

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DAVAO CITY WATER DISTRICT,
Petitioner,

CTA Case Nos. 8505 & 8575

Members:

- versus -

BAUTISTA, Chairperson
FABON-VICTORINO, and
RINGPIS-LIBAN, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

Respondent.

OCT 12 2015

CAIR 4:20 P.M.

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DECISION

Fabon-Victorino, J.:

The present case is a consolidation of two (2) Petitions for Review separately filed by petitioner Davao City Water District, praying for the refund or issuance of tax credit certificate in the aggregate amount of ₱2,567,552.18, allegedly representing income tax erroneously withheld and remitted by its customers to respondent from January 1, 2010 to December 31, 2011, broken down as follows:

CTA CASE NO.	PERIOD	AMOUNT CLAIMED
8505	January 1, 2010 to December 31, 2010	₱ 1,182,638.08 ¹
8575	January 1, 2011 to December 31, 2011	1,384,914.18 ²
TOTAL		₱2,567,552.18

Petitioner is a government-owned and controlled corporation created and organized by virtue of Presidential Decree No. 198. It is a public utility engaged in the

¹ Amended Petition for Review, CTA Case No. 8505, docket, p. 280.

² Petition for Review, CTA Case No. 8575, docket, p. 26.

production and supply of potable water to the entire City of Davao.³

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) vested with the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 26, 2008, respondent issued Revenue Regulations No. 14-2008 increasing the coverage of withholding tax agents required to withhold 1% from regular suppliers of goods and 2% from regular suppliers of services from the top 10,000 private corporations to top 20,000 private corporations.

Many of the top 20,000 corporations and government agencies operating in Davao City were petitioner's customers withholding 2% income taxes from their water bills.⁴ According to petitioner, the accumulated income tax withheld from it for 2010 and 2011 reached ₱1,182,638.08 and ₱1,384,914.18, respectively.

On March 11, 2010, Republic Act (RA) No. 10026 entitled "*An Act Granting Income Tax Exemption To Local Water Districts By Amending Section 27 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, and adding Section 289-A to the Code, for the purpose*" was enacted. By reason of such enactment, petitioner formally requested the BIR for a Ruling/Certification of Exemption so that it could inform its clients belonging to the top 20,000 corporations and government agencies to cease withholding taxes on their payments of water bills.⁵

In a Reply⁶ dated April 15, 2011, the BIR indicated that it could not as yet process the request for tax exemption in

³ Pars. 1 and 2, Statement of Facts and Antecedent Proceedings, Petitioner's Memorandum, CTA Case No. 8505, docket, p. 1230.

⁴ Par. 4, Statement of Facts and Antecedent Proceedings, Petitioner's Memorandum, CTA Case No. 8505, docket, p. 1230.

⁵ Exhibit "P-7", CTA Case No. 8505, docket, p. 935.

⁶ Exhibit "P-8", CTA Case No. 8505, docket, p. 936.

the absence of implementing rules and regulations required under Section 3 of RA 10026.

On December 6, 2011, petitioner filed with respondent an application for refund of income tax payments for taxable year 2010 amounting to ₱1,182,638.08. This was followed by a similar application on April 18, 2012, this time for the year 2011 for the amount of ₱1,384,914.18.

Respondent failed to act on both applications for refund.

Consequently, petitioner filed two (2) separate Petitions for Review with the Court on June 21, 2012 for the 2010 income taxes⁷ and on November 12, 2012 for the 2011 income taxes⁸, which were respectively docketed as CTA Case No. 8505 and CTA Case No. 8575.

On September 13, 2012, petitioner filed an Amended Petition for Review⁹ in CTA Case No. 8505, which the Court admitted on November 21, 2012.¹⁰

In her Answer in CTA Case No. 8505 filed on December 10, 2012¹¹, respondent assailed the jurisdiction of the Court based on the allegations in the petition and the relief prayed for. Respondent also claimed that RA 10026 was not self-executing, thus, its implementation was subject to certain conditions; that petitioner needed to prove its entitlement to refund and failure to do so was fatal; that petitioner was liable to income tax pursuant to Section 27(A) of the 1997 Tax Code; and, the claim for refund would be construed strictly against petitioner and in favor of the government.

In her Answer in CTA Case No. 8575 filed on February 21, 2013¹², respondent denied petitioner's entitlement to refund due to its failure to submit relevant documents in the

⁷ CTA Case No. 8505, docket, pp. 6-43.

⁸ CTA Case No. 8575, docket, pp. 11-28.

⁹ CTA Case No. 8505, docket, pp. 247-284.

¹⁰ CTA Case No. 8505, docket, pp. 381-386.

¹¹ CTA Case No. 8505, docket, pp. 396-408.

¹² CTA Case No. 8575, docket, pp. 125-136.

administrative level as required in Revenue Memorandum Order (RMO) No. 53-98,¹³ rendering its application pro-forma.

On May 30, 2013, the two Petitions for Review were consolidated¹⁴ at the instance of petitioner.

On August 23, 2013, respondent filed her Consolidated Pre-Trial Brief¹⁵, while petitioner¹⁶ filed its own via registered mail on November 25, 2013.

On February 26, 2014, a Pre-Trial Order¹⁷ was issued but it was amended on June 11, 2014, at the instance of the parties.

Petitioner presented four (4) witnesses, namely: (1) its Acting General Manager Engineer Edwin V. Regalado, (2) the Manager of its Legal Department Attorney Richard D. Tumanda, (3) the OIC-Department Manager of its Accounting and Budget Department Hilton P. Husain, and (4) the court-appointed Independent Certified Public Accountant (ICPA) Annabelle I. Opamin.

To expedite the proceeding, the testimony of Engineer **Edwin V. Regalado** was dispensed with on stipulation that as the Acting General Manager of petitioner, he was authorized in a Board Resolution to sign and file the instant Petitions for Review.

Attorney **Richard D. Tumanda**, in his Judicial Affidavit,¹⁸ declared that as petitioner's Legal Department Manager, he assisted in the filing of the instant petitions for tax refund with the BIR. Petitioner's applications for refund/tax credit for 2010 and 2011 were filed with respondent through registered mail. As appearing in the

¹³ Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket

¹⁴ Minutes of the hearing held on May 30, 2013, CTA Case No. 8505, docket, p. 662.

¹⁵ CTA Case No. 8505, docket, pp. 683-685.

¹⁶ CTA Case No. 8505, docket, pp. 829-834.

¹⁷ CTA Case No. 8505, docket, pp. 878-881.

¹⁸ Exhibit "P-19", CTA Case No. 8505, docket, pp. 1088-1093.

Certification dated July 11, 2013 and January 3, 2014 issued by the Philippine Postal Corporation, the applications for tax refund were received by respondent.

Witness **Hilton P. Husain**, also by way of a Judicial Affidavit,¹⁹ testified that as the OIC-Department Manager of petitioner's Accounting and Budget Department, he reviews and signs disbursements, journal vouchers, purchase orders and other reports. On November 16, 2011, he issued a Certification that for the period January 1 to December 31, 2010, its customers withheld a total amount of ₱1,182,638.08 as expanded withholding tax (EWT) from their respective monthly water bills and remitted the same to the BIR as shown in its ITR. To arrive at such amount, he collated all the Certificates of Creditable Tax Withheld delivered to them by their customers belonging to top 20,000 corporations and government agencies at the time they paid their monthly water bills. He believes that petitioner is exempt from income tax by virtue of RA 10026.

ICPA **Annabelle I. Opamin** also testified by way of a Judicial Affidavit,²⁰ indicating that petitioner had about 922 customers who withheld 2% from their total monthly water bills payment and remitted them to the BIR. Her examination and verification of the Certificates of Creditable Tax Withheld issued by these customers to petitioner show that the amount of ₱1,053,818.44 for 2010 and ₱1,312,700.81 for 2011 income tax withheld were properly substantiated.

After presentation of its evidence, petitioner rested.²¹ Respondent, on the other hand, opted not to adduce any.²²

On October 21, 2014, petitioner filed its Memorandum through registered mail.²³ Respondent did not file any per Records Verification Report²⁴ of the Judicial Records Division dated October 17, 2014. ✓

¹⁹ Exhibit "P-11", CTA Case No. 8505, docket, pp. 1044-1051.

²⁰ CTA Case No. 8505, docket, pp. 816-825.

²¹ Resolution dated August 26, 2014, CTA Case No. 8505, docket, p. 1213.

²² Minutes of the hearing held on September 1, 2014, CTA Case No. 8505, docket, p. 1214.

²³ CTA Case No. 8505, docket, pp. 1229-1259.

²⁴ Records Verification, CTA Case No. 8505, docket, p. 1228.

THE ISSUES

There are actually three issues²⁵ for the resolution of the Court, to wit:

1. Whether the Court has jurisdiction over the instant petitions;
2. Whether petitioner is entitled to refund in the amount of ₱1,182,638.08, allegedly representing income tax for taxable year 2010 and ₱1,384,914.18 for taxable year 2011; and
3. Whether the Court has authority to resolve the issues raised by petitioner regarding RA No. 10026.

THE COURT'S RULING

On the issue of jurisdiction of the Court, Sections 204 (C) and 229 of the NIRC of 1997, as amended, relevantly provide:

"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** ✓

²⁵ Amended Pre-Trial Order dated June 11, 2014, CTA Case No. 8505, docket, pp. 1193-1194.

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."

"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 supplied*)

The foregoing provisions require that both the administrative claim for refund under Section 204(C) and the subsequent judicial action for recovery of the tax under Section 229 of the NIRC, as amended, be filed within two (2) years from the date of payment of tax. It is therefore necessary that the date of payment of the subject tax be known to determine when the said two year prescriptive period shall commence. ✓

In the instant case however, the **date of payment of the alleged erroneously withheld income taxes could not be determined** for purposes of determining the two-year prescriptive period within which to file both the administrative and judicial claims for refund. Petitioner failed to adduce evidence indicating the date of payment of subject income taxes withheld for taxable years 2010 and 2011. Petitioner submitted only the relatively short ICPA Report, the self-serving Certifications dated November 16, 2011 and March 14, 2012, the 2010 and 2011 Annual Income Tax Returns of petitioner, and the Judicial Affidavits of petitioner's witnesses to support its claim of erroneously withheld income taxes. Petitioner failed to present any Monthly Withholding Tax Return to prove the actual payment/remittance of the alleged erroneously withheld income taxes. Without the said documents, the Court cannot with certainty determine if the two-year period for purposes of the claims for refund has been complied with by petitioner. On this score alone, the consolidated Petitions for Review must fail.

Assuming *arguendo* that the Petitions for Review were timely filed, is petitioner entitled to the refund sought by virtue of Republic Act. No. 10026²⁶ which lapsed into law on March 11, 2010?

RA No. 10026 amended the NIRC of 1997 by adding local water districts (LWD) among those exempt from income tax. The pertinent portions of which reads:

"SECTION 1. Section 27(C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337, is hereby further amended to read as follows:

'SEC. 27. *Rates of Income Tax on Domestic Corporations.* -

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²⁶ An Act Granting Income Tax Exemption to Local Water Districts by Amending Section 27(C) of the National Internal Revenue Code (NIRC) of 1997, and adding Section 289-A to the Code, for the purpose.

'(C) *Government-owned or - Controlled Corporations, Agencies or Instrumentalities.* - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, **except** the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), **the local water districts (LWD)** and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

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SECTION 2. A new section, designated as Section 289-A under Chapter II, Title XI, of the same Code is inserted to read as follows:

'Section 289-A. *Support for Local Water Districts.* - The amount that would have been paid as income tax and saved by the local water district by virtue of its exemption to the income taxes shall be used by the local water district concerned for capital equipment expenditure in order to expand water services coverage and improve water quality in order to provide safe and clean water in the provinces, cities, and municipalities: *Provided, That*, the water district shall adopt internal control reforms that would bring about their economic and financial viability: *Provided, further, That*

✓

the water district shall not increase by more than twenty percent (20%) a year its appropriation for personal services, as well as for travel, transportation or representation expenses and purchase of motor vehicles.

'All unpaid taxes or any portion thereof due from a local water district for the period starting August 13, 1996 until the effectivity date of this Act are hereby condoned by the Government subject to the following conditions: (1) that the Bureau of Internal Revenue, after careful review of the financial statements of a water district applying for condonation of taxes due, establishes its financial incapacity, after providing for its maintenance and operating expenses, debt servicing and reserve fund, to meet such obligations for the period stated herein; and (2) that the water district availing of such condonation shall submit to Congress of the Philippines a program of internal reforms, duly certified by the local water utilities administration, that would bring about its economic and financial viability.

'All water districts, through the Local Water Utilities Administration, shall furnish the Committee on Ways and Means of the Senate and House of Representatives, respectively, on an annual basis, with statistical data and financial statements regarding their operations and other information as may be required, for purposes of



monitoring compliance with the provisions of this Act and reviewing the rationalization for tax exemption privileges.”

The newly inserted Section 289-A mentioned in RA No. 10026 does not impose any condition on LWDs to be exempt from payment of income tax. There is nothing in the provision that even insinuates the need for Implementing Rules and Regulations before LWDs, such as petitioner, may be entitled to income tax exemption.

The ruling in *Securities and Exchange Commission vs. Interport Resources Corporation, et al.*²⁷ is in point, thus:

In the absence of any constitutional or statutory infirmity, which may concern Sections 30 and 36 of the Revised Securities Act, this Court upholds these provisions as legal and binding. It is well settled that every law has in its favor the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. **The mere absence of implementing rules cannot effectively invalidate provisions of law**, where a reasonable construction that will support the law may be given. In *People v. Rosenthal*, this Court ruled that:

In this connection we cannot pretermitt reference to the rule that “legislation should not be held invalid on the ground of uncertainty if susceptible of any reasonable construction that will support and give it effect. An Act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it is



²⁷ G.R. No. 135808, October 6, 2008.

passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith." (25 R.C.L., pp. 810, 811)

In *Garcia v. Executive Secretary*, the Court underlined the importance of the presumption of validity of laws and the careful consideration with which the judiciary strikes down as invalid acts of the legislature:

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The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management. **To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.** It is well established that administrative authorities have the power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more



extensive prerogative or deviate from the mandate of the statute. **Moreover, where the statute contains sufficient standards and an unmistakable intent,** as in the case of Sections 30 and 36 of the Revised Securities Act, **there should be no impediment to its implementation.** *(Emphasis supplied)*

Hence, the mere absence of implementing rules cannot effectively invalidate provisions of law. To rule that the absence of implementing rules can render ineffective an act of Congress, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules.

Be that as it may, the instant Petitions for Review must still fail for failure of petitioner to substantiate its claimed entitlement to refund.

While it appears that the income payments have been declared as part of the gross income of petitioner, Petitioner failed to present the certificates of tax withheld at source (BIR Form No. 2307) duly issued by its customers to it showing the amount paid and the tax withheld from it. The testimonies of petitioner's witnesses, specifically Hilton P. Husain and ICPA Annabelle I. Opamin, as to the existence of the said withholding tax statements (BIR Form 2307) are self-serving without the presentation and identification of such documents which would establish the fact of withholding. ✓

Section 2.58.3 (B) of RR 2-98 is plain and clear, viz.:

"Sec. 2.58.3. *Claim for Tax Credit or Refund.* —

xxx xxx xxx

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income

payments shall be given due course **only when it is shown that** the income payment has been declared as part of the gross income and **the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom** (*Emphasis supplied*)."

In addition, the said Regulations is specific as to what BIR Form shall be used by the withholding agent. Section 2.58 (B) of RR 2-98, as amended by RR 03-02, provides, to wit:

"Sec. 2.58. RETURNS AND
PAYMENT OF TAXES WITHHELD AT
SOURCE. —

xxx xxx xxx

(B) *Withholding tax statement for taxes withheld.* — Every payor required to deduct or withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form No. 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.

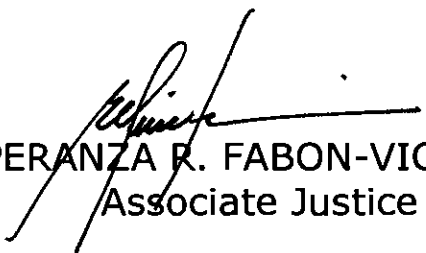
For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year. ✓

Upon request of the payee, however,
the payor must furnish such certificate
simultaneously with the income payment."
(Underscoring supplied)

Hence, for purposes of establishing the fact of withholding, only BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) issued by the withholding agent may be introduced. It cannot be replaced by any other BIR Form. This is so because administrative regulations have the force and effect of law.²⁸ Needless to state, what the law decrees must be obeyed.²⁹

WHEREFORE, the instant consolidated Petitions for Review are hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.


ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:


LOVELL R. BAUTISTA
Associate Justice

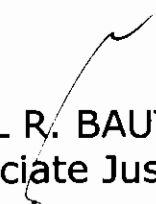

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

²⁸ *Banco Filipino Savings and Mortgage Bank vs. Navarro, et al.*, G.R. No. L-46591, July 28, 1987.

²⁹ *The Philippine American Management Company, Inc., et al. vs. The Philippine American Management Employees Association, et al.*, G.R. No. L-35254, May 25, 1973.

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.



LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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