REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAND BANK OF THE PHILIPPINES,
Petitioner,

CTA EB NO. 1462
(CTA Case No. 8684)

Present:

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

\- versus -

THE HONORABLE COMMISSIONER of the BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 01 2017 3:35 p.m.

x- -x

DECISION

Fabon-Victorino, J.:

This Petition for Review[1] filed by petitioner Land Bank of the Philippines seeks to reverse and set aside the Decision[2] dated January 21, 2016 promulgated by the Court in Division in CTA Case No. 8684. The assailed Decision dismissed on jurisdictional ground petitioner's claim for refund of the amount of Php173,718.96, representing the 25% surcharge, interest and penalty allegedly paid under protest. Similarly impugned is the Resolution[3] dated April 18, 2016, which denied petitioner's Motion for Reconsideration of the assailed Decision.

[1] *En Banc* docket, pp. 6-12.
[2] *En Banc* docket, pp. 17-33.
[3] *En Banc* docket, pp. 36-38.

THE FACTS AND THE PROCEEDINGS

The pertinent facts, as culled from the record, are as follows:

Petitioner is a government financing institution created by virtue of Republic Act (RA) No. 3844, as amended, with principal office located at Landbank Plaza, 1598 M. H. del Pilar corner Dr. J. Quintos Street, Malate, Manila.

Respondent, on the other hand, is the head of the Bureau of Internal Revenue (BIR), mandated to assess, impose and collect taxes, fees and charges and account for all revenues paid as well as to refund fees and charges erroneously assessed and paid. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner was the highest bidder in a public auction of a real property covered by Transfer Certificate of Title (TCT) No. T-234316. As the highest bidder, it was issued a Certificate of Sale dated September 16, 2011, which was registered and annotated on the said title on September 29, 2011. The one year period to redeem the subject property expired on September 29, 2012.

On October 12, 2012, petitioner went to BIR Revenue District Office No. 113, Revenue Region No. 19 to pay the corresponding Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) for the purpose of consolidating TCT No. T-234316 in its name. However, BIR assessed petitioner surcharges, interests and penalties for alleged late payment of EWT and DST per the One-Time Transaction (ONETT) Computation Sheet[4], as follows:

I	Expanded Withholding Tax	
	Tax Base: 6% of Php7,317,700.00	Php 439,062.00
	Add: 25% Surcharge	109,765.50
	Interest	3,368.15
	Compromise Penalty	16,000.00
	TOTAL	**Php 568,195.65**

[4] Annex B, *Rollo,* p. 27.

II	Documentary Stamp Tax	
	Tax Base: Php7,317,700.00	Php 109,770.00
	Add: 25% Surcharge	27,442.50
	Interest	1,142.81
	Compromise Penalty	16,000.00
	TOTAL	**Php 154,355.31**

On October 24, 2012, petitioner paid the above imposition to avoid additional penalties.

On October 30, 2012, petitioner sent a letter[5] of even date to the Regional Director of BIR Revenue Region No. 19, Revenue District Office No. 113 – Davao City, protesting the imposition of the surcharges, interests, and penalties. The said protest was however denied in the letter[6] dated December 3, 2012, which petitioner received on December 18, 2012.

On January 10, 2013, petitioner elevated the denial of its protest to respondent by way of a *Motion for Reconsideration/Appeal on the Denial of Protest*[7] sent through registered mail.

Due to alleged respondent's inaction, petitioner elevated the case *via* a Petition for Review[8] with the Court in Division on July 13, 2013.

In his Answer[9], respondent mainly argues that the imposed 25% surcharges, interests and penalties in the aggregate amount of Php173,718.96 is in accordance with law, jurisprudence and administrative rules and regulations. The penalties are a consequence of petitioner's failure to timely remit the creditable withholding tax (CWT) and DST liabilities from the foreclosure sale of the real property covered by TCT No. T-234316. Respondent cited Section 2 of Revenue Regulations No. 09-2012, which provides that the remittance of the CWT should be made within ten (10) days, while the DST within five (5) days, following the end of the month after the expiration of the applicable statutory

[5] Annex D, *Rollo*, pp. 30-32.
[6] Annex E, *Rollo*, p. 33
[7] Annex F, *Rollo*, pp. 34-39.
[8] *Rollo*, pp. 8-23.
[9] *Rollo*, pp. 53-61.

redemption period. Further, the computation of the period for the remittance of the CWT and DST should be based on the date when the period of redemption expired, viz., September 29, 2012, which fell on a Saturday, and not on October 1, 2012.

During the pre-trial conference on September 25, 2014, the parties agreed and manifested in open court that the case involved only questions of law, in which case, they would no longer present any evidence.

On November 19, 2014, the parties filed their Joint Stipulation of Facts and Issues (JSFI)[10] in compliance with Court's directive[11]. It was approved in the Resolution[12] dated November 28, 2014.

With the filing of the parties' respective memoranda, the case was submitted for decision on February 27, 2015.[13]

On January 21, 2016, the Court in Division promulgated the assailed Decision dismissing the case for lack of jurisdiction. It explained that it *"can only acquire jurisdiction over matters that are clearly granted by RA No. 9282, as amended, i.e., decision or inaction of respondent over petitioner's disputed assessment pursuant to Section 228 of the NIRC of 1997, as amended"*. The Court in Division further ruled that the ONETT Computation Sheet is not the assessment contemplated under Section 228 of the NIRC of 1997, as amended, that requires a protest from petitioner. Moreover, the Court cannot entertain petitioner's claim for refund as it failed to avail of the administrative remedy for claim for refund pursuant to Section 229 of the NIRC of 1997, as amended.

Petitioner's bid for a reconsideration[14] suffered the same fate in the equally assailed Resolution promulgated on April 18, 2016.

---

[10] *Rollo*, pp. 139-142.
[11] Minutes of the Hearing, *Rollo*, p. 127.
[12] *Rollo,* p. 144.
[13] Resolution, *Rollo*, p. 193.
[14] *Rollo*, pp. 213-217.

Hence, this Petition for Review filed on June 2, 2016, raising the lone issue, to wit:

> THE 2ND DIVISION OF THIS HONORABLE COURT ERRED IN DISMISSING THE CLAIM FOR REFUND OF THE HEREIN PETITIONER.

Petitioner insists the Court in Division has jurisdiction over its case saying that the ONETT Computation Sheet issued by respondent is an assessment contemplated under Section 228 of the NIRC of 1997, as amended, and that the formal written protest satisfies the requirements for refund contemplated by Section 229 of the same Code. According to petitioner, the ONETT Computation Sheet is considered an "assessment" for it informs petitioner, the buyer in the auction sale, of its tax liabilities and their corresponding due dates. Further, the motion for reconsideration/appeal to the CIR of the denial of its protest is petitioner's administrative claim for refund which satisfies the requirements of Section 229 of the NIRC of 1997, as amended.

In his Comment[15] filed on July 26, 2016, respondent moves to dismiss the appeal for lack of merit. Respondent argues that the Court can only acquire jurisdiction over matters that are clearly within its mandate under RA No. 9282, as amended, *i.e.*, decision or inaction of the CIR over disputed assessment pursuant to Section 228 of the NIRC of 1997, as amended. In the case at bar, there can be no "disputed" assessment since petitioner paid the surcharge, interests and penalties for late remittance of EWT and DST. That being the case, there was no "inaction" on the part of respondent involving a disputed assessment over which the Court may exercise its appellate jurisdiction.

Moreover, the Court in Division lacks the competence to act on petitioner's claim for refund of the surcharges, interests and penalties paid. Admittedly, petitioner paid the corresponding EWT and DST including the assessed 25% surcharges, interests and penalties to avoid additional penalties, surcharge and interest. Instead of filing an administrative claim for refund, petitioner protested the said payment with the Regional Director of Revenue Region No.

---

[15] *En Banc* docket, pp. 67-74.

19, Davao City, pursuant to Section 228 of the NIRC of 1997, as amended. In other words, no administrative claim for refund was filed by petitioner in violation of Section 229 of the NIRC of 1997, as amended.

On August 16, 2016, the instant petition was submitted for Decision.[16]

THE COURT'S RULING

After a judicious review of petitioner's arguments and the record of the case, the Court *En Banc* finds no reason to modify much more reverse the assailed Decision and Resolution of the Court in Division.

The record reveals that the arguments raised in the instant petition had been fully and exhaustively resolved by the Court in Division in the assailed Decision of January 21, 2016 and Resolution of April 18, 2016. Be that as it may, and if only to put petitioner's mind to rest and for purposes of emphasis, the Court *En Banc* will discuss them anew *in seriatim*.

*The ONETT Computation Sheet is **not** the assessment contemplated under Section 228 of the NIRC of 1997, as amended.*

It must be noted that neither the NIRC nor revenue regulations governing protest against assessments[17] provide a specific definition or form of an assessment. However, the NIRC defines the specific functions and effects of an assessment.

In the case of *Commissioner of Internal Revenue v. PASCOR Realty and Development Corporation, et al.*,[18] the Supreme Court held that "an assessment informs the taxpayer that he or she has tax liabilities. But not all

---

[16] Resolution, *En Banc* docket, pp. 77-78.
[17] Revenue Regulations No. 12-1999.
[18] G.R. No. 128315, June 29, 1999.

documents coming from the BIR containing a computation of the tax liability can be deemed assessments." The Final Arbiter emphasized that an "assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period."

As pointed out by the Court in Division, thus:

> The ONETT Computation Sheet states the computation of tax liabilities which a taxpayer is required to pay. **However, it does not formally inform petitioner of its tax liabilities and there is no formal demand to pay the same**. Without the formal demand for payment, petitioner has no way to determine the period within which to protest the tax liabilities made by respondent. After all, the issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it. (*Boldfacing supplied*)

On the issue of jurisdiction, indeed, the Court of Tax Appeals can only acquire jurisdiction over matters that are clearly granted by RA No. 9282, as amended, that is, decision or inaction of the CIR in cases involving disputed assessments pursuant to Section 228 of the NIRC of 1997, as amended.

In the instant case, there is no disputed assessment to speak of. As ruled by the Supreme Court, the ONETT Computation Sheet is not the assessment contemplated under Section 228 of the NIRC of 1997, as amended, that would require a protest from petitioner.

For a judicial claim for refund under Section 229 of the NIRC of 1997, as amended, to prosper, an administrative claim must first be filed with the CIR.

In the instant case, petitioner insists that the requirements of Section 229 of the NIRC of 1997, as amended, was duly satisfied when it elevated the denial of its protest to the Commissioner of Internal Revenue (CIR) by way of a Motion for Reconsideration/Appeal on the Denial of Protest.

We are not convinced.

Section 229 of the NIRC of 1997, as amended, relevantly states:

> 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. (*Boldfacing supplied*)

Clear from the record that instead of filing an administrative claim for refund under Section 229 of the NIRC of 1997, as amended, petitioner filed a letter-protest pursuant to Section 228 of the same Code, questioning the imposition of the 25% surcharges, interests and penalties.

Clear as a day that no claim for refund was filed by petitioner mandated under Section 229 of the NIRC of 1997, as amended. To submit to petitioner's supposition that the Motion for Reconsideration/Appeal on the Denial of Protest filed with the CIR substantially complies with the requirements of Section 229, is simply specious as the two provisions have their own requirements and periods.

It is a cardinal rule in taxation that a claim for tax refund partakes the nature of a tax exemption which cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge said burden is fatal to the claim. [19]

Thus, the Court *En Banc* is one with the Court in Division in holding that without an administrative claim for refund filed, petitioner cannot seek judicial intervention from this Court.

WHEREFORE, the Petition for Review filed by Land Bank of the Philippines on June 2, 2016 is hereby **DENIED,** for lack of merit. Accordingly, the assailed Decision and Resolution dated January 21, 2016 and April 18, 2016, respectively, are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[19] *Emmanuel and Zenaida Aguilar vs. Commissioner of Internal Revenue*, CA-G.R SP 16432, March 30, 1990.

We Concur:

(With Dissenting Opinion)
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

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

LAND BANK OF THE PHILIPPINES, Petitioner,	**CTA EB NO. 1462** *(CTA Case No. 8684)*
	Members:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
THE HONORABLE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 01 2017 3:35 p.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect to my esteemed and learned colleague, the Honorable Associate Justice Esperanza R. Fabon-Victorino, I dissent in the denial of the present Petition for Review which affirmed the assailed Decision and Resolution of the Court in Division.

In the assailed Decision, the Court in Division dismissed the Petition for Review filed by petitioner for lack of jurisdiction. It ruled, among others, that petitioner failed to file an administrative claim for refund as required under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, and concluded that without such administrative claim, the Court cannot entertain the Petition. In my humble view, however, the factual circumstances of the case would clearly show that petitioner substantially complied with the requirement of filing an administrative claim for refund prior to filing the Petition before the Court in Division.

Records reveal that petitioner paid Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) for purposes of consolidating TCT No. T-234316 in its name. Consequently, the ONETT Team of BIR Revenue Region No. 19, Revenue District Office No. 113, Davao City, prepared a Computation Sheet[1] showing that there is still due from petitioner the total amount of Php154,355.31 representing surcharges, interests and penalties for late payment of EWT and DST. To avoid additional penalties, petitioner paid the amount of Php154,355.31 on October 24, 2012 but subsequently sent a Letter dated October 30, 2012 addressed to the Regional Director of BIR Revenue Region No. 19, Revenue District Office (RDO) No.113-Davao City,[2] requesting that the additional amount paid be applied as tax credits, *viz.*:

> "In conclusion, Land Bank of the Philippines humbly submits that the payment of CWT and DST is within the period allowed by Revenue Regulations No. 09-2012 and it should not be made to pay penalties, surcharges and interests. In view of the fact that Land Bank of the Philippines already paid the penalties, surcharges and interests as not to further incur additional sanctions, **it is requested that the amount paid for penalties, surcharges and interests be instead applied as tax credits**." (Boldfacing supplied)

After failing to obtain affirmative relief from the Chief of the Legal Division of Revenue Region No. 9, petitioner elevated the matter to respondent Commissioner of Internal Revenue (CIR) through a Letter dated January 7, 2013 wherein petitioner prayed as follows:

> "WHEREFORE, premises considered, it is respectfully prayed that:
>
> 1. The protest filed by Land Bank of the Philippines be given due course;
>
> 2. **The 25% surcharges, penalties and interests imposed are refunded or it be applied as tax credit in the name of Land Bank of the Philippines**." (Boldfacing supplied)

---

[1] Annex "B", Petition for Review, Court in Division Docket, p. 27.
[2] Annex C-1, Petition for Review, Court in Division Docket, p. 29.

Due to the alleged inaction of respondent CIR, petitioner filed the Petition before the Court in Division on July 31, 2013, which is within the two-year period from petitioner's payment of the amount of Php154,355.31 representing surcharges, interests and penalties for late payment of EWT and DST.

To my mind, petitioner's October 30, 2012 Letter[3] and the January 7, 2013 Letter[4] should appropriately be considered as petitioner's administrative claim for refund within the contemplation of Section 204 in relation to Section 229 of the NIRC, as amended, which provide:

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* -** The Commissioner may – 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**.
>
> xxx xxx xxx
>
> **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, of any sum alleged to have been excessively or in any manner wrongfully 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

[3] Annex "D", Petition for Review, Court in Division Docket, pp. 30-32.
[4] Annex "F", Petition for Review, Court in Division Docket, pp. 34-39.

> 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." (Boldfacing supplied)

While the October 30, 2012 Letter *in esse* assailed the imposition of surcharges, interests and penalties, it likewise **explicitly requested that payment already made by petitioner be applied as tax credits**. Similarly, in the January 7, 2013 Letter, petitioner unequivocally requested respondent CIR for a refund or tax credit of the surcharges, interests and penalties it previously paid. Indubitably, said October 30, 2012 and January 7, 2013 Letters of petitioner constitute substantial compliance with the requirement of filing an administrative claim for refund under Section 204(C) of the NIRC, as amended.

Interestingly, the NIRC does not require a specific form for administrative claim for refund. Truth to tell, even in the absence of a written claim for refund, the return filed by a taxpayer showing an overpayment of taxes or penalties may even be considered as a claim filed pursuant to Section 204(C) of the NIRC. Respondent CIR is vested with the power to grant a tax credit or refund even without a written claim if the former determines from the face of the return that payment had clearly been erroneously made.[5]

At this juncture, I find it worthy to re-echo the Supreme Court's pronouncement that substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the **law-abiding citizen or entities who have complied with the requirements of the law in order to forward the claim for refund**.[6] As there is substantial compliance with the requirement to file the administrative claim for refund and the judicial claim within the two-year prescriptive period provided under Section 229 of the NIRC, as amended, I submit that the Court in Division should have assumed jurisdiction over the Petition and proceeded to determine petitioner's entitlement to its claim for refund or tax credit of alleged erroneously paid surcharges, interests and penalties.

---

[5] Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. 146941, August 9, 2007.
[6] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015.

All told, I vote to **GRANT** the present Petition for Review; **SET ASIDE** the assailed Decision; and **REMAND** the case to the Court in Division to determine whether petitioner is entitled to its claim for refund or tax credit of alleged erroneously paid surcharges, interests and penalties.

ROMAN G. DEL ROSARIO
Presiding Justice