REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

EAST WEST BANKING CORPORATION, *Petitioner,*	**CTA Case No. 9762**
	Members:
-versus-	
	DEL ROSARIO, *P.J., Chairperson,* **FABON-VICTORINO, MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE AND THE REVENUE DISTRICT OFFICER OF REVENUE DISTRICT OFFICE NO. 57-CITY OF BIÑAN, BUREAU OF INTERNAL REVENUE, *Respondents.*	Promulgated: OCT 0 2 2019 : 10:58

x- -x

DECISION

MANAHAN, *J.*:

This is a Petition for Review filed by East West Banking Corporation, as petitioner, praying for the refund of or the issuance of a tax credit certificate (TCC) in the total amount of NINE HUNDRED NINETY-EIGHT THOUSAND SIX HUNDRED EIGHTY TWO and 41/100 PESOS (Php998,682.41) allegedly representing erroneously paid capital gains tax (CGT) and documentary stamp taxes (DST) on January 28 and 29, 2016, respectively.

THE PARTIES

Petitioner East West Banking Corporation is a universal banking corporation duly organized and existing under the Philippine laws with corporate address at the East West

Corporate Center, 5th Avenue corner 23rd Street, Bonifacio Global City, Taguig City.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR), clothed with the power and duty to, among others, act upon and approve claims for refund or tax credit as provided by law. He may be served with summons and other court processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Revenue District Officer of Revenue District Office (RDO) No. 57 – City of Biñan, Laguna is an official of the BIR authorized to, among others, collect taxes and grant refunds as delegated by the CIR. He holds office at the 2/F Umbria Commercial Center, National Hi-way (New Biñan Road), San Antonio, Biñan City.

THE FACTS

In 2008 and 2011, petitioner acquired the following properties after its bank borrowers defaulted in payment, *viz.*:

Registered Owner (Bank Borrower)	**TCT No/s.**	**Date of Acquisition**	**Mode of Acquisition**
Roberto C. Cerbo married to Marissa Cerbo	T-738930[1]	May 13, 2011	*Dacion En Pago*[2]
Mylin M. Aguinaldo	T-666646[3] and T-666647[4]	July 8, 2008	Extrajudicial Foreclosure[5]

Thereafter, in the course of securing a Certificate Authorizing Registration (CAR) from the BIR, petitioner was required by respondents, through its RDO No. 57 – City of Biñan, Laguna, to submit a copy of the previous CAR covering the transaction between petitioner's borrowers, Roberto C.

[1] Exhibit "P-3".
[2] Exhibit "P-2".
[3] Exhibit "P-11".
[4] Exhibit "P-12".
[5] Exhibit "P-15".

Cerbo and Mylin M. Aguinaldo, and the previous owners of the properties before the said borrowers as required under BIR Revenue Memorandum Circular (RMC) No. 76-2007 (*Prescribing Additional Mandatory Documentary Requirements for One-time Transactions Involving Transfers of Real Property*).

On January 27, 2016, petitioner filed a letter[6] dated January 26, 2016 to RDO No. 57 – City of Biñan, stating that since it could not produce a copy of the previous CARs of the respective properties' prior transactions, considering that its submission is not among the documents required in loan processing, petitioner will, nonetheless, pay the taxes due on the "prior transactions" in order to secure the said CARs between the previous owners and petitioner's bank borrowers to enable it to eventually consolidate title over the subject properties. More so, petitioner also reserved the right to question the legality of the said RMC No. 76-2007 in the proper forum.

Thus, on January 28 and 29, 2016 petitioner paid the taxes, namely the CGT and DST due on the properties detailed as follows:

Type of Tax	**TCT No. T-738930** *(Paid on 1/28/16)*[7]	**TCT Nos. T-666646 and T-666647** *(Paid on 1/29/16)*[8]
Capital Gains	₱ 389,578.29	₱ 404,870.55[9]
Documentary Stamp	101,911.85	102,321.72[10]
TOTAL	**₱491,490.14**	**₱507,192.27**

Then, on January 17, 2018, petitioner filed with respondent a letter re: claim for refund[11] dated January 15, 2018 seeking the refund of the erroneously paid CGT and DST in the total amount of ₱998,682.41. Subsequently, on January 25, 2018, petitioner also filed with the RDO No. 57 – City of

---

[6] Exhibit "P-1".
[7] Exhibit "P-8".
[8] Exhibits "P-22" and "P-23".
[9] Exhibits "P-18" and "P-18-A".
[10] Exhibits "P-21" and "P-21-A".
[11] Exhibit "P-26".

Biñan a letter re: claim for refund[12] of its alleged erroneously paid taxes together with four (4) sets of Application for Tax Credits/Refunds (BIR Form No. 1914) in the respective amounts of ₱389,578.29[13]; ₱101,911.85[14]; ₱404,870.55[15]; and, ₱102,321.72[16].

Due to the alleged inaction of respondent on the said claims for refund, petitioner filed through registered mail the instant Petition for Review[17] on January 26, 2018.

On April 17, 2018, respondents filed their Answer to the Petition for Review. [18]

On April 19, 2018, a Notice of Pre-Trial Conference[19] was issued by this Court, setting the case for pre-trial on May 24, 2018. As such, a Pre-Trial Brief[20] was filed by petitioner on May 18, 2018, while respondents' Pre-Trial Brief[21] was filed on June 1, 2018.

Thereafter, the parties submitted their Joint Stipulation of Facts and Statement of the Issue (JSFI)[22] on June 25, 2018. Consequently, a Pre-Trial Order[23] was issued by this Court on July 6, 2018, which deemed the pre-trial terminated.

During trial, petitioner presented as its lone witness Mr. Kenny Junne L. Ybañez, Administrative Officer of Acquired Asset Department of petitioner, who testified on direct examination by way of judicial affidavit[24].

On July 16, 2018 petitioner filed, through registered mail, its Formal Offer of Documentary Exhibits[25].

---

[12] Exhibit "P-27".
[13] Exhibit "P-29".
[14] Exhibit "P-28".
[15] Exhibit "P-30".
[16] Exhibit "P-31".
[17] Docket, pp. 12-40.
[18] *Id.*, pp. 195-205.
[19] *Id.*, pp. 206-207.
[20] *Id.*, pp. 219-227.
[21] *Id.*, pp. 320-324.
[22] *Id.*, pp. 337-342.
[23] *Id.*, pp. 343-346.
[24] Exhibit "P-33"; Judicial Affidavit (Of Kenny Junne L. Ybañez, witness for petitioner East West Banking Corporation), docket pp. 228-244.
[25] Docket, pp. 354-360.

In a Resolution[26] dated August 22, 2018, this Court admitted all exhibits offered by petitioner as evidence except for Exhibits "P-4", "P-5", "P-6", and "P-7" for its failure to present the originals for comparison.

When called to present their case, respondents' counsel manifested that since there is no report of investigation in this case, they will no longer present any evidence. Thus, the parties were given a period of thirty (30) days within which to submit their respective memoranda.[27]

Petitioner filed its Memorandum[28] on September 26, 2018 while respondents filed their Memorandum[29] on October 1, 2018 via a Motion to Admit Memorandum[30]. Hence, in the Resolution[31] dated October 8, 2018, this Court, after granting respondents' Motion to Admit, deemed the present case submitted for decision.

THE ISSUE

The sole issue[32] submitted by the parties for this Court's resolution is whether petitioner's claim for refund or tax credit has legal and factual basis.

Petitioner's Arguments

Petitioner primarily claims that it is entitled to the refund of the erroneously collected CGT and DST for transfers prior to the subject transactions. It insists that Section 27(D)(5) of the NIRC of 1997, as amended, only requires payment of CGT on the gains realized in the sale, exchange or disposition of lands. Nowhere in the said Section does it say that an obligation is imposed on the parties to pay the CGT on the previous transactions involving the same property. Thus, to require a party to pay the previous CGT on a current sale transaction,

---

[26] *Id.*, pp. 408-409.
[27] Order dated August 29, 2018, *id.*, p. 411.
[28] Docket, pp. 415-439.
[29] *Id.*, pp. 445-454.
[30] *Id.*, pp. 440-444.
[31] *Id.*, p. 456.
[32] Joint Statement of the Issue, Joint Stipulation of Facts and Statement of the Issue, *id.*, p. 338.

should it fail to produce the previous CAR, goes beyond the requirement of the law.

More so, as to respondents' contention that this Court has no jurisdiction over the present case, petitioner counters that it is not appealing the interpretation or reasonableness of RMC No. 76-2007 but rather the inaction of respondents on its claim for refund. Petitioner believes that the present case can be resolved without having to pass on the issue of the propriety of the said revenue circular, in the sense that: (a) the law does not impose any obligation on the parties to pay taxes for previous transfers; and, (b) the BIR issued RMC No. 105-2016 dated August 23, 2016 to amend RMC No. 76-2007 thereby removing the requirement of producing the previous CAR.

Lastly, petitioner argues that while RMC No. 76-2007 may be a valid issuance, the same has been superseded by RMC No. 105-2016. As such, petitioner claims that RMC No. 105-2016 should be applied retroactively considering the amendment of the mandatory requirements will not be prejudicial to taxpayers and the amendatory circular is merely procedural in nature.

Respondents' Arguments

In their Answer, respondents interpose the following Special and Affirmative Defenses:

> **"THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION.**
>
> 6. It is settled that what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought.
>
> 7. A perusal of the instant petition readily shows that it is not a mere claim for refund or issuance of a tax credit for alleged erroneously paid taxes, for it is in fact primarily questioning the validity of Revenue Memorandum Circular (RMC) No. 76-2007 which provided for the submission of either the following as a requisite for the issuance of a Certificate Authorizing Registration (CAR): *a*

a. Certified true copy of the original CAR (copy of the Registry of Deeds) pertaining to the transfer of property prior to the issuance of Original/Transfer Certificate of Title (OCT/TCT) or Condominium Certificate of Title (CCT) which is the subject of the current sale/transfer; or

b. certification issued by the Registry of Deeds indicating the serial number of the CAR, date of issuance of CAR, the Revenue District Office Number of the district office that issued the CAR, the name of the Revenue District Officer who signed the CAR, the type of taxes paid and the amount of payment per tax type.

8. Petitioner recognizes that the issue involved in this case is the propriety of requiring the certified true copy of the CAR pertaining the transfer of property prior to the issuance of original/transfer title which is the subject of the sale/transfer. In its Petition, petitioner states:

'The BIR's imposition of the payment of previous CGT upon the current parties to the current sale transaction involving subject real property goes beyond the requirement of the law.'

x x x

'B. The requirement of submitting previous CAR before transfer of title of property is unreasonable and oppressive.'

9. Clearly, RMC 76-2007 was issued in the exercise of CIR's power to interpret tax laws as provided for in Section 4 of the NIRC of 1997, as amended, *viz.*:

x x x

10. When an administrative agency, such as the BIR, renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law. Thus, RMC 17-2013 falls under the quasi-legislative power of the CIR as provided for in the first paragraph of Section 4.

11. In *Petron Corporation vs. CIR*, this Court ruled that:

'Under the second paragraph of Section 4, respondent CIR has the power to decide on administrative tax cases which includes 'other matters'. These 'other matters' pertain to disputes such as the determination if the warrant of distraint and levy issued by the BIR is valid; if the Waiver of Statute of Limitations was validly effected and determination if the BIR's right

> to collect taxes has prescribed. **With the nature of 'other matters' as previously enumerated, there is no way an action of the CIR through issuance of a BIR Ruling can be classified as 'other matters'. The BIR Ruling is simply an interpretation of a provision of tax code in the exercise of its quasi-legislative power. To classify the BIR Ruling as 'other matters' will render inoperative the first paragraph.** *(Emphasis supplied)*

12. Clear from the foregoing is the fact that it is the Secretary of Finance who has jurisdiction to review the interpretation of the CIR of the provisions of the NIRC of 1997, as amended.

PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

13. Time and again, the Supreme Court consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.

14. As discussed, the power to review CIR rulings issued in relation to the CIR's power to interpret tax laws belongs to the Secretary of Finance.

15. Moreover, in the recent case of *CIR vs. Court of Appeals and Petron Corporation*, the Court expressly held that,

> '... the CIR correctly argues that the CTA had no jurisdiction to take cognizance of the petition as it its resolution would necessarily involve a declaration of the validity or constitutionality of the CIR's interpretation of Section 148 (e) of the NIRC, which is subject to the exclusive review by the Secretary of Finance an ultimately by the regular court.'

16. In the instant petition, petitioner did not appeal before the Secretary of Finance. Prior to elevating the case to this Court, petitioner should have questioned RMC 76-2007 before the

Secretary of Finance. Only after the Secretary of Finance adversely ruled on its appeal can petitioner come to Court.

17. While it is true that the rule admits of exceptions, there is no showing in the instant petition that it falls in one of the exceptions.

18. What is apparent is that petitioner unjustifiably failed to exhaust the administrative remedies available in the Department of Finance before seeking recourse with this Court.

19. When the law provides for a remedy against a certain action of an administrative board, body, or officer, relief to the courts can be made only after exhausting all remedies provided therein.

20. It is settled that the non-observance of the doctrine of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.

21. In view of petitioner's failure to exhaust administrative remedies when it directly elevated to the CTA the CIR Ruling before appealing it first to the Secretary of Finance, respondent respectfully submits that the instant Petition be dismissed.

RMC 76-2007 IS A VALID ISSUANCE AS SUCH, PETITIONER IS NOT ENTITLED TO THE CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

22. The Bureau of Internal Revenue is mandated to assess and collect all national internal revenue taxes, fees, and charges, and to enforce all forfeitures, penalties and fines connected therewith, including the execution of judgments.

23. Further, because of the impracticability of the lawmakers to provide general regulations for various and varying

details of management, it is necessary to vest administrative authorities with the power to make rules and regulations.

24. Accordingly, in addition to the abovementioned powers, the BIR through respondent Commissioner of Internal Revenue is given the power to interpret the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws.

25. Pursuant to this power, respondent issued Revenue Memorandum Circular (RMC) No. 76-2007.

26. In compliance to its mandate to collect all national internal revenue taxes and pursuant to its power to interpret the provisions of the NIRC of 1997, as amended, respondent Commissioner of Internal Revenue issued RMC No. *[76]*-2007. The circular was issued to ensure that all internal revenue taxes due on transfers of real property have been correctly paid and remitted to the government.

27. Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.

28. RMC No. 76-2007 being a valid issuance, petitioner's claim for refund or issuance of tax credit certificate has no leg to stand on.

29. Section 204 of the NIRC of 1997, as amended, provides:

30. From the foregoing, it is clear that in order to be entitled to a refund of erroneously or illegally collected taxes, there must be a showing that there is an erroneous or illegal collection of tax, or a penalty collected without authority, or sum

excessively or wrongfully collected. In the case at bar, the capital gains tax was not erroneously collected from petitioner.

31. Section 24(D)(1) of the NIRC of 1997, as amended provides:

> **(1) In General.** - The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24 (A) or under this Subsection, at the option of the taxpayer;

32. In relation thereto, RMC 76-2007 requires proof that the capital gains tax from the previous transactions/transfers have been paid. Clearly, the payment was not erroneous as the same was paid in pursuance to a valid issuance of the CIR.

33. It has been consistently held that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

RMC NO. 105-2016 CANNOT BE APPLIED RETROACTIVELY.

34. In its petition, petitioner admits that it paid the alleged erroneously collected taxes in January 28 and 29, 2016 while RMC No. 105-2016 was issued only on August 2016.

35. As discussed above, administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law.

36. Further, it is binding rule, conformably with Article 4 of the Civil Code, that generally, laws shall have only a prospective effect and must not be applied retroactively in such a way as to apply to pending disputes and cases. This is expressed in the legal maxim *lex prospicit, non respicit* (the law looks forward not backward).

37. While it is true that the rule admits of certain exceptions, such as when the law itself provides for retroactivity, there is no showing that petitioner's case falls among the exceptions.

38. In fact, the NIRC of 1997, as amended, provides for non-retroactivity of rulings it issued.

39. Thus, petitioner's case not being the exception to the rule of non-retroactivity, RMC 105-2016 cannot be applied in its favor." *(Citations omitted)*

In a nutshell, respondents mainly argue that this Court has no jurisdiction over the instant Petition considering that the present case is not a claim for refund or issuance of a tax credit, but in reality, a case questioning the validity of RMC No. 76-2007. Respondents argue that petitioner should have instead filed a petition with the Secretary of Finance since the power to review CIR rulings in relation to his power to interpret tax laws primarily belongs to the Secretary of Finance before elevating the same to the Court of Tax Appeals (CTA). Accordingly, by directly elevating the matter to the CTA before its appeal with the Secretary of Finance, petitioner failed to observe the doctrine of *exhaustion of administrative remedies*. Respondents aver that it has been held by the Supreme Court in a long line of cases, that the non-observance of the doctrine of exhaustion of administrative remedies results in a lack of cause of action, which is one of the grounds enumerated in the Rules of Court to justify the dismissal of a complaint with court.

Respondents likewise submit that laws generally shall have prospective effect – in fact, the NIRC of 1997, as amended, itself provides for non-retroactivity of rulings. Although the rule admits of certain exceptions, such as when the law itself provides for retroactivity, there is no showing that petitioner's case falls among the exceptions.

RULING OF THE COURT

We shall first determine whether petitioner's claim for refund was timely filed as this will also be determinative of this Court's jurisdiction to take cognizance of the case.

Sections 204 (C) and 229 of the 1997 National Internal Revenue Code (NIRC), as amended, are relevant, and we quote:

> "**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 supplied)*
>
> "**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)*

From the foregoing, settled is the rule that both the administrative claim, *via* refund with the BIR, and the judicial claim, *via* the subsequent appeal to the CTA, must be filed within the two-year period from the date of payment of the tax.[33]

In this case, petitioner paid the CGT and DST of the subject properties on January 28 and 29, 2016. Counting two (2) years therefrom, petitioner had until January 28 and 29, 2018 within which to file claims for refund thereof. For ease of reference, a table is provided below to show the pertinent dates relative to the subject claim for refund, *viz.*:

TCT No.	**Type of Tax**	**Date of Payment**	**2-Year Prescriptive Period**	**Date of Admin. Claim**	**Date of Judicial Claim**
T-738930	CGT	January 28, 2016[34]	January 28, 2018	January 25, 2018[35]	January 26, 2018[36]
	DST				
	CGT				

33 See *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.
34 Exhibit "P-8".
35 Exhibits "P-22" and "P-23".
36 Exhibits "P-27" to "P-31".

T-666646 and T-666647	DST	January 29, 2016[37]	January 29, 2018		

Clearly, petitioner was able to timely file both its administrative and judicial claims within the two-year prescriptive period. As such, this Court can take cognizance of the present case.

Another issue, however, was raised by respondents as regards the jurisdiction of this Court.

Respondents insist that regardless of whether the present case is timely filed or not, this Court is still bereft of any jurisdiction to rule on the legality or validity of an administrative issuance because according to them this is not a mere claim for refund of erroneously paid taxes, but in fact involves questioning the propriety of RMC No. 76-2007.

This Court does not agree with the contention of respondents.

Verily, the jurisdiction of the CTA is conferred by Republic Act (RA) No. 1125[38], as amended by RA No. 9282,[39] Section 7(a) thereof provides for one of the instances where this Court may exercise its exclusive appellate jurisdiction, *viz.*:

> "**Sec. 7.** *Jurisdiction.* –The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue or other**

[37] Supra No. 17.
[38] An Act Creating the Court of Tax Appeals.
[39] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, And For Other Purposes.

laws administered by the Bureau of Internal Revenue;" *(Emphasis supplied)*

Fittingly, in the case of *The City of Manila, et al. vs. Hon. Caridad H. Grecia-Cuerdo, et al.*[40], the Supreme Court discussed about the inherent powers in the jurisdiction of the CTA which are needed in order to effectively exercise its appellate jurisdiction. The High Court elaborated that, in transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction, thus:

> "A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.
>
> Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.
>
> x x x xxx xxx
>
> x x x. **Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of**

---

[40] G.R. No. 175723, February 4, 2014.

its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance." (emphasis supplied)

The Supreme Court also recognized the jurisdiction of the CTA over questions of constitutionality or validity of a tax law or regulation[41], in this manner:

> "The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act 1125, as amended."

The present case involves petitioner's entitlement to refund its alleged erroneously paid taxes. Nonetheless, incidental in resolving the crux of the controversy is also determining the applicability of RMC No. 105-2016 in the present case. Henceforth, being mindful of Section 4[42] of the NIRC of 1997, as amended, this Court shall not pass upon the validity or constitutionality of RMC 76-2007, but will however determine whether RMC No. 105-2016 may indeed be applied considering that the former has been superseded by the latter.

Clearly, the Court has jurisdiction to rule on these matters.

We will now proceed to the substantive merits of the claim for refund of petitioner.

Petitioner anchors its claim on the alleged erroneously paid CGT and DST pertaining to the acquisition of real

---

[41] Resolution in the case of *Banco de Oro, et. al., vs. Republic of the Philippines, CIR, et.al.*, G.R. No. 198756, August 16, 2016.

[42] "**SEC. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*- The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

properties from the bank's borrowers (former owners Roberto C. Cerbo and Mylin M, Aguinaldo) as a result of *Dacion en pago* on the part of Mr. Cerbo and extrajudicial foreclosure on the part of Ms. Aguinaldo.

Petitioner presents various arguments against such payments made, foremost among which is the unreasonable requirement contained in RMC No. 76-2007 (issued on October 25, 2007) which requires the submission of the CARs pertaining to previous transfers as a condition before the CAR for the current transfer may be issued. Petitioner cites RMC No. 105-2016 issued on August 23, 2016, where the Commissioner of Internal Revenue (CIR) allegedly (in effect) removed the requirement of RMC No. 76-2007 to present proof that taxes were paid on the previous transfers since payments should be presumed when such transfers were allowed by the BIR and Register of Deeds in the first place.

Granting that the provisions of RMC No. 76-2007 are valid, petitioner asserts that the provisions of RMC 105-2016 should be applied retroactively to the subject transactions.

Respondents counter that laws generally shall have prospective effect and in fact the 1997 NIRC, as amended, provides for non-retroactivity of rulings.

We find that both parties' arguments on the retroactivity or non-retroactivity of RMC No. 105-2016 miss the point altogether in relation to the real issue of this case.

In claims for refund based on Section 229 of the 1997 NIRC, as amended, it is basic that there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively collected. In sum, the collection of the tax was either erroneous or without legal basis or that payment was made in excess of what is required by the law and implementing regulations, such that the amount overpaid must be returned to the taxpayer.

The main rationale for the instant claim for refund is based on an erroneous payment or payment made without any legal basis and it is in this regard that we have to agree with petitioner for the simple reason that there is no law which imposes CGT and DST on previous transfers of real property on the parties to a current sales transaction involving the same real property.

Section 27 (D) (5) and Section 196 of the 1997 NIRC, as amended, are quite explicit in this regard, and we quote:

> "Section 27. *Rates of Income Tax on Domestic Corporations.-*
>
> xxx xxx xxx
>
> (D) Rates of Tax on Certain Passive Incomes. –
>
> xxx xxx xxx
>
> (5) *Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings.* – A final tax of six percent (6%) is hereby imposed on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of this Code, whichever is higher, of such lands and/or buildings."
>
> Section 196. *Stamp Tax on Deeds of Sale and Conveyances of Real Property.* – On all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any land, tenement or realty sold shall be granted, assigned or transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid on such realty or on its fair market value determined in accordance with Section 6 (E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration."
>
> xxx xxx xxx

The requirements under RMC No. 76-2007 and later amended by RMC No. 105-2016 speak of conditions before a CAR will be issued in order for the Register of Deeds to effect a change in the names registered in the title of the property. These requirements embodied in such circulars must be distinguished from a tax obligation provided by law in case of transfer of real property, e.g., payment of CGT and DST. Clearly then, the aforequoted provisions of Sections 27 (D) (5) and 196 of the 1997 NIRC, as amended, speak only of a single payment of CGT and DST on each sale of real property and which pertain to the seller and the buyer of the subject property as parties to the transaction. Apart from payment of the CGT and DST, the law does not impose a condition before one is considered to have settled its tax obligations for the sale or transfer of real property. The requirements for the issuance of the CAR should be clearly delineated from the tax obligations (under the 1997 NIRC, as amended) inherent in the sale or transfer of real property.

Be that as it may, even a cursory reading of the provisions of RMC No. 76-2007 and RMC No. 105-2016 do not impose a requirement for the payment of CGT and DST on previous transfers of the subject real property if the taxpayer cannot produce the CARs of the previous transactions. Admittedly, the petitioner was constrained to pay the CGT and DST on the previous transfers *only* to expedite the consolidation of its title over the properties in question as can be read from Paragraph 6 of its Petition for Review, and we quote:

> "6. Since EWBC could not produce a copy of the previous CAR pertaining to the prior transaction, **EWBC was erroneously required but was nonetheless constrained to pay the previous CGT and DST including surcharges in order to secure the CAR of the prior transactions and eventually able to consolidate title over the subject properties."** (emphasis supplied)

Neither the law nor its implementing regulations contain a statement requiring payments of the CGT and DST on prior transactions and the BIR does not have the authority to impose taxes which are not clearly imposed by a provision or provisions of law. The Supreme Court in the case of *SMI-ED Technology, Inc. vs. CIR,*[43] plainly ruled, thus:

> "xxx **A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.** In answering the question of who is subject to tax statutes, it is basic in case of doubt, such statutes are to be construed most strongly against the government and in

[43]G.R. No. 175410, November 12, 2014.

favor of the subjects or citizens because burdens are not to be imposed beyond what statutes expressly and clearly import." (emphasis supplied)

The payments of CGT and DST made by petitioner for prior transactions is not sanctioned by law hence said payments are considered erroneous and must be refunded. The wisdom of the Supreme Court, in its ruling in the case of *CIR vs. Mirant Pagbilao Corporation,*[44] is *apropos*, and we quote in part, thus:

"xxx On the other hand, a tax refund may be, as usually it is, predicated on tax refund provisions allowing a refund of erroneous or excess payment of tax. **The return of what was erroneously paid is founded on the principle of *solutio indebiti,*** a basic postulate that no one should unjustly enrich himself at the expense of another. The caveat against unjust enrichment covers government." (emphasis supplied)

Having settled the issue on erroneous or illegal payment of taxes, this Court would no longer delve on the issue of the retroactivity or non-retroactivity of RMC No. 105-2016 as it is not on point with the meat of the issue which lies beneath the arguments propounded by both parties.

WHEREFORE, premises considered, petitioner's claim for refund or issuance of tax credit certificate for erroneously imposed and collected CGT and DST in the amount of Php998,682.41 is **GRANTED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

---

[44] G.R. No. 172129, September 12, 2008.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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