REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EMPRESS DENTAL LABORATORIES, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA CASE NO. 10186

Members:

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

Promulgated:

JUN 07 2021 4:20 pm

x- x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on October 14, 2019 prays for the refund and/or issuance of tax credit certificate in the amount of ₱562,007.96, allegedly representing petitioner's erroneously paid taxes on its September 2017 *Monthly Remittance Return of Income Tax Withheld on Compensation* – BIR Form No. 1601-C (*Monthly WTC Return*).[1]

[1] Summary of the Case, Pre-Trial Order dated March 12, 2020, Docket, p. 184.

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THE PARTIES

Petitioner Empress Dental Laboratories, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws, with registered office address at Lot 2 Block 3, Ampere Street, Light Industry and Science Park 1, Barangay Diezmo, Cabuyao, Laguna 4025.[2] It is engaged in the manufacture, design and repair of dental ceramics products, other dental products using other materials, and related appliances which are utilized by dentists or in dentistry, by employing its own technology or such other technology as may be developed subsequently.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification No. (TIN) 003-936-797-000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, BIR National Office Building, NIA Road, Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On October 13, 2017, petitioner filed its *Monthly WTC Return* via BIR Electronic Filing and Payment System (eFPS) in the total amount of ₱281,003.98 for the month of September 2017.[6] During the course of electronic payment, petitioner encountered several technical errors or difficulties. On the same day and on its third attempt, it was able to successfully process and pay its withholding tax on compensation for the said month in the amount of ₱281,003.98, through the Bank of Philippine Islands (BPI) online tax payment facility.[7] JR

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[2] Par. 1, Stipulation of Facts, *Compliance* dated February 28, 2020, Docket, p. 168; Exhibits "P-2" and "P-3", Docket, pp. 120 to 126.
[3] Par. 1.1, Stipulation of Facts, *Compliance* dated February 28, 2020, Docket, p. 168.
[4] Exhibit "P-4", Docket, p. 127.
[5] Par. 2, Stipulation of Facts, *Compliance* dated February 28, 2020, Docket, p. 168.
[6] Exhibits "P-5", "P-6", and "P-7", Docket, pp. 289 to 291.
[7] Q & A Nos. 13 and 14, Exhibit "P-17" [Judicial Affidavit (of Witness Jalene B. Gapas)], Docket, at pp. 64 to 65, and 239 to 240; Exhibits "P-7", Docket, p. 291; Exhibit "P-8", Docket, pp. 292 to 297, at p. 294.

The eFPS generated three (3) requests for confirmation of remittance for petitioner's *Monthly WTC Return* for the September 2017 under Payment Transaction Nos. 179819153, 179819123, and 179819085, respectively, with an amount of ₱281,003.98 each.[8]

On October 17, 2017, petitioner, through its Accounting Supervisor, approved all pending payment instructions lodged in its BPI ExpressLink online banking facility. As a result, the last two (2) of the three (3) transactions, under Transaction Nos. 179819153 and 179819085, have been successfully processed and paid in an amount of ₱281,003.98 each or in the total amount of ₱562,007.96.[9]

Thereafter, on October 24, 2017, petitioner filed the letter, on even date, signed by its General Manager, Ms. Andreas Giese, with the BIR Revenue District Office (RDO) No. 57, Biñan, Laguna,[10] requesting for a tax credit in the amount of ₱562,007.98, for alleged erroneous payment made through eFPS and BPI online banking system on its *Monthly WTC Return* for the month of September 2017. Petitioner claims that since there was an error in the system, its transaction was posted thrice in the BPI portal and was unknowingly approved on October 17, 2017.

On February 21, 2018, petitioner filed with the same BIR RDO another letter dated January 30, 2018[11] for the issuance of a tax credit certificate, and an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[12] both signed by Ms. Andreas Giese, for alleged erroneously paid taxes in the amount of ₱562,007.98, on its *Monthly WTC Return* for the month of September 2017.

On May 7, 2018, the BIR issued the *Letter of Authority* (LOA) SN: eLA201200046984/LOA-057-2018-00000121 signed by Regional Director, Edgar B. Tolentino,[13] authorizing Revenue Officer Amapola Jane San Juan under Group Supervisor Grace Mangubat of RDO No. 57, to examine its books of accounts and other accounting records

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[8] Exhibit "P-7", Docket, p. 291.

[9] Exhibit "P-7", Docket, p. 291; Exhibit "P-8", Docket, pp. 292 to 297, at p. 294; Q & A Nos. 21, 22, 24 and 25, Exhibit "P-17" [Judicial Affidavit (of Witness Jalene B. Gapas)], Docket, at pp. 67 and 242.

[10] Exhibits "P-9", "P-9-A", "P-9-B", "P-9-C", "P-9-D", "P-9-E", "P-9-F" and "P-9-G", Docket, p. 137.

[11] Exhibits "P-10", "P-10-A", "P-10-B", "P-10-C", "P-10-D", "P-10-E", "P-10-F", "P-10-G and "P-10-H", Docket, p. 138.

[12] Exhibits "P-11", "P-11-A", "P-11-B", "P-11-C", "P-11-D", "P-11-E" and "P-11-F", Docket, p. 139 and BIR Records, p. 9.

[13] Exhibit "P-14", Docket, p. 142.

Petitioner filed its *Formal Offer of Evidence* on June 8, 2020.[23] Respondent posted his *Comment/Opposition (to Petitioner's Formal Offer of Evidence) and Motion* on June 15, 2020.[24]

In the Resolution dated July 10, 2020,[25] the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-9", "P-9-A", "P-9-B", "P-9-C", "P-9-D", "P-9-E", "P-9-F", "P-9-G", "P-10", "P-10-A", "P-10-B", "P-10-C", "P-10-D", "P-10-E", "P-10-F", "P-10-G", "P-10-H", "P-11", "P-11-A", "P-11-B", "P-11-C", "P-11-D", "P-11-E", "P-11-F", "P-12", "P-13", "P-13-A", "P-13-B", "P-13-C", "P-13-D", "P-13-E", "P-13-F", "P-13-G", "P-13-H", "P-13-I", P-14", "P-15", "P-16", "P-16-A" and "P-17"; *but denied* Exhibits "P-5", "P-5-A", "P-5-B", "P-5-C", "P-5-D", "P-5-E", "P-6", "P-6-A", "P-6-B", "P-6-C", "P-6-D", "P-6-E", "P-7", "P-7-A", "P-7-B", "P-7-C", "P-7-D", "P-7-E", "P-7-F", "P-7-G", "P-7-H", "P-7-I", "P-7-J", "P-7-K", "P-7-L", "P-7-M", "P-7-N", "P-7-O", "P-7-P", "P-7-Q", "P-7-R", "P-7-S", "P-8", "P-8-A", "P-8-B", "P-8-C", "P-8-D", and "P-8-E", for failure to submit the documents duly marked and compared during the commissioner's hearing held on March 11, 2020.

The same Resolution also states that respondent manifests that, in view of the confirmation of the office conducting the investigation/audit on petitioner's claim for refund that there is still no report on the investigation, he will no longer present his witness, but instead requests that the Court allow him to submit his memorandum to further support his defense. Accordingly, the parties are granted a period of thirty (30) days from receipt of the Resolution to file their memoranda. Upon receipt thereof, or the lapse of the period granted, this case shall be deemed submitted for decision.

Petitioner filed its *Manifestation* on July 30, 2020,[26] stating that during the filing, seven (7) copies of its *Formal Offer of Evidence* were duly stamped received but due to inadvertence, the copy to which the duly marked Exhibits "P-5" to "P-8" and "P-17" were attached was the one taken and brought back by its counsel's messengerial staff.

[23] Docket, pp. 195 to 208.
[24] Docket, pp. 252 to 254.
[25] Docket, pp. 259 to 261.
[26] Docket, pp. 262 to 265.

Petitioner also filed its *Motion for Reconsideration* on September 10, 2020,[27] praying for the reconsideration of this Court's Resolution dated July 10, 2020, insofar as the denial of admission of Exhibits "P-5" to "P-8-E" is concerned. In the Resolution dated September 28, 2020,[28] the Court noted the *Manifestation* filed by petitioner and granted the latter's *Motion for Reconsideration*, thereby admitting Exhibits "P-5", "P-6", "P-7", "P-8" and "P-17".

Respondent's *Memorandum* was posted on August 17, 2020;[29] while petitioner's *Memorandum* was submitted on November 3, 2020.[30]

On November 10, 2020, this case was considered submitted for decision.[31]

THE ISSUE AND MATTERS RAISED BY THE PARTIES

The parties submitted this sole issue for the Court's resolution, to wit:

> "Whether or not petitioner is entitled to refund or to the issuance of a TCC in the amount of P562,007.96 arising from alleged erroneous payment of taxes on its September 2017 WTC Return."[32]

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction over the instant *Petition*; that both administrative and judicial claims were timely filed; and that petitioner is entitled to the issuance of a tax credit certificate or refund of erroneously paid taxes on its September 2017 *Monthly WTC Return*.

Respondent's counter-arguments:

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[27] Docket, pp. 333 to 339.
[28] Docket, pp. 341 to 343.
[29] Docket, pp. 323 to 330.
[30] Docket, pp. 344 to 360.
[31] Resolution dated November 10, 2020, Docket, p. 361.
[32] Stipulation of Issue, *Compliance* dated February 28, 2020, Docket, p. 169.

Respondent claims that this Court has no jurisdiction over the instant *Petition*; and that assuming without conceding that the Court has jurisdiction, the said *Petition* should be dismissed for utter lack of merit.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

***The Court has jurisdiction over the instant* Petition for Review.**

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 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. However, Section 229 further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with respondent.[33]

Said provisions respectively read as follows:

> "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**

[33] *CBK Power Company Limited vs. Commissioner of Internal Revenue, etseq.,* G.R. Nos. 193383-84 and 193407-08, January 14, 2015.

> **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 added)*
>
> "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." *(Emphases added)*

These provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. **Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional**, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[34] It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[35] *gr*

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[34] *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative,* G.R. No. 209776, December 7, 2016.

[35] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.,* G.R. Nos. 180740 and 180910, November 11, 2019.

Simply put, Section 229 of the NIRC of 1997 states that **judicial claims must be filed within two (2) years from the date of payment of the tax or penalty**, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with respondent.[36] Thus, so long as the judicial claim was filed within two (2) years from the date of payment of the tax or penalty, and within such period, an administrative claim was filed before filing such judicial claim, this Court has jurisdiction to entertain the latter.

In this case, records show that the alleged erroneous multiple payments or remittance by petitioner in the total amount of ₱562,007.96 under Transaction Nos. 179819153 and 179819085 transpired on October 17, 2017, when petitioner's Accounting Supervisor approved all pending payment instructions lodged in its BPI ExpressLink online banking facility.[37]

Counting two (2) years from October 17, 2017, **petitioner had until October 17, 2019**, within which to file both its administrative and judicial claims for refund. Considering that petitioner filed its letter-claim dated January 30, 2018 and *Application for Tax Credits/Refunds* (BIR Form No. 1914), for alleged erroneously paid taxes with the BIR on **February 21, 2018**,[38] and that the instant *Petition for Review* was filed on **October 14, 2019**,[39] this Court has jurisdiction to entertain the present appeal.

In any event, as already intimated, the foregoing provisions allow the 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 aspect is illegal.[40]

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[36] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.

[37] Exhibit "P-7", Docket, p. 291; Exhibit "P-8", Docket, pp. 292 to 297, at p. 294; Q & A Nos. 21, 22, 24 and 25, Exhibit "P-17" [Judicial Affidavit (of Witness Jalene B. Gapas)], Docket, at pp. 67 and 242.

[38] Exhibits "P-10", "P-10-A", "P-10-B", "P-10-C", "P-10-D", "P-10-E", "P-10-F", "P-10-G and "P-10-H", Docket, p. 138; Exhibits "P-11", "P-11-A", "P-11-B", "P-11-C", "P-11-D", "P-11-E" and "P-11-F", Docket, p. 139 and BIR Records, p. 9.

[39] Docket, pp. 6 to 16.

[40] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

Thus, for the instant claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject withholding tax paid is an "erroneous or illegal tax".

The alleged erroneous multiple payments were proven by petitioner.

It is undisputed that on October 13, 2017, petitioner filed its *Monthly WTC Return* via BIR eFPS in the total amount of ₱281,003.98 for the month of September 2017.[41] During the course of electronic payment, however, petitioner encountered several technical errors or difficulties. On the same day and on its third attempt, it was able to successfully processed and paid its tax in the amount of ₱281,003.98, through the BPI online tax payment facility,[42] as shown in the *eFPS* Payment Details for petitioner's *Monthly WTC Return* for September 2017[43] and BPI ExpressLink Statement of Transactions for petitioner's Account No. 1921-1037-23 for the month of October 2017.[44]

It is likewise established that the BIR eFPS generated three (3) requests for confirmation of remittance for petitioner's *Monthly WTC Return* for the September 2017 under Payment Transaction Nos. 179819153, 179819123, and 179819085, respectively, with an amount of ₱281,003.98 for each of the said transactions.[45]

Thereafter, on October 17, 2017, petitioner, through its Accounting Supervisor, approved all pending payment instructions lodged in its BPI ExpressLink online banking facility. Consequently, the last two (2) of the three (3) transactions, under Transaction Nos. 179819153 and 179819085, have been successfully processed and paid in an amount of ₱281,003.98 each, or in the total amount of ₱562,007.96.[46]

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[41] Exhibits "P-5", "P-6", and "P-7", Docket, pp. 289 to 291.
[42] Q & A Nos. 13 and 14, Exhibit "P-17" [Judicial Affidavit (of Witness Jalene B. Gapas)], Docket, at pp. 64 to 65, and 239 to 240.
[43] Exhibits "P-7", Docket, p. 291.
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Based on the foregoing established facts, it is apparent that the said total amount of ₱562,007.96 are the result of excess payments or overpayments of petitioner of income tax withheld on compensation for the month of September 2017. In other words, the said excess payments or overpayments fall under the definition of "erroneous or illegal tax", since it is one levied without statutory authority.

Respondent's contention that the documents presented by petitioner do not necessarily prove its claim, as these are susceptible to different interpretations other than a case of multiple payment or multiple remittance and it could be that the second and third payment were for a different transaction,[47] is bereft of merit.

While respondent contends that petitioner fell short of proving the veracity of its claim of alleged multiple payments of withholding tax on compensation for September 2017, he, however, failed to present any evidence to prove such contention during trial. This is despite his facility and/or opportunity in checking the BIR's own records to verify or determine the veracity petitioner's claim.

It must be emphasized that after the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim. To rule otherwise would be to unduly burden the claimant with additional requirements which has no statutory nor jurisprudential basis.[48]

That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.[49]

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[47] Respondent's *Memorandum*, Docket, p. 328.

[48] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 212699, March 13, 2019.

[49] *Filinvest Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 146941, August 9, 2007.

Thus, with petitioner having complied with the requirements for tax refund and having shown convincing proof for the grant thereof, and without the respondent showing contrary evidence other than his bare assertions, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged by petitioner. Hence, the grant of refund in this case is warranted.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱562,007.96**, representing the its erroneously paid withholding taxes on compensation for the month of September 2017.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

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