a tax treaty, to wit:

> "A tax treaty is an agreement entered into between sovereign states 'for purposes of eliminating double taxation on income and capital, preventing fiscal evasion, promoting mutual trade and investment, and according fair and equitable tax treatment to foreign residents or nationals.' *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.* explained the purpose of a tax treaty:
>
>> The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.
>>
>> The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate. (Emphasis in the original, citations omitted)
>
> Observance of any treaty obligation binding upon the government of the Philippines is anchored on the constitutional provision that the Philippines 'adopts the generally accepted principles of international law as part of the law of the land[.]' ***Pacta sunt servanda* is a fundamental international law principle that requires agreeing parties to comply with their treaty obligations in good faith.**
>
> **Hence, the application of the provisions of the National Internal Revenue Code must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries."**
>
> In *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, this court stressed the binding effects of

[58] G.R. No. 169507, January 11, 2016.

> tax treaties. It dealt with the issue of "whether the failure to strictly comply with [Revenue Memorandum Order] RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty." Upholding the tax treaty over the administrative issuance, this court reasoned thus:
>
> xxx xxx xxx
>
> *(Emphases and underscoring added)*

In *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*,[59] the Supreme Court pointed out that tax treaties resort to several methods to eliminate double taxation, one of which is to set out the respective rights of the state of source or situs and the state of residence, to tax certain classes of income or capital. In some cases, an exclusive right to tax is conferred on one of the contracting states; however, for other items of income or capital, both states are given the right to tax, although the amount of tax that may be imposed by the state of source is limited.[60]

Relevant to the present controversy is the tax treaty between the Philippines and the Netherlands[61] which was signed on March 9, 1989 and took effect on September 20, 1991.

Under Article 2 of the Philippines-Netherlands Tax Treaty, the same shall apply to taxes on income imposed on behalf of one of the States, including Philippine income tax. Article 13 thereof specifically provides the rules on income or gains from the alienation of property, as follows:

> Article 13
> GAINS FROM THE ALIENATION OF PROPERTY
>
> 1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.
>
> 2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State, or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing professional services, including such gains from the

---

[59] G.R. No. 127105, June 25, 1999.
[60] *Id.*
[61] Formally known as the "CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF THE PHILIPPINES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME".

u

alienation of such permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

3. Notwithstanding the provisions of paragraph 2, gains derived by an enterprise of one of the States from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

4. **Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, shall be payable only in the State of which the alienator is a resident.**

5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its domestic law a tax on gains from the alienation of property derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property. *(Emphasis and underscoring added)*

A careful reading of the foregoing Article shows the taxing rights of each State relative to income or gains from the alienation of property. Paragraph 1 covers gains from the alienation of immovable property; while paragraph 2 covers gains from the alienation of certain movable property. Paragraph 3 involves the alienation of ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships or aircraft.

Notably, paragraph 4 of the foregoing Article, which petitioner correctly invokes, involves the alienation of any property other than those mentioned in paragraphs 1 to 3. In such case, the taxing right belongs to the State where the alienator is a resident. As a corollary, any gain derived from the alienation of the said property should be exempt from income taxation in the State where the alienator is ***not*** a resident.

To determine which State the alienator is a resident of, paragraph 1 of Article 4 of the Philippines-Netherlands Tax Treaty provides:

Article 4
FISCAL DOMICILE

1. **For the purpose of this Convention, the term "resident of one of the States" means any person who, under the**

ע

> **law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.** *(Emphasis added)*

In this case, petitioner sufficiently proved that during the year 2020, it was a resident of the Netherlands within the meaning of Article 4 of the Philippines-Netherlands Tax Treaty, as evidenced by the apostilled *Certificate of Residence* dated November 25, 2021 issued by The Inspector of the Tax Authorities Administration Office Arnhem, the Netherlands.[62]

The fact that petitioner is a resident of the Netherlands, and not of the Philippines, is also bolstered by the *Certification of Non-Registration of Company* dated March 24, 2022,[63] issued by the Philippine SEC, which certifies that its records do not show the registration of petitioner as a corporation, partnership or one person corporation.

Furthermore, petitioner adequately established that: **(1)** it was the legal and beneficial owner of a total of 901,000 shares of stock in CHPI, a domestic corporation, as evidenced by, among others, the Stock Certificates covering such shares,[64] and CHPI's *General Information Sheet* for the year 2019;[65] **(2)** it sold such shares to QHPL, as evidenced by, among others, the apostilled *Sale and Purchase Agreement* dated December 4, 2019;[66] and, **(3)** due to such sale, it filed a *Capital Gains Tax Return* (BIR Form No. 1707)[67] on August 24, 2020 with BIR RDO No. 39, and paid CGT in the amount of ₱7,382,449.50 on even date, as shown in *Revenue Official Receipt* No. ROR 201402338720.[68]

Meanwhile, respondent failed to adduce any documentary or testimonial evidence that would contradict petitioner's allegations and supporting evidence. Respondent advanced only mere statements of general principles of law to support his contentions.

Considering the foregoing, the Court finds petitioner to be a tax resident of the Netherlands within the meaning of paragraph 1 of Article 4 of the Philippines-Netherlands Tax Treaty. The Court likewise

---

[62] Exhibit "P-6", Docket – Vol. 2, pp. 854 to 855.
[63] Exhibit "P-7", Docket – Vol. 2, p. 858.
[64] Exhibits "P-13" to "P-13-5", BIR Records, pp. 58 to 69.
[65] Exhibit "P-12", Docket – Vol. 2, pp. 898 to 905
[66] Exhibit "P-16", Docket – Vol. 2, pp. 927 to 989.
[67] Exhibit "P-19", Docket – Vol. 2, pp. 1004 to 1005.
[68] Exhibit "P-19-1", Docket – Vol. 2, p. 1008.

finds petitioner to have derived income from the sale of shares of stock in a Philippine corporation, which is property other than those mentioned in paragraphs 1 to 3 of Article 13 of the said treaty. Applying paragraph 4 of Article 13 thereof, such income shall be taxable only in the Netherlands. Consequently, such income is exempt from Philippine income tax, particularly CGT imposed under Section 28(B)(5)(c) of the Tax Code.

Such being the case, the amount of CGT paid by petitioner in connection with the subject transaction should be deemed as an erroneous or wrongful payment, since no CGT was legally due. Therefore, such amount should be refunded to petitioner.

WHEREFORE, premises considered, the present *Petition for Review* is **GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱7,382,449.50**, representing CGT erroneously or wrongfully paid on August 24, 2020 in relation to the sale of its shares of stock in CHPI to QHPL.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ATTESTATION

I attest 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.

CATHERINE T. MANAHAN
Associate Justice
Third Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's *Attestation*, 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