REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ONG BENG GUI, (operating under the name and style "MUCH PROSPERITY TRADING"),
Respondent.

CTA EB NO. 1248
(CTA CASE NO. 8410)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:
MAY 18 2017 3:35 p.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review[1] appealing the Decision of the Second Division of this Court (Court in Division), promulgated on September 8, 2014 in CTA Case No. 8410, the dispositive portion thereof reads:

[1] Rollo, CTA EB No. 1248pp. 5-14, with annexes. Filed on December 5, 2014.

"**WHEREFORE,** premises considered, the Petition for Review is **GRANTED but in the reduced amount of P174,460.01** representing excess payment of WTC for the taxable month of December 2009.

SO ORDERED."

and the Resolution dated October 28, 2014, the dispositive portion thereof reads:

"**WHEREFORE,** respondent's Motion for Partial Reconsideration (Decision dated 08 September 2014) is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The relevant antecedents stated in the assailed Decision are as follows:

On December 14, 2009, after resolving to retire his business, petitioner[2] applied with the Department of Labor and Employment ("DOLE") for authority to terminate thirty-seven (37) employees effective January 16, 2010.

Petitioner paid P1,167,191.00, as separation pay, to the 37 terminated employees in December 2009.

On January 12, 2010, petitioner filed through Electronic Filing and Payment System ("EFPS") his monthly Withholding Tax on Compensation ("WTC") Form (BIR Form 1601-C") for the month of December 2009 and paid the corresponding WTC in the amount of P320,099.79 on the separation pay he paid to the 37 terminated employees. Realizing that the amount of P1,167,191.00 separation pay he paid to his 37 terminated employees should not have been subjected to WTC pursuant to Sec. 32 (B)(6)(b) of the Tax Code and Sec. 2.79 (B) of Revenue Regulations No. 2-98, as amended, petitioner filed and paid through EFPS on January 19, 2010, an amended BIR Form 1601-C for the month of December 2009, reflecting the correct WTC of P16,104.82, properly exempting the separation pay of P1,167,191.00 from WTC.

[2] Respondent Ong Beng Gui in this Petition for Review.

On February 22, 2010, petitioner filed through EFPS the Annual Information of Income Taxes Withheld on Compensation and Final Withholding Taxes ("BIR Form 1604-CF") reflecting petitioner's WTC payment of P16,104.82 for the month of December 2009 and excluding the earlier WTC payment of P320,099.79 made in January 12, 2010.

On February 2, 2010, petitioner filed an administrative claim for refund with the Revenue Accounting Division and Revenue District Office No. 29 (San Nicholas/Tondo) of the BIR through Metropolitan Bank and Trust Company ("MBTC"), the Authorized Agent Bank which handled petitioner's aforementioned EFPS payment.

Due to respondent's inaction on petitioner's claim for refund and, to toll the running of the 2-year prescriptive period, the instant Petition for Review was filed with this Court on January 11, 2012.

The Commissioner of Internal Revenue (CIR) filed an Answer[3] dated March 6, 2012, and interposed as Special and Affirmative Defenses that: Respondent Ong Beng Gui's bare allegations on full compliance with the requirements of law for entitlement to claim for tax refund for payment on tax-exempt separation pay of the alleged terminated employees is self-serving; that assuming respondent filed for retirement from business, the self-serving allegations by respondent that the affected employees were properly paid their separation pay in accordance with law in the month of December 2009 is fatal to the petition; there is no actual proof of the alleged payment of separation pay and the amount of separation pay paid by respondent to the dismissed employees; the identities of the alleged affected employees to whom the separation pays were paid are not established by respondent; the failure of respondent to establish actual payment of separation pay to his affected employees casts doubt on whether the petitioner withheld the correct amount of income tax and that the correct amount was remitted.

In the Joint Stipulation of Facts and Issues[4], the parties agreed that the issues to be resolved by the Court in Division are as follows:

1. Whether or not the Honorable Court has jurisdiction to entertain the instant Petition for review;
2. Whether or not petitioner[5] terminated 37 employees, and in the process, paid Separation Pay of P1,167,191.00 to 31 employees in full and without any withholding;

[3] Docket, CTA Case No. 8410, pp. 35-39.
[4] Filed by the parties on May 10, 2012.
[5] Respondent Ong Beng Gui in this Petition for Review.

3. Whether or not Petitioner as the statutory withholding agent for WTC is entitled to claim the refund on paid WTC on Separation Pay to his employees advanced by Petitioner;
4. Whether or not the evidence supports petitioner's claim that the Separation Pay remitted to petitioner's employees was undiminished by WTC; and
5. Whether the evidence supports petitioner's claim that he advanced WTC in the amount of P320,099.79 paid to the BIR representing WTC on tax-exempt Separation Pay.

After trial on the merits and upon the parties' submission of their respective memoranda, the case was submitted for decision on September 13, 2013.

On September 8, 2014, the Court in Division rendered the questioned Decision.[6]

On September 23, 2014, the CIR filed a "Motion for Partial Reconsideration (Decision dated 08 September 2014)."

On October 13, 2014, respondent Ong Beng Gui filed a "Comment/Opposition to Motion for Partial Reconsideration (dated 22 September 2014)."

On October 28, 2014, the Court in Division rendered the assailed Resolution.[7]

Aggrieved, petitioner CIR filed before the Court *En Banc* the instant Petition for Review.

On March 24, 2015, the Court *En Banc* issued a Resolution[8] ordering respondent Ong Beng Gui to file its Comment on the Petition for Review, within 10 days from notice.

On July 7, 2015[9] and December 11, 2015[10], the Judicial Records Division issued Records Verification Report stating that respondent Ong Beng Gui failed to file a Comment on the instant case.

On January 7, 2016, the Court *En Banc* issued a Resolution[11] ordering the parties to file their respective memoranda.

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[6] Docket, CTA Case No. 8410, pp. 268-283.
[7] Ibid. pp. 298-299.
[8] Rollo, CTA EB No. 1248, p. 48-49.
[9] Ibid. p. 50.
[10] Ibid. p. 57.
[11] Ibid. pp. 59-60.

On February 22, 2016, petitioner filed a "Memorandum."

On May 31, 2016, the Judicial Records Division of this Court issued a Records Verification Report[12] stating that respondent failed to file Memorandum.

On June 15, 2016, the Court *En Banc* issued a Resolution[13] submitting the case for decision.

ISSUE

The issues to be resolved by this Court are:

1. Whether or not the Second Division of this Court erred in its appreciation of the evidence presented by respondent Ong Beng Gui; and
2. Whether or not the Second Division of this Court erred in ruling that respondent is entitled to the reduced amount of P174,460.01 representing excess payment of WTC for the taxable month of December 2009.

ARGUMENTS

Petitioner argues that respondent merely closed a branch and not his main business and that the evidence presented were merely for the alleged separation pay made to the thirty seven (37) employees displaced in the private warehouse closed by respondent; the list of computation presented by respondent did not show those employees not affected by the closure of the private warehouse of respondent; the Court in Division erred in holding that respondent is liable for only P161,744.60 as WTC due and payable because there is no way of determining how much tax on compensation is due from respondent as withholding agent for the taxable year 2009.

RULING OF THE COURT EN BANC

The Petition for Review before the Court in Division was anchored on respondent Ong Beng Gui's claim for tax refund pursuant to Sections 204 (c), 229, and 32(B)(6)(b) of the NIRC of 1997, as amended, and Section 2.78.1(B)(1)(b) of Revenue Regulations No. 02-98.

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[12] Ibid. p. 69.
[13] Ibid. pp. 71-72.

"Section 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."

"Section 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 to 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, 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."

"**Section 32**. Gross Income.-

xxx xxx xxx

(B) *Exclusions from Gross Income.* – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(6) *Retirement benefits, Pensions, Gratuities, etc.* –

xxx xxx xxx

> (b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee."
>
> "Section 2.78.1(B)(1)(b)-
>
> Any amount received by an official or employee or by his heirs from the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee, such as retrenchment, redundancy, or cessation of business."

On January 12, 2010, petitioner filed his original Monthly Remittance Return of Income Taxes Withheld on Compensation [BIR Form No. 1601-C] for the month of December 2009 and paid the corresponding WTC of P320,099.79 on the separation pay subject of this case. From January 12, 2010, petitioner had until January 12, 2012 within which to file his administrative and judicial claims for refund. Records show that on February 2, 2010, petitioner's administrative claim for refund was filed through his Authorized Agent Bank, Metropolitan Bank & Trust Company. On January 11, 2012, respondent filed before the Court in Division a Petition for Review. Thus, the filing of the administrative claim for refund before the BIR and the Petition for Review before the Court in Division both fell within the prescriptive period allowed by law.

After a careful review of petitioner's arguments and the records of the case, the Court *En Banc* finds no reason to reverse or modify the Decision and Resolution of the Court in Division. The records of the case show that the Court in Division had fully and exhaustively resolved the issues raised in this petition.

A perusal of the evidence presented by respondent clearly show that the employees declared to the DOLE who received the separation pay, are the same employees referred to in the closed private warehouse of the respondent. All the evidence presented show that the WCT remitted to the government pertains to the terminated employees of the respondent.

As aptly discussed in the assailed Decision:

> "Records show that on December 14, 2009, petitioner resolved to retire his business and applied to terminate thirty seven (37) employees with the Department of Labor and

Employment (DOLE) effective January 16, 2010 as evidenced by his Cancellation of TIN for Permanent Closure of a Branch filed with the BIR on January 5, 2010 as well as the Establishment Employment Report and List of Affected Workers by Displacement/Flexible Work Arrangements/Flexible Work Arrangements filed with the DOLE on December 14, 2009.

Consequently, petitioner paid separation pay, in full, to 31 of his employees in the total amount of P1,167,191.00 as indicated in the notarized statements of waiver and quitclaim entitled "PAGPAPALAYA SA LAHAT NG OBLIGASYON" duly executed and signed by the said employees in the presence of two (2) DOLE Labor Employment Officers.

However, petitioner avers that, while the separation pay was disbursed in full, his accountant erroneously withheld withholding taxes on compensation on separation pay, which he paid in behalf of his employees.

As stated earlier, petitioner filed his BIR Form 1601-C for the month of December 2009 on January 12, 2010 and paid the corresponding WTC in the amount of P320,099.79. In the attached Computation of Withholding Taxes for 2009, the separation pay to each of petitioner's 31 employees totaling P1,167,191.00 was labeled as "Taxable" and was included in the "Net Taxable Income after exemption". Consequently, the total income taxes due on the employees' compensation for the year 2009 amounted to P465,739.57 against which the total taxes withheld for January to November 2009 in the amount of P145,639.78 was deducted resulting to net taxes due for December 2009 in the amount of P320,099.79.

Realizing that the separation pay is exempt from withholding tax, petitioner filed his Amended BIR Form No. 1601-C for the month of December 2009 and paid WTC in the amount of P16,104.82 without deducting his previously remitted tax. Correspondingly, in his Amended Computation of Withholding Taxes for 2009, the separation pay of P1,167,191.00 was labeled as "Non-Taxable" and was included in the Net Taxable Income after exemption". Thus, total income taxes due on the employees' compensation for the year 2009 amounted only to P161,744.60 from which the total taxes withheld for January to November 2009 in the amount of P145,639.78 was deducted resulting to net taxes due for December 2009 in the amount of only P16,104.82.

However, the amount of P161,744.60 taxes withheld and remitted for the year 2009 per the amended Computation of Withholding Taxes for 2009 does not tally with that reflected in petitioner's Annual Information Return of Income Taxes withheld on Compensation and Final Withholding Taxes [BIR Form No. 1602-CF]. While petitioner reported in BIR Form No. 1604-CF the amount of P181,906.05 as total taxes withheld and remitted for the year 2009, which is of higher amount, the same cannot be considered to include the Monthly Remittance returns of Income Taxes Withheld on Compensation for January to November 2009 to ascertain the amounts withheld and remitted for the said months.

As such, petitioner may be entitled to a refund only to the extent of what was paid per his BIR forms No. 1601-C (original and amended) for December 2009 in excess of what was due, as computed below:

WTC remitted per original BIR Form No. 1601-C	P 320,099.79
WTC remitted per amended BIR Form No. 1601-C	16,104.82
Total WTC remitted to the BIR	P 336,204.61
Less: Total WTC due and payable	161,744.60
Overremittance to the BIR	P174,460.01

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[14] In this case, respondent Ong Beng Gui was able to prove that it is entitled to a refund or issuance of a tax credit certificate for the paid withholding tax on compensation for calendar year 2009, but in the reduced amount of P174,460.01.

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED for lack of merit.** Accordingly, the Decision dated September 8, 2014 and Resolution dated October 28, 2014 are hereby affirmed *in toto.*

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[14] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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