REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

EGIS ROAD OPERATION PHILIPPINES, INC., Petitioner,	CTA CASE NO. 8843
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	APR 26 2017 2:10 p.m.

x- -x

DECISION

FABON-VICTORINO, J.:

In this Petition for Review filed on July 2, 2014[1], petitioner Egis Road Operation Philippines, Inc. prays for refund or issuance of a tax credit certificate (TCC) in the amount of TWELVE MILLION PESOS (₱12,000,000.00), allegedly representing erroneously paid final withholding tax (FWT) on dividends.

THE FACTS

Petitioner Egis Road Operation Philippines, Inc. is a domestic corporation, with office address at Unit 703 Citystate Centre, 709 Shaw Blvd., Pasig City. It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 203-659-088-000[2].

[1] Docket, pp. 6-36.
[2] Exhibits "P-8" and "P-9".

Respondent is the Commissioner of the BIR, with authority to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Egis Road Operation S.A. (ERO S.A.) is a non-resident foreign corporation, organized and existing under the laws of France with principal address at 11 Avenue du Centre, 78 286 Guyancourt, France[3]. It is not registered as a corporation or partnership licensed to do business in the Philippines.[4] It owns 75,595 common shares of stock of petitioner, with a par value of ₱100.00 per share, or a total of ₱7,959,500.00, equivalent to 99% of the total issued and outstanding shares of petitioner. [5]

Petitioner is the authorized representative of ERO S.A. and withholding agent for the final tax on dividends imposed on non-resident corporations by virtue of Resolution No. 86, issued by the Board of Directors (BOD) of ERO S.A. [6]

On April 20, 2010, petitioner's BOD approved the declaration of cash dividends in the amount of ₱60,000,000.00, in favor of its stockholders of record as of December 31, 2009, and payable within the year 2010.[7] Actual payments of said dividends to ERO S.A. were made on May 5, 2010 and on August 31, 2010 which were subjected to final tax on dividends using the 10% preferential rate for tax residents of France under the Philippines-France Tax Treaty.[8]

On August 25, 2010, respondent issued Revenue Memorandum Order (RMO) No. 72-2010, otherwise known as the Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties[9], to streamline the processing of tax treaty applications for relief from double taxation pursuant to existing Philippine tax treaties in order to improve efficiency

---

[3] Exhibit "P-13".
[4] Exhibit "17".
[5] Exhibit "P-19".
[6] Exhibit "P-1".
[7] *Id.*
[8] Petition for Review, par. 18, docket, p. 12.
[9] Effective Nov. 4, 2010.

and service to the taxpayers. It took effect on November 4, 2010.[10]

On September 14, 2010, the BIR International Tax Affairs Division (ITAD), acting on ERO S.A.'s request on February 18, 2009, issued BIR ITAD Ruling No. 034-10, confirming the application of the Philippines-France Tax Treaty rates on the dividends declared by petitioner on December 17, 2008 and paid on or prior to December 23, 2008.[11]

On March 18, 2011, ERO S.A. filed a TTRA dated March 17, 2011 with the BIR ITAD requesting a confirmation on whether the dividends it received from petitioner on May 5, 2010 and on August 31, 2010 are subject to a preferential tax rate of 10% pursuant to the "RP-France Tax Treaty"[12], as amended by the Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic.[13]

On August 15, 2011, respondent issued ITAD BIR Ruling No. 210-11, denying ERO S.A.'s TTRA on the ground that ERO S.A. was disqualified from the tax treaty relief sought as it was not filed within the prescriptive period provided under RMO No. 72-2010. Consequently, instead of a reduced rate of ten percent (10%), the dividends paid to ERO S.A. would be subject to income tax at the regular rate of thirty percent (30%) of the gross amount thereof, under Section 28(B)(1)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended.[14]

On June 26, 2012, petitioner received from the Revenue District Officer of Revenue District Office (RDO) No. 043A-East Pasig, an Amended Notice of Informal Conference (ANIC) pursuant to Letter of Authority (LOA) No. 00085511[15], assessing it of deficiency final tax on dividends in the total amount of ₱20,400,000.00, consisting of basic

---

[10] Petition for Review, par. 19, docket, p. 12.
[11] Petition for Review, par. 20, docket, p. 12.
[12] Convention between the Government of the Republic of the Philippines and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.
[13] Exhibits "P-10" and "P-11", effective January 1, 1998.
[14] Petition for Review, par. 5, docket, p. 8.
[15] *Ibid.,* par. 7, docket, p. 8.

deficiency tax of ₱12,000,000.00 and penalties and interest of ₱8,400,000.00, all these for petitioner's alleged failure to comply with the requirements of RMO No. 72-2010 on the filing of the TTRA prior to the payment of the dividends.[16]

On July 3, 2012, petitioner paid under protest the basic deficiency tax of ₱12,000,000.00 on the final tax on dividends.[17]

On June 26, 2014, petitioner filed an administrative claim for the refund of ₱12,000,000.00 representing its alleged erroneous payment of final tax on dividends with RDO No. 043-A of Pasig City.[18]

On July 2, 2014, petitioner filed the instant Petition for Review.

On September 1, 2014, respondent filed his Answer[19] basically stating that petitioner has the burden to prove that the amount paid was erroneously or illegally collected. Further, petitioner's TTRA was denied because it failed to comply with the guidelines for the processing of TTRA provided by RMO No. 72-2010 which was issued pursuant to the authority of the Secretary of Finance to promulgate rules and regulations for the effective implementation of NIRC of 1997, as amended. Thus, it partakes the nature of a statute and has in its favor the presumption of legality. He added that taxes are essential to a government's existence and since tax refunds are in the nature of tax exemptions, they are construed *strictissimi juris* against the person or entity claiming the exemption, such as petitioner.[20]

After a Pre-Trial Conference[21], petitioner presented its first witness, **Attorney Teresa R. Tam-Yap**, its Corporate Secretary and a member of its BOD. She declared[22] that she was one of the incorporators of the company and among the

---

[16] Petition for Review, par. 8, docket, pp. 8-9.
[17] Exhibits "P-4" and "P-5".
[18] Exhibits "P-6" and "P-7".
[19] Docket, pp. 77-82.
[20] Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005.
[21] Docket, pp. 139-144.
[22] Exhibits "P-20" to "P-20-a".

directors who approved the amendment of petitioner's corporate name from Transroute Philippines Incorporated to Egis Road Operation Philippines, Inc.[23]

Petitioner is a domestic corporation registered to engage business in the Philippines. It is registered with the BIR with TIN No. 203-659-088-000 and OCN 8RC0000421868[24]. It is owned by ERO S.A., a corporation registered under the laws of France[25]. ERO S.A. is a major shareholder of petitioner owning 75,595 shares out of 79,600 shares, or more than 99% of petitioner's issued and outstanding shares. Since ERO S.A. is not licensed to do business in the country[26], its business activities are conducted through petitioner.

On April 20, 2010, petitioner's BOD unanimously approved the declaration of cash dividends in the amount of ₱60,000,000.00, in favor of its stockholders of record as of December 31, 2009 which was paid on May 5, 2010 and August 31, 2010. The said dividends were subjected to final tax on dividends using the 10% preferential tax rate for tax residents of France under the Philippines-France Double Tax Treaty.

On March 18, 2011, ERO S.A. filed the TTRA[27] with the BIR-ITAD requesting to confirm that the dividends paid to it by petitioner on May 5, 2010 and August 31, 2010 were subject to a preferential tax rate of 10% and submitted documents[28] in compliance with the requirements of RMO No. 72-2010.

The witness believed that under Article 10 of the Philippines-France Double Tax Treaty and BIR Ruling No. DA-ITAD 037-09 dated March 18, 2009 issued in its favor, ERO S.A. is entitled to the 10% preferential tax rate on the payment of dividends to ERO S.A. by Tollways Management Corporation pursuant to the Convention between the Government of the Republic of the Philippines and the

---

[23] Exhibit "P-8".
[24] Exhibit "P-9".
[25] Exhibit "P-13".
[26] Exhibit "P-17".
[27] Exhibits "P-10" to "P-11".
[28] Exhibits "P-12" to "P-19".

Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income. Likewise, on September 14, 2010, BIR Ruling No. ITAD 034-10 addressed to ERO S.A., was issued confirming the application of the RP-France Tax Treaty preferential rates of 10% on the dividends declared by petitioner on December 17, 2008 and paid on or prior to December 23, 2008.

The witness further testified that on August 15, 2011, then BIR Commissioner Kim S. Jacinto-Henares issued BIR Ruling No. ITAD 210-11 denying ERO S.A.'s TTRA pursuant to Sections 13 and 14 of RMO No. 72-2010, as it was filed not within the period prescribed in the RMO. Consequently, instead of the reduced rate of 10%, the BIR ruled that the dividends paid to ERO S.A. are subject to income tax at the regular rate of 30 percent (30%) of the gross amount thereof under Section 28(B)(1)(a) of the NIRC of 1997, as amended.

On appeal, BIR Ruling No. ITAD 210-11 was sustained by the Secretary of the Department of Finance (DOF) on December 22, 2011.

On June 26, 2012, petitioner received from the RDO 043A-East Pasig, an ANIC dated June 25, 2012[29] pursuant to LOA No. 00085511. Per the ANIC, petitioner was assessed deficiency Final Tax on Dividends in the total amount of ₱20,400,000.00 consisting of basic deficiency tax of ₱12,000,000.00 and penalties and interest of ₱8,400,000.00.

After referring the matter to ERO S.A., petitioner, as the withholding agent, paid under protest the basic deficiency tax assessment of ₱12,000,000.00[30], then referred the matter to its counsel who prepared a Protest Letter[31].

[29] Exhibit "P-2".
[30] Exhibits "P-4" to "P-5".
[31] Exhibit "P-3".

On June 26, 2014, petitioner, acting as ERO S.A.'s withholding agent and authorized representative[32], filed a claim for refund[33] in the amount of ₱12,000,000.00 with the RDO No. 043-A of Pasig City.

Petitioner's Treasurer **Ronie B. Dorimon** basically corroborated[34] the foregoing testimony and added that petitioner is the withholding agent for the final tax on dividends imposed on its non-resident corporate stockholders and the authorized representative of ERO S.A. for the instant claim by virtue of Resolution No. 86 issued by its BOD. As petitioner's Treasurer, he signed the disbursements of the dividend payments by petitioner to its stockholders, and personally coordinated between petitioner, ERO S.A. and petitioner's legal counsel on the matter.

After petitioner rested[35], counsel for respondent, on February 15, 2016, manifested that respondent would not present any evidence in the absence of Audit Report from the Revenue Officers.[36]

On April 27, 2016,[37] the case was submitted for decision after the parties filed their respective Memoranda on April 15, 2016[38].

THE ISSUE

The lone issue submitted by the parties for the Court's consideration is:[39]

> WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE TWELVE MILLION PESOS (PhP12,000,000.00) FINAL WITHHOLDING TAX ON DIVIDENDS.

---

[32] Exhibit "P-1".
[33] Exhibits "P-6" to "P-7".
[34] Exhibits "P-21" to "P-21-a".
[35] Docket, pp. 541-542.
[36] Docket, p. 546.
[37] Docket, p. 914.
[38] Petitioner's Memorandum, docket, pp. 565-601; Respondent's Memorandum, docket, pp. 555-563.
[39] Joint Stipulation of Facts & Issues, docket, p. 136.

THE COURT'S RULING

First, the Court must determine the timeliness of the filing of the claim.

Sections 204 (C) and 229 of the NIRC of 1997, as amended, provide that both the administrative and the judicial claims for refund/TCC must be filed within two years from the date of payment of tax.[40]

It was established that petitioner paid, under protest, the subject FWT on dividends in the amount of ₱12,000,000.00 on July 3, 2012[41]. Thus, petitioner has two years from July 3, 2012, within which to file both its administrative and judicial claims for refund.

On June 26, 2014, petitioner filed its administrative claim for refund with the BIR of its alleged erroneously paid FWT in the amount of ₱12,000,000.00 and sought judicial intervention through its Petition for Review with the Court of

---

[40] "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."

"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 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."

[41] Exhibits "P-4" and "P-5".

Tax Appeals on July 2, 2014. Clearly, petitioner seasonably filed both its administrative and judicial claims for refund of the amount it paid as withholding agent of ERO S.A.

But is petitioner entitled to the refund sought?

Petitioner claims that the dividends it paid to ERO S.A., a foreign corporation registered in France to which the Philippines has a valid tax treaty, must only be subject to the preferential tax rate of ten percent (10%) as provided under Article 10 of the RP-France Tax Treaty, as amended by Article 5 of the Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic because ERO S.A. holds 99% of the total issued and outstanding shares of stock of petitioner. However, since petitioner was imposed the regular tax rate of thirty percent (30%) on the FWT on dividends it paid to ERO S.A. by virtue of RMO No. 72-2010, its payment in the total amount of ₱12,000,000.00 constitutes an erroneous payment, which may be the subject of a claim for refund under Sections 204 and 229 of the NIRC of 1997, as amended.

On the other hand, respondent insists that even if ERO S.A. is entitled to the preferential tax rate provided under the RP-France Tax Treaty, petitioner's claim for refund must be denied on the ground that it filed the TTRA with BIR ITAD after the payment of dividends and the corresponding final withholding taxes. To be entitled to the 10% preferential tax rate, petitioner should have filed the TTRA before the transaction to avail of tax treaty provisions. In the instant case however, the TTRA was not timely filed with ITAD, hence, petitioner is not entitled to the refund sought. In addition, RMO No. 72-2010 was issued pursuant to the authority of the Secretary of Finance to promulgate rules and regulations for the effective implementation of the NIRC of 1997, as amended. Thus, courts cannot ignore administrative issuances for they partake the nature of a statute and have in their favor a presumption of legality.

The Court agrees with petitioner.

Under 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 and the Prevention of Fiscal Evasion with Respect to Taxes on Income (RP-France Tax Treaty), as amended by Article 5 of the Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic, the dividends paid by a Philippine corporation to a resident of France, which does not have a permanent establishment in the Philippines, will be taxed at a preferential rate not exceeding 10% of the gross amount of the dividends, if the recipient is a company which holds directly at least 10% of the voting shares of the Philippine corporation paying the dividends.

The relevant portions of Article 10 of the RP-France Tax Treaty are quoted as follows:

"ARTICLE 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 15 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 10 per cent of the voting shares of the company paying the dividends;

b) in all other cases, 25 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term 'dividends' as used in this Article means income from shares, 'jouissance' shares or 'jouissance' rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. A resident of the Philippines who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (precompte) relating to such dividends, in the event it had been paid by the distributing company. Such prepayment (precompte) shall be refunded subject to the deduction of the tax levied according to the French taxation law and the provisions of paragraph 2.

The gross amount of the prepayment (precompte) refunded shall be deemed to be dividends for the purposes of the provisions of this Convention.

> 6. Where a company resident of a Contracting State has in the other Contracting State a permanent establishment, the profits of its permanent establishment shall, after having borne the corporation tax, be liable to a tax the rate of which shall not exceed 15 per cent, according to the laws of that other Contracting State."

However, pursuant to Article 5 of The Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic signed on January 9, 1976 and took effect on January 1, 1998, the tax rates of 15% and 25% are replaced respectively by 10% and 15% in paragraph 2 and the tax rate of 15% is replaced by 10% in paragraph 6.

Applying the foregoing to the present case, it is clear that ERO S.A., being a resident of France[42], which does not have permanent establishment in the Philippines[43] and a shareholder of ninety-nine percent (99%)[44] of the total issued and outstanding shares of stock of petitioner, is entitled to the preferential tax rate of 10% for the dividends it received from petitioner.

The Court is also not one with respondent in his position in ITAD BIR Ruling No. 210-11 dated August 15, 2011 that the TTRA should be denied since it was filed beyond the prescribed period provided under RMO No. 72-2010, rendering the dividends paid by petitioner to ERO S.A. disqualified from the relief sought.

In Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue[45], the Supreme Court held that non-compliance with the prior application rule as required by RMO No. 1-2000[46] should not operate to automatically divest entitlement to the tax treaty relief as it would constitute a violation of the duty required by good faith in complying

[42] Exhibits "P-12", "P-13", and "P-14".
[43] Exhibit "P-17".
[44] Exhibit "P-19".
[45] G.R. No. 188550, August 19, 2013.
[46] Procedures for Processing of Tax Treaty Relief Application.

with a tax treaty and would impair the value of the tax treaty, to wit:

> "Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction.
>
> Tax treaties are entered into 'to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions.' *CIR v. S.C. Johnson and Son, Inc.* further clarifies that 'tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.' Simply put, tax treaties are entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.
>
> 'A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be

necessary to ensure the fulfillment of the obligations undertaken.' Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. **The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements.** More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.

Likewise, it must be stressed that **there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period.** We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but **the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.**

Bearing in mind the rationale of tax treaties, **the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 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. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty.** At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the

> **objective of RMO No. 1-2000.** Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief." *(Emphases supplied)*

In the same case, the Supreme Court also held that prior application with the BIR becomes moot in refund cases, and explained the rationale as follows:

> "Again, RMO No. 1-2000 was implemented to obviate any erroneous interpretation and/or application of the treaty provisions. The objective of the BIR is to forestall assessments against corporations who erroneously availed themselves of the benefits of the tax treaty but are not legally entitled thereto, as well as to save such investors from the tedious process of claims for a refund due to an inaccurate application of the tax treaty provisions. However, as earlier discussed, noncompliance with the 15-day period for prior application should not operate to automatically divest entitlement to the tax treaty relief especially in claims for refund.
>
> **The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance. In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period prescribed,**

> **or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application requirement becomes illogical. Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000.**
>
> Corollary thereto, Section 229 of the NIRC provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. **The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would defeat the purpose of Section 229.**" *(Emphases supplied)*

Thus, in case of dividend payments under the RP-France Tax Treaty, petitioner shall not be precluded from enjoying the benefits of the preferential tax rate of 10% simply because a prior application for a tax treaty relief was not made or, if made, was denied because of a requirement that was legislated beyond the statutory authority given under the law. To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application.[47]

In fine, the dividends issued by petitioner to ERO S.A. is only subject to the 10% preferential tax rate pursuant to the RP-France Tax Treaty, as amended. Consequently, since the said dividends were instead subjected to 30% FWT instead of the 10% preferential tax rate, then it is proper to grant petitioner a refund in the total amount of

---

[47] Commissioner of Internal Revenue v. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005.

₱12,000,000.00, representing erroneously paid FWT on dividends.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Egis Road Operation Philippines, Inc., the amount of TWELVE MILLION PESOS (₱12,000,000.00), representing erroneously paid final withholding tax on dividends.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice