REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ZENITH FOODS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 9165

Members:

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

Promulgated:

JUL 29 2020 2:10 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Zenith Foods Corporation (**petitioner/ZFC**) against respondent Commissioner of Internal Revenue (**respondent/CIR**). It seeks the cancellation of the deficiency assessment for Expanded Withholding Tax (**EWT**), Final Withholding Tax (**FWT**) and Fringe Benefit Tax (**FBT**) for the calendar year (**CY**) 2004 amounting to ₱13,628,099.53, inclusive of increments; and, for the refund or issuance of tax credit certificate (**TCC**) of its payment for the subject deficiency taxes amounting to ₱13,628,099.53,

[1] Filed on 05 October 2015, Division Docket, pp. 10-25.

pursuant to Section 229[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

Petitioner is a corporation registered with the Securities and Exchange Commission[3] (**SEC**) and the Bureau of Internal Revenue (**BIR**) with Taxpayer's Identification Number (**TIN**) 218-664-404-000.[4] Its primary purpose is to engage in the planting, raising, culture, harvesting and processing of agricultural and fishery products into semi-processed or finished products, and to engage in other farm activities.[5]

Respondent, on the other hand, is the duly appointed CIR vested with authority, among others, to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines connecting therewith, including approval of compromise settlement and claim for refund.

FACTS OF THE CASE

Petitioner's books of accounts and accounting records for CY 2004 were subjected to an audit investigation, pursuant to Letter of Authority (**LOA**) No. 00098183[6] dated 15 September 2005.

On 05 March 2008, petitioner availed of tax amnesty under Republic Act (**RA**) No. 9480[7] covering taxable years (**TY**) 2005 and

---

2 **Sec. 229.** *Recover 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 assesses 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 penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without the 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.

3 Exhibit "P-1", Division Docket, Volume II, p. 838.

4 Exhibit "P-2-a", id., pp. 849-850.

5 Primary Purpose, Amended Articles of Incorporation, Exhibit "P-1", id., p. 841.

6 Exhibit "R-5", BIR Records, p. 612.

7 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2005 AND PRIOR YEARS.

prior years, thus constraining BIR-Revenue District Office No. 56 to limit its audit to withholding tax liabilities for CY 2004[8].

Respondent issued a revised Preliminary Assessment Notice[9] (**PAN**) on 11 April 2008.

On 23 July 2008, petitioner received from Revenue Region (**RR**) No. 9 a Formal Letter of Demand/Final Assessment Notice[10] (**FLD/FAN**), dated 10 July 2008, demanding payment of the alleged deficiency internal revenue taxes in the total amount of ₱8,406,714.79, itemized as follows:

Tax Type	**Amount**
Expanded Withholding Tax	₱3,433,669.42
Final Withholding Tax	3,699,527.06
Fringe Benefit Tax	1,273,518.31
Total Amount	**₱8,406,714.79**

On 22 August 2008, petitioner filed its Protest Letter[11] to the FLD/FAN with RR No. 9, requesting for the reinvestigation and/or reconsideration of the assessment for CY 2004.

On 02 October 2009, petitioner received a Preliminary Collection Letter[12] (**PCL**) dated 01 September 2009, seeking the collection of petitioner's alleged tax liabilities for CY 2004.

On 27 January 2010, petitioner received a Final Notice Before Seizure[13] (**FNBS**) giving it the final opportunity to settle its deficiency tax liabilities. Petitioner responded to the FNBS through a letter[14] dated 01 February 2010.

On 10 December 2010, petitioner paid the amount of ₱352,295.56 as its supposed full settlement of its deficiency tax liabilities. The

8 Paragraph (Par.) 5, Statement of Facts and Proceedings, petitioner's Memorandum, Division Docket, Volume III, p. 1135.
9 Exhibit "R-11", BIR Records, pp. 400-403.
10 Exhibit "P-15", Division Docket, Volume II, pp. 863-869.
11 Exhibit "P-16", id., pp. 870-876.
12 Exhibit "P-17", id., p. 877.
13 Exhibit "P-18", id., p. 878.
14 Exhibit "R-4", BIR Records, pp. 731-737.

substantial reduction of the assessed amount from ₱8,406,714.79 (as stated in the FLD) was embodied in the Agreement Form[15] which petitioner's representative (Atty. Jeffrey R. Balmores) and Revenue District Officer Benito B. Wong (**RDO Wong**) signed. Furthermore, the said reduction was evidenced by Authority to Cancel Assessment[16] (BIR Form No. 1402). The following consisted the items of the payment made:

Tax Type	Basic Tax	Interest	Compromise Penalty	Total
EWT	₱132,068.77	₱157,469.39	₱16,000.00	₱305,538.16
FBT	19,503.19	23,254.21	4,000.00	46,757.40
TOTAL	**₱151,571.96**	**₱180,723.60**	**₱20,000.00**	**₱352,295.56**

In a letter dated 14 April 2015, the Regional Director of RR No. 9-San Pablo City, Jose N. Tan, rendered a "final decision"[17] (**final decision**) on the deficiency tax liabilities for CY 2004. Petitioner received the letter on 04 September 2015.

On 23 September 2015, petitioner received a Notice of Dis-Accreditation from the Bureau of Customs-Accounts Management Office (**BOC-AMO**); the same appeared to have taken effect days prior or on 16 September 2015.

On 08 October 2015, petitioner likewise received a Preliminary Notice of Dis-Accreditation as Importer[18] dated 17 June 2015 from the BIR-Accounts Receivable Monitoring Division (**BIR-ARMD**).

On 14 October 2015, petitioner paid the delinquent account for CY 2004 in the aggregate amount of ₱13,628,099.53 to avert its dis-accreditation as importer. On 20 October 2015, petitioner submitted its proof of payment. On 05 November 2015, respondent issued a Certification[19] stating that petitioner had settled its deficiency liabilities.

---

15 Exhibit "P-20", Division Docket, Volume II, p. 888.
16 Exhibits "P-21", "P-22", "P-23", "P-24", "P-25" and "P-26", id., pp. 889-894.
17 Exhibit "P-19", id., pp. 879-887.
18 Exhibit "P-31", id., p. 905.
19 Exhibit "P-39", id., p. 961.

On 12 April 2016, petitioner filed an administrative claim for refund or issuance of TCC pursuant to Section 229 of the NIRC of 1997, as amended, for the ₱13,628,099.53 deficiency taxes paid on 14 October 2015.

On 05 October 2015, within thirty (30) days from the receipt of the final decision, petitioner filed a Petition for Review before this Court.

PROCEEDINGS BEFORE THE COURT

After twice moving for extension, respondent filed his Answer[20] to the Petition for Review on 12 January 2016. Pre-trial conference was also later set.[21] While respondent filed his Pre-Trial Brief[22] on 08 April 2016; petitioner, on the other hand, moved for a resetting. Still later, it sought to file a Supplemental Petition for Review.

Meanwhile or on 22 April 2016[23], respondent filed a Motion to Dismiss which the Court denied in its 01 July 2016 Resolution.[24]

On 10 May 2016, petitioner filed its Supplemental Petition for Review[25] praying for both the cancellation of the assessment and the refund or issuance of TCC of the amount paid (relating to the deficiency assessment). Afterwards, petitioner filed its Pre-Trial Brief on 26 May 2017.

Respondent, for his part, filed an Omnibus Motion (Motion for Reconsideration and Motion for Clarification)[26], which the Court denied on 13 December 2016.[27]

---

20 Id., Volume I, pp. 103-122.
21 See Notice of Pre-Trial, id., pp. 123-124.
22 Id., pp. 133-140.
23 Id., pp. 233-240.
24 Id., pp. 378-384.
25 Motion for Extension of Time to File Supplemental Petition for Review was granted in an Order dated 03 May 2016, id., p. 247.
26 Dated 20 July 2016, id., pp. 397-410.
27 See Resolution, id., pp. 453-458.

After several postponements, the Pre-Trial Conference proceeded and the parties also submitted their Joint Stipulation of Facts and Issues[28] (**JSFI**) on 17 July 2017. On the same date, petitioner moved to clarify whether the Court, upon ruling on the cancellation of the assessment, will *motu propio* rule on the propriety of a refund as a necessary and logical consequence of the erroneous assessment. Over respondent's objection, the Court granted petitioner's motion in a Resolution[29] dated 22 November 2017, thus including the issue of petitioner's entitlement to refund in the JSFI and Pre-Trial Order.

On 30 January 2018, the parties amended their JSFI.[30] Later or on 06 February 2018[31], the Court approved and adopted the parties' amended JSFI and terminated the pre-trial.

In the Resolution dated 27 March 2018[32], the Court admitted petitioner's Supplemental Petition for Review upon payment of additional docket fee. Likewise, the Court ordered respondent to file his Answer to the Supplemental Petition for Review.

After moving for an extension of time, respondent filed his Supplemental Answer on 30 April 2018[33].

When trial ensued thereafter, petitioner presented its lone witness, Ms. Clarisa Hornilla-Guerra[34] (**Guerra**). Respondent, on the other hand, presented Revenue Officers (**ROs**) Lea R. Bustonera[35] (**RO Bustonera**), Floriana L. Guevarra[36] (**RO Guevarra**), Grace N. Mangubat[37] (**RO Mangubat**) and Margie O. Padre[38] (**RO Padre**), who all testified on direct examination by way of Judicial Affidavits.

---

28 Id., Volume II, pp. 650-660.
29 Id., pp. 717-721.
30 Id., pp. 737-748.
31 See Resolution, id., p. 751.
32 Id., pp. 790-791.
33 Id., pp. 799-821.
34 Exhibit "P-40", id., pp. 488-505.
35 Exhibit "R-20", Judicial Affidavit, id., Volume I, pp. 170-177.
36 Exhibit "R-21", Judicial Affidavit, id., pp. 147-151.
37 Exhibit "R-22", Judicial Affidavit, id., pp. 158-163.
38 Judicial Affidavit, id., pp. 184-188.

TESTIMONY OF
CLARISSA HORNILLA-GUERRA

Guerra is employed as Tax Manager of Jollibee Worldwide Pte. Ltd. (**JWPL**) that renders accounting and tax services to the Jollibee Group of Companies, including its subsidiaries and affiliates (such as petitioner ZFC). She was involved in the review and preparation of the documents relevant to the instant petition and thus was well aware of petitioner's judicial protest to the assessment for CY 2004. On the witness stand, she testified essentially on the factual circumstances that led to the filing of the instant petition. She also identified relevant documents in support thereof.

On cross-examination[39], she elaborated on petitioner's request for re-investigation or reconsideration (to cancel the assessment) in the protest to the FLD and confirmed the documents that petitioner submitted to substantiate the request.

After the presentation of Guerra, petitioner filed its Formal Offer of Evidence (**FOE**) on 01 August 2018.[40] In the Resolution[41] dated 21 November 2018, the Court, except for Exhibit "P-29"[42], admitted all of petitioner's exhibits.

Respondent's witnesses subsequently took turns in taking the witness stand to rebut petitioner's claims.

TESTIMONY OF REVENUE OFFICER
LEA R. BUSTONERA

RO Bustonera holds the position of Revenue Officer III and in line with her duty and pursuant to the LOA dated 15 September 2005, she conducted an investigation involving the audit for CY 2004 subject of the case. After reviewing the records, she found that petitioner was liable for EWT, FWT, FBT, Documentary Stamp Tax, Income Tax and Compromise Penalty for CY 2004. She then prepared the Notice of Informal Conference (**NIC**) dated 03 January 2008 and 17 March 2008,

---

39 TSN dated 12 July 2018.
40 Division Docket, Volume II, pp. 827-837.
41 Id., p. 969.
42 Notice of Dis-Accreditation as Importer dated September 16, 2015.

respectively. Since there was no settlement of liabilities, she prepared a Memorandum recommending the issuance of the Final Assessment Notice/Demand Letter.[43] Together with the entire case docket, the said Memorandum was then indorsed to the Regional Director of RR No. 9-San Pablo, Laguna.

During cross-examination[44], she was asked whether she has knowledge of petitioner's actual receipt of the PAN, to which she answered that she was not involved in the preparation and issuance of the same and the Memorandum she prepared was a recommendation for the FAN's issuance.

TESTIMONY OF REVENUE OFFICER
FLORIANA GUEVARRA

RO Guevarra occupies the position of a Revenue Officer-Collection and is tasked to pursue and enforce collection of (accounts) receivable of taxpayers with delinquent accounts. She became familiar with the case when, pursuant to a Memorandum of Assignment, she was asked to verify petitioner's delinquent account. After verification, she prepared the PCL and thereafter, the FNBS.

On cross-examination[45], RO Guevarra confirmed that the preparation of the PCL and the FNBS was one of her official tasks since it was part of the collection procedure (after verification of delinquent account).

TESTIMONY OF REVENUE OFFICER
GRACE MANGUBAT

RO Mangubat holds the position of Revenue Officer II tasked to conduct audit investigation, among which is the case at bar. At the time she was detailed at RR No. 9, she was assigned to review the investigation conducted by the district office concerning petitioner's tax liabilities for CY 2004. Anent this, she prepared the assessment notices based on the recommendation of the district office contained in the Memorandum dated 01 April 2008.

---

43 Supra at note 10.
44 TSN dated 05 December 2018.
45 TSN dated 30 January 2019.

RO Mangubat then issued the revised PAN and the FLD with Assessment Notices. After receiving the protest to the FLD, she then informed petitioner that the case will be forwarded to the district office for further evaluation and required it to submit supporting documents.

On cross examination[46], RO Mangubat likewise confirmed that she was authorized to issue the assessment notices. She explained that there was a manually prepared assignment slip and that, as a matter of procedure, they are assigned to issue the assessment notices based on the recommendation of the district office.

On re-direct examination[47], it was established that the Memorandum issued by the district office recommended the issuance of the FLD.

On re-cross examination[48], RO Mangubat was asked whether it was a ministerial duty for her to cause the issuance of the assessment notices. In retort, she stated that she only issued the assessment notices after her review of the recommendation.

TESTIMONY OF REVENUE OFFICER
MARGIE PADRE

RO Padre is a Revenue Officer II who reinvestigated petitioner's accounts pursuant to a Memorandum dated 10 December 2008. After receiving petitioner's protest to the FLD, she prepared a letter demanding the submission of the relevant supporting documents. For petitioner's failure to submit documents within the period prescribed, she prepared a Memorandum (dated 02 April 2009) addressed to the RDO; recommending that the case be forwarded to the Assessment Division of RR No. 9 for collection.

On cross-examination[49], RO Padre was asked of her basis for treating the protest letter as one for reinvestigation and not for

---

[46] TSN dated 13 February 2019.
[47] Id.
[48] Id.
[49] TSN dated 01 April 2019.

reconsideration. To this, she replied that the docket she received for review was one for reinvestigation. She likewise stated that she could no longer remember if petitioner was duly informed of respondent's acceptance of its request for reinvestigation.

After the presentation of the last witness, respondent filed his FOE on 10 April 2019. In a Resolution[50] dated 13 June 2019, the Court admitted all of respondent's exhibits.

Subsequently, petitioner filed its Memorandum[51] on 17 September 2019, whereas respondent filed his Memorandum[52] on 02 September 2019. Following the filing of the parties' memoranda, the Court submitted the instant case for decision.[53]

ISSUES

As the parties so agreed[54], the following are the issues for this Court's resolution:

I.
WHETHER THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT PETITION;

II.
WHETHER PETITIONER IS LIABLE TO THE ASSESSED DEFICIENCY EXPANDED WITHHOLDING TAX (EWT), FINAL WITHHOLDING TAX (FWT), FRINGE BENEFIT TAX (FBT), AND COMPROMISE PENALTIES FOR TAXABLE YEAR 2004, PLUS 25% SURCHARGE, 20% DEFICIENCY AND DELINQUENCY INTEREST PURSUANT TO SECTIONS 248 AND 249 OF THE 1997 NATIONAL INTERNAL REVENUE CODE; and,

III.
WHETHER PETITIONER IS ENTITLED TO A REFUND IN THE AMOUNT OF P13,628,099.53 REPRESENTING PAYMENT FOR ILLEGALLY ASSESSED AND COLLECTED TAX.

---

50 Division Docket, Volume III, pp. 1060-1061.
51 Id., pp. 1134-1176.
52 Id., pp. 1106-1130.
53 See Resolution dated 25 September 2019, id., p. 1178.
54 Pre-Trial Order dated 20 February 2018, id., Volume II, pp. 766-776.

ARGUMENTS

Petitioner proferred a three-tiered argument for its claim.

First, petitioner argues that the Court has jurisdiction to take cognizance of the case and to rule on the validity of the assessment and its claim for refund. It insists that the payment of the alleged deficiency taxes did not constitute as abandonment or waiver of its petition for cancellation or withdrawal of assessment for deficiency taxes, as respondent insists. Petitioner points out that the payment was made to avert its dis-accreditation as an importer and that time was of the essence (considering the perishable goods it imports). Based on the factual circumstances surrounding its payment, it could not possibly be deemed to have abandoned or waived its petition for the cancellation of the assessment for CY 2004.

Petitioner likewise contends that the assessment for CY 2004 did not yet attain finality since it did not submit supporting documents relevant to its protest to the FLD/FAN. Petitioner believes that it is the failure to file protest within thirty (30) days from receipt of the FLD that makes the assessment final and *not* the non-submission of supporting documents. As it timely filed the Petition for Review within thirty (30) days from receipt of the Final Decision on Disputed Assessment (**FDDA**), the Court then has jurisdiction over its appeal.

In the same vein, petitioner insists that its judicial claim for refund of taxes paid was filed on time and within two (2) years from the time of payment, as provided in Section 229 of the NIRC of 1997, as amended.

Petitioner contends further that this Court may concurrently rule on the validity of the assessment and the propriety of the refund of taxes paid pursuant to Section 229 of the NIRC of 1997, as amended; citing *Commissioner of Internal Revenue v. Court of Appeals, et al.*[55] wherein the Supreme Court ruled that it is logically necessary and legally appropriate to resolve jointly the issue of deficiency assessment and claim for refund where the same are intimately related to each other.

---

[55] G.R No. 106611, 21 July 1994.

Second, as to the merits of its petition for cancellation of the deficiency assessment, petitioner argues vehemently that respondent's right to assess EWT, FWT and FBT for CY 2004 had already prescribed in view of the lapse of the three (3)-year period provided in Section 203[56] of the NIRC of 1997, as amended. Respondent issued the assessment only on 23 July 2008 or more than three (3) years from the filing of the subject returns.

Petitioner likewise points out that respondent's right to collect deficiency taxes lapsed as the FDDA was issued nearly seven (7) years from the time he released the FLD. According to petitioner, the RO who examined its books for CY 2004 and recommended the assessment thereon lacked valid authority as she was not named in the LOA. RO Mangubat was only assigned to perform the audit investigation through an assignment slip.

Petitioner claims to have also settled its deficiency taxes amounting to ₱352,295.56 as evidenced by an Agreement Form signed by its representative and RDO Wong; hence, the audit investigation for CY 2004 was already terminated. Moreover, it reasons that had respondent intended to reverse the revised assessed amount in the Agreement Form, it should have issued his FDDA earlier. For petitioner, respondent's belated action in issuing the FDDA not only violated the period for the enforcement of collection, it also deprived petitioner of its right to due process.

Third, considering the foregoing arguments that would warrant the cancellation of the assessment, petitioner thus claims its entitlement to a refund or issuance of TCC for the whole amount it paid to respondent (for the deficiency assessment). The said payment, as petitioner puts it, constitutes illegally assessed and collected tax that can be recovered under Section 229 of the NIRC of 1997, as amended.

---

[56] **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Respondent, on the other hand, countered a mix of arguments as follows:

First, the Court has no jurisdiction as the instant Petition for Review states no cause of action and the claim or demand set forth has been paid, waived, abandoned or otherwise extinguished. In the petition, petitioner prayed for the cancellation of the assessment and for respondent to desist from enforcing the collection proceedings. However, merely days following the filing of the petition, it paid the entire amount of alleged deficiency liabilities. For respondent, this positive act of petitioner is conclusive of its admission of its tax liabilities for CY 2004. Petitioner is hence estopped from contesting the legality and validity of the assessment and there is no more disputed assessment to speak of.

Second, respondent's assessment had become final, executory and unappealable for petitioner's failure to file a valid protest due to the non-submission of supporting documents within sixty (60) days from filing of protest.

Third, the assessment against petitioner had not prescribed. Respondent argues that the period of limitation in Section 203 of the NIRC of 1997, as amended, pertains only to internal revenue taxes and is not applicable to withholding tax as it is not one of the internal revenue taxes. Respondent explains that withholding tax is a system and the actual tax is income tax. Therefore, what it seeks to recoup from petitioner as withholding agent is considered penalty for non-remittance of the withholding taxes. For respondent, withholding taxes do not fall under the three-year prescriptive period for assessment. The assessment is not for the collection of income tax but for the breach of petitioner's duty as his agent.

Fourth, the revised assessment[57] as shown in the Agreement Form cannot be the basis of the alleged settlement of tax liability. Respondent argues further that the Agreement Form that RDO Wong signed is invalid because the assessment was already final and executory (for petitioner's failure to submit relevant supporting documents). Moreover, the RDO was merely tasked to review

---

57 Supra at note 15.

petitioner's factual claims and make a report thereto, and not to revise the assessment and enter into an agreement with it (petitioner). Hence, petitioner's payment of the amount indicated in the Agreement Form does not totally absolve its liabilities.

Fifth, respondent's right to collect had not prescribed as the period was tolled numerous times due to petitioner's multiple requests for re-investigation even after the issuance of the PCL and FNBS.

Lastly, petitioner is not entitled to the refund of its payment when such payment was voluntarily made. The issue of prescription of assessment and collection as basis for its claim for refund is procedural and may be waived. Also, the remedy of appeal from the assessment and refund are separate and distinct remedies provided by law and anchored on different causes of action. The Supplemental Petition for Review altered the original cause of action and is unwarranted as it was made without leave of court.

RULING OF THE COURT

After an assiduous review of the records and the parties' contrasting arguments, the Court finds the Petition for Review impressed with merit.

Before proceeding to discuss the merits of the case, the Court shall first tackle the issue on jurisdiction. Section 7 of RA 1125, as amended, provides in part:

> ...
> *Sec. 7. Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]
>
> ...

As earlier stated, respondent assails the Court's jurisdiction on two main grounds: (1) petitioner's payment of its deficiency taxes (after the filing of the petition) is acquiescence to his assessment and there is no longer any "disputed assessment" to speak of and the same has been paid, waived, abandoned or otherwise extinguished; and, (2) the assessment is final, executory and unappealable for petitioner's failure to file a valid protest due to the non-submission of supporting documents within sixty (60) days from filing of protest.

We disagree with respondent.

Petitioner's payment after the filing of the instant petition cannot be considered as an acquiescence to the assessment, such that there is no more disputed assessment to speak of.

Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of the action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[58]

The allegations in the instant Petition for Review clearly made out a case of an appeal to a disputed assessment. The Court's jurisdiction was acquired from that point. Hence, the petitioner's subsequent payment to avert the impending cancellation of its Importer Accreditation will not be considered as acceding to the assessment that will strip us off of our jurisdiction, especially when petitioner itself made it clear that such payment was without conceding liability. Besides, regardless of payment, appeal is a remedy

---

58 *Padlan v. Elenita Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.

available to petitioner. Unless time-barred, the Court could henceforth assume jurisdiction.

In the same vein, We cannot side with respondent's contention that the assessment had become final and executory for petitioner's alleged failure to submit relevant documents within sixty (60) days from the filing of its protest. The Supreme Court's ruling in *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*[59] is apt, *viz*:

> ...
> The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.
> ...

On the merits of the instant case, since petitioner's claim for refund under Section 229 of the NIRC of 1997, as amended, is hinged on the validity of the assessment, We shall first discuss the latter.

THE ASSESSMENT FOR
CY 2004 IS VOID

For CY 2004, petitioner filed the monthly EWT returns on the following dates:

Month	Due Date for Filing	Date of Filing[60]	End of 3-year Prescriptive Period
January 2004	16 February 2004[61]	10 February 2004	16 February 2007
February 2004	15 March 2004[62]	9 March 2004	15 March 2007
March 2004	14 April 2004	12 April 2004	14 April 2007
April 2004	14 May 2004	11 May 2004	14 May 2007
May 2004	14 June 2004	10 June 2004	14 June 2007

---

59 G.R. Nos. 172045-46, 16 June 2009.

60 Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13" and "P-14", Division Docket, Volume II, pp. 851-862.

61 14 February 2004 fell on a Saturday.

62 14 March 2004 fell on a Sunday.

June 2004	14 July 2004	9 July 2004	14 July 2007
July 2004	16 August 2004[63]	10 August 2004	16 August 2007
August 2004	14 September 2004	10 September 2004	14 September 2007
September 2004	14 October 2004	8 October 2004	14 October 2007
October 2004	15 November 2004[64]	10 November 2004	15 November 2007
November 2004	14 December 2004	10 December 2004	14 December 2007
December 2004	17 January 2005[65]	10 January 2005	17 January 2008

No FWT and FBT returns were filed since petitioner was firm that the items were only subject to EWT and not (FWT and FBT as respondent had deemed).[66]

Based on the preceding matrix of payment dates, the FLD was issued only on 10 July 2008 or after four (4) years from the filing of the monthly EWT returns. Obviously, the assessment was issued beyond the three-year prescriptive period.

Likewise, it is noted that the FLD merely imposed a 25% surcharge[67] thus implying that the neglect was not willful and there was no allegation of fraud.

Section 203 of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 203**. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this

63 14 August 2004 fell on a Saturday.
64 14 November 2004 fell on a Sunday.
65 15 January 2005 fell on a Saturday.
66 Indicated in the Protest Letter to the FLD.
67 **Sec. 248.** *Civil Penalties.* –
(A) There shall be imposed, in addition to the tax required to be paid a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed[.]
...
(B) In case of willful neglect to file the return within the period prescribed by this Code... the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax...

> Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
>
> ...

In contending that the assessment for EWT had not prescribed, respondent treats the said assessment as penalty for failure of petitioner to withhold the correct amount of income tax and not an assessment for internal revenue tax as provided for in Section 203 of the NIRC of 1997, as amended. On this score, the recent Supreme Court ruling in *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[68] is enlightening:

> ...
>
> The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.
>
> ...
>
> Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.
>
> As a consequence of the withholding tax system, two distinct liabilities arise – one for the income earner/payee and another for the withholding agent...
>
> ...
>
> It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.

---

68 G.R. No. 211289, 14 January 2019.

...

A careful analysis of the above-quoted decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word "penalty" was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax and not of the withholding agent. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.

The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties. In *Commissioner of Internal Revenue v. Procter and Gamble Philippine Manufacturing Corporation*, the Court explained:

> It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made *"personally liable for such tax"* and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. **The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under the law.**
>
> A "person liable for the tax" has been held to be a "person subject to tax" and properly considered a "taxpayer". The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as *not* "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a

suit for refund of taxes he believes were illegally collected from him.

Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the tax code.

In addition, Section 247 (b) of the NIRC provides:

> SEC. 247. *General Provisions.* –
>
> x x x x
>
> (b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions of the tax prescribed herein.

On the other hand, Section 251 of the Tax Code reads:

> SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* — Any person required to withhold, account for and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

Based on the above-cited provisions, it is clear to see that the "penalties" are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. Thus, it was wrong for the CIR to restrict the EWT and WTC assessments

> against La Flor as only for the purpose of imposing penalties and not for the collection of internal revenue taxes.[69]
>
> ...

From the foregoing, respondent cannot circumnavigate the three-year prescriptive period in the guise that it is merely collecting penalty and not internal revenue taxes. The assessment for EWT falls within the ambit of Section 203.

The assessment having been issued beyond the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended, and not otherwise falling under the exception provided in Section 222[70], the Court could only deem that the subject assessment is void.

THE FORMAL LETTER OF DEMAND/FINAL ASSESSMENT NOTICE ISSUED IS VOID

Even assuming *arguendo* that the period to assess petitioner did not prescribe or lapse, the assessment is still void as the FLD failed to provide a definite amount demanded of petitioner.

Although the parties did not raise the validity of the FLD/FAN as an issue, the Court can nonetheless rule on the same pursuant to the last paragraph of Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), *viz*:

---

69 Citations omitted, emphasis and italics in the original text.

70 **Sec. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

(a) In the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

...

> ...
> SECTION 1. *Rendition of Judgment.* - ...
> ...
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the cases.
> ...

A perusal of the FLD/FAN shows that the amount being demanded from petitioner is not definite. The computation of interest as shown in the enclosed Assessment Notices covered only the period from <u>10 January 2005 up to 10 July 2008</u>, while the deadline for payment indicated in the said notices was <u>08 August 2008</u>. Evidently, no interest was computed from 11 July 2008 up to the deadline on 08 August 2008. Although there was a caveat in the FLD that "the interest and the total amount due will have to be adjusted if paid beyond due date", there is still a gap period of twenty-eight (28) days wherein no interest[71] is due. Such gap will result in an absurd situation wherein the taxpayer who wishes to pay within the prescribed period would still need to have the total amount due adjusted, lest the payment of the amount reflected on the FLD will result in deficiency. It is rather illogical for respondent to set a deadline within which to settle the deficiency taxes due but the amount remained variable. At the very least, respondent should have computed the interest up to the deadline for payment, with caveat for adjustment of interest if paid beyond the deadline.

In the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[72], the Supreme Court emphasized the importance of the definiteness of the amount demanded from the taxpayer, to wit:

---

71 **SEC. 249**. *Interest.* –

(A). *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum*, or such higher rate as may be prescribed by rules and regulations, <u>from the date prescribed for payment until the amount is fully paid.</u>

(B) *Deficiency Interest.* – Any deficiency in tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof. (Underscoring supplied)

...

72 G.R No. 215957, 09 November 2016.

> ...
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there: definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment...
>
> ...
>
> ... The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.
>
> ...
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality... Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.
>
> ...

From the foregoing disquisitions, the Court is more than convinced that the subject assessment for CY 2004 is void, thus granting respondent with no right to collect deficiency taxes from petitioner.

PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT PAID

With the assessment for CY 2004 declared as void, it follows that the collection therefor could not be enforced. The next more important query then is whether petitioner is entitled to refund of the compromise settlement.

We rule in the affirmative.

Section 204 of the NIRC of 1997, as amended, provides:

...

Sec. 204. *Authority of the Commissioner to Compromise, Abate, and Refund of Credit Taxes.* – The Commissioner may –

...

(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.

...

Section 204 above must be correlated with Section 229 of the NIRC of 1997, as amended, to wit:

...

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.

...

From the foregoing, the following are the requisites for the refund of taxes erroneously or illegally paid by taxpayers:

1. That the taxpayer should **file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty**, non-compliance with which the latter is precluded from exercising his authority thereon;[73]

2. That, **if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause**, otherwise, the claim for refund shall have prescribed;[74]

3. The claim for refund must be a **categorical demand for reimbursement**;[75]

4. There must be proof of payment of the erroneously or illegally collected taxes;[76] and,

5. No refund shall be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

Anent the first and second requisites, petitioner paid the alleged deficiency taxes on 14 October 2015.[77] Accordingly, respondent issued a Certification dated 05 November 2015[78] attesting that the Company had settled its alleged tax liabilities in the amount of ₱13,628,099.53.

On 12 April 2016, petitioner then filed an administrative claim for the refund or the issuance of TCC representing the erroneously and illegally paid deficiency tax for CY 2004. Petitioner thereafter filed a Supplemental Petition for Review with the Court on 10 May 2016; incorporating in the earlier Petition for Review its prayer for the refund or issuance of TCC of the amount paid. Accordingly, both the administrative and judicial claim were timely filed within two (2) years reckoned from the date of payment on 14 October 2015.

---

73 *Vda. De Aguinaldo v. Commissioner of Internal Revenue*, 13 SCRA 269 (1965).
74 *Gibbs v. Commissioner of Internal Revenue*, 107 Phil. 232 (1960).
75 *Bermejo v. The Collector of Internal Revenue*, 87 Phil. 96 (1950).
76 *Aguilar v. Commissioner of Internal Revenue*, CA-G.R. SP-16432, 30 March 1990.
77 Exhibits "P-34", "P-35", "P-36", "P-37" and "P-38", Division Docket, Volume II, pp. 947-960.
78 Supra at note 19.

With the timeliness of the administrative and judicial claims shown, the Court shall now proceed to determine the propriety of petitioner's claim for refund.

Respondent's belief that petitioner's payment was voluntarily made and was tantamount to an admission of liabilities is wrong. What prompted petitioner to pay the full amount of the alleged deficiency taxes was its impending dis-accreditation as an importer. In fact, at the time, respondent already communicated to both BOC-AMO and petitioner that its Importer Accreditation was being cancelled for having a delinquent account. In effect, petitioner was made to choose between paying the delinquent account or losing its privilege to import its products. Certainly, petitioner cannot just wait for the decision on its appeal before this Court especially that it is importing perishable goods. As earlier stated, petitioner cannot be considered as estopped from questioning the assessment and seeking refund of the amount it paid given the special and unusual circumstances that it was placed in. Therefore, its claim for refund or issuance of TCC, together with its consistent insistence that it is not conceding liability, constitutes a categorical demand for reimbursement in accordance with the third requisite.

As regards the fourth and fifth requisites, it is undisputed that petitioner paid the entire amount of its alleged liabilities. The said payment was evidenced by eFPS Payment Forms[79] and the Certification from RR No. 9 dated 05 November 2015.

All told, petitioner has sufficiently established that it is entitled to the refund or issuance of a TCC representing the illegally collected deficiency taxes (that resulted from a void assessment).

WHEREFORE, premises considered, petitioner Zenith Foods Corporation's Petition for Review, docketed as CTA Case No. 9165, is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's Formal Letter of Demand dated 10 July 2008 is declared **VOID** and the assessment for deficiency for Expanded Withholding Tax (**EWT**), Final Withholding Tax (**FWT**) and Fringe Benefit Tax (**FBT**) for calendar year 2004 is hereby **CANCELLED and SET ASIDE.**

---

[79] Supra at note 77 .

Additionally, respondent is hereby **ORDERED** to refund or issue a tax credit certificate in the amount of **Thirteen Million Six Hundred Twenty-Eight Thousand Ninety-Nine Pesos and Fifty-Three Centavos (₱13,628,099.53)**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, 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