REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BANGKO SENTRAL NG PILIPINAS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9478

Members:

CASTAÑEDA, JR., Chairperson,
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:

SEP 2 6 2019 4:00 pm

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

In this Petition for Review, petitioner Bangko Sentral ng Pilipinas seeks to refund the total amount of One Hundred Seventy-Six Thousand One Hundred Ninety-Two Pesos (P176,192.00), representing Documentary Stamp Tax (DST), surcharge and interest.

THE FACTS

Petitioner is a government instrumentality created and operating by virtue of Republic Act (RA) No. 7653 (The New Central Bank Act), with principal office at A. Mabini corner P. Ocampo

Streets, Malate, Manila. It is registered as a taxpayer with Taxpayer Identification No. 000-691-315.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 22, 2007, petitioner and G7 Bank - Rural Bank of Nabua, Inc. entered into a Restructured Promissory Note with Trust Receipt Agreement and Deed of Assignment,[2] covering the amount of One Hundred Thirty-Four Million Six Hundred Three Thousand Fourteen and 74/100 (P134,603,014.74).

Thereafter, on December 28 2007, petitioner and G7 Bank - Rural Bank of Nabua, Inc. entered into a Promissory Note with Trust Receipt Agreement and Deed of Assignment,[3] covering the amount of Four Million Eight Hundred Thousand Pesos (P4,800,000.00).

Unfortunately, G7 Bank - Rural Bank of Nabua, Inc. defaulted in its obligations. Thus, the mortgaged credits[4] assigned to petitioner were subjected to foreclosure proceedings, with petitioner being declared as the highest bidder.

Considering the above foreclosure sales, the BIR assessed respondent for payment of DST, surcharge, interest and compromise penalty. Consequently, petitioner allegedly paid the same, as evidenced by its Credit Advices to the Treasurer of the Philippines[5] on September 29, 2014,[6] November 21, 2014[7] and September 30, 2014,[8] respectively.

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[1] Parties to the Case, Petition for Review, par. 4, Docket, p. 11.
[2] Exhibit "P-4", Docket, pp. 404-405.
[3] Exhibit "P-5", Docket, pp. 413-414.
[4] Exhibits "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13" and "P-14", Docket, pp. 416-468.
[5] BSP's Proposed Facts, Joint Stipulation of Facts and Issues (JSFI), par. 10, Docket, p. 203.
[6] Exhibit "P-15", Docket, p. 469.
[7] Exhibit "P-16", Docket, p. 470.
[8] Exhibit "P-20", Docket, p. 475.

On October 14, 2014[9] and December 16, 2014,[10] petitioner filed its respective administrative claim for refund. Without action on respondent's part, petitioner was constrained to file the instant Petition on September 28, 2016.

On December 22, 2016, petitioner filed his Answer.[11] On August 30, 2017, both parties filed their Joint Stipulation of Facts and issues.[12] On December 5, 2017, the Court issued a Pre-Trial Order.[13]

During trial, petitioner presented the following witnesses: (1) Ms. Rhea E. David[14] - Department of Loans and Credits Manager of petitioner; and (2) Ms. Carmela Ruego[15] -Asset Management Department Bank Officer II of petitioner. Petitioner likewise filed its Formal Offer of Evidence[16] on May 28, 2018.

On June 4, 2018, respondent filed his Comment with Manifestation [Re: Petitioner's Formal Offer of Evidence],[17] where respondent manifested that he will no longer present any evidence, among others.

On October 8, 2018, the Court issued a Resolution[18] acting on petitioner's Formal Offer of Evidence and requiring the parties to file their respective memoranda. On November 16, 2018, petitioner filed its Memorandum[19] while on December 3, 2018, respondent filed his Memorandum.[20] On January 4, 2019,[21] the Court issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUE

The parties agreed on the following issue: Whether petitioner is entitled to a refund in the total amount of P176,192.00 representing DST paid for several properties it acquired in foreclosure sales.[22]

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[9] Exhibits "P-1" and "P-2", Docket, pp, 398-401.
[10] Exhibit "P-3", Docket, pp. 402-403.
[11] Docket, pp. 119-123.
[12] Docket, pp. 201-213.
[13] Docket, pp. 227-234.
[14] Exhibit "P-23", Judicial Affidavit of Ms. Rhea E. David, Docket, pp. 154-163.
[15] Exhibit "P-24", Amended Judicial Affidavit of Ms. Carmela Ruego, Docket, pp. 281-294.
[16] Docket, pp. 386-397.
[17] Docket, pp. 490-492.
[18] Docket, pp. 497-498.
[19] Docket, pp. 500-524.
[20] Docket, pp. 530-535.
[21] Docket, p. 536.
[22] Issue, JSFI, Docket, p. 211.

THE RULING

The Court shall first determine whether it has jurisdiction over the instant case.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, respectively 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 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)*

It is settled that Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of **payment** of the tax or penalty.[23]

In the instant case, petitioner asserts that it paid the subject DST and penalties, as evidenced by Credit Advices to the Bureau of Treasury, as follows:

Credit Advice Ticket No.	Date	Amount	Person who issued
16546[24]	September 29, 2014	P156,297.58	Ma. Corazon G. Catarroja – Acting Manager
20136[25]	November 21, 2014	12,650.00	Maria Ammie B. Sedano – Acting Assistant Manager
16571[26]	September 30, 2014	616,806.00	Ma. Cecilia J. Laforteza – Deputy Director

However, said pieces of evidence cannot be given credence by Court for being hearsay evidence.

Section 36 of Rule 130 of the Revised Rules of Court provides:

> "**Section 36.** *Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules." *gr*

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[23] Consolidated cases of *CBK Power Company Limited v. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue v. CBK Power Company Limited*, G.R. Nos. 193383-84 & 193407-08, January 14, 2015.
[24] Please see Note 6.
[25] Please see Note 7.
[26] Please see Note 8.

In *Soledad Calicdan v. Silverio Cendaña,*[27] the Supreme Court defined hearsay evidence as follows:

> "Hearsay evidence is defined as 'evidence not of what the witness knows himself but of what he has heard from others.' The hearsay rule bars the testimony of a witness who merely recites what someone else has told him, whether orally or in writing. In *San Vicente v. People*, we held that when evidence is based on what was supposedly told the witness, the same is without any evidentiary weight for being patently hearsay. Familiar and fundamental is the rule that hearsay testimony is inadmissible as evidence."[28]

The consequence of presenting hearsay evidence in Court is explained in *Republic of the Philippines v. Carmen Santorio Galeno,*[29] as follows:

> "xxx it should be borne in mind that 'hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule,' which do not, however, obtain in this case. Verily, while respondent's documentary evidence may have been admitted due to the opposing party's lack of objection, it does not, however, mean that they should be accorded any probative weight. The Court has explained that:
>
> > The general rule is that hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence. But one should not be misled into thinking that such declarations are thereby impressed with probative value. Admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not cannot be given credence for it has no probative value."[30]

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[27] G.R. No. 155080, February 5, 2004.
[28] Id., citing *People v. Guittap*, G.R. No. 144621, 9 May 2003.
[29] G.R. No. 215009, January 23, 2017.
[30] Id., citing *Philippine Home Assurance Corporation v. CA,* 327 Phil. 255, 268 (1996) citing *Baguio v. CA,* G.R. No. 93417, September 14, 1993, 226 SCRA 366, 370, and *People v. Parungao,* 332 Phil. 917, 924 (1996).

In the instant case, none of the persons who prepared or issued the respective Credit Advices were presented before the Court, in violation of the hearsay evidence rule. As a consequence, these pieces of evidence cannot be given probative weight.

Still, even if these persons were presented as witnesses, the subject Credit Advices cannot be regarded as proofs of payment. At best, these pieces of evidence may prove that disbursements were made in favor of the Bureau of Treasury. However, whether the disbursements were actually delivered or paid to the Bureau of Treasury are beyond the avenue of these Credit Advices as proofs.

At any rate, Section 70 of Presidential Decree (PD) No. 1445, otherwise known as the "Government Auditing Code of the Philippines", provides:

> "**Section 70.** *Acknowledgment of receipt for funds.* Under such rules and regulations as the Commission and the Department (Ministry) of Finance may prescribe, the Treasurer of the Philippines and all authorized depository banks shall acknowledge receipt of all funds received by them, the acknowledgment bearing the date of actual remittance or deposit and indicating from whom and on what account it was received."

Thus, said acknowledgement receipt mandated by Section 70 of PD No. 1445 validly serves as proof of remittance or deposit to the Treasury.

A perusal of the records likewise shows that Director Corazon R. Purugganan of the Asset Management Department of petitioner issued various Certifications[31] that the subject taxes were already paid through direct credit to the Treasury of the Philippines as per said Credit Advices.

As mentioned earlier, the subject Credit Advices are mere hearsay evidence. Thus, even if the Court takes at face value the facts stated under the Certifications of Director Purugganan, the same cannot be considered as evidence of payment because in effect, Director Purugganan merely certified that pieces of hearsay evidence were issued in favor of the Bureau of Treasury. *gr*

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[31] Exhibits "P-17", "P-18" and "P-21", pp. 471, 472 and 476, respectively.

Finally, records also show that petitioner filed its DST Returns[32] on October 14, 2014. Considering petitioner's statement that it allegedly paid the subject DST and penalties directly to the Bureau of Treasury, these DST Returns merely constitute as evidence of filing of the same and not as evidence of payment thereof.

Considering that petitioner failed to present proof of prior payment, the same divests this Court of jurisdiction to determine the merits of this case. In other words, there can be no valid claim for refund or nothing could be refunded where there is no showing of prior payment. Hence, the dismissal of the instant Petition is in order.

WHEREFORE, the instant Petition for Review is **DISMISSED**, for lack of jurisdiction.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[32] Exhibits "P-19" and "P-22", Docket, pp. 473-474 and 477-478, respectively.

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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

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Promulgated:
SEP 2 6 2019 4:00 pm

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SEPARATE CONCURRING OPINION

With due respect, I concur with the end result, that the Petition for Review be dismissed for lack of jurisdiction, albeit, for a different reason.

At the outset, insufficiency of evidence to prove payment of tax does not divest the Court of jurisdiction. Nevertheless, in the *PSALM Case*[1], the Supreme Court *En Banc ruled that where the disputing parties are* ***all public entities*** *(covers disputes between the BIR and other government entities),* ***the case shall be governed by PD 242****. To wit -*

> *"To harmonize Section 4 of the 1997 NIRC with PD 242, the following interpretation should be adopted: (1) As regards* ***private entities and the BIR,*** *the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR is vested in the CIR subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and (2) Where the disputing parties are* ***all public entities*** *(covers disputes between the BIR and other government entities),* ***the case shall be governed by PD 242****."*

[1] Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue, G.R. No. 198146, August 8, 2017.

PD 242 was embodied in Chapter 14[2] Book IV Executive Order No. 292 (EO 292), otherwise known as the "Administrative Code of 1987", which took effect on November 24, 1989, Pursuant to the Administrative Code, the Secretary of Justice or the Solicitor General, shall have jurisdiction to administratively settle or adjudicate all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations which are under the executive control and supervision of the President of the Philippines, depending on the issues and government agencies involved.

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

[2] "Controversies Among Government Offices and Corporations" of Book IV, entitled "Executive Branch".