REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MANILA NORTH TOLLWAYS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 812
(C.T.A. CASE NO. 7864)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

OCT 11 2012

x --- x

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Manila North Tollways Corporation (hereafter "petitioner") under *Section 11 of RA 1125, as amended by Section 18 of RA 9282*, in relation to *Rule 43 of the 1997*

Rules of Civil Procedure, as amended, which seeks to annul or set aside the Decision dated April 12, 2011 and Resolution dated July 22, 2011 rendered by the Second Division of this Court in C.T.A. Case No. 7864, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** filed on April 29, 2011 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner Manila North Tollways Corporation is a corporation, duly registered and operating under the laws of the Republic of the Philippines, with business/office address at the NLEX Compound, Balintawak, Caloocan City, Philippines. Petitioner is the builder of the North Luzon Expressway ("NLEX") and is the authorized concessionaire with rights to operate, maintain, and charge tolls on the NLEX.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with notices and other processes of this Court.

THE FACTS

The facts, as found by the Second Division, are as follows:

On November 27, 2006, petitioner's Board of Directors declared cash dividends of seventy pesos (P70.00) per share payable on or before December 21, 2006. Among petitioner's stockholders is Egis Project SA (Egis), a *sociedad anonima* incorporated in France, which owns 2,468,640 shares or 13.9% of the outstanding capital stock of petitioner.

For that reason, pursuant to *Article 10 of the "Convention between the Government of the Republic of the Philippines and the Government of the French Republic for the Avoidance of Double Taxation"* (hereafter

"RP-France Tax Treaty"), petitioner withheld and paid 15% of the declared dividend as FWT on the dividends so declared in favor of Egis.

Consequently, Egis protested the withholding done by petitioner, stating that pursuant to *the "Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic"* (hereafter "Protocol to the Tax Treaty") the proper tax rate is only 10%. Egis, therefore, demanded for the 5% difference. Petitioner acceded with the understanding that petitioner would be authorized to claim a refund of the overpaid FWT for and on behalf of Egis.

On December 23, 2008, petitioner filed with the International Tax Affairs Division ("ITAD") of the BIR an Application for Relief from Double Taxation and Refund ("Application and Refund") in the amount of P8,640,240.00.

Subsequently, on January 13, 2009, petitioner submitted additional documents in support of its "Application and Refund".

Despite the filing of its "Application and Refund", respondent has not acted with finality on petitioner's "Application and Refund", prior to the expiration of the two-year period prescribed under *Section 204 of the NIRC of 1997*. Hence, on January 14, 2009, petitioner filed the instant Petition for Review with this Court in Division, docketed as C.T.A. Case No. 7864.

In her Answer, the CIR alleged by way of special and affirmative defenses: taxes paid and collected by the BIR are presumed to have been made in accordance with law and the rules and regulations, and the burden to prove otherwise is upon petitioner; in an action for refund, it is a working rule that petitioner as taxpayer-claimant has the burden of proof to show that it is entitled to refund of the amount claimed as refundable; the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund; failure to present the necessary evidence is fatal to his claim; it is well-settled principle that tax refunds are in the nature of tax exemptions and are to be construed in *strictissimi juris* against the entity claiming the same; exemptions from taxation are highly disfavored, so much that they may be odious to the law; the law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted; a state cannot be stripped off this most essential power by doubtful words and of this highest attribute of sovereignty by ambiguous language; he who claims an exemption must be able to point the provision of the law creating said right; petitioner must prove that it is entitled to avail of the preferential tax treaty rate of 10% on final withholding tax on dividends, pursuant to the Protocol on Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic; petitioner must prove that it actually paid final withholding tax on dividend to the BIR in the amount of Twenty-Five Million Nine Hundred Twenty Thousand (Seven Hundred Twenty Pesos) *sic* (P25,920,720.00) for the year 2006; petitioner must prove that there was an overpayment of final withholding tax on dividends in the amount of Eight Million Six Hundred Forty Thousand Two Hundred Forty Pesos (P8,640,240.00); petitioner must prove that it complied with all the requisites under the law, jurisprudence and revenue issuances for the refund of all alleged overpaid taxes pursuant to an alleged Tax Treaty; petitioner must prove that it has complied with the provisions of *Sections 204 (C) and 229 of the NIRC of 1997, as amended*, on the prescriptive period of claiming tax refund/credit.

After trial on the merits, on April 12, 2011, the Second Division rendered the assailed Decision denying the Petition for Review.

On April 29, 2011, petitioner filed a "Motion for Reconsideration (of the Decision dated 12 April 2011)", which was denied for lack of merit in a Resolution dated July 22, 2011.

Not satisfied, petitioner filed the instant Petition for Review raising the sole:

ISSUE

> WHETHER PETITIONER IS ENTITLED TO CLAIM FOR REFUND OR A TAX CREDIT CERTIFICATE OF OVERPAID FWT FOR DIVIDENDS REMITTED IN 2006 IN THE AMOUNT OF PHP8,640,240.00.

On September 7, 2011, without necessarily giving due course to the petition, we required respondent CIR to file her comment, not a motion to dismiss, within ten (10) days from notice, afterwhich the petition shall be deemed submitted for decision, unless the Court *en Banc* decides to require the parties to submit their simultaneous memoranda.

On September 22, 2011, respondent CIR filed a "Motion for Extension of Time to File Comment", which the Court granted in a Resolution dated September 23, 2011.

On October 5, 2011, respondent timely filed its "Comment (Re: Petition for Review dated August 9, 2011)".

On October 24, 2011, we gave due course to the Petition for Review, and required the parties to submit their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.

On December 2, 2011, respondent CIR filed a "Manifestation (Re: Resolution dated October 24, 2011)" stating that she is adopting the arguments raised in her Comment to the Petition for Review as her Memorandum in the instant case, which the Court noted.

On December 5, 2011, petitioner filed its "Memorandum".

Considering that both parties had already filed their respective memorandum, the case was deemed submitted for decision.

Petitioner Manila North Tollway's Arguments

Petitioner contends that the dividends paid by petitioner to Egis in 2006 are subject to only 10% FWT, pursuant to the RP-France Tax Treaty, as amended by the Protocol to the Tax Treaty; petitioner's application for Treaty Relief included a definite request for refund, and the application and refund, together with its judicial claim, were filed within the prescribed period; denying petitioner's claim for refund is tantamount to unjust enrichment on the part of the Government and is a derogation of the right of a qualified resident of France to avail of tax treaty relief, as well as a violation of the obligation of the Government to grant the same; and the submission and presentation of the original BIR Form No. 1601-F is not an indispensable requirement to support petitioner's claim for refund.

Respondent CIR's Counter-Arguments

Respondent counter-argues that petitioner failed to file a timely and appropriate written claim for refund, hence, it should not be entitled to the claim for refund being applied for; petitioner failed to comply with *Revenue Memorandum Order No. 01-2000* ("RMO 1-2000"), in relation to its Application for Tax Treaty Relief; tax laws which are civil in nature may be applied retroactively, hence, *RMO 72-10* is likewise applicable in the instant case; and petitioner did not file the original BIR Form No. 1601-F at the time of the remittance of the FWT on January 15, 2007 relative to the cash dividend payments it made to Egis, a non-resident foreign corporation.

THE COURT *EN BANC'S* RULING

The Petition has no merit.

Petitioner failed to establish that it complied with the requirements prescribed in Section 229 of the NIRC of 1997, as amended.

While we agree with the petitioner and ruling of the Second Division that *Article 10 of the RP-France Tax Treaty*, as amended by *Article 5 of the Protocol to the Tax Treaty*, subjects to 10% final tax the gross amount of the dividends received by a resident of the French Republic that holds directly at least 10% of the voting shares of the company paying the dividends, which is a resident of the Philippines;

however, to be entitled to refund of excessively paid taxes, petitioner must comply with the requisites provided by law.

Section 229 of the NIRC of 1997, as amended, provides:

> "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 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."

The above provision allows the taxpayer recovery of any:

1) national internal revenue tax that has been erroneously collected,

2) national internal revenue tax that has been illegally collected,

3) penalty claimed to have been collected without authority, or

4) any sum that has been excessively or in any manner wrongfully collected, within a period of two (2) years from the date of payment of the tax, regardless of any supervening cause that may arise after payment.

Pursuant, therefore, to *Section 229*, a taxpayer to be entitled for refund, it must be proven that (1) the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and (2) the claim for refund or credit must have been filed within a period of two (2) years from the date of payment of the tax, regardless of any supervening cause that may arise after payment.

To prove that petitioner has paid an excessive final tax of 15%, petitioner presented the following documentary evidence:

1) Amended Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) for the month of December 2006, showing the rubber receiving stamp of the BIR dated 18 April 2007, with the following details:

NATURE OF INCOME	ATC	TAX BASE	TAX RATE	TAX REQUIRED TO BE WITHHELD
Interest on Foreign Loans Payable to NRFC's	WC180	14,383,308.40	10%	1,438,330.84
On Other Payments to NRFC's	WC230	12,655,672.14	35%	4,429,485.25
On Other Payments to NRFC's	WC230	11,507,221.00	20%	2,301,444.20
On Other Payments to NRFC's	WC230	205,128,000.00	15%	30,769,200.00
On Other Payments to NRFC's	WC230	212,991,348.53	10%	31,948,702.28

Total Tax Required to be Withheld Based on Regular Rates				70,887,162.57

(Exhibit "D")

2) BIR Form 1601F – Schedule 1, which is an Alphabetical List of Payees From Whom Taxes Were Withheld for the Month of December 2006, with the following details:

SEQ NO	TAXPAY/CORPORATION IDENTIF/(Registered Name) NUMBER	INDIV/ATC CODE	NATURE OF PAYMENT	AMOUNT OF INCOME PAYMENT	TAX RATE	AMOUNT OF TAX WITHHELD
1	ABA Tech International Limited	WC230	On Other Payments to NRFC's	11,946,293.46	35.00	4,181,202.71
2	Egis Projects SA	WC230	On Other Payments to NRFC's	212,991,348.53	10.00	31,948,702.28
3	Leighton Asia Limited	WC230	On Other Payments to NRFC's	11,507,221.00	20.00	2,301,444.20
4	Leighton Asia Limited	WC230	On Other Payments to NRFC's	205,128,000.00	15.00	30,769,200.00
5	Mizuho Corporate Bank Limited	WC180	Int. on Foreign Loans Payable	14,383,308.40	10.00	1,438,330.84
6	Mizuho Corporate Bank Limited	WC230	On Other Payments to NRFC's	666,831.31	35.00	233,390.96
7	Mott Connell Limited	WC230	On Other Payments to NRFC's	42,547.37	35.00	14,891.58
Grant Total						70,887,162.57

(Exhibit "D-6")

3) Equitable PCI BIR Payment Form with Account Number CA 1413-03000-1; Date of Payment Jan. 15, 2007; Check-Bank/Br. Name/Ck. No. JP Morgan/01584; Amount 70,887,162.57; Taxpayer Manila North Tollways; TIN 004-984-946-000.

(Exhibit "D-7")

From the foregoing, petitioner claims that it withheld and paid 15% final withholding tax, equivalent to P25,920,720.00, to the BIR from the dividends payment to Egis Project S.A., a *sociedad anomina* incorporated in France, owning 2,468,640 shares, or 13.9% of the outstanding capital stock of petitioner; and that the P25,920,720.00 final withholding tax is included in the P31,948,702.28 amount of tax withheld on Other Payments to NRFC's under line 4 of petitioner's Amended BIR Form 1601-F of December 2006 *(Exhibit "D-4")*. However, a perusal of the final withholding tax of P31,948,702.28 under line 4 of the Amended BIR Form 1601-F for the month of December 2006 *(Exhibit "D")* shows that the tax rate thereof is only "10%".

In support of its Amended BIR Form 1601-F for the month of December 2006, petitioner presented Schedule 1, which is an Alphabetical List of Payees From Whom Taxes Were Withheld for the Month of December 2006, showing that the amount of P31,948,702.28 was withheld from "Egis Projects SA", "On Other Payments to NRFC's" in the amount of P212,991,348.53, under line 2 of Schedule 1 thereof *(Exhibit "D-6")*. But, a perusal of line 2 of said Schedule 1 again shows that the tax rate thereof of final withholding tax of P31,948,702.28 is only "10%".

Petitioner's witness, Mr. Huger L. Labang, however, on direct examination testified that the 10% rate is a mere typographical error since if computed, it will be seen that the tax rate used is 15%, and not 10% *(Judicial Affidavit, A22, Exhibit "N")*.

It must be emphasized that petitioner is claiming for refund the amount of P8,640,240.00 allegedly attributable to the 5% difference of the final withholding tax of 15% it remitted to the BIR for the dividends payment to Egis, considering that under *Article 10 of the RP-France Tax Treaty*, as amended by *Article 5 of the Protocol to the Tax Treaty*, dividends payment to Egis is only subject to a 10% final withholding tax.

Since petitioner is claiming for refund of an alleged excessively paid 5% final withholding tax difference, petitioner must clearly establish that it paid an excessive tax to the BIR. Thus, petitioner must clearly show that it paid the amount of P25,920,720.00 to the BIR, as the 15% final withholding tax on the dividends payments to Egis. However, both the Amended BIR Form 1601-F for the month of December 2006 and

Schedule 1, which is an Alphabetical List of Payees From Whom Taxes Were Withheld for the Month of December 2006, show that the amount of final withholding taxes from Egis is P31,948,702.28, and said amount is subject to a 10% tax rate.

Since there are discrepancies between petitioner's allegations and the documentary evidence presented by petitioner, to wit: (1) P25,920,720.00, as the amount allegedly remitted and paid by petitioner to the BIR as final withholding tax on dividends payment to Egis, and P31,948,702.28 as the amount actually reflected in the Amended BIR Form 1601-F for the month of December 2006 and in the attached Schedule 1; and (2) the rate of final withholding tax – 15% as alleged by petitioner, and 10% as actually reflected in the Amended BIR Form 1601-F for the month of December 2006 and in the attached Schedule 1, we find that petitioner failed to substantiate that it has paid an excessive final withholding tax of P8,640,240.00 to the BIR. Although, petitioner's witness testified that the amount of P25,920,720.00 is part of the P31,948,702.28 final withholding tax on Other Payments to NRFC's (specifically, income payments to Egis) *(Judicial Affidavit, A27, Exhibit "N")*, basic is the rule that mere allegations are not equivalent to proof *(Philippine National Bank vs. Court of Appeals, 266 SCRA 139).* He who alleges a fact has the burden of proving it *(P.T. Cerna Corporation vs. CA, 221 SCRA 25).* Moreover, it is a rule in this jurisdiction that testimonial evidence cannot prevail over documentary evidence *(Jarantilla, Jr. vs. Jarantilla, et al., 636 SCRA 317).* In fact, the Supreme Court has on several occasions, expressed its disapproval on using self-serving testimonies to support one's claim (*supra*).

Furthermore, under *Section 229 of the NIRC of 1997, as amended*, both the administrative and judicial claims for refund or credit must be filed within a period of two (2) years from the date of payment of the tax, regardless of any supervening cause that may arise after payment.

Therefore, the date of payment of the tax is important for purposes of counting the two (2)-year prescriptive period.

Records, however, show that petitioner failed to present the Original BIR Form No. 1601-F. Instead, petitioner presented the Amended BIR Form No. 1601-F, showing the rubber receiving stamp of the BIR dated 18 April 2007. Without the Original BIR Form No. 1601-

F, it cannot be determined when petitioner actually paid the alleged final withholding tax, subject of the claim for refund. Although, petitioner presented an Equitable PCI BIR Payment Form dated January 15, 2007, the same, however, cannot be considered proof that petitioner actually paid the final withholding tax subject of the claim for refund on the same date of January 15, 2007. As correctly held by the Second Division of this Court, "said receipt does not show for what the said amount was paid".

Moreover, petitioner alleges in the present "Petition for Review" that "Both the original and the amended returns were filed on the same day, as the only difference between these returns was the enumeration of the breakdown of the payments made by Petitioner to the various payees" *(last sentence, par. 14 of Petition for Review, En Banc Original Docket, pp. 4-5)*, and the date when the Amended BIR Form No. 1601-F was filed was on April 18, 2007. With the foregoing, we cannot determine with certainty when petitioner actually paid the alleged final withholding tax subject of the claim for refund.

It bears stressing that in *Section 229*, the date of payment of the tax is important for purposes of counting the two (2)-year prescriptive period to claim for refund or credit. If it has not been clearly established when the final withholding tax, subject of the present claim for refund, was actually filed, then, we cannot determine whether the claim for refund was filed within the prescriptive period, especially as regards the judicial claim for refund.

Thus, in the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., 624 SCRA 358*, the Supreme Court ruled that the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to a tax refund. This burden cannot be offset by the non-observance of procedural technicalities by the government's tax agents when the non-observance of the remedial measure addressing it does not in any manner prejudice the taxpayer's due process rights.

Petitioner failed to comply with the provisions of RMO 1-2000

Although we agree with petitioner that the ruling of the Supreme Court in *Mirant (Philippines) Operations Corporation (formerly:*

Southern Energy Asia-Pacific Operations [Phils.], Inc. vs. Commissioner of Internal Revenue, G.R. No. 168531, February 18, 2008 ("Mirant case") is not a binding precedent and therefore, cannot bind non-parties to the action, such as herein petitioner, since the ruling in the Mirant case is a mere minute resolution, as held in the case of *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue, 600 SCRA 446-447*, however, the requirement that an application for tax treaty relief must be filed prior to the payment of the tax and prior to the availment of the preferential tax rate has been consistently ruled by this Court in the cases of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue, C.T.A. EB No., 456, May 29, 2009; Commissioner of Internal Revenue vs. CBK Power Limited and CBK Power Company Limited vs. Commissioner of Internal Revenue, C.T.A. EB Nos. 469 and 494, May 29, 2010; and Sal Oppenheim Jr. & Cie Kommanditgesellschaft Auf Aktien vs. Commissioner of Internal Revenue, C.T.A. Case No. 7923, February 27, 2012.*

Thus, we agree with the Second Division that petitioner failed to comply with the guidelines set forth under *RMO 1-2000*, which provides that any availment of a tax treaty relief should be preceded by an application for a tax treaty relief with ITAD, at least fifteen (15) days before the payment of the dividends.

It must be emphasized that *RMO 1-2000* was issued for the following objectives:

> "This Order is issued to streamline the processing of the tax treaty relief application in order to improve efficiency and service to taxpayers.
>
> Furthermore, it is to the best interest of both the taxpayer and the Bureau of Internal Revenue **that any availment of the tax treaty provisions be preceded by an application for treaty relief with the International Tax Affairs Division (ITAD)**. In this way, the consequences of any erroneous interpretation and/or application of the treaty provisions (i.e., claim for tax refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment) can be averted before proceeding with the transaction and or paying the tax liability covered by the tax treaty." *(emphasis supplied)*

From the foregoing, it is clear that *RMO 1-2000* requires that an application for treaty relief must be filed with the ITAD prior to any availment of tax treaty provisions to avoid the consequences of any erroneous interpretation and/or application of treaty provisions.

Petitioner's contention that the 15-day rule laid down in *RMO 1-2000* is not mandatory and compliance therewith is not strictly applied by the respondent and by this Court cannot be sustained.

The third part of *RMO 1-2000*, specifically, the "Policies" thereof, categorically provides:

> "III. Policies:
>
> In order to achieve the above-mentioned objectives, the following policies shall be observed:
>
> 1. The processing for tax treaty relief shall be transferred from Law Division to the International Tax Affairs Division (ITAD) in accordance with the approved memorandum dated March 23, 1999.
>
> 2. **Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction i.e. payment of dividends, royalties, etc., accompanied by supporting documents justifying the relief.** Consequently, BIR Form Nos. TC 001 and TC 002 prescribed under RMO 10-92 are hereby declared obsolete.
>
> 3. Claims for tax credit/refund pertinent to the tax treaty relief requested filed with ITAD within the two (2) year period prescribed by Section 229 of the NIRC, as amended under RA 8424. The Tax Credit Certificate for this purpose shall be issued for the account of the 'non-resident taxpayer/recipient of the income'"

From the foregoing, it is evident that the word "shall" was used in paragraph 2. Settled is the rule that the word "shall" should be taken in its ordinary signification, *i.e.* it must be imperative or mandatory and not merely permissive *(Taule vs. Secretary Santos, G.R. No. 90336, 200 SCRA 525)*. In the case of *Gonzales vs. Chaves, 205 SCRA 836-837*, the Supreme Court further clarified, to wit: "In common or ordinary parlance and in its ordinary significance, the term 'shall' is a word of command, and one which has always and which must be given a compulsory meaning, and it is generally imperative or mandatory. It has the invariable significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning or when public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears."

Thus, following the wordings of *RMO 1-2000*, we are bound to apply the requirements imposed thereof, that any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD, at least 15 days before the transaction.

Records, however, show that petitioner filed its Application for Relief from Double Taxation only on December 23, 2008, more than one year from the payment of dividends to its stockholders. Clearly, petitioner failed to comply with the requirements prescribed in *RMO 1-2000.*

Considering that administrative issuances have the force and effect of law, and they benefit from the same presumption of validity and constitutionality enjoyed by statutes *(Mirasol vs. Department of Public Works and Highways, 490 SCRA 347-348)*, we rule that petitioner's failure to comply with the requirements prescribed by *RMO 1-2000* warrants the denial of its claim for refund or credit under the Protocol to the Tax Treaty.

RMO 1-2000 requires for an application of tax treaty relief at least 15 days before the transaction

Petitioner's contention that if the application for treaty relief precedes the transaction, there is no need to include a request for refund; on the other hand, if the application for treaty relief is availed of after the occurrence of the transaction and payment of the applicable tax, then the application for treaty relief should be coupled with a claim for refund, is contrary to the mandatory provisions *of RMO 1-2000*, which requires for an application of tax treaty relief, at least 15 days before the transaction.

It must be stressed that the provision of *RMO 1-2000* cited by petitioner as the basis of the foregoing contention does not state that there is no need to include a request for refund if the application for tax treaty relief precedes the transaction, or that the application for treaty relief should be coupled with a claim for refund if the application for treaty relief is availed of after the occurrence of the transaction and payment of the tax. The provision cited by petitioner pertains to the functions of the ITAD.

On the other hand, *RMO 1-2000*, particularly part III on Policies, expressly provides that "3. Claims for tax credit/refund **pertinent to the tax treaty relief requested** filed with ITAD within the two (2) year period prescribed by *Section 229 of the NIRC, as amended* under *RA 8424*". Based on the foregoing, it is clear that the claim for refund or credit must be pertinent to the tax treaty relief requested. Hence, there must first be a request for a tax treaty relief, before a claim for refund or credit in connection with the tax treaty relief is filed. This is clear from the provision prior to it, which provides: "2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD, at least 15 days before the transaction xxx".

Petitioner cannot rely on the ITAD Rulings pertaining to other parties

As regards petitioner's contention that ITAD rulings in force prior to and during the application for tax treaty relief allowed the filing of such application after the transaction has occurred, in effect, disregarding the 15-day rule prescribed in *RMO 1-2000*, petitioner cannot rely on said ITAD rulings as the basis for its claim for refund or credit herein. Said rulings are not rulings in favor of petitioner, but for some other taxpayers. A perusal of all the rulings cited by petitioner shows that these rulings bear the same ultimate statement, to wit:

> "This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned."

Clearly, the rulings were issued on the basis of the facts as represented by the parties concerned therein. Thus, said rulings shall be binding only to the parties therein, and not to non-parties, such as herein petitioner.

Petitioner cannot invoke the principle of solutio indebiti

As regards petitioner's contention that the denial of its claim for refund or credit would lead to unjust enrichment on the part of the government as the right of a taxpayer, such as petitioner to claim for refund or credit is premised on the principle of *solutio indebiti* provided in *Article 2154 of the Civil Code*, we find the same devoid of merit.

There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause as the quasi-contract of *solutio indebiti* is based on the ancient principle that no one shall enrich himself unjustly at the expense of another *(Bank of the Philippines Islands vs. Sarmiento, 484 SCRA 271).*

Both elements are lacking in the instant case. First, there exists a binding relation between petitioner and the CIR. Petitioner is a withholding agent obligated to pay the final withholding tax on dividends received by Egis. Second, there is no mistake on the part of petitioner when it paid the final withholding taxes to the BIR, as it was aware that dividends payment to a resident of the French Republic that holds directly at least 10% of the voting shares of the company paying the dividends, which is a resident of the Philippines, such as petitioner herein, is subject to the 10% final tax of the gross amount of the dividends received. The Protocol to the Tax Treaty reducing the rate of 15% to 10% took effect as early as January 1, 1998, while petitioner declared the cash dividends on November 27, 2006. Thus, the 10% rate has already been effective for more than eight (8) years when petitioner declared the dividends and paid the corresponding final withholding tax thereof. It cannot be said that the reduced rate of 10% is novel to petitioner.

Finding no reversible error, we affirm the assailed Decision dated April 12, 2011 and Resolution dated July 22, 2011 of the Second Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED,** and, accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice