REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2261** (CTA Case No. 9944)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
AVON COSMETICS, INC., Respondent.	***Promulgated:*** JUN 2 2 2021 11:15a.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) on June 10, 2020 *via* registered mail and received by the Court on June 17, 2020, against respondent Avon Cosmetics, Inc. (ACI), praying for the reversal and setting aside of the Decision dated November 8, 2019[2] and the Resolution dated March 2, 2020[3], both rendered by the First Division of this Court (Court in Division) in CTA Case No. 9944, entitled *"Avon Cosmetics, Inc., Petitioner, versus Commissioner of*

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[1] EB Docket, pp. 1 to 9.
[2] Penned by Presiding Justice Roman G. Del Rosario, and concurred by Associate Justice Esperanza R. Fabon-Victorino (retired) and Associate Justice Catherine T. Manahan, EB Docket, pp. 15 to 25.
[3] EB Docket, pp. 26 to 27.

Internal Revenue, Respondent", the dispositive portions of which, respectively read as follows:

Decision dated November 8, 2019:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Avon Cosmetics, Inc. in the amount of ₱10,896,470.80, representing the latter's erroneous second payment of final withholding VAT for September 2015.
>
> **SO ORDERED**."

Resolution dated March 2, 2020:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated 8 November 2019) is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Petitioner is the duly appointed CIR with office address at National Office Building, BIR, Agham Road, Diliman, Quezon City where he may be served with summons, processes, orders and notices, from the Court.

On the other hand, ACI is a corporation duly organized and existing under Philippines laws, with business address at 10th Floor, Gercon Plaza, 7901 Makati Avenue, Makati City. It is a registered taxpayer with Tax Identification Number (TIN) 000-107-629-00000 per Bureau of Internal Revenue (BIR) Certificate of Registration issued on May 27, 2016.

On October 9, 2015, ACI filed its *Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld* (BIR Form No. 1600) *via* Electronic Filing and Payment Systems (*eFPS*) facility in relation to its royalty payment to Avon Products, Inc. for September 2015, with corresponding final withholding value-added tax (VAT) of ₱10,896,470.80.

On October 12, 2015, ACI first attempted to remit the tax through the Metrobank *eFPS* tax payment facility but due to technical difficulties, it was not able to complete and confirm the tax payment/remittance. On the same day, it was able to successfully processed the tax payment/remittance through the BPI Head Office *eFPS* tax payment facility.

It turned out that the initial attempt to remit tax through the Metrobank *eFPS* tax payment facility remained pending, and on October 10, 2016, the *eFPS* tax payment facility processed and cleared the tax payment/remittance for final withholding VAT for the month of September 2015 in the amount of ₱10,896,470.80.

On July 9, 2018, ACI filed before the BIR a *Letter* requesting for a tax credit certificate or tax refund of erroneously paid tax amounting to ₱10,896,470.80, representing the alleged September 2015 final VAT, which according to ACI was inadvertently paid twice on October 12, 2015 and October 10, 2016.

Due to the inaction of the CIR on said claim for refund, ACI filed a *Petition for Review*[4] before the Court in Division on October 9, 2018, entitled "*Avon Cosmetics, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent*", docketed as CTA Case No. 9944.

On November 28, 2018, CIR filed his *Answer*, with the following special and affirmative defenses: (1) ACI's claim for refund is subject to administrative routinary investigation/examination by the BIR; (2) the amount of ₱10,896,470.80 allegedly representing erroneously paid excess September 2015 Final Withholding VAT was not properly documented; (3) the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to its claim; (4) ACI must show that it has complied with the provisions of Section 229 of the National Internal Revenue Code (NIRC) of 1997 on the prescriptive period for claiming tax refund/credit; and (5) there is no record of ACI ever submitting complete documents to substantiate its

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[4] Division Docket (CTA Case No. 9944), pp. 10 to 19.

administrative claim for refund, thereby making such claim for refund *pro-forma*.

After the Pre-Trial Conference held on January 24, 2019, and the filing of the parties' *Joint Stipulation of Facts* on February 6, 2019, pre-trial was terminated and the Court in Division issued the *Pre-Trial Order* on April 16, 2019.

During trial, ACI presented both testimonial and documentary evidence. ACI presented as witnesses: (1) Princess Carmela Anne Tinaliza V. Samoy, its Finance Operations Manager[5]; and (2) Atty. Raquel R. Dujunco[6], its Tax Manager. On the other hand, respondent's counsel manifested in his *Comment* filed on June 19, 2019 to ACI's *Formal Offer of Evidence* that he will no longer be presenting any witness.

Thus, as directed by the Court in Division, both parties filed their respective *Memoranda* on August 14, 2019. Hence, on September 3, 2019, the Court in Division issued a Resolution submitting CTA Case No. 9944 for decision.

On November 8, 2019, the Court in Division rendered the assailed Decision[7] granting ACI's *Petition for Review* in CTA Case No. 9944 and ordering the CIR to refund or issue a tax credit certificate in favor of ACI in the amount of ₱10,896,470.80, representing the latter's erroneous second payment of final withholding VAT for September 2015.

On November 27, 2019, the CIR filed a *Motion for Reconsideration (Re: Decision promulgated 8 November 2019)*,[8] while ACI filed its *Comment*[9] on December 20, 2019. In the assailed Resolution[10] promulgated on March 2, 2020, the Court in Division denied the CIR's *Motion for Reconsideration (Re: Decision promulgated 8 November 2019)* for lack of merit.

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[5] *Judicial Affidavit of Ms. Princess Carmela Anne Tinaliza V. Samoy*, Exhibit "P-49", Division Docket (CTA Case No. 9944), pp. 83 to 93.
[6] *Judicial Affidavit of Atty. Raquel R. Dujunco*, Exhibit "P-50", Division Docket (CTA Case No. 9944), pp. 127 to 136.
[7] EB Docket, pp. 15 to 25; Division Docket (CTA Case No. 9944), pp. 439 to 449.
[8] Division Docket (CTA Case No. 9944), pp. 450 to 454.
[9] Division Docket (CTA Case No. 9944), pp. 459 to 461.
[10] EB Docket, pp. 26 to 27; Division Docket (CTA Case No. 9944), pp. 474 to 475.

Thereafter, the CIR filed the instant *Petition for Review*[11] before the Court *En Banc* on June 10, 2020[12] *via* registered mail and received by the Court on June 17, 2020.

As directed by the Court *En Banc* in the Resolution[13] dated July 7, 2020, ACI filed its *Comment (to the Petition for Review dated 13 March 2020)*[14] on July 23, 2020. In the Resolution[15] dated September 3, 2020, the instant case was submitted for decision.

Hence, this Decision.

ASSIGNMENT OF ERROR

The CIR raises the following error supposedly committed by the Court in Division, *to wit:*

> "WHETHER OR NOT THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT [ACI] IS ENTITLED TO REFUND THE AMOUNT OF ₱10,896,470.00[16] ALLEGEDLY REPRESENTING ITS ERRONEOUS SECOND PAYMENT OF FINAL WITHHOLDING VAT FOR SEPTEMBER 2015."[17]

CIR's arguments:

The CIR argues that ACI fell short of proving the veracity of its claim for refund. Allegedly, there is no categorical statement in the Certification issued by the BIR Large Taxpayers – Document Processing & Quality Assurance Division (LTDPQAD) that ACI made

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[11] EB Docket, pp. 1 to 9.

[12] Pursuant to Administrative Circulars Nos. 31-2020, 34-2020, 35-2020, and 39-2020 issued by the Supreme Court on March 16, 2020, April 8, 2020, April 27, 2020, and May 14, 2020, respectively, the period of filing petitions and appeals, complaints, motions, pleadings and other court submissions that fall due during the period from March 15, 2020 until May 31, 2020, was extended for thirty (30) calendar days counted from June 1, 2020, or **until June 30, 2020**. Accordingly, the CIR had until July 1, 2020 within which to file his Petition for Review. Thus, the CIR's *Petition for Review* filed on June 10, 2020 was timely filed.

[13] EB Docket, pp. 30 to 31.

[14] EB Docket, pp. 32 to 34.

[15] EB Docket, pp. 79 to 80.

[16] Should be ₱10,896,470.80.

[17] *Petition for Review*, EB Docket, p. 3.

a double payment. The CIR insists that the said Certification merely showed the payments made by ACI which is susceptible to different interpretations other than a case of double payment or double remittance.

As regards the Certification issued by Bank of Philippine Islands (BPI) and Metropolitan Bank & Trust Company (Metrobank), the CIR contends that the said banks only certified that ACI made BIR ePayments.

Finally, the CIR claims that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer; and that the taxpayer must present convincing evidence to substantiate a claim for refund.

ACI's counter-arguments:

ACI reiterates its manifestation before the Court in Division that the instant case has been rendered moot when the CIR issued in favor of ACI the *Tax Credit Certificate* (TCC) dated September 18, 2019 for ₱10,896,470.80 corresponding to ACI's erroneously paid excess final withholding VAT for the month of September 2015 which is the subject of this case.

THE COURT *EN BANC'S* RULING

The Court finds merit in the manifestation of ACI that the instant case has already become moot in view of the issuance of TCC No. 200800001364[18] dated September 18, 2019 for ₱10,896,470.80 corresponding to ACI's erroneously paid excess final withholding VAT for the month of September 2015.

Although the TCC submitted by ACI to the Court in Division and to this Court, are mere photocopies, nevertheless, the Court shall consider the same as an admission on the part of taxpayer-claimant, ACI, against its interest in its refund claim in CTA Case No. 9944. And pursuant to said admission, the judgment rendered in CTA Case No. 9944 has been satisfied. Hence, the proceedings herein have become moot and academic.

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[18] Division Docket (CTA Case No. 9944), p. 462; EB Docket, p. 35.

It must be noted that ACI also admitted that ACI already fully utilized the tax credit available under the TCC against its net VAT payable for the months of October and November 2019.[19]

It is well settled that allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[20]

It is mind boggling however, why petitioner has taken two conflicting actions in this case, to wit:

(1) the issuance of TCC No. 200800001364[21] dated September 18, 2019, and received by ACI on October 23, 2019 for ₱10,896,470.80 corresponding to ACI's erroneously paid excess final withholding VAT for the month of September 2015 as adjudged by the Court in Division in CTA Case No. 9944; and

(2) the filing of the instant Petition for Review before the Court *En Banc* on June 17, 2020 to assail the Decision dated November 08, 2019 and Resolution dated March 02, 2020 in CTA Case No. 9944.

On the first action taken by petitioner, as mentioned earlier, the issuance of the TCC prayed for in CTA Case No. 9944 renders the resolution of the instant case moot and academic.

On the second action taken by petitioner, after careful review of the issues and arguments raised by the CIR in the instant Petition for Review, the Court *En Banc* finds that the same are mere reiterations of what have been considered and thoroughly passed upon by the Court Division in the assailed Decision dated November 8, 2019, and Resolution dated March 2, 2020.

Hence, We quote with approval the findings of the Court in Division in CTA Case No. 9944 that ACI paid the final withholding VAT of ₱10,896,470.80 twice for the same transaction and for the

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[19] Par. 3.1, Comment (to the Petition for Review dated 13 March 2020), p. 1, EB Docket, p. 32.
[20] Alfelor, et al., v. Halasan, G.R. No. 165987, March 31, 2006
[21] Division Docket (CTA Case No. 9944), p. 462; EB Docket, p. 35.

same taxable period of September 2015 and therefore, ACI is entitled to the refund of the said erroneous double payment, to wit:

> "With respect to the substantiation aspect of the case, records disclose the filing of petitioner's Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600) on October 9, 2015, with Reference No. 171500012823245, for VAT Withholding from non-residents with a tax base of P90,803,923.33 and the corresponding tax withheld of P10,896,470.80.
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> The aforesaid tax withheld of P10,896,470.80 was paid twice by petitioner (herein respondent) to the BIR through eFPS, as shown in the eFPS Payment Details with Reference No. 171500012823245. The first successful payment was through BPI facility under Payment Transaction No. 150738282 on October 12, 2015, while the second successful payment was made through Metrobank facility under Payment Transaction No. 150705968 on October 10, 2016.
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> BPI issued a certification dated February 20, 2017 that petitioner made epayment in the amount of P10,896,470.80 for the September 2015 return period with Filing Reference No. 171500012823245 and Payment Transaction No. 15073828. Metrobank also issued a certification about the successful tax payment transaction of petitioner via eFPS in the amount of P10,896,470.80 under Filing Reference No. 171500012823245 and Payment Transaction No. 150705968. Further, a Certification was issued on May 31, 2018 by Danilo T. Pasiliao, BIR Chief, Large Taxpayers-Document Processing & Quality Assurance Division (LTDPQAD), certifying the collection of two amounts of taxes of P10,896,470.80 on October 12, 2015 and October 10, 2016 for the September 2015 return period of the petitioner and for the same tax type, which were paid through eFPS.
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> The fact of double payment of the amount of P10,896,470.80 by petitioner is also narrated in the

Judicial Affidavit of Ms. Princess Carmela Anne Tinaliza V. Samoy, viz:

xxx xxx xxx

Incidentally, there is no denying that petitioner (herein respondent) did not apply the subject overpaid tax against any of its final withholding VAT due for the months after September 2015. Truth to tell, the Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form 1600) does not permit any application or carry-over of overpaid tax from previous period, as correctly pointed out by petitioner's (herein respondent's) witness, Atty. Raquel R. Dujunco.

Respondent's (herein petitioner's) contention that the Certification issued by the BIR L TDPQAD is susceptible to different interpretations other than a case of double payment or double remittance, and the second payment could be for a different transaction, is bereft of merit

It is worth re-echoing the principle that a judgment has to be based on facts. Conjectures and surmises cannot substitute for the facts.[22] A mere assumption cannot be used as basis in deciding a case.[23] Sorely, respondent (herein petitioner) remained passive as he chose not to present any evidence during trial; and this, despite his facility in checking its own records to verify the significance of the Certification of BIR LTDPQAD. Besides, **the Certifications issued by BPI and Metrobank vis-à-vis the Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600) bearing Reference No. 171500012823245 filed on October 9, 2015 and the testimony of petitioner's (herein respondent's) witness, altogether confirm that petitioner (herein respondent) indeed paid twice the final withholding VAT of ₱10,896,470.80 for the same transaction and for the same taxable period of September 2015."** *(Emphasis supplied.)"*[24]

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[22] *Guidangen vs. Wooden*, G.R. No. 174445, February 15, 2012.
[23] *Id.*
[24] Decision dated November 08, 2019, CTA Case No. 9944, at pp. 6-9, EB Docket, pp. 20-23

In view of the foregoing, the Court *En Banc* finds no compelling reason to disturb the findings of the Court in Division.

Correspondingly, the Court *En Banc* hereby resolves the two conflicting actions of petitioner as follows: (1) to consider the judgment rendered in CTA Case No. 9944 as satisfied pursuant to the issuance of TCT No. 200800001364[25] dated September 18, 2019 for ₱10,896,470.80 corresponding to ACI's erroneously paid excess final withholding VAT for the month of September 2015; and (2) to deny the instant Petition for Review for lack of merit.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for being moot and academic, and for lack of merit.

The judgement rendered in CTA Case No. 9944 is deemed **SATISFIED** and said case is considered **CLOSED AND TERMINATED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[25] Division Docket (CTA Case No. 9944), p. 462; EB Docket, p. 35.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice