Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

COL FINANCIAL GROUP, INC.,
Respondent.

CTA EB CASE NO. **1187**
(CTA Case No. 8454)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS
RINGPIS-LIBAN, JJ.

Promulgated:
JUN 3 0 2015
11:15 a.m.

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DECISION

MINDARO-GRULLA, J.:

Before this Court is a Petition for Review under Rule 4, Section 2(a)(1)[1] in relation to Rule 8, Sections 4(b)[2] and 3(b)[3] of the Revised Rules of the Court of Tax Appeals

[1] Cases within the jurisdiction of the Court En Banc. – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

[2] An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

[3] A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the

seeking nullification of the Decision[4] dated April 15, 2014, rendered by the Third Division of this Court[5] in CTA Case No. 8454, and its Resolution[6] dated June 02, 2014.

Petitioner Commissioner of Internal Revenue (CIR) seeks reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated April 15, 2014:

> "***WHEREFORE***, *in view of the foregoing, the Court hereby* ***GRANTS*** *the Petition for Review. Accordingly, respondent is hereby* ***ORDERED*** *to* ***ISSUE*** *a* ***TAX CREDIT CERTIFICATE*** *in favor of petitioner* ***COL Financial Group, Inc.*** *in the amount of* ***Eight Million Nine Hundred Sixty Thousand Two Hundred Forty Five Pesos (Php 8,960,245.00),*** *representing the additional income tax paid under protest.*
>
> ***SO ORDERED."***

Resolution dated June 02, 2014:

> "***WHEREFORE***, *respondent's 'Motion for Reconsideration (of the Decision dated 15 April 2014)' is hereby* ***DENIED*** *for lack of merit.*
>
> ***SO ORDERED."***

The facts culled from the records are undisputed.

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docket and other lawful fees and deposit for costs before expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[4] *En Banc* Docket at 25-51.

[5] Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.

[6] *Supra* note 2, at 52-53.

On June 17, 2008, then President Gloria Arroyo, signed into law Republic Act No. 9504 (RA 9504),[7] which introduced several amendments to Republic Act No. 8284 (RA 8284).[8]

On November 26, 2008, the BIR issued Revenue Regulation (RR) No. 16-2008,[9] implementing Section 3 of RA 9504. Under the said regulation, particularly Section 7, taxpayers had the option of using either the Itemized or OSD method in preparing their quarterly ITRs, provided only one method shall be applied in preparing the annual ITR.[10]

During the first three (3) quarters of the taxable year 2009,[11] respondent used the itemized method of deduction in determining its income tax payable in accordance with Section 7 of RR No. 16-2008. *ℓ*

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[7] An Act Amending Sections 22, 24, 34, 35, 51 and 79 of Republic Act No. 8424, as Amended otherwise known as the National Internal Revenue Code of 1997.

[8] An Act Amending the National Internal Revenue Code, as Amended, and for other purposes, dated December 11, 1997.

[9] Implementing the Provisions of Section 34 (L) of the Tax Code of 1997, as Amended by Section 3 of Republic Act No. 9504, Dealing on the Optional Standard Deduction (OSD) Allowed to Individuals and Corporations in Computing their Taxable Income.

[10] SECTION 7. *Other Implications of the Optional Standard Deduction.* – A taxpayer who elected to avail of the OSD not exceeding forty percent (40%) of gross sales or gross receipts, in case of an individual taxable under Secs. 24 (A) and 25 (A) (1) of the Tax Code, or forty percent (40%) of the gross income, in case of a corporation subject to tax under Sec. 27 (A) or 28 (A) (1) of the same Code shall signify in his/ its return such intention, otherwise he/ it shall be considered as having availed himself of the itemized deductions allowed under Sec. 34 of the Code. Once the election to avail the OSD is signified in the return, it shall be irrevocable for the taxable year for which the return is made. This means that a taxpayer who initially filed a return availing of OSD is precluded from amending said return in order to shift to the itemized deductions. An individual taxpayer who is entitled to and claimed the OSD shall not be required to submit with his tax return such financial statements otherwise required under the Code. Provided, that, except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross sales or gross receipts. In the case of a corporation, however, said corporation is still required to submit its financial statements when it files its annual income tax return and to keep such records pertaining to its gross income as herein defined.

In the filing of the quarterly income tax returns, the taxpayer may opt to use either the itemized deduction or OSD. However, in filing the final adjustment income tax return, the taxpayer must make a choice as to what method of deduction it or he shall employ for the purpose of determining its/ his taxable net income for the entire year. The taxpayer is, thus, not allowed to use a hybrid method of claiming its/ his deduction for one taxable year. (Emphasis supplied)

[11] Exhibit "C," Exhibit "D," Exhibit "E."

On February 24, 2010, BIR issued RR No. 02-2010,[12] which amended Sections 6 and 7 of RR No. 16-2008.[13]

Thereafter, BIR issued Revenue Memorandum Circular (RMC) No. 016-10[14] on February 26, 2010, stating that RR 02-2010 will also apply to the taxable year 2009.

Subsequently; *C*

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[12] Amendments to Section 6 and 7 of Revenue Regulations No. 16-2008 with Respect to the Determination of the Optional Standard Deduction (OSD) of General Professional Partnerships (GPPs) and Partners thereof, as well as the manner and period for making the Election to Claim OSD in the Income Tax Returns.

[13] Section 7. *Other Implications of the Optional Standard Deduction.* - A taxpayer who elected to avail of the OSD not exceeding forty percent (40%) of gross sales or gross receipts, in case of an individual taxable under Secs. 27 (A) or 28 (A) (1) of the Tax Code, or forty percent (40%) of gross income, in case of a corporation subject to tax under Sec. 27 (A) or 28 (A) (1) of the same Code shall signify in his/ its return such intention, otherwise he/ it shall be considered as having availed of himself the itemized deductions allowed under Sec. 34 of the Code. Once the election to avail of the OSD or itemized deduction is signified in the return, it shall be irrevocable for the taxable year for which the return is made.

The election to claim either the OSD or the itemized deduction for the taxable year must be signified by checking the appropriate box in the income tax return filed for the first quarter of the taxable year adopted by the taxpayer. Once the election is made, the same type of deduction must be consistently applied for all the succeeding quarterly returns and in the final income tax return for the taxable year. Any taxpayer who is required but fails to file the quarterly income tax return for the first quarter shall be considered as having availed of the itemized deductions for the taxable year.

Thus, a taxpayer who avails of the OSD in the first quarter of its/ his taxable year shall have to claim the same OSD in determining its/ his taxable income for the rest of the year, including the final income tax return which is due to be filed on or before the 15th day of the fourth month, following the close of the taxable year. Likewise, a taxpayer who avails of the itemized deduction in the first quarter of its/ his taxable year or fails to file an income tax return for the first quarter of the taxable year, shall have to claim the itemized deduction in determining the taxable income for the rest of the year, including the final income tax return which is due to be filed on or before the 15th day of the fourth month, following the close of the taxable year. (Emphasis supplied)

An individual taxpayer who is entitled to and claimed the OSD shall not be required to submit with his tax return such financial statements otherwise required under the Code. Provided, that, except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross sales or gross receipts. In the case of a corporation, however, said corporation is still required to submit its financial statements when it files its annual income tax return and to keep such records pertaining to its gross income as herein defined.

[14] Disclosure of Election to Use the Optional Standard Deduction for Taxable Year 2009.

"On April 12, 2010 COL filed its Annual Income Tax Return (ITR) for taxable year 2009 using the OSD and paid the corresponding income tax due.

On April 15, 2010, COL paid under protest an additional income tax amounting to Eight Million Nine Hundred Sixty Thousand Two Hundred and Forty Five Pesos (Php 8,960,245.00,) in order to avoid the imposition of interests, penalties, surcharges, and other increments should respondent require COL to use the itemized method of deduction for its Annual ITR.

On October 11, 2011, COL filed an application for the refund of and/or the issuance of TCCs for the excess income tax paid during the taxable year 2009 amounting to Eight Million Nine Hundred Sixty Thousand Two Hundred and Forty Five Pesos (Php 8,960,245.00).

In view of petitioner's inaction on the claim and the lapse of the prescriptive period on filing a judicial claim, respondent filed on April 03, 2012 its Petition for Review."[15]

On April 15, 2014, the Third Division of this Court rendered its Decision granting respondent's petition, and directing the issuance of a TCC in its favor.[16]

On May 08, 2014, petitioner filed by registered mail her Motion for Reconsideration of the April 15, 2014 Decision. On June 02, 2014, in a Resolution promulgated by the Third Division of this Court, said Motion was denied for lack of merit.[17]

The primary issue submitted to the *En Banc* for consideration is whether or not the Third Division of this

[15] *Supra* note 2, at 26-27.
[16] *Id.* at 25-51.
[17] *Id.* at 52-53.

Court of Tax Appeals erred in ordering the petitioner's issuance of a tax credit certificate in favor of respondent COL Financial Group, Inc. in the amount of Eight Million Nine Hundred Sixty Thousand Two Hundred Forty Five Pesos (Php 8,960,245.00) representing the additional income tax paid under protest.

In support of her claim, petitioner raises the following issues. First, petitioner posits that RR 02-2010 was merely an interpretative ruling, which neither had a prospective nor retroactive nature. And second, petitioner asserts that respondent's failure to submit complete supporting documents was tantamount to non-exhaustion of administrative remedies which prevented the Court from acquiring jurisdiction over the Petition for Review filed by respondent.

Petitioner's Petition for Review is bereft of merit.

Petitioner argues that RR No. 02-2010 was rendered strictly as an interpretative ruling. She maintains that her interpretation of Section 34(L) of the NIRC, through RR No. 02-2010, cannot be considered as retroactive, and as such, was rendered strictly as an interpretative ruling, and not as subordinate legislation designed to implement a primary legislation by providing details thereof.

In the case of *Cooper v. Watson*[18] the Minnesota Supreme Court defined a retroactive law.

> "A retrospective law, in the legal sense, is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past. It may also be defined as one which changes or injuriously affects a present right by going behind it and giving efficacy to anterior circumstances to defeat it, which they had not when the right

[18] 290 Minn. 362, 369, 187 N.W.2d 689, 693 (1971).

> accrued, or which relates back to and gives to a previous transaction some different legal effect from that which it had under the law when it occurred. Another definition of a retrospective law is one intended to affect transactions which occurred, or rights which accrued, before it became operative, and which ascribes to them effects not inherent in their nature, in view of the law in force at the time of their occurrence."

Under any of these precepts, application of RR No. 02-2010 would be retrospective no matter the nomenclature or legal parlance petitioner would have the Court believe it to be.

A typical retroactive law affecting procedural rights is one that lengthens or shortens a statute of limitations and applies to causes of action arising before the law's effective date. A typical retroactive law affecting substantive rights alters a person's legal remedy or a person's right to receive, or duty to pay, benefits or compensation under a preexisting contractual or statutory framework. Retroactive laws address a wide variety of subjects, including judicial and administrative procedures, legal remedies, pension benefits, insurance coverage, criminal violations, and property rights. The one thing they all have in common is the purpose or effect of altering a person's or entity's preexisting rights or duties.[19]

With these in mind and applying such tenets into the case at bar, respondent is correct in saying that the test on whether or not a revocation, modification, or reversal of a tax regulation can be given retroactive effect is not whether the ruling partakes of the nature of an interpretative or substantial legislation, but rather the effect on the taxpayers. If the taxpayers are prejudiced because a new interpretation of the regulation removes a benefit provided by a previous interpretation, then the new interpretation is retroactive.

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[19] http://www.house.leg.state.mn.us/hrd/pubs/retrostat.pdf (last accessed May 5, 2015)

The prohibition against retroactive rulings cannot be any clearer. Section 246 of the NIRC provides that:

> "**SEC. 246. *Non-Retroactivity of Rulings.*** - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
> (c) Where the taxpayer acted in bad faith.

Under said section, absent any one of the exceptions provided therein, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The revocation, modification or reversal is not given retroactive effect.[20]

One must take into account that prior to the issuance of RR No. 02-2010, petitioner issued RR No. 16-2008 on November 26, 2008 which was, at the time of filing by the respondent of its quarterly income tax returns for the first three (3) quarters of 2009, the controlling regulation.

At the time of filing of the respondent's quarterly income tax returns for the first three (3) quarters of 2009, section 7 of RR No. 16-2008 provided:

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[20] *Commissioner of Internal Revenue v. San Roque*, G.R. No. 187485, October 8, 2013.

"Section 7. In the filing of the quarterly income tax returns, the taxpayer may opt to use either the itemized deduction or OSD. However, in filing the final adjustment income tax return, the taxpayer must make a choice as to what method of deduction it or he shall employ for the purpose of determining its/ his taxable net income for the entire year. The taxpayer is, thus, not allowed to use a hybrid method of claiming its/ his deduction for one taxable year."

The provision provides that the taxpayer may opt to use either the itemized deduction or OSD in the filing of the quarterly income tax returns. It is only upon the filing of the final adjustment income tax return that the taxpayer must make a choice as to what method of deduction shall be employed by the taxpayer for the purposes of determining its/ his taxable net income for the entire year.

Upon petitioner's issuance of RR No. 02-2010 on February 18, 2010 and as clarified by RMC No. 16-2010 later on, all these modified the rules prescribed by RR No. 16-2008. Under RR No. 02-2010 and RMC No. 16-2010, BIR curtailed the taxpayer's option to choose the deduction method from quarter to quarter, which was previously allowed under RR No. 16-2008. The BIR now required taxpayers to choose the deduction method during its first quarterly filing, by indicating on the form whether it will opt for the itemized or OSD deduction. The choice of deduction method during the first quarter obligates the taxpayer to use the same method throughout the taxable year, as well as in preparation of the annual ITR.

Under Section 3 of RR No. 02-2010, Section 7 of RR No. 16-2008 was amended to read as follows:

Section 7. *Other Implications of the Optional Standard Deduction.* – A taxpayer who elected to avail of the OSD not exceeding forty percent (40%) of gross sales or gross receipts, in case of an individual taxable under Secs. 27 (A) or

28 (A) (1) of the Tax Code, or forty percent (40%) of gross income, in case of a corporation subject to tax under Sec. 27 (A) or 28 (A) (1) of the same Code shall signify in his/ its return such intention, otherwise he/ it shall be considered as having availed of himself the itemized deductions allowed under Sec. 34 of the Code. Once the election to avail of the OSD **or itemized deduction** is signified in the return, it shall be irrevocable for the taxable year for which the return is made.

The election to claim either the OSD or the itemized deduction for the taxable year must be signified by checking the appropriate box in the income tax return filed for the first quarter of the taxable year adopted by the taxpayer. Once the election is made, the same type of deduction must be consistently applied for all the succeeding quarterly returns and in the final income tax return for the taxable year. Any taxpayer who is required but fails to file the quarterly income tax return for the first quarter shall be considered as having availed of the itemized deductions for the taxable year.

Thus, a taxpayer who avails of the OSD in the first quarter of its/ his taxable year shall have to claim the same OSD in determining its/ his taxable income for the rest of the year, including the final income tax return which is due to be filed on or before the 15th day of the fourth month, following the close of the taxable year. Likewise, a taxpayer who avails of the itemized deduction in the first quarter of its/ his taxable year or fails to file an income tax return for the first quarter of the taxable year, shall have to claim the itemized deduction in determining the taxable income for the rest of the year, including the final income tax return

> **which is due to be filed on or before the 15th day of the fourth month, following the close of the taxable year.**
>
> An individual taxpayer who is entitled to and claimed the OSD shall not be required to submit with his tax return such financial statements otherwise required under the Code. Provided, that, except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross sales or gross receipts. In the case of a corporation, however, said corporation is still required to submit its financial statements when it files its annual income tax return and to keep such records pertaining to its gross income as herein defined. (Emphasis supplied)

The implementation of RR No. 02-2010 in effect moved the deadline for choosing a method of deduction earlier, from the filing of the final adjustment income tax return on April 15, 2010 to the filing of the first quarterly tax return on May 30, 2009, which was the last day of filing the first quarterly return for the taxable year 2009.

Respondent filed its quarterly returns for the first to third quarters for the taxable year 2009 with the option that they can change the method of deduction from quarter to quarter as was provided for by RR No. 16-2008. Having lost this option upon the issuance of RR No. 02-2010, the same should not be given retroactive application for being prejudicial to the rights of the taxpayers, including herein respondent.

Since petitioner has failed to show the existence of any of the exceptions enumerated in Section 246 of the NIRC of 1997 against respondent, and this Court sees none, RR No. 02-2010 cannot be given retroactive application. Correspondingly, RR No. 16-2008 may still be made as a basis for the application for the claim for refund of respondent.

With regard to the second issue, petitioner alleges that the Court in Division did not have jurisdiction over respondent's claim for refund because the documents submitted by petitioner were grossly insufficient and that this failure to thoroughly apply the administrative remedy, led to a premature filing of COL's Petition for Review.

Having no actual revenue regulation that enumerates what documents are required to support an administrative claim in a case such as this, the Court in Division is correct in stating that the documentation submitted by the taxpayer is amply adequate if petitioner could already ascertain the amount of the claim and whether or not the claim is valid.

Based on the records of the case respondent has submitted sufficient documentation to enable petitioner to decide on whether or not she will grant or deny respondent's claim for a tax refund or issuance of tax credit certificate. To wit, respondent has submitted a letter explanation, clearing up the circumstances that swathe the claim for refund. Included therein was a computation table detailing how the amount of Php8,960,245.00, the total payment under protest, was reached:

> "In 2009, COL earned a total gross income of Php199,417,292 (sic). Using the OSD method, COL's resulting income tax due is Php35,895,113. On the other hand, under the itemized deduction method, COL's income tax payable is Php44,855,358 (sic). Below are the details of the computation:

	Total Gross Income	Deduction	Taxable Income	Tax Rate	Income Tax Due
Itemized Deduction	199,417,292	49,899,434	149,517,858	30%	44,855,358
OSD	199,417,292	79,766,917	119,650,375	30%	35,895,113
Difference	-	29,867,483	29,867,483	-	8,960,245

> As such, should COL be required to use the itemized deduction method, it will be made to pay an additional Php8,960,245 in income taxes.

Attached too was a copy of the Application for Tax Credits/ Refunds (BIR Form No. 1914) showing the claim amount of Php8,960,245."[21]

Such documentation submitted by respondent is more than enough for petitioner to determine if respondent did not comply with the submission of complete documents in support of its administrative claim for refund. As such, there is no merit to petitioner's assertion that the documents submitted by respondent were grossly insufficient.

Substantial justice dictates that the government should not keep money that does not belong to it at the expense of citizens.[22] Having resolved these two issues and taking all the circumstances of the case altogether, respondent sufficiently proved that there was indeed an erroneous or illegally collected tax.

WHEREFORE, the petition is **DENIED**. The Decision dated April 15, 2014, rendered by the Third Division of this Court in CTA Case No. 8454, and its Resolution dated June 02, 2014 are **AFFIRMED.** No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[21] *Supra* note 2, pp. 45-46.
[22] *BPI-Family Savings Bank, Inc. v. Court of Appeals, et. Al.*, G.R. No. 122480, April 12, 2000.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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