REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1522** **(CTA Case No. 8831)**
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
LUCIO L. CO, SUSAN P. CO, FERDINAND VINCENT P. CO, and PAMELA JUSTINE P. CO, Respondents.	Promulgated: AUG 14 2018 11:31 a.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

This resolves petitioner's Motion for Reconsideration (Re: Decision dated February 28, 2018) filed on March 28, 2018[1] with respondents' Comment [To the Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision dated February 28, 2018)] filed on May 21, 2018.[2]

The motion is bereft of merit.

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[1] Rollo, pp. 161-168.
[2] Rollo, pp. 172-197; from the receipt of the Court's Resolution on May 9, 2018, respondents had ten days or until May 19, 2018, Saturday, to file their Comment.

The grounds raised by petitioner are not new. Petitioner previously invoked the same in its Motion for Reconsideration which the Court below already resolved: [3]

> "Respondent's allegation that the initial written claims for refund were without authority from petitioners are without basis since there is a presumptive authority of counsel to act in behalf of its client. At any rate, assuming that a written mandate was required, such was satisfied by the subsequent execution by petitioners of a Special Power of Attorney (SPA), which also ratified the action previously made by their counsel.
>
> Also, the written claims met all the requirements for a valid administrative claim as provided under Section 229 of the NIRC, as amended. The written claims were filed with the Commissioner of the BIR within 2 years from the payment of the tax categorically demanded for reimbursement.
>
> The initial lack of any BIR Form No. 1914, or the Application for Tax Credits/Refunds is of no moment since all the information required in said BIR Form was provided by petitioners in their written claims, constituting substantial compliance of the said legal requirement. Jurisprudence also has it that compliance with the requisites under the law constitutes a valid administrative claim even in the absence of BIR Form No. 1914." (*Underscoring supplied*)

The Petition for Review likewise advanced identical issues on the opposing counsel's lack of authority and the timeliness of the administrative claim they filed.[4] As a final attempt to persuade the Court on the merits of this position, petitioner once again repleads it in this motion.

First, as already discussed at length in the Decision, an act performed by a counsel within the scope of his general or implied authority is, in the eyes of the law, regarded as the act of the client himself.[5]

If petitioner's objection to the authority of the respondents' counsel were indeed considerable enough to defeat the validity of the refund claim, why fail to bring forward any evidence that would impugn the implied authority of the opposing counsels? What is evident during trial is that petitioner opted not to present any proof to show the alleged infirmity[6] because there was really none. Despite the abundance of opportunity to overturn the presumption in Sections 21 and 22, Rule 138 of the Rules of

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[3] September 1, 2016 Resolution, Division Docket, Volume III, pp. 1336-1338.
[4] Rollo, pp. 10-12.
[5] *Spouses Ragudo v. Fabella Estate Tenants Association, Inc.*, G.R. No. 146823, August 9, 2005.
[6] June 15, 2015 Resolution, Division Docket, Volume II, pp. 1204-1205.

Court,[7] petitioner applied the same inaction it previously did on the administrative claim for refund.[8]

On this score, the Supreme Court explained in *Republic of the Philippines v. Honorable Clemente M. Soriano, et al.*:[9]

> "In its desperate but futile attempt to defeat the claim of respondent Wellington, petitioner questions the authority of Tito Fajardo to make representations in behalf of Wellington. <u>A lawyer is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client (Sec. 21, Rule 138). No evidence was presented against this presumption in favor of Atty. Fajardo. Thus, the presumption remains unrebutted. It is worthy to note that respondent Wellington never disowned or denied that Atty. Fajardo is its counsel</u>. On the contrary, there is more than enough evidence that the services of Atty. Fajardo were properly engaged (Annexes N, N-1, and N-2)." (*Underscoring supplied*)

Second, Sections 204(C) and 229 of the Tax Code *neither* prohibit representation by counsel when the taxpayers file their administrative claims for refund *nor* require that the representatives to produce evidence of their authority obtained from the principals. In fact, the respondents are correct in pointing out that the acts of the counsels in filing the administrative claims do *not* even fall under any of the cases for which a special power of attorney is necessary under Article 1878 of the Civil Code:

> Art. 1878. Special powers of attorney are necessary in the following cases:
>
> (1) To make such payments as are not usually considered as acts of administration;
> (2) To effect novations which put an end to obligations already in existence at the time the agency was constituted;
> (3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;
> (4) To waive any obligation gratuitously;
> (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

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[7] "**Section 21.** *Authority of attorney to appear.* — an attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client, but the presiding judge may, on motion of either party and on reasonable grounds therefor being shown, require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires. Any attorney wilfully appearing in court for a person without being employed, unless by leave of the court, may be punished for contempt as an officer of the court who has misbehaved in his official transactions.

Section 22. *Attorney who appears in lower court presumed to represent client on appeal.* — An attorney who appears *de parte* in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court."

[8] Judicial Affidavit of Mrs. Mary S. Demetillo, Exhibit P-47, Division Docket, Volume I, p. 399.
[9] G.R. No. 76944, December 20, 1988.

> (6) To make gifts, except customary ones for charity or those made to employees in the business managed by the agent;
> (7) To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;
> (8) To lease any real property to another person for more than one year;
> (9) To bind the principal to render some service without compensation;
> (10) To bind the principal in a contract of partnership;
> (11) To obligate the principal as a guarantor or surety;
> (12) To create or convey real rights over immovable property;
> (13) To accept or repudiate an inheritance;
> (14) To ratify or recognize obligations contracted before the agency;
> (15) Any other act of strict dominion. (n)"

In *PSCFC Financial Corporation (New PSCFC Business Corporation) v. Court of Appeals, et al.*,[10] the Supreme Court affirmed the authority of a counsel to make representations in reply to a request for admission by an opposing party and cited Article 1878 of the Civil Code and Section 21, Rule 138 of the Rules of Court as bases:

> "The argument is untenable. Section 21 of Rule 138 states —
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> > 'Sec. 21. Authority of attorney to appear. — An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client ...'
>
> <u>Petitioner has not shown that the case at bar falls under any of the recognized exceptions as found in Art. 1878 of the Civil Code which enumerates the instances when special powers of attorney are necessary, or in Rule 20 of the Rules of Court on pre-trial where the parties and their attorneys are both directed to appear before the court for a conference; so that for counsel to appear at the pre-trial in behalf of the client, he must clothe the former with an adequate authority in the form of a special power of attorney or corporate resolution</u>.
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> Section 23 of Rule 138 provides that '(a)ttorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure ...'
>
> Thus, when Rule 26 states that a party shall respond to the request for admission, it should not be restrictively construed to mean that a party may not engage the services of counsel to make the response in his behalf. <u>Indeed, the theory of petitioner must not be taken seriously; otherwise, it will negate the principles on agency in the Civil Code, as well as Sec. 23, Rule 138, of the Rule of Court</u>.
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> Nonetheless, even assuming arguendo that Atty. Philip Sigfrid Fortun overstepped his authority, it is only his client, respondent Banco

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[10] Resolution, G.R. No. 106094, December 28, 1992.

Filipino, which has the prerogative to impugn his acts and not petitioner, the adverse party. Interestingly, Banco Filipino has not objected to the response made by its counsel in its behalf." (*Underscoring supplied and citations omitted*)

Finally, petitioner's counsels are *estopped* from questioning the authority of the opposing counsels to represent and bind their clients considering that the former recognized this authority when they entered into a Joint Stipulation of Facts and Issues with the latter after the Pre-Trial Hearing.[11]

As the Court *a quo* noted, whatever doubt on the counsels' presumptive authority in the filing the administrative claim was squarely addressed when the taxpayers executed a Special Power of Attorney and submitted the same to the Court *a quo*. This instrument clearly *spells out* the extent of the authority granted to respondents' counsels and *ratifies* all prior acts done in pursuit of said authority:[12]

"**<u>SPECIAL POWER OF ATTORNEY</u>**

KNOW ALL MEN BY THESE PRESENTS:

We, **Lucio L. Co**, **Susan P. Co**, **Ferdinand Vincent P. Co** and **Pamela Justine P. C** xxx do hereby **APPOINT** the law firm of **ZAMBRANO AND GRUBA LAW OFFICES or any of the lawyers of said law firm**, xxx to be our true and legal attorney-in-fact to act for and in our name and stead and to perform the following acts:

1. <u>To represent us in all **civil, criminal, administrative** cases as well as in any other proceeding in connection with our Application and/or Claim for Tax Refund of Capital Gains Tax</u>, plus interest and/or penalties, as well as to negotiate, enter into, execute sign and deliver any settlement or compromise agreement on any account or matter prior to commencement of litigation, under such terms and conditions as they may deem just and equitable in connection with our Application and/or Claim for Tax Refund of Capital Gains Tax, plus interest and/or penalties; and

xxx xxx xxx

HEREBY GRANTING unto our representative full power and authority required and proper for carrying into full force and effect any and all things necessary and proper in the premises above-mentioned as fully to all intents and purposes as we may lawfully do if present, and <u>we ratify and confirm, as we hereby ratify and confirm, all the said attorney-in-fact has heretofore done or may lawfully do or cause to be done by virtue hereof</u>." (*Underscoring supplied*)

Land Bank of the Philippines v. Pamintuan Development Co.[13] is precisely relevant to the case at bench where the Supreme Court upheld the

[11] Division Docket, Volume II, pp. 571-585.
[12] Division Docket, Volume II, pp. 569-570.
[13] G.R. No. 167886, October 25, 2005.

authority of a party's counsel by underscoring the strong presumption enjoyed by him as such and the retroactive effect of the ratification made by the client:

> "The presumption in favor of the counsel's authority to appear in behalf of a client is a strong one. A lawyer is not even required to present a written authorization from the client. In fact, the absence of a formal notice of entry of appearance will not invalidate the acts performed by the counsel in his client's name. However, the court, on its own initiative or on motion of the other party require a lawyer to adduce authorization from the client.
>
> In the case at bar, the filing of a notice of entry of appearance by Attys. Montarde and Mesa, gave rise to the presumption that they have the authority to file the notice of appeal in behalf of petitioner. When their authority was challenged, they presented the SPA executed by Gilda E. Pico, Executive Vice President of LANDBANK authorizing them to represent petitioner; and the two memoranda of Atty. Danilo B. Beramo, Department Manager and Head, CARP Legal Services Department, requesting Atty. Montarde to file a notice of appeal. These documents are sufficient proof of their authority to represent petitioner's cause. The doubt entertained by the DARAB as to when the SPA and memoranda were executed is of no consequence in view of petitioner's vigorous assertion that it authorized said lawyers to file a notice of appeal. Indeed, even an unauthorized appearance of an attorney may be ratified by the client either expressly or impliedly. Ratification retroacts to the date of the lawyer's first appearance and validates the action taken by him." (*Underscoring supplied and citations omitted*)

Clearly, against the unrebutted presumption under the Rules of Court and the unrefuted fact that the counsels for respondents were expressly sanctioned under the SPA and had acted within the bounds of such authority, petitioner's arguments must fail.

Accordingly, we find no cogent reason to disturb the conclusions reached in the February 28, 2018 Decision.

WHEREFORE the Motion for Reconsideration (Re: Decision dated February 28, 2018) is **DENIED** for lack of merit. Accordingly, the June 2, 2016 Decision and the September 1, 2016 Resolution are hereby **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(took no part)

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice