Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

NANOX PHILIPPINES, INC., Petitioner,	**CTA Case No. 8320**
-versus-	**Members:** CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALASTAS, *J.J.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 2 6 2014 10:25 a.m.

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DECISION

CASANOVA, *J.:*

The instant Petition for Review,[1] filed by petitioner-Nanox Philippines, Inc., on August 11, 2011, seeks the refund of the 10% final withholding tax remitted to respondent in the amount of P9,495,774.38 on August 13, 2009, in relation to an intended cash dividends distribution that did not materialize or occur.

The facts of the case, as culled from the records, are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission under the laws of the Philippines, with office address at IE-5 Clark Premier Industrial Park, M. A. Roxas Highway, Clark Special Economic Zone, Clarkfield, Pampanga.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with office

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[1] Docket (Vol. I), pp. 6-32.
[2] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 342.

address at BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On June 15, 1999, petitioner was incorporated[4] as a domestic corporation, organized for the purpose of manufacturing and trading goods such as liquid crystal displays and to trade the same on wholesale/retail basis.[5]

In June 2009, petitioner's officers started discussing the possibility of declaring cash dividends to its sole stockholder, Nanox Corporation Japan (Nanox Japan) as shown in several electronic-mail correspondence between petitioner's officers and representatives of Nanox Japan.[6]

On July 31, 2009, petitioner's Finance Senior Staff, Ms. Annie Mamangun, prepared the documentation for the payment of the 10% final withholding tax equivalent to JPY20,000,000.00 (approximately P9,495,774.38)[7] as well as the documentation for the payment of the cash dividends to be distributed to Nanox Japan. [8]

On August 11, 2009, petitioner proceeded to process the payment of the 10% withholding tax of JPY20,000,000.00 equivalent to P9,495,774.38. For this purpose, petitioner filed with the BIR its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) indicating the payment of the total withholding tax of P9,755,502.97(consisting of the dividends tax of P9,495,774.38 and the royalty tax of P259,728.59) for the period ending July 31, 2009.[9] Said amount was paid and remitted by petitioner on August 13, 2009.[10] On the same day, the payment made by petitioner in the amount of P9,755,502.97 was acknowledged[11] by a system-generated document and was debited by its banking facility as shown in its Passbook for Savings Account No. 377-3-377-50187-0.[12] Afterwards, petitioner filed

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[3] Par 2, The Parties, Petition for Review, Docket (Vol. I), p. 7.
[4] Annexes "E" and "F" to the Petition for Review, Docket (Vol. I), pp. 45-50.
[5] Par. 8, Statement of Material Facts, Petition for Review, Docket (Vol. I), p. 9.
[6] Par. 9, Statement of Material Facts, Petition for Review, Docket (Vol. I), p. 9 ; Annexes "G" to "G-1", "U", and "H" to "H-1" to the Petition for Review, Docket (Vol. I), pp. 51-52, 275, and 53-54, respectively.
[7] Accounts Payable Voucher dated July 31, 2009, Exhibit "F", Docket (Vol. II), p. 570.
[8] Pars. 13 and 14, Statement of Material Facts, Petition for Review, Docket (Vol. I), pp. 12-13; Annexes "I" and "J" to the to the Petition for Review, Docket (Vol. I), pp. 55 and 56, respectively.
[9] Par. 15, Statement of Material Facts, Petition for Review, Docket (Vol. I), pp. 13-14; Annex "A" to the Petition for Review, Docket (Vol. I), p. 36
[10] Exhibit "K", Docket (Vol. II), p. 573.
[11] Par. 17, Statement of Material Facts, Petition for Review, Docket (Vol. I), p. 14; Annex "B" to the Petition for Review, Docket (Vol. I), p. 41.
[12] Par. 18, Statement of Material Facts, Petition for Review, Docket (Vol. I), p. 15; Exhibit "M", Docket (Vol. II), p. 574.

its Annual Information Return (BIR Form No. 1604-CF) on January 27, 2010, reporting therein the withholding tax it remitted for the month of July 2009.[13]

On September 1, 2009, petitioner's Vice President for Finance, Mr. Kazuhiko Yamane, received an e-mail from the President of Nanox, Japan, Mr. Jin Tetsuo, regarding the discontinuance of the said cash dividends. As a result thereof, petitioner did not release any amount of cash dividends to its sole stockholder.[14]

Consequently, on November 10, 2009, petitioner filed its written claim for refund in the amount of P9,495,774.38, representing the 10% final withholding tax paid in relation to the discontinued cash dividends payments.[15] Due to respondent's inaction, petitioner filed the instant Petition for Review on August 11, 2011.[16]

Respondent, for her part, filed her Answer[17] on October 10, 2011, and interposed the following special and affirmative defenses:

> "5. Respondent hereby repleads the above admissions and denials as part of her special and affirmative defenses.
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> 6. The Petition for Review does not merit to be given due course. Petitioner failed to prove that it exhausted all administrative remedies before elevating this case to this Honorable Court.
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>> 6.1 A careful reading of the petition for review shows that petitioner failed to prove that it has submitted the complete supporting documents to warrant the granting of the application for tax refund. Instead, on November 10, 2009, petitioner submitted only its application for refund with Bureau of Internal Revenue (BIR) Revenue Region No. III, Pampanga, which was attached to the petition

[13] Par. 19, Statement of Material Facts, Petition for Review, Docket (Vol. I), p. 16.
[14] Par. 20, Statement of Material Facts, Petition for Review, Docket (Vol. I), p. 17; Annexes "M", "M-1" and "U" to the Petition for Review, Docket (Vol. I), pp. 59-60, 61-62 and 275, respectively.
[15] Par. 23, Statement of Material Facts, Petition for Review, Docket (Vol. I), p. 20; Annex "D" to the Petition for Review, Docket (Vol. I), pp. 43-44.
[16] Par. 24, Statement of Material Facts, Petition for Review, Docket (Vol. I), p. 20.
[17] Docket (Vol. I), pp. 301-308.

as Annex 'D' without the submission of complete supporting documents. Absent the submission of complete supporting documents, the BIR Commissioner cannot act on the administrative application for refund.

6.2 Considering that petitioner failed to submit supporting documents to respondent when it filed its application for refund on November 10, 2009, it deprived respondent of the opportunity to fully exercise her function to decide claims for refund, correct, modify or affirm the findings of her subordinates. It must be remembered, that in the case of *Jariol vs. Commission on Elections,* the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

6.3 The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because there are matters peculiarly within the competence of the administrative agency.

6.4 Settled is the rule that the non-exhaustion of administrative remedies is jurisdictional and it renders only the action premature, *i.e.,* the claimed cause of action is not ripe for judicial determination and for that a

> party has no cause of action to ventilate in court. The premature invocation of the court's intervention is fatal to one's cause of action; and absent any finding of waiver of estoppel, the case is susceptible of dismissal for failure to state a cause of action.'

7. Petitioner must also prove by clear and convincing evidence that the requirements for refund claim were met.

> 7.1 There must be a written claim for refund filed by the taxpayer with respondent.
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> 7.2 The claim of refund must be a categorical demand for reimbursement.

8. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

9. It is well established in this jurisdiction that a claim for refund partakes the nature of an exception and is therefore held against the claimant and in favor of the State.

> 9.1 The burden of proof in establishing the factual and legal basis for refund claims is on the claimant.
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> 9.2 In the case of *Far East Bank & Trust Company vs. Commissioner of Internal Revenue* the Supreme Court held:
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> 'A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.'
>
> 9.3 Indeed, a claim for refund is in the nature of an exemption and is construed *strictissimi juris* against the taxpayer. In the

2008 case of *M.E. Holding Corp. vs. Court of Appeals* the Supreme Court held that '(w)e reiterate at this juncture that claims for refund/credit, as in the instant case, are in the nature of claims for exemption.'

10. Taxes collected are presumed to be in accordance with laws and regulations.

11. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670.)**

12. Respondent humbly manifest that this Honorable Court is bereft of jurisdiction to hear and try the instant case, due to failure of the petitioner to exhaust all administrative remedies. Respondent submits that the instant petition for review was filed *prematurely.*

13. In view of the foregoing, for lack of merit, this Honorable Court should therefore dismiss the case outright. In so doing, a long and tedious trial would be dispensed with and the Honorable Court as well as the parties would be spared from undergoing the rigors and expenses of a full blown trial."

On October 11, 2011, the Court issued a Notice of Pre-Trial Conference[18] setting the pre-trial conference of the case on November 10, 2011 at 1:30 p.m. and requiring parties to file their respective pre-trial brief. In compliance therewith, Respondent's Pre-Trial Brief[19] was filed on October 20, 2011 while the Pre-Trial Brief for Petitioner[20] was filed on November 4, 2011.

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[18] Docket (Vol. I), p. 310.
[19] Docket (Vol. I), 311-314.
[20] Docket (Vol. I), pp. 315-324.

Petitioner filed its Reply[21] to respondent's Answer on October 27, 2011.

On December 12, 2011, the parties filed their Joint Stipulation of Facts and Issues[22] which was later approved by the Court in a Resolution[23] dated December 19, 2011. In the same Resolution, the Pre-Trial was considered terminated.

Thereafter, the trial of the case proceeded giving both parties the opportunity to present their documentary and testimonial evidence. Petitioner formally offered in evidence Exhibits "FF", "F", "H", "K", "M", "M-1", "LL", "Z", "Y", "KK", and "JJ"[24] which were admitted, with the exception of Exhibit "F", in a Resolution[25] dated August 15, 2013. For her part, respondent's counsel manifested, in the June 24, 2013 hearing,[26] that respondent will no longer present her evidence and that she is submitting the instant case for decision. In the same hearing, counsel for both parties were given thirty (30) days from receipt of the Court's Resolution within which to file their respective memorandum.

On November 8, 2013, the case was submitted for decision,[27] taking into consideration petitioner's Memorandum,[28] filed on October 16, 2013, and respondent's Memorandum[29] filed on November 5, 2013.

Hence, this Decision.

The following are the parties' jointly stipulated issues[30] submitted for this Court's resolution:

> "1. Whether or not *solutio indebiti* justifies the refund of the 10% withholding tax amounting to P9,495,774.38; and,
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> 2. Whether or not petitioner is entitled to a refund or tax credit in the total amount of P9,495,774.38 allegedly representing erroneously paid 10% final withholding

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[21] Docket (Vol. I), pp. 327-332.
[22] Docket (Vol. I), pp. 342-343.
[23] Docket (Vol. I), p. 345.
[24] Docket (Vol. II), pp. 558-561.
[25] Docket (Vol. II), pp. 669-670.
[26] Minutes of the Hearing dated June 24, 2013, Docket (Vol. II), p. 554.
[27] Docket (Vol. II), p. 708.
[28] Docket (Vol. II), pp. 688-695.
[29] Docket (Vol. II), pp. 697-707.
[30] Issues Admitted for Resolution, Joint Stipulation of Facts and Issues, Docket (Vol. I), pp. 342-343.

tax on dividends payment for fiscal period 31 March 2009 to 31 March 2010.

Considering that the foregoing issues are intertwined, the Court shall discuss them jointly.

The provisions of the 1997 NIRC, as amended, pertinent to a refund claim arising from erroneous payment of taxes are Sections 204 (C) and 229, which, respectively, provide:

> **"SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may-
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> 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 xxx"
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> **"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 therefore, 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." (*Emphasis supplied*)

Pursuant to the aforequoted provisions, in order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present:

1) There must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2) A claim for refund has been duly filed with the Commissioner, within two years after the payment of tax or penalty; and

3) The suit or proceeding is instituted with the Court within two years from the date of payment of the tax or penalty.

In the case at bench, records show that petitioner paid to the BIR on August 13, 2009, the amount of P9,755,502.97 FWT (including the claimed amount of P9,495,774.38) as reflected in its BIR Form No. 1601-F for the month of July 2009. Counting from August 13, 2009, petitioner had until August 13, 2011 within which to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim[31] for refund, filed before the BIR's Regional Director, Regional Office III, San Fernando Pampanga, on November 10, 2009, and the judicial claim for refund filed with this Court on August 11, 2011, fell within the two-year prescriptive period.

The Court will now determine if petitioner is entitled to its claim for refund in the total amount of P9,495,774.38, representing erroneously paid 10% final withholding tax on cash dividends payment for fiscal period March 31, 2009 to March 31, 2010.

Records reveal that on August 11, 2009, petitioner filed through the BIR's Electronic Filing and Payment System (EFPS) its Monthly Remittance Return of Final Income Taxes Withheld [BIR Form No. 1601-

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[31] Exhibit "JJ", Docket (Vol. II), pp. 663-664.

F][32] for the month of July 2009 and paid the corresponding FWT in the amount of P9,755,502.97[33] which comprised the following[34]:

10% Royalty Tax	P 259,728.59
10% Dividends Tax	**9,495,774.38**
Total	P 9,755,502.97

The 10% FWT in the amount of P9,495,774.38 pertains to an intended declaration and distribution of cash dividends by petitioner to its sole stockholder, Nanox Japan, in July 2009[35]. However, the said cash dividends distribution did not materialize as shown in the Secretary's Certificate[36] and Judicial Affidavit[37] of petitioner's witness, Ms. Maria Imelda Tuazon, to wit:

Secretary's Certificate

"3. Based on the records of the Corporation in my custody, **no board resolution was executed or signed by the Board of Directors for the purpose of declaring cash dividend payments to stockholders during the period covering the fiscal year March 2009 to March 2010.**" *(Emphasis supplied)*

Judicial Affidavit

"14. **Q: You mentioned in the second paragraph of the letter that a resolution was made by the board on 30 July 2009 to declare a cash dividend of 200,000,000.00 JPY. Do you have a copy of that board resolution?**

A: No.

15. Q: Why not?

A: The board resolution was never finalized on paper. *a*

[32] Annexes A to A-1 to the Petition for Review, Docket (Vol. I), p. 36-37; BIR Records, pp. 3-6.
[33] Exhibit "K", Docket (Vol. II), p. 573; Line 24, Exhibit "M-1", Docket (Vol. II), p. 575.
[34] BIR Records, p. 3.
[35] Annexes "G-1" and "H-1" to the Petition for Review, Docket (Vol. I), pp. 52 and 54; Exhibits "FF" and "KK", Docket (Vol. II), pp. 562-569 and 659-662, respectively.
[36] Annex "P" to the Petition for Review, Docket (Vol. I), p. 67.
[37] Exhibit "KK", Docket (Vol. II), pp. 660-661.

16. Q: What do you mean by that?

A: I did not prepare any board resolution to this effect.

17. Q: xxx

A: xxx. However, due to my busy schedule at that time, I was not able to prepare and cause the execution of the proper board resolution as promptly as I would normally do.

xxx xxx xxx

19. Q: You mean you failed to record the resolution of the board to declare a cash dividend of P200,000,000 million JPY?

A: No. I did not fail to record the resolution to declare cash dividends of 200,000,000 million JPY because the decision was retracted and discontinued by the corporation even before I could prepare and circulate the proper board resolution. In other words, it is as if there was no board resolution to document and record because the decision to retract the resolution came even before the resolution came into existence, and therefore preempted the actual issuance of the resolution itself.

20. Q: How did you come to know that the decision to distribute cash dividends would be discontinued?

A: I was directly informed by the corporation's finance department staff, particularly Ms. Annie Mamangun, which I immediately confirmed with their Senior Finance Manager, Ms. Ruby Chavez-Madria, sometime in October of 2009."

Further, President of Nanox Japan, Mr. Jin Tetsuo laid out in his email letter[38] on September 1, 2009, the reasons for the discontinuance of cash dividend distribution, to wit:

"Due to the tax reform, if we will wait for the dividend until 2010, the tax will be greatly reduced.

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[38] Annex "M-1" to the Petition for Review, Docket (Vol. I), pp. 61-62.

(1) The payment amount related to the dividend until 2009

2009	
NXP ¥200M x 10% (source tax)	¥20M
NXJ ¥200M x 40% (Corporate tax effective tax rate) – ¥20M	60M
Tax amount	**¥80M**

(2) The payment amount after the 2010 tax reform

2010	
NXP ¥200M x 10% (source tax)	¥20M
NXJ ¥200M x 5% x 40% (Corporate tax effective tax rate)	4M
Tax amount	**¥24M**

Others (Fund collection consultation)

(1) Regardless of the above-mentioned matters, as a method of collecting the funds of NXP, the dividend method was sealed until 2010.

(2) In view of this, also for the changes in the payment site, xxx."

Consistently, no dividends paid were reported in petitioner's Audited Financial Statements for the fiscal year ended March 31, 2010[39].

Having proved that the cash dividends distribution did not materialize, the 10% FWT on cash dividends paid by petitioner to BIR on August 13, 2009, in the amount of ₱9,495,774.38, constitutes erroneously paid tax which is refundable under Sections 204(C) and 229 of the 1997 NIRC, as amended. Consequently, the principle of *solutio indebiti* under Article 2154 of the New Civil Code must be applied. Respondent, therefore, has the obligation under the law to restore the said tax erroneously paid by petitioner.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby

[39] Petitioner's Statements of Cash Flows for the Fiscal Years Ended March 31, 2010 and March 31, 2009, Exhibit "Y", Docket (Vol. II), p. 589.

ORDERED TO REFUND to petitioner the amount of P9,495,774.38, representing petitioner's erroneously paid final withholding tax.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice