REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

OCE HOLDING B.V.,
Respondent.

CTA EB NO. 1644
(CTA Case No. 8930)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , *and*
MANAHAN, *JJ.*

Promulgated:

JAN 23 2019 3:28 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court En Banc is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) against respondent Océ Holding B.V. seeking the reversal of the Decision dated November 28, 2016 (Assailed Decision) rendered by the Second Division of this Court in CTA Case No. 8930, as well as the Resolution dated April 19, 2017 (Assailed Resolution) rendered by the Special Second Division of this Court in the same case denying its motion for reconsideration.

The dispositive portion of the Assailed Decision reads, as follows:

> "**WHEREFORE**, premises considered, this Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the

[1] *Rollo*, pp. 1-36.

amount of ₱14,586,827.10 representing the capital gains tax paid by it on November 22, 2012 in connection with the Deed of Transfer dated November 15, 2012.

SO ORDERED."[2]

The Assailed Resolution, on the other hand, in its dispositive portion, provides the following:

> **"WHEREFORE,** premises considered, respondent's **Motion for Reconsideration (Decision of 28 November 2016)** filed on December 14, 2016 is **DENIED** for lack of merit.
>
> **SO ORDERED."**[3]

The Parties

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia,* the power to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes, including final tax withheld on dividend income by non-residents. He may be served with summons, pleadings and other processes of the Court at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

Respondent is a foreign corporation duly organized and existing under the laws of The Netherlands, with office address at Sint Urbanusweg 43, 5914 CA Venlo, The Netherlands.[5] It is formerly named as Océ N.V., and its primary objectives are to participate directly or indirectly in other companies and bodies corporate as well as to manage and to finance such, and to do all acts as are directly or indirectly connected with the aforesaid objects, are related or may be conductive thereto, such in the widest sense.[6] Petitioner is being represented by Atty. Cynthia L. dela Paz, Senior Partner of Picazo Buyco Tan Fider & Santos

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[2] *Id.*, p. 25.
[3] *Id.*, pp. 32-33.
[4] *Id.*, pp. 11-12.
[5] Exhibits "P-1" and "P-1-A".
[6] Exhibit "P-1-A".

Law Offices for purposes of the petitioner's administrative and judicial claims for refund.[7]

The Facts[8]

On November 15, 2012, respondent executed a Deed of Transfer[9] that relinquished all of its rights, title and interest over the one hundred thousand three hundred seventy-four (100,374) shares of stock of Océ Business Services Philippines, Inc. (now named Canon Business Process Services Philippines, Inc.)[10] in favor of Océ Business Services, Inc.

In view thereof, respondent paid the documentary stamp tax on the said transfer of shares of stock in the amount of ₱376,402.50 and filed a Documentary Stamp Tax (DST) Declaration/Return on November 15, 2012.[11] Then, respondent applied for relief from double taxation on capital gains on November 16, 2012.[12]

Notwithstanding of the aforesaid application for relief from double taxation, respondent paid the capital gains tax in the amount of ₱14,586,827.10 and filed a Capital Gains Tax (CGT) Return on November 22, 2012.[13]

On May 9, 2013, petitioner issued a Certification[14], stating that the above-mentioned sale or transfer between Océ N.V. and Océ Business Services, Inc. of the shares of stock of Canon Business Process Services Philippines, Inc. are not subject to CGT pursuant to Article 14 of the Philippines-Netherland Tax Treaty.

Consequently, respondent filed an administrative claim for refund on July 8, 2014 for the capital gains tax it paid in the amount of ₱14,586,827.10.[15]

Due to the inaction of petitioner on respondent's administrative claim for refund,[16] the respondent (petitioner therein) filed a Petition for

[7] Exhibits "P- 13", and "P-14".
[8] As found by the Second Division and as culled from the records of the case.
[9] Exhibit "P-5".
[10] Exhibit "P-6".
[11] Exhibits "P-10" and "P-11".
[12] Exhibit "P-7".
[13] Exhibits "P-8" and "P-9".
[14] Exhibit "P-12".
[15] Par. (b), JSF, Docket (Vol. II), p. 674.
[16] Par. (c), JSF, Docket (Vol. II), p. 674.

Review[17] with the Court of Tax Appeals (CTA) on November 19, 2014, docketed as CTA Case No. 8930.

In his Answer[18] filed on February 13, 2015, petitioner (respondent therein) interposed the special and affirmative defenses that the claim for refund is still under review by the petitioner; the burden of proof is upon the respondent to prove that it is entitled to the claim for refund or issuance of tax credit certificate; the grant of claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; the taxes sought to be refunded were paid in accordance with law; and that the burden of proof to the contrary is upon the claimant to show with clear and unambiguous provision of law supporting the same.

Petitioner filed his Pre-Trial Brief[19] on April 7, 2015 and respondent filed its Pre-Trial Brief[20] on April 13, 2015. The parties subsequently filed their Joint Stipulation of Facts[21] on May 6, 2015. Consequently, the Court in Division issued a Pre-Trial Order[22] on May 12, 2015.

To prove its claim, petitioner presented Atty. Cynthia L. dela Paz as its sole witness, and formally offered its documentary exhibits, which were all admitted in evidence by the Court in Division on August 13, 2015.[23]

On the other hand, petitioner's counsel manifested in open court that petitioner has no witness to present and that the same will no longer present evidence in this case.[24]

After the Court considered respondent's Memorandum[25] filed through registered mail on November 4, 2015, and the Report[26] of the Records Division dated January 12, 2016, that no memorandum has been filed by the petitioner, this case was deemed submitted for decision on January 18, 2016.[27]

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[17] Docket (Vol. 1), pp. 6-53.
[18] Docket (Vol. 1), pp. 339 to 341.
[19] Docket (Vol. 1), pp. 343 to 345.
[20] Docket (Vol. I), pp. 350 to 365.
[21] Docket (Vol. II), pp. 674 to 677.
[22] Docket (Vol. II), pp. 679 to 683.
[23] Resolution, Docket (Vol. III), pp. 1419 to 1420.
[24] Resolution dated October 5, 2015, Docket (Vol. III), p. 1428.
[25] Docket (Vol. III), pp. 1433 to 1457.
[26] Docket (Vol. III), p. 1463.
[27] Resolution, Docket (Vol. III), p. 1464.

On November 28, 2016, the Court in Division promulgated the assailed Decision[28] granting the Petition for Review filed by respondent and ordering petitioner to refund the amount of ₱14,586,827.10 representing the capital gains tax paid by it on November 22, 2012 in connection with the Deed of Transfer dated November 15, 2012.

Petitioner filed his Motion for Reconsideration on December 14, 2016. In response to this, respondent filed its Opposition through registered mail on January 3, 2017.

On April 19, 2017, the Court in Division issued the assailed Resolution denying petitioner's motion.

Within the extended period granted by the Court *en banc*[29], petitioner timely posted his Petition for Review which was docketed as CTA EB No. 1644[30] on May 22, 2017.

In a Resolution dated June 14, 2017, the Court *en banc* ordered petitioner to file proof of service pursuant to Section 13, Rule 13 of the Rules of Court.[31] In response thereto, petitioner filed his Compliance on July 10, 2017.[32]

In a Resolution dated August 1, 2017,[33] respondent was ordered to file his Comment to the Petition.

On September 4, 2017, respondent posted its Comment[34] through registered mail in insufficient number of copies which the Court received on September 11, 2017. The Court *en banc* then required respondent to submit additional copies within the given period, otherwise, the pleading would be deemed as not filed.[35]

On October 3, 2017, respondent filed its Compliance.[36]

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[28] *Id.* at Note 2.
[29] *Id.* at Note 1, p. 5.
[30] *Id.*
[31] *Id.*, pp. 38-39.
[32] *Id.*, pp. 40-42.
[33] *Id.*, pp. 44-45.
[34] *Id.*, pp. 47-55.
[35] *Id.*, p. 57.
[36] *Id.*, pp. 58-60.

On October 25, 2017, the Court *en banc* issued a Resolution[37] giving due course to the Petition for Review and ordering the parties to submit their respective memoranda.

On December 7, 2017, respondent posted its Memorandum[38] via registered mail which the Court *en banc* received on December 13, 2017 while petitioner failed to file his Memorandum.[39]

On January 29, 2018, the case was submitted for decision.[40]

The Assignments of Errors

In its Petition for Review, petitioner assigns a single error to the Court in Division's assailed Decision and Resolution -- that it erred in granting respondent's claim of refund on the capital gains tax that it paid.

The Arguments of the Parties

Petitioner argues that respondent failed to prove with certainty that it is entitled to the claim for refund of CGT. First, the Certification does not state the amount of CGT the respondent is not subject to when the said amount was already determinable at the time. Second, the Certification states that the name of the seller is Océ N.V. and not Océ Holding B.V who is the respondent in this case. While respondent alleged that these are one and the same entities, the only document presented by respondent is a certificate from a prospective civil-law notary who relied only on information provided by the trade register and without having conducted any further investigation on the matter.

On the other hand, respondent states that the arguments of the petitioner are the same arguments raised in his Motion for Reconsideration of the Decision of the Court in Division and, hence, presents nothing new. Respondent argues that the Certification which was issued by petitioner himself on the basis of documents submitted by respondent after having examined them pertains to the transfer of the subject shares. Furthermore, it argues that Océ N.V. and respondent Océ Holding B.V. are one and the same entity and that Océ N.V. is simply the former corporate name of respondent.

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[37] *Id.*, pp. 63-64..
[38] *Id.*, pp. 65-85.
[39] *Id.*, p. 87.
[40] *Id.*, pp. 89-90.

The Ruling of the Court

We deny the Petition.

First of all, the Court observes that the arguments raised by petitioner are a rehash of the arguments it raised in its Motion for Reconsideration of the assailed Decision, all of which properly rejected by the Court in Division in the assailed Resolution. There is nothing new in petitioner's arguments that debunks or, at the very least, points to reversible errors in the conclusions of the Court in Division that warrants a reversal or modification of the assailed Decision and Resolution.

The CIR Certification Issued by Petitioner Pertains to the Subject Shares

Petitioner argues that the CIR Certification "does not state the amount of the capital gains tax which the respondent is not subject to. The said amount is already determinable at the time because allegedly the payment was already made prior to the issuance of the Certification."

On this point, the Court in Division concluded that "[s]ince the said sale or transfer of shares of stock is not subject to capital gains tax, it is of no importance whether the above-mentioned Certification states the exact amount of the capital gains tax to which [respondent] is exempted to pay."

We agree.

The records show that the CIR Certification was issued pursuant to respondent's Application for Relief from Double Taxation on Capital Gains (BIR Form No. 0901-C) dated 16 November 2012[41], with all the required attachments which included respondent's Tax Treaty Relief Application (TTRA) and the Deed of Transfer. The TTRA was filed by respondent to confirm that the transfer of the Subject Shares was exempt from CGT in the Philippines pursuant to the Philippines-Netherlands Tax Treaty. The CIR Certification confirmed said exemption.

The CGT that respondent is asking a refund for were paid after the TTRA was filed. As respondent explains in its Comment, it decided to pay the CGT despite its TTRA application since: a) it had to record the change

[41] Exhibit "P-7".

of ownership of the Subject Shares in the stock and transfer book of the Philippine Company before the 31 December 2012 deadline in order to secure a Certificate Authorizing Registration in order to effect such registration; and b) it had foreseen that the issuance of the Certification would take time, as it had in this case when it was issued six months after the TTRA was filed.

It was after it paid the CGT for the transfer of the Subject shares that respondent filed its administrative claim for refund of taxes[42] where it specified the amount of CGT that it paid amounting to ₱14,586,827.10 and sought a refund for. As petitioner did not act upon the claim for refund, it then filed the Petition docketed as CTA Case No. 8930 with the Court in Division.

However, regardless of the lack of specification of the amount in the Certification, what is imperative is that respondent is exempt from paying it. There should be no issue on whether the tax exemption confirmed by the CIR Certification refers to the Deed of Transfer and/or the transfer of the Subject Shares. The Certification[43] dated May 9, 2013 was issued by petitioner specifically stating that the sale of shares of stock between Océ N.V. (now Océ B.V.) and OCÉ Business Services, Inc. was not subject to CGT. It also makes specific references to the TTRA that was filed by the respondent, the Deed of Transfer that was submitted by the respondent, and even the Subject Shares, *viz.:*

> "THIS IS TO CERTIFY that, on the basis of the representations and documents submitted, particularly the Application For Relief from Double Taxation ***(Gains from Sale or Transfer of Shares of Stock in Philippine Corporation*) BIR Form No. 0901-C***, original copy of which is attached hereto and made an integral part hereof, the sale or transfer of shares of stock of ***OCÉ Business Services Philippines, Inc.*** by and between:

Name of Seller	Address	Type of Entity
Océ N.V.	Sint Urbanusweg 43, 5914 CA Venlo, The Netherlands	Corporation

[42] Exhibit "P-4", Claim for Refund dated 8 July 2014.
[43] Exhibit "P-12".

Name of Buyer	Address	Type of Entity
Océ Business Services, Inc.	460 West, 34th Street, New York, New York United States of America	Corporation

in accordance with the attached *Deed of Transfer* dated November 15, 2012, which forms an integral part of this Certification, are ***not* subject to capital gains tax**, pursuant to Article 14 of the Philippines- Netherland tax treaty. The transaction is, however, **subject to documentary stamp tax** as follows:

Transaction	Tax Base	Tax Rate	Amount Due
Sale of 100,374 shares of stock with a par value of ₱100.00 per share in OCÉ Business Services Philippines, Inc. by OCÉ N.V.	Php100,374,000.00	Php0.75 on each P200 or fractional part thereof, if with par value	Php376,402.50

No transfer of shares shall be effected in the Stock and Transfer Book of OCÉ Business Services Philippines, Inc. without the necessary Certificate Authorizing Registration (CAR) issued by Revenue District Office No. 39 South, Quezon.

This Certification shall be valid unless revoked by this Office for misrepresentation. Any erasure or alteration made on this certification shall render the same void.

The processing and certification fees in the amount of ***₱5,000.00*** has been paid on **November 15, 2012** under **BTR-BIR Account No. 0405-027020-080 (Development Bank of the Philippines)."**

It is patent from the Certification that it refers to the exemption from CGT of the transfer of the Subject Shares under the Deed of Transfer. As the sale or transfer of shares of stock is not subject to CGT, *We* arrive at the same conclusion as the Court in Division that it is of no importance that the Certification does not state the exact amount of CGT subject of the exemption. The CIR himself has stated in the said

Certification that it was issued "on the basis of the representations and documents submitted" with particular emphasis on the Application for Relief from Double Taxation (BIR Form No. 0901-C) from which the exact amount can be referenced, deduced and identified.

Océ N.V. and Océ Holding B.V. are One and the Same Entity

Petitioner's arguments that the Certification grants the exemption to Océ N.V. instead of respondent, Océ Holding B.V. and that respondent has not sufficiently proven that both corporations are one and the same must likewise fail.

Records show that respondent was able to provide evidence proving the same, namely: a) the Deed of Conversion and Amendment of the Articles of Association of Océ N.V. dated 1 July 2013[44], in Dutch, which shows that respondent was formerly named Océ N.V.; b) the English Translation of the Deed of Conversion and Amendments[45]; and c) the testimony of Atty. Cynthia L. dela Paz as contained in her Judicial Affidavit dated 13 May 2015[46], where Atty. dela Paz testified that respondent Océ Holding B.V. and Océ N.V. are one and the same entity.

During trial, respondent presented the original of the Deed of Conversion and Amendment. Therefore, the non-certification of the Securities and Exchage Commission or any counterpart agency in the Netherlands, as petitioner alleges, is of no moment because a copy certified by a public officer who has custody thereof is merely secondary evidence[47] and is necessary only if the original is not available.

As regards Atty. Dela Paz's testimony, the Court in Division held thus:

> "Records also show that Atty. Cynthia L. Dela Paz testified that the name Océ N.V. and Océ Holding B.V. are one and the same entity, to wit:
>
> > 'Q29: Now, I have noticed that in the *Deed of Transfer,* the entity that is indicated as

[44] Exhibit "P-1".
[45] Exhibit "P-1-A".
[46] Exhibit "P-15".
[47] Section 7, Rule 130 of the Rules of Evidence.

transferor is Océ N.V. instead of Océ Holding B.V. Why is that so, if you know?

A29: Océ N.V. is the former corporate name of Océ Holding B.V. After the execution of the *Deed of Transfer,* Océ N.V. was changed to Océ Holding B.V. In other words, 'Océ N.V.' and 'Océ Holding B.V.' are actually one and the same entity.

Q30: What, if any, is your proof that Océ N.V. was changed to Océ Holding B.V.?

A30: I have the *Deed of Conversion and Amendment of the Articles of Association of Océ N. V.* dated 1 July 2013 ***('Deed of Conversion and Amendment),*** pursuant to which the Articles of Association of Océ N.V. was amended to change, among others, its corporate name from 'Océ N.V.' to 'Océ Holding B.V.' The *Deed of Conversion and Amendment* was executed in the Dutch language, but I also have an English translation of the said *Deed of Conversion and Amendment* '[48]

During the cross-examination, Atty. Dela Paz testified that the English Translation of the Deed of Conversion and Amendment was made by a civil Notary in Amsterdam, to wit:

'Q In relation to page 8 and 9, who made the English translation of the Deed of Conversion and Amendment?

A I think that one was made by civil Notary in Amsterdam, it is part of the documents that we asked them to send to us and that the Océ was the one who took care of the processing of the

[48] Exhibit "P-15".

consularization, the notarization in the Netherlands.

Q So the translation and conversion to English is official?

A I actually do not know if that is official, I do not know what do you mean by official but it was submitted together with the Articles of Association because it has to be translated. They were in Dutch language and they had to be translated. So it is part of the documents that were notarized and consularized before the Philippine Embassy.'[49]

Further, respondent has neither made any objection/opposition to petitioner's formal offer of evidence,[50] nor presented any witnesses or documentary evidence to controvert the material facts proven by petitioner's evidence which, therefore, remain undisputed.[51]"

A review of the records of the case shows that the testimony of Atty. Dela Paz still remains unrebutted. The Court in Division did not err in giving weight to her testimony considering that she has personal knowledge of the facts and circumstances of respondent with whom she has dealt with in her professional capacity.

Given the foregoing, there is no doubt that respondent was able to prove that Océ Holding B.V. and Océ N.V. are one and the same entity. Therefore, when the Certification mentions "Océ N.V. ", it is referring to respondent. As held in *Javier Sons vs. Hon. Court of Appeals*[52], "a change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed."

[49] Transcript of Stenographic Notes (TSN) dated June 15, 2015, pp. 8 to 9.
[50] Records Verification dated July 15, 2015, Docket, (Vol. III), p. 1417.
[51] Resolution dated October 5, 2015, Docket, (Vol. III), p. 1428.
[52] G.R. No. 129552, 29 June 2005.

The Court also makes the observation that petitioner has a judicial admission in its Petition that Océ Holding B.V. and Océ N.V. are one the same. Paragraph 5 of the CIR Petition pertinently states:

> "Respondent is a foreign corporation duly organized and existing under the laws of The Netherlands, with office address at Sint Urbanusweg 43, 5914 CA Venlo, The Netherlands. **It is formerly named as Oce N.V.** and its primary objectives are to participate directly or indirectly in other companies and bodies corporate as well as to manage and finance such, and to do all acts as are directly or indirectly connected with the aforesaid projects, are related or may be conductive (sic) thereto, such in the widest sense. x x x" *(Emphasis supplied)*

All considered, the arguments of petitioner in support of its Petition fail to persuade.

WHEREFORE, the instant Petition for Review is **DENIED**. The assailed Decision dated November 28, 2016 and the assailed Resolution dated April 19, 2017 are hereby **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice