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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2008
(CTA Case No. 8911)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

- versus –

DGA ILIJAN B.V.,
Respondent.

Promulgated:

SEP 02 2019
10:15 a.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review[1] filed under Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) which seeks the reversal of the Decision dated June 28, 2018,[2] (Assailed Decision) as well as the Resolution dated December 18, 2018[3] (Assailed Resolution) of the First Division (Court in Division)[4] of this Court in CTA

[1] Court *En Banc's* Docket, pp. 5-17.
[2] *Id.*, pp. 19-43.
[3] *Id.*, pp. 45-51.
[4] Composed of Presiding Justice Roman G. Del Rosario as Chairperson, Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla as members.

Case No. 8911, entitled *DGA Ilijan B.V. v. Commissioner of Internal Revenue.*

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

"**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱11,013,583.11, representing the following:

Excess 5% FWT paid on dividends	₱ 9,664,657.43
Interest	1,323,925.68
Compromise penalty	25,000.00
Total	**₱ 11,013,583.11**

SO ORDERED."

Assailed Resolution:

"**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The facts of the present case, as found by the Court in Division in its Decision dated June 28, 2018, are as follows:[5]

"Petitioner DGA Ilijan B.V. is a non-resident foreign corporation, organized and existing under the laws of the Netherlands, with address at Claude Debussylaan 28 12 1082 MD Amsterdam. The company's purpose is, among others, to

[5] Court *En Banc's* Docket, pp. 20-29 (Citations omitted).

incorporate, to finance, to participate in, to manage and to supervise companies and other enterprises.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has 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 the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 10, 2011, petitioner entered into a Deed of Exchange with Mitsubishi Corporation ('Mitsubishi' for brevity), where Mitsubishi transferred 12,370,688 common shares of TeaM Diamond Holding Corporation (TDHC) to petitioner.

On the same date, petitioner and Mitsubishi also entered into a Declaration of Trust, where the parties agreed that Mitsubishi will hold in trust for the benefit of petitioner the TDHC shares, and that the trust will automatically terminate following the issuance by the Bureau of Internal Revenue of a Certificate Authorizing Registration with respect to the transfer of shares from Mitsubishi to petitioner and upon recording of the shares in the name of petitioner in the stock and transfer book of TDHC.

On January 11, 2012, the Board of Directors of TDHC approved the declaration of dividend in the amount of $8,577,000.00 payable to all of its stockholders of record as of January 11, 2012.

On January 17, 2012, petitioner filed a Tax Treaty Relief Application (TTRA) with the BIR's International Tax Affairs Division (ITAD) in order to confirm that the dividend income from TDHC is entitled to the ten percent (10%) preferential rate provided under Article 10(2)(a) of 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' for brevity).

On February 8, 2012, TDHC filed, through the BIR's Electronic Filing and Payment System (EFPS), its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F), and remitted the amount of ₱19,329,314.87 representing the 10% FWT withheld from petitioner.

Subsequently, respondent issued BIR Ruling No. ITAD 328-12 dated September 3, 2012 denying petitioner's TTRA on the ground that the application was not filed before the date of transaction, *i.e.*, dividend payment, in alleged violation of Revenue Memorandum Order (RMO) No. 72-2010.

Petitioner appealed respondent's ruling to the Secretary of Finance, who denied the same and affirmed BIR Ruling No. ITAD 328-12.

Meanwhile, since the TTRA was denied by the BIR, petitioner remitted the amount of $275,000 to TDHC to pay for the difference between the preferential tax rate of 10% under Article 10(2)(a) of the Philippines-Netherlands tax treaty and the rate of fifteen percent (15%) imposed under Section 28(B)(5)(b) of the National Internal Revenue Code of 1997, as amended, and the corresponding interest and penalties thereon. The unused amount of $8,327.29 was subsequently remitted back to petitioner by TDHC.

Thus, on October 22, 2012, TDHC paid to the BIR on behalf of petitioner the total amount of ₱11,013,583.11 consisting of (a) additional 5% FWT on the dividends amounting to ₱9,664,657.43, (b) interest of ₱1,323,925.68, and (c) compromise penalty of ₱25,000.00.

On August 19, 2013, the Supreme Court promulgated its decision in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue (Deutsche Bank)*, holding that the period of application for the availment of tax treaty relief should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty.

On this basis, petitioner filed on April 21, 2014 an administrative claim for refund of excess and erroneously paid FWT, inclusive of interest and penalties, amounting to ₱11,013,583.11.

Due to respondent's inaction on petitioner's administrative claim for refund, petitioner filed the instant Petition for Review on October 20, 2014.

On January 22, 2015, respondent filed his Answer and interposed the following special and affirmative defenses:

> '5. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
>
> 6. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau.
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> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
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> 8. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php11,013,583.11, allegedly representing excess and erroneously paid final withholding tax (FWT) inclusive of interest and compromise penalty.
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> 9. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.
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> 10. Petitioner failed to comply with the conditions/requirements under Section 112(A)(B)(C) of the 1997 Tax Code.
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> 11. It is incumbent upon the latter to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
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> 12. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***.'

Since respondent filed his Answer two (2) days late without any written explanation, the Court deemed the Answer as not filed. Respondent filed a Motion for Reconsideration (with Motion to Admit Answer), which the Court granted on May 19, 2015. Hence, respondent's Answer was admitted by the Court on the same date.

Thereafter, a Notice of Pre-Trial Conference was issued by the Court on May 25, 2015, setting the case for pre-trial conference on July 23, 2015. Accordingly, Petitioner's Pre-Trial Brief was filed on July 15, 2015; while the Pre-Trial Brief (for the Respondent) was filed on July 7, 2015.

Pre-trial ensued. The parties filed their Joint Stipulation of Facts and Issues on August 7, 2015. Thereafter, a Pre-Trial Order was issued on August 28, 2015 and the pre-trial was deemed terminated.

During trial, petitioner presented Ms. Ng Yu Mei May, Atty. Rosalie F. Factor, Ms. Marienette Marcelino, and Ms. Mary Ruth L. Calderon.

Ms. Ng Yu Mei May, Controller of Diamond Generating Asia, Limited (DGA), an affiliate of petitioner, testified that she is responsible for providing tax and accounting services to petitioner. She stated that TDHC withheld the amount of ₱19,329,314.87 as 10% FWT due on the dividends to be given to petitioner. She further testified that TDHC withheld FWT at the rate of 10% and not 15% because they were advised by their tax advisor that since petitioner is a resident of Netherlands and TDHC is a resident of the Philippines, the payment of dividends would be covered by the Philippines-Netherlands tax treaty. Ms. Ng testified that upon the BIR's denial of petitioner's TTRA, its tax advisor advised them that the cash dividends from TDHC is subject to FWT of 15% pursuant to the tax sparing clause under Section 28(B)(5)(b) of the Tax Code. Since there was a deficiency FWT of 5%, petitioner remitted to TDHC the amount of $275,000 to pay for the deficiency FWT as well as interest and penalty. Out of this amount, TDHC used $266,672.71 to pay for the deficiency FWT, and the unused amount of $8,327.29 was remitted back to petitioner.

Atty. Rosalie F. Factor, Corporate Secretary of TDHC, testified that petitioner is the beneficial owner of 12,370,688 shares of stock of TDHC or 51.21% of TDHC's outstanding capital stock. She explained that these shares of stock were originally owned by Mitsubishi Corporation, and that subsequently, TDHC was furnished copies of (1) the Deed of gr

Exchange dated June 10, 2011 where Mitsubishi transferred its TDHC shares to petitioner, and (2) the Declaration of Trust stating that Mitsubishi is holding the TDHC shares in trust for the benefit of petitioner until such time that the BIR issues a Certificate Authorizing Registration of the said shares and these shares are recorded in petitioner's name in TDHC's stock and transfer book. Atty. Factor likewise testified that TDHC paid to petitioner such dividends corresponding to the 12,370,688 shares that petitioner acquired from Mitsubishi.

Ms. Marienette Marcelino, Treasury Senior Manager of TDHC, testified that sometime in November 2014, she received a request from petitioner's representative for a bank certification relative to petitioner's remittance to TDHC's bank account on October 19, 2012 of the amount of $275,000.00. She further testified that on November 14, 2014, Citibank N.A. issued a Certification confirming the said inward remittance from Bank of Tokyo-Mitsubishi UFJ (Holland) N.V., by order of petitioner, and that of this amount, TDHC used $266,672.71 to pay the BIR on behalf of petitioner. The unused amount of $8,327.29 was remitted back to petitioner.

Lastly, **Ms. Mary Ruth L. Calderon**, Tax Senior Analyst of TDHC, testified that petitioner initially received the amount of $3,953,184.43, equivalent to ₱173,963,833.83, from TDHC on January 12, 2012. This amount represents the dividends of $4,392,427.14 to which petitioner was entitled, which is equivalent to ₱193,293,148.70, less the amount of ₱19,329,314.87 which was the FWT deducted from the said dividends. However, sometime in October 2012, petitioner returned the amount of ₱9,664,657.43 from the dividends that it received from TDHC, and requested TDHC to remit the said amount to the BIR representing the 5% deficiency FWT, together with interest of ₱1,323,925.68 and compromise penalty of ₱25,000.00. She likewise stated that she prepared and filed, through the Electronic Filing and Payment System, the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for January 2012, and the Certificate of Final Tax Withheld at Source (BIR Form No. 2306) which was given to petitioner as proof that the amount of ₱19,329,314.87 was deducted as withholding tax. She testified that subsequently, TDHC issued a Revised Certificate of Final Tax Withheld at Source (BIR Form No. 2306) in the amount of ₱28,993,972.31 as proof of the aggregate amount withheld in connection with the payment of dividends to petitioner on January 12, 2012, and prepared an Amended Monthly Remittance Return of Final Taxes Withheld (BIR Form No. 1601-F) for the month of January 2012 as proof of remittance to the BIR of the additional FWT, interest, and compromise penalty.

Petitioner filed its Formal Offer of Evidence on November 17, 2016, and in the Resolution dated February 8, 2017, the Court admitted all of petitioner's exhibits.

The documentary evidence offered by the petitioner are as follows:

Exhibit	Document
P-1	Petitioner's Deed of Incorporation duly authenticated by the Philippine Embassy in the Netherlands
P-2	Petitioner's Declaration of Residence dated January 19, 2012 duly authenticated by the Philippine Embassy in the Netherlands
P-3	Petitioner's Certification of Non-Registration issued by the Securities and Exchange Commission (SEC) of the Philippines
P-4	Deed of Exchange between Mitsubishi Corporation and Petitioner dated June 10, 2011 and duly authenticated by the Philippine Embassy in Tokyo, Japan
P-5	Declaration of Trust between Mitsubishi Corporation and Petitioner dated June 10, 2011.
P-5-1	Signature of Mr. Hiroshi Sakuma
P-6, inclusive of sub-markings	Petitioner's Tax Treaty Relief Application (TTRA) and BIR Form 0901-D filed with the BIR on January 17, 2012
P-6-1 to P-6-9	Letter dated January 12, 2012 addressed to the Bureau of Internal Revenue, International Tax Affairs Division
P-6-9-a	Signature of Mr. Wilfredo U. Villanueva
P-6-10	TTRA for Dividend Income (BIR Form No. 0901-D)
P-6-10-a	Signature of Mr. Wilfredo U. Villanueva
P-6-11	Dorsal portion of P-6-10
P-7	BIR Ruling No. ITAD 328-12 issued by the BIR on 3 September 2012
P-8	Ruling of the Secretary of Finance dated December 12, 2012 upholding the denial of Petitioner's TTRA
P-9, inclusive of sub-	Claim for refund and BIR Form 1914 that SGV & Co. filed with the BIR on April 21,

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markings	2014 on behalf of Petitioner
P-9-1	Application for Tax Credits/Refunds (BIR Form No. 1914) dated 16 April 2014
P-9-1-a	Signature of Atty. Jonald R. Vergara
P-9-2 to P-9-12	SGV's letter dated 16 April 2014 explaining the basis for Petitioner's claim for refund
P-9-12-a	Signature of Atty. Jonald R. Vergara
P-10	Secretary's Certificate dated January 16, 2012
P-10-1	Signature of Ms. Rosalie F. Factor
P-11	Secretary's Certificate dated January 16, 2012
P-11-1	Signature of Ms. Rosalie F. Factor
P-12	Stock Certificate No. 20 of Southern Diamond Holding Corporation
P-13	Stock Certificate No. 24 of Southern Diamond Holding Corporation
P-14	Certificate of Filing of Amended Articles of Incorporation dated June 21, 2001
P-15	Certificate of Filing of Amended Articles of Incorporation dated August 13, 2007
P-16	TDHC's General Information Sheet for the year 2012
P-17	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for January 2012
P-18	Certificate of Final Tax Withheld at Source (BIR Form No. 2306) showing a tax withheld of Php19,329,314.87
P-18-1	Signature of Mr. Kazunobu Takijima
P-18-2	Initials of Ms. Taryn Uberita
P-19	Certificate of Final Tax Withheld at Source (BIR Form No. 2306)
P-19-1	Signature of Mr. Kazunobu Takijima
P-19-2	Initials of Ms. Taryn Uberita
P-20	Amended Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of January 2012, with Filing Reference No. 201200006484454
P-21	Certificate of Citibank N.A. Philippines – Makati Branch dated November 14, 2014
P-21-1	Signature of Ms. Catherine T. Paz
P-22	Application of Funds Transfer duly received and processed by Citibank N.A. Philippines – Makati Branch
P-22-1	Signatures of Hirofumi Yasuhara and Kazunobu Takajima
P-22-2	Signature of Marienette Marcelino

P-23	Debit Advice issued by Citibank N.A. Philippines – Makati Branch
P-25	Sworn Statement of Ms. Ng May Mei Yu to Questions propounded by Atty. Jerome Joseph B. Arnaldo dated November 3, 2015
P-25-1	Signature of Ms. Ng May Mei Yu appearing on the above document
P-26	Sworn Statement of Ms. Rosalie F. Factor to Questions propounded by Atty. Joanness S. Batimana dated January 29, 2015
P-26-a	Signature of Ms. Rosalie F. Factor appearing on the above document
P-27	Sworn Statement of Ms. Marinette Marcelino to Questions propounded by Atty. Alexis Joseph R. Noble dated May 12, 2016
P-27-1	Signature of Ms. Marinette Marcelino appearing on the above document
P-28	Sworn Statement of Ms. Mary Ruth L. Calderon to Questions propounded by Atty. Alexis Joseph R. Noble dated May 12, 2016
P-28-1	Signature of Ms. Mary Ruth L. Calderon appearing on the above document

On the other hand, respondent manifested that he will no longer be presenting any evidence in this case since the BIR revenue examiner who handled petitioner's application for refund has no final report.

The case was deemed submitted for decision on July 6, 2017, considering petitioner's Memorandum filed on May 25, 2017 and respondent's failure to file his memorandum despite notice."

On June 28, 2018, the Court in Division rendered the Assailed Decision granting DGA Ilijan B.V.'s Petition for Review.

Aggrieved, the CIR filed via registered mail a Motion for Reconsideration on July 18, 2018[6] which the Court in Division denied in the Assailed Resolution.

Within the extended period granted by the Court *En Banc*,[7] the CIR filed the present Petition for Review on February 7, 2019.

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[6] *Id.*, pp. 52-59.

[7] Minute Resolution dated February 7, 2019, Docket, p. 4.

On June 27, 2019, DG Ilijan B.V. filed its Comment/Opposition (Re: CIR's Petition for Review dated February 6, 2019).[8]

In a Resolution dated July 17, 2019, the Court *En Banc* submitted the present Petition for Review for decision.

THE ISSUE

Petitioner anchored the present Petition for Review on the following arguments, to wit:

1. DGA Ilijan B.V. failed to sufficiently establish and prove its entitlement under the Philippines-Netherlands Tax Treaty;[9]

2. DGA Ilijan B.V. failed to comply with Revenue Memorandum Order No. 1-2000 and Revenue Memorandum Order No. 72-2010;[10] and

3. There is no erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected.[11]

THE COURT *EN BANC*'S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for lack of merit. Notably, petitioner merely recycled the arguments he previously raised in his Motion for Reconsideration before the Court in Division. As the records clearly show, these matters had already been thoroughly discussed and resolved by the Court in Division. Truth be told, there is nothing in his present Petition for Review that was not sufficiently passed upon by the Court in Division. By and large, petitioner miserably failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Assailed Decision and Resolution.

With respect to petitioner's argument that respondent DGA Ilijan B.V. failed to comply with Revenue Memorandum Order No. 1-2000 and Revenue Memorandum Order No. 72-2010, the Court *En Banc* agrees with

[8] Court *En Banc*'s Docket, pp.74-84.
[9] *Id.*, pp. 7-8.
[10] *Id.*, pp. 9-11.
[11] *Id.*, pp. 11-13.

the Court in Division's explanation that a prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatment under the various Philippine tax treaties. The State's compliance with tax treaty obligations must take precedence over the objective of a mere administrative issuance. This is the import of the Supreme Court's ruling in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*[12] as reiterated and applied in the subsequent case of *CBK Power Company Limited v. Commissioner of Internal Revenue.*[13] The Supreme Court already definitively settled such issue. Needless to say, this Court has no other option but to faithfully uphold and apply the same. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[14] Consistent with the foregoing, DGA Ilijan B.V.'s failure to file a tax treaty relief application (TTRA) before the date of the transaction does not deprive it of its entitlement to tax treaty relief provided under the Philippines-Netherlands Tax Treaty.

The Court *En Banc* also does not find any merit in petitioner's contention that refund claims may only be granted when there is payment of taxes under a mistake of fact. In this regard, the Court in Division correctly ruled that wrongful payment may also pertain to one levied without statutory authority. There is nothing in the cases cited by petitioner that supports his view. It may not be amiss to point out that the Court *En Banc* had already resolved a similar issue in the case of *Commissioner of Internal Revenue v. Lawl Pte. Ltd.*,[15] in the following wise:

> "Petitioner argues that this is not a case of erroneously or illegally collected tax because petitioner allegedly did not proceed from a mistake of fact. Thus, the payment of the subject CGT cannot be considered as erroneous and therefore, cannot be refunded. She anchors this argument on the case of *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*, wherein the Supreme Court ruled as follows:
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>> 'xxx. In *UST Cooperative Store v. City of Manila*, we explained that 'there is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made.' Such payment is held to be not

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[12] G.R. No. 188550, August 19, 2013, 704 SCRA 216.
[13] G.R. Nos. 193383-84 & 193407-08, January 14, 2015.
[14] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.
[15] CTA EB No. 1118 (CTA Case No. 8307), May 12, 2015.

> voluntary and, therefore, can be recovered or refunded.'

We are not convinced.

A plain reading of the foregoing jurisprudence would reveal that nowhere was it stated or implied that refund claims may only be granted when the taxpayer pays under a mistake of fact. At most, what can be taken from the said pronouncement is that a tax payment under a mistake of fact is just an example of an 'erroneous payment'.

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* the Supreme Court defines what constitutes *'erroneous or illegal tax'* as understood under Section 229 of the NIRC of 1997, to wit:

> 'Section 229 of the NIRC of 1997 allows recovery of taxes erroneously or illegally collected. **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 is some other similar respect is illegal.' *(Emphasis supplied)*

Furthermore, in *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.,* the Supreme Court said:

> 'From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is 'erroneously, x x x illegally, x x x excessively or **in any manner wrongfully** collected.' In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in *Mirant,* Section 229 should **'apply only to instances of erroneous payment of illegal collection of internal revenue taxes.'** Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due**. xxx' *(Underscoring supplied)*

On the basis of the foregoing pronouncements, petitioner is in error to conclude that a claim for refund may be sustained only when the tax payment was made under a mistake of fact." *(Citations omitted)* gr

Finally, as regards the question of whether DGA Ilijan B.V. has sufficiently established its entitlement to the tax relief afforded by the Philippines-Netherlands Tax Treaty, and consequently, to its claim for refund, the Court *En Banc* quotes with approval the findings and conclusions of the Court in Division in the Assailed Decision, to wit:

> "After a careful evaluation of the evidence on record, the Court finds that petitioner was able to comply with the foregoing provisions.
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> To prove the fact of withholding and remittance of the additional 5% FWT, petitioner presented the Amended Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of January 2012; which shows that while TDHC has previously remitted the amount of ₱19,329,314.87, the tax required to be withheld is ₱28,993,972.30. Hence, the 'Tax Amount Still Due' amounts to ₱11,013,583.11, consisting of basic tax of ₱9,664,657.43, interest of ₱1,323,925.68, and compromise of ₱25,000.00. Petitioner also presented the EFPS Payment Details showing TDHC's remittance to the BIR of ₱11,013,583.11 on October 22, 2012.
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> The allegation that petitioner is a resident of the Netherlands is also sufficiently proven by the (1) Declaration of Residence issued by the inspector of the Tax Administration Rivierenland, the Netherlands, dated January 16, 2012; and (2) the Certificate of Non-Registration of Company issued by the Securities and Exchange Commission on January 11, 2012.
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> Petitioner was also able to comply with the requirement that its capital must be wholly or partly divided into shares. It presented its Deed of Incorporation which shows that petitioner's authorized capital amounts to Ninety Thousand Euros (EUR90,000), divided into ninety thousand (90,000) shares, each share having a nominal value of One Euro (EUR1).
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> Lastly, to prove that petitioner is the beneficial owner of 51.21% of TDHC's outstanding capital stock, it submitted the following documents:
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> 1. Deed of Exchange between Mitsubishi Corporation and petitioner;
> 2. Declaration of Trust between Mitsubishi Corporation and petitioner; and
> 3. Secretary's Certificate dated January 16, 2012 executed by Atty. Factor. gr

Petitioner also presented TDHC's General Information Sheet for the year 2012, showing that TDHC has 40,000,000 authorized capital stocks, and 24,155,982 subscribed and paid-up capital.

From these documents, it is established that Mitsubishi transferred the 12,370,688 TDHC shares to petitioner on June 10, 2011, but held it in trust for the benefit of petitioner pending the issuance by the BIR of a Certificate Authorizing Registration and the recordation of the shares in the name of petitioner in the stock and transfer book of TDHC.

Out of the 24,155,982 subscribed and paid-up capital of TDHC, records prove that petitioner is the beneficial owner of 12,370,688 shares, or 51.21%, of TDHC.

Therefore, considering that petitioner, a resident of the Netherlands, is a company the capital of which is wholly divided into shares and holds directly 51.21% of TDHC, then the dividend payment of the latter to petitioner is subject to 10% preferential tax rate based on the gross amount of the dividends, pursuant to Article 10(2)(a) of the Philippines-Netherlands tax treaty.

Consequently, since the dividends received by petitioner were subjected to 15% FWT instead of the 10% preferential tax rate, then it is proper to grant petitioner its refund claim representing the additional 5% FWT it paid amounting to ₱9,664,657.43, plus interest of ₱1,323,925.68, and compromise penalty of ₱25,000.00." *(Citations omitted)*

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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 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