REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2214** (CTA Case No. 9626)
	Present:
- versus -	**DEL ROSARIO**, P.J., **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, and **REYES-FAJARDO**, JJ.
ESTATE OF MR. CHARLES MARVIN ROMIG REPRESENTED BY ITS SOLE HEIR MRS. MARICEL NARCISO ROMIG, Respondent.	Promulgated: OCT 28 2021 2:25 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue (CIR) on February 6, 2020,[1] which seeks to reverse and set aside the Decision dated September 2, 2019 and Resolution dated December 27, 2019 both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9626, entitled *"Estate of Mr. Charles Marvin Romig Represented by its Sole Heir, Mrs. Maricel Narciso Romig, petitioner, vs. Commissioner of Internal Revenue, respondent".*

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[1] EB Docket, pp. 7 to 23.

We quote the dispositive portions of the assailed Decision and Resolution as follows:

<u>Decision dated September 2, 2019</u>:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is ordered to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱4,565,349.07, representing erroneously paid estate tax, including interest and penalties, on petitioner's foreign currency deposit with HSBC.
>
> **SO ORDERED.**"

<u>Resolution dated December 27, 2019</u>:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration [Decision dated September 2 2019] is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997 (Tax Code), and other tax laws, rules and regulations. He may be served with summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On the other hand, respondent is the Estate of Charles Marvin Romig.

The decedent Charles Marvin Romig is an American Citizen who died intestate in the Philippines on November 20, 2011. At the time of his death, Mr. Romig was a resident of Aguada, Poblacion, Puerto Galera, Oriental Mindoro.

On March 13, 2012, Maricel Narciso Romig, the decedent's sole heir and respondent's representative, executed an Affidavit of Self Adjudication, adjudicating unto herself the properties of the decedent at the time of his death, including a dollar deposit at the Foreign Currency Deposit Unit (FCDU) of the Hongkong and Shanghai Banking Corporation Limited HSBC Premiere – Makati Branch (HSBC USD Savings Account).

On May 18, 2012, respondent through its representative, Maricel Romig, filed an Estate Tax Return (BIR Form 1801) and paid the estate tax due thereon amounting to ₱26,152.00 with the Development Bank of the Philippines – Calapan Branch under the jurisdiction of the BIR, RDO No. 63.

On even date, respondent filed with the Law and Legislative Division of the BIR National Office a letter request for confirmatory ruling dated May 17, 2012 that the HSBC USD Savings Account is exempt from estate tax and all other taxes in accordance with Section 6, of Republic Act (RA) No. 6426,[2] as amended by Presidential Decree (PD) Nos. 1034 and 1035.

On June 30, 2015, respondent filed an Amended Estate Tax Return and paid additional estate tax on the HSBC USD Savings Account amounting to ₱4,565,349.07 through the Philippine National Bank – Calapan Branch under the jurisdiction of the BIR, RDO No. 63.

On June 28, 2017, respondent filed with petitioner through the BIR – Revenue District Office No. 63, an administrative claim for refund of erroneously paid estate tax amounting to ₱4,565,349.07, including interests and penalties, on the HSBC USD Savings Account.

In view of the two-year statute of limitations provided under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, respondent filed a Petition for Review on

[2] Foreign Currency Deposit Act of the Philippines.

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June 28, 2017. The case was initially raffled to the First Division and docketed as CTA Case No. 9626 entitled "*Estate of Mr. Charles Marvin Romig Represented By Its Sole Heir, Mrs. Maricel Narciso Romig vs. Commissioner of Internal Revenue.*"

Within the extension period granted by the Court in Division, petitioner filed his Answer in CTA Case No. 9626 on October 9, 2017, interposing the following defenses:

1) Respondent is not entitled to refund of the alleged payment of estate tax for the transfer of the foreign currency deposits of the heir of Mr. Romig;

2) The decedent is an American Citizen but a resident of the Philippines. Hence, all the properties of the decedent wherever situated is subject to estate tax;

3) That a foreign currency deposit of a resident decedent is not among those enumerated as allowable deductions from the gross estate under Section 86 (A) of the NIRC of 1997, such should be subject to estate tax;

4) That the alleged exemption under Section 6 of the Foreign Currency Deposit Act interposed by respondent is not among those enumerated under Section 87 of the NIRC of 1997 as exempted from estate tax; and

5) The Petition should be dismissed for failure on the part of respondent to exhaust administrative proceedings.

After the pre-trial conference held on February 8, 2018, the parties filed their Joint Stipulation of Facts and Issues on February 28, 2018. Thereafter, the Court in Division issued a Pre-Trial Order on May 7, 2018.

During trial, respondent presented Maricel Narciso Romig as its witness. Thereafter, respondent filed its Formal Offer of Evidence (With Motion to Recall Witness) on June 8, 2018. The motion to recall witness was granted by the Court in Division in its Resolution dated August 6, 2018 and respondent's witness, Maricel Narciso Romig was recalled to the witness stand. On September 11, 2018, a Supplemental Formal Offer of Evidence was filed by respondent.

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In the Order dated September 25, 2018, CTA Case No. 9626 was transferred to the Second Division (Court in Division) pursuant to CTA Administrative Circular No. 02-2018.[3]

Thereafter, the Court in Division admitted all of respondent's exhibits and declared respondent to have rested its case on November 21, 2018.

For his part, petitioner, through his counsel, manifested during the hearing on January 21, 2019, that there is no report of investigation on the claim for refund of respondent. Thus, the Court in Division ordered both parties to submit their respective Memoranda.

CTA Case No. 9626 was submitted for decision on April 8, 2019 after the filing of petitioner's Memorandum on February 21, 2019 and respondent's Memorandum on March 22, 2019.

On September 2, 2019, the Court in Division rendered the assailed Decision, granting respondent's Petition for Review in CTA Case No. 9626 and ordering petitioner to refund or issue a Tax Credit Certificate (TCC) in favor of respondent in the amount of ₱4,565,349.07.[4]

On September 17, 2019, petitioner filed a Motion for Reconsideration [Decision dated September 2, 2019].[5]

In the assailed Resolution dated December 27, 2019, the Court in Division denied petitioner's Motion for Reconsideration for lack of merit.[6]

Subsequently on January 22, 2020, petitioner filed a Motion for Extension of Time to File Petition for Review[7] before the Court *En Banc* praying for an additional period of fifteen (15) days from January 22, 2020, or until February 6, 2020, within which to file his Petition for Review. The same was granted by

[3] "*Reorganizing the Three Divisions of the Court*" issued on September 18, 2018.
[4] EB Docket, pp. 30 to 47; Division Docket (CTA Case No. 9626), pp. 358 to 376.
[5] Division Docket (CTA Case No. 9626), pp. 377 to 391.
[6] EB Docket, pp. 49 to 54; Division Docket (CTA Case No. 9626), pp. 428 to 433.
[7] EB Docket, pp. 1 to 4.

the Court *En Banc*.[8]

On February 6, 2020, petitioner filed the instant Petition for Review docketed as CTA *EB* No. 2214.[9]

In the Resolution dated February 20, 2020, the Court *En Banc* directed respondent to file its comment to the Petition for Review.[10] On March 9, 2020, respondent filed a Motion for Extension of Time to File Comment,[11] praying for additional period of ten (10) days from March 8, 2020, or until March 18, 2020, within which to file its Comment. The same was granted by the Court *En Banc* on March 11, 2020.[12]

Meanwhile, due to the Covid-19 pandemic, the Supreme Court issued Administrative Circular Nos. 31-2020,[13] 34-2020,[14] 35-2020[15] 39-2020[16], and 41-2020,[17] wherein the deadlines of the filing of petitions, appeals, complaints, motions and pleadings, and other court submissions that fall during the period of the Enhanced Community Quarantine and Modified Enhanced Community Quarantine were extended to a period of thirty (30) calendar days counted from June 1, 2020.

On June 29, 2020, respondent filed his Comment (Re: Petition for Review dated February 5, 2020).[18] Thereafter, the Court *En Banc* submitted the instant case for decision on July

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[8] Minute Resolution dated January 23, 2020, EB Docket, p. 6.
[9] EB Docket, pp. 7 to 23.
[10] EB Docket, pp. 56 to 57.
[11] EB Docket, pp. 58 to 60.
[12] Minute resolution dated March 11, 2020, EB Docket, p. 61.
[13] Issued on March 16, 2020. "The filing of petitions, and appeals, complaints, motions, pleadings and other court submissions that fall due during the period from March 15, 2020 until April 15, 2020 is extended for 30 calendar days counted from April 16, 2020."
[14] Issued on April 8, 2020. "The filing of petitions, appeals, complaints, motions, pleadings and other court submissions that fall due up to April 30, 2020 is extended for 30 calendar days counted from May 1, 2020, xxx."
[15] Issued on April 27, 2020. "The filing of petitions, appeals, complaints, motions, pleadings and other court submissions that fall up to May 15, 2020 in the ECQ areas is extended for 30 calendar days, counted from May 16, 2020, xxx."
[16] Issued on May 14, 2020. "The filing of petitions, appeals, complaints, motions, pleadings and other submissions that fall due up to May 31, 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from June 1, 2020, xxx."
[17] Issued on May 29, 2020. "There shall no longer be extensions in the filing of petitions, appeals, complaints, motions, pleadings and other court submissions that will fall due beginning June 1, 2020. In the same manner, the periods for court actions with prescribed periods beginning 1 June 2020 shall no longer be extended."
[18] EB Docket, pp. 62 to 77.

14, 2020.[19]

THE ISSUE

The sole ground raised by the petitioner in his Petition for Review is quoted as follows:

> "THE HONORABLE COURT ERRED IN RULING THAT THE RESPONDENT'S FOREIGN CURRENCY DEPOSIT WITH HSBC IS EXEMPT FROM ESTATE TAX"[20]

Petitioner's arguments:

Petitioner maintains that respondent is not entitled to the refund of Php4,565,349.07 representing the estate tax paid for the transfer of the foreign currency deposits to Maricel Narciso Romig, the sole heir of the decedent, Charles Marvin Romig.

According to petitioner, the decedent is an American citizen but a resident of the Philippines. Thus, all properties of the decedent wherever situated is subject to estate tax.

Further, petitioner argues that a foreign currency deposit of a resident decedent is not among those enumerated as allowable deductions under Section 86(A) of the 1997 NIRC, as amended, and as those allowed for the acquisitions and transmissions which are not subject to estate tax under Section 87 of the same law. Hence, foreign currency deposit units (FCDU) are not exempt from estate tax.

Petitioner cited a ruling in CTA Case No. 7484 entitled "*Bank of the Philippine Islands vs. Commissioner of Internal Revenue*", where the Court supposedly recognized that the legislature intended to remove the exemption of FCDUs from all taxes when it enacted the 1997 NIRC, as amended, by excluding the phrase "are hereby exempted from any and all taxes whatsoever" contained in RA No. 6426.

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[19] Resolution dated January 29, 2020, EB Docket, pp. 82 to 83.
[20] EB Docket, p. 11.

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Moreover, petitioner asserts that respondent cannot interpose the alleged exemption under Section 6 of RA No. 6426 in light of Section 84 of the 1997 NIRC, as amended; that even assuming Section 6 of RA No. 6426 exempts FCDUs from estate tax, there is no proof that respondent's US dollar deposit with HSBC is covered by the said law. Thus, respondent is not entitled to the exemption from payment of taxes on such deposit.

Petitioner also invokes the oft-repeated doctrine that tax exemptions are strictly construed against the taxpayer and that respondent failed to prove that it falls under said exemption.

Lastly, petitioner insists that respondent's original petition should be dismissed for failure to exhaust administrative remedies. Petitioner asserts that the filing of the judicial appeal on the same day it filed the administrative claim effectively denied his office the opportunity to review its claim for refund, thus violating the well-entenched doctrine of exhaustion of administrative remedies. Petitioner additionally posits that the Court in Division should have dismissed the Petition for Review filed by respondent for failure to state a cause of action.

Respondent's counter-arguments:

Respondent claims that petitioner's arguments are mere reiterations of the grounds he raised in his Motion for Reconsideration before the Court in Division and which was denied in a Resolution dated December 27, 2019.

Respondent counter-argues that RA No. 6426, being a special law, could not have been impliedly revoked by the general repealing clause in Section 291 of the Tax Code, which is a general law.

According to respondent, the *BPI* case relied upon by petitioner is not applicable to the instant case; that the BPI case dealt with the liability of the depository bank (BPI) for Documentary Stamp Tax on its FCDU transactions and did not touch upon the depositor's liability for income tax (or estate tax) on the income earnings derived by such depositor from his foreign currency deposits; and that the CTA explicitly stated in the said case that the withdrawal of the tax exemption of depositor's income from foreign currency deposit was restored upon the effectivity of RA No. 9294 on May 21, 2004.

Respondent further submits that the Court in Division did not err in holding that HSBC had the authority from the *Bangko Sentral ng Pilipinas* (BSP) to operate an FCDU.

Allegedly, the rule that "claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of erroneously or illegally paid taxes, such as the instant case. Respondent contends that it was able to prove with indubitable evidence all the requirements for the refund of its erroneously paid or illegally collected estate tax.

Finally, respondent contends that the Court acquired jurisdiction over the case since both the administrative and judicial claims for refund were filed within the two-year prescriptive period as required in Section 229 of the 1997 NIRC, as amended.

THE COURT *EN BANC*'S RULING

Before we proceed to the substantive merits of the case, we first resolve the issue raised during trial that respondent failed to exhaust administrative remedies which petitioner infers to be a sufficient basis for the dismissal of the instant Petition for Review.

Petitioner asserts that the Court in Division should not have taken cognizance of the Petition for Review due to respondent's failure to exhaust administrative remedies provided by law before resorting to judicial relief. Petitioner maintains that this seemingly apparent violation is illustrated by the fact that respondent filed both its administrative claim for refund and appeal to the Court of Tax Appeals (CTA) on the same day, June 28, 2017. Petitioner quoted the decision of the Supreme Court in the case of *Smart Communications vs.*

Aldecoa,[21] where it was ruled "that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him" and that "the premature resort to the court is fatal to one's cause of action."

We are not convinced.

The credit or refund of erroneously paid or illegally collected internal revenue taxes is governed by Sections 204 and 229 of the 1997 NIRC, as amended, and we quote:

> "Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
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> (C) Credit or refund of 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 showing an overpayment shall be considered as a written claim for credit or refund.** (emphasis supplied)
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> xxx xxx xxx
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> Section 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or 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.**
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> **In any case, no 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

[21] G.R. No. 166330, September 11, 2013.

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which payment was made, such payment appears clearly to have been erroneously paid." (emphasis supplied)

Jurisprudence has largely assisted in developing a clearer understanding of the substantive and procedural requirements in filing a claim for refund under the aforesaid sections of the 1997 NIRC, as amended. In the case of *CIR vs. Rosemarie Acosta, as represented by Virgilia A. Abogado,*[22] the Supreme Court laid down the following procedural requirements in filing a claim for refund of alleged erroneously paid or illegally collected taxes, thus:

> "1) A written claim for refund or tax credit must be filed by the taxpayer with the Commissioner;
> 2) The claim for refund must be a categorical demand for reimbursement;
> 3) **The claim for refund or tax credit must be filed, or the suit or proceeding therefor, must be commenced in court within two (2) years from date of payment of the tax or penalty regardless** of any supervening cause." (emphasis supplied)

Sections 204 (C) and 229 of the 1997 NIRC, as amended, stipulate quite clearly that an administrative claim for refund must precede the filing of a judicial appeal before the Court and that both claims must be filed within the two (2) year period from the date of payment of the tax. This was expounded by the Supreme Court in the case of *CIR vs. Goodyear Philippines, Inc. (Goodyear* case*)*[23] in this manner:

> "Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, **providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the CIR xxx xxx xxx"** (emphasis supplied)

The law does not, however, specify the interval between the two types of claims. The law only requires that an administrative claim be priorly filed within the two year period.[24] In the instant case, the facts show that respondent duly filed an administrative claim for refund with the BIR, Revenue District Office (RDO) No. 63-Calapan City on June 28, 2017 at 8:00 a.m.

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[22] G.R. No. 154068, August 3, 2007.
[23] G.R. No. 216130, August 3, 2016.
[24] *CIR vs. Univation Motor Phils., Inc.,* G.R. No. 231581, April 10, 2019.

before it filed a Petition for Review with the Court in Division also on June 28, 2017 at 4:47 p.m. Counted from the date of payment of the estate tax on June 30, 2015, both the administrative and judicial claims for refund were both filed within the two (2)-year period from payment of the tax, in compliance with the provisions of Section 229 of the 1997 NIRC, as amended.

The *Goodyear* case further clarified that the taxpayer need not wait for the decision or resolution of the CIR on its administrative claim for refund before resorting to a judicial appeal, and we quote:

> "To clarify, Section 229 of the Tax Code-(then Section 306 of the old Tax Code)- however does not mean that the taxpayer must await the final resolution of the administrative claim for refund, **since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2) year period expire without the appropriate judicial claim being filed."** (emphasis supplied)

We quote with approval, the decision of the Court in Division when it disposed of the issue of jurisdiction in this manner:

> "Notably, Section 229 of the Tax Code, as worded, only requires that an administrative claim should first be filed. In this case, although petitioner's administrative and judicial claims were both filed on June 28, 2017 petitioner's administrative claim was filed first in the morning before its judicial claim, which was filed later in the day.
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> It bears stressing that petitioner could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. **Had petitioner awaited the action of respondent knowing fully well that the prescriptive period was about to lapse, it would have resultantly forefeited its right to seek a judicial review of tis claim, thereby suffering irreparable damage.**
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> Hence, the Court has jurisdiction." (emphasis supplied)

We now proceed to resolve the substantive merits of the arguments of both parties as regards the claim for refund filed by respondent.

Petitioner contends that it was erroneous for the respondent to invoke the provisions of Section 6 of RA 6426, otherwise known as the *"Foreign Currency Deposit Act of the Philippines,"* as basis of its alleged exemption for the payment of the estate tax pertaining to the US dollar deposits of the decedent, Charles Marvin Romig, in Hongkong and Shanghai Banking Corporation (HSBC). He asserts that the US dollar deposit of a decedent via a bank's FCDU, is not among the allowable deductions from the gross estate provided under Section 86 (A) of the 1997 NIRC, as amended. Moreover, petitioner argues that Section 87 of the 1997 NIRC, as amended, does not include foreign currency deposits among those which are not subject to estate tax and maintains that only those which are specifically enumerated therein are exempted from the estate tax.

Petitioner ends his arguments by stating that even if RA No. 6426 applies to the instant case, the respondent failed to prove that HSBC (where the decedent had maintained a dollar deposit account) was granted by the BSP an authority to operate an FCDU at the time of his death.

Respondent disagrees with the assertions of petitioner and insists that Section 6 of RA No. 6426 expressly exempts FCDUs from all types of taxes which may cover estate taxes, hence the payment thereof was erroneous and should be refunded.

We find petitioner's arguments meritorious.

The resolution of the issue in this case must be seen in the light of the type of tax involved in respondent's claim for refund. It is clear from the records and facts of the case that respondent is seeking the refund of the alleged erroneous payment of the estate tax imposed on the Estate of Charles Marvin Romig, particularly on the portion pertaining to the latter's foreign currency deposit with HSBC.

The foremost issue that this Court is tasked to resolve is whether or not such foreign currency deposit should be included in the gross estate of the decedent and/or whether or not such deposit is a deductible item in said gross estate to come up with the net estate subject to Philippine estate tax. After all, the primary tax consequence of the death of a resident alien such as Charles Marvin Romig, is the payment of the estate tax resulting from the transmission of properties *mortis causa*. Estate tax (formerly called inheritance tax) is a tax imposed "upon transmission or the transfer or devolution of property of a decedent made effective by his death."[25] It is in reality an excise or privilege tax imposed on the right to succeed to, or receive or take property by or under a will or the intestacy law, or deed, grant or gift to become operative at or after death."[26]

Section 84 of the 1997 NIRC, as amended,[27] is explicit on this particular tax obligation when it provides:

> Section 84. *Rates of Estate Tax.* – **There shall be levied, assessed, collected, and paid** upon the transfer of the net estate as determined in accordance with Sections 85 and 86 of every decedent, **whether resident or nonresident of the Philippines**, a tax based on the value of such net estate, as computed in accordance with the following schedule:" (emphasis supplied)
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> xxx xxx xxx

The net estate of a decedent who is either a citizen or a resident of the Philippines is computed as the gross estate minus the allowable deductions.[28] Section 85 of the 1997 NIRC, as amended, provides that the composition of the gross estate of both residents or citizens of the Philippines includes *all* property, real or personal, tangible or intangible, wherever situated, quoted as follows:

> "Section 85. *Gross Estate.* – The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, **real or personal**, **tangible or intangible, wherever situated**: *Provided, however,* That in the case of a nonresident decedent who at the time of his death was not a citizen of the Philippines, only that part of the entire gross estate which is situated in the Philippines shall be included in his taxable estate." (emphasis supplied)
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It is undisputed that the decedent, Charles Marvin Romig, was an American citizen and a resident of the Philippines at

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[25] Lorenzo vs. Posadas, G.R. No L-43082, June 18, 1937.
[26] Ibid.
[27] Pre-Train Law provisions of the 1997 NIRC, as amended, because the decedent died on November 20, 2011.
[28] Section 6 of Revenue Regulations No. 2-2003 dated December 16, 2002 implementing pre-TRAIN Law provisions of the 1997 NIRC, as amended.

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the time of his death on November 20, 2011, hence, in accordance with the aforequoted Section 85 of the 1997 NIRC, as amended, *all* his properties, real or personal, *wherever situated,* form part of his gross estate which certainly includes money whether this be in local currency or in dollars, as the case may be.

Respondent invokes the tax exemption of the dollar deposits in the FCDU of HSBC under Section 6 of RA No. 6426 to serve as a justification that this should not be subject to estate tax.

We find this argument to be misplaced as the legislative history of the tax exemption of the FCDUs will show.

An FCDU refers to a unit of a local bank/branch of a foreign bank authorized by the BSP to engage in foreign currency denominated transactions pursuant to RA No. 6426, as amended.[29]

Section 6 of RA 6426 which took effect on April 4, 1974 provides as follows:

> "Section 6. *Tax Exemption.* – All foreign currency deposits made under this Act, as amended by PD No. 1034, including interest and all other income or earnings of such deposits, are hereby exempted from any and all taxes whatsoever irrespective of whether or not these deposits are made by residents or non-residents so long as the deposits are eligible or allowed under aforementioned laws and, in the case of nonresidents, irrespective of whether or not they are engaged in trade or business in the Philippines."

Under the legal milieu of RA No. 6426, the BIR issued Revenue Regulations (RR) No. 10-76 and section 3 thereof provides as follows:

> "Section 3. *Rates of income tax to be imposed.*-
>
> Income derived by Offshore Banking Units (OBUs) and Foreign Currency Deposit Units (FCDUs) from foreign currency transactions with non-residents, other offshore banking units or foreign currency deposit units, otherwise known as offshore income, **shall be exempt from all taxes** except net income from such transactions as may be specified by the Minister of

[29] Source- www.bsp.gov.ph.

Finance, upon recommendation of the Monetary Board, to be subject to the usual income tax payable by banks.

However, any interest income derived from foreign currency loans granted to residents other than offshore banking units or foreign currency deposit units, otherwise known as onshore income, shall be subject to a 10% final withholding tax.

Income of non-residents from transactions with offshore banking units and foreign currency deposit units shall be exempt from income tax." (emphasis supplied)

Section 3 (b) of RR 10-76 was later on amended by RR No. 14-77 issued on November 9, 1977 which reads as follows:

"Section 3(b)- In the case of gross onshore income as defined in Section 2(h) above, the tax shall be ten percent (10%) thereof and shall be a final tax. Any and all fees, commissions and other charges which are integral parts of the charges imposed on foreign currency loan transactions are exempt from the tax herein imposed."

The tax exemption provided under RA No. 6426 which took effect in 1974 was abolished by the enactment of RA No. 8424 otherwise known as the *Tax Reform Act of 1997*,[30] where Section 27 (D) (3) of RA No. 8424 was amended to read as follows:

Section 27. – Rates of Income Tax on Domestic Corporations.

xxx xxx xxx

(D) Rates of Tax on Certain Passive Income

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(3) T*ax on Income Derived under the Expanded Foreign Currency Deposit System.* Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks, including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, shall be subject to a final income tax rate of ten percent (10%) of such income."

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[30] Took effect on January 1, 1998.

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It took another law, RA No. 9294 or *"An Act Restoring the Tax Exemption of Offshore Banking Units (OBUs) and Foreign Currency Deposit Units (FCDUs) Amending for the Purpose Section 27 (D) and Section 28 Paragraphs (A) (4) and (A) (7) (b) of the National Internal Revenue Code as Amended,"*[31] to revive the tax exemption of the FCDUs, as the title clearly suggests. As a result, Section 27 (D) (3) of the 1997 NIRC, as amended, reads as follows:

> "Section 27. *Rates of Income Tax on Domestic Corporations.*
>
> (D) Rates of Tax on Certain Pasive Incomes. –
>
> > (3) Tax on Income Derived Under the Expanded Foreign Currency Deposit System. – **Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency deposit system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes,** except net income from such transactions as may be specified by the Secretary of Finance, upon recommendation by the Monetary Board to be subject to the regular income tax payable by banks: Provided, however, that interest income from foreign currency loans granted by such depository banks under the expanded system to residents other than offshore banking units in the Philippines or other depository banks under the expanded system shall be subject to a final tax of ten percent (10%).
> >
> > Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax. " (emphasis supplied)

A close reading of the tax exempt status of the FCDUs as provided in Section 27 (D) (3) of the 1997 NIRC, as amended, conveys quite clearly that the tax exemption of FCDUs refers to income tax exemption on income derived by a depository bank from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks,

[31] Date of Effectivity- April 28, 2004.

including branches of foreign banks that may be authorized by the BSP to transact business with FCDUs and other depository banks under the foreign currency deposit system. Said codal amendments to the 1997 NIRC did not verbatimly adopt the wordings of Section 6 of RA No. 6426 which exempted from all taxes "foreign currency deposits" by residents or non-residents. Glaringly, the beginning statement of Section 27 (D) (3) of the 1997 NIRC, as amended, denotes "income" derived by a depository bank under the expanded FCDU system as being exempt from all taxes.

On the other hand, interest income derived by an individual taxpayer (whether a citizen or resident) from a depository bank under the expanded foreign currency deposit system is taxable at 7.5% (Pre-Train Law) under Section 24 (B) (1) of the 1997 NIRC, as amended, quoted as follows:

> "Section 24. Income Tax Rates. –
>
> *(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines. –*
>
> xxx xxx xxx
>
> (B) Rates of Tax on Certain Passive Income
>
> (1) Interests, Royalties, Prizes and Other Winnings.- A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest from any foreign currency bank deposit and yield or any other monetary benefit from deposit substitues and from trust funds and other similar arrangements; royalties, except on books, as ell as other literary works and musical compositions, which shall be imposed a final tax of ten percent (10%); prizes (except prizes amounting to Ten Thousand Pesos (P10,000) or less which shall be subject to tax under Subsection (A) of Section 24); and other winnings (except Philippine Charity Sweepstakes and Ltto winnings), dervided from sources within the Philippines: **Provided, however, That interest income received by an individual taxpayer (except a nonresident individual) from a depository bank under the expanded foreign currency deposit system shall be subject to a final tax at the rate of seven and one-half percent (7 ½%) of such interest income:** xxx xxx xxx" (emphasis supplied)

The aforequoted provision under RA No. 8424 was implemented by RR No. 10-98 issued on September 2, 1998, where it reiterated that interest income derived by a citizen or resident of the Philippines from a foreign currency deposit will be subject to a withholding tax of 7.5%.

The decedent, Charles Marvin Romig, as an American Citizen and a Philippine resident during his lifetime was subject to the final withholding tax on his foreign currency deposits with HSBC based on the aforequoted Section 24 (B) (1) of the 1997 NIRC, as amended. However, the litmus test in this case is the estate tax liability of the Estate of Charles Marvin Romig on its HSBC US dollar account. More specifically, whether there was an erroneous payment of said estate tax on these financial assets that would justify a refund under the relevant provisions of the 1997 NIRC, as amended.

Respondent's claim for estate tax refund is misplaced. It is anchored on an alleged tax exemption law that pertains to income tax which is separate and distinct from estate tax. It is well-settled that claims for tax exemption are strictly construed against the person claiming the same. We quote the Supreme Court in the case of *Quezon City vs. ABS-CBN Broadcasting Corporation*[32], to wit:

> "Claims for tax exemption must be based on language too plain to be mistaken. It cannot be made out of inference or implication."

Indeed, tax refunds like tax exemptions are construed strictly against a taxpayer and liberally in favor of the State "such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted."[33] In the face of the clear and categorical provisions of the 1997 NIRC, as amended, as regards the composition of the gross estate of a resident alien and the items that may deducted therefrom, this Court finds that there is no legal basis for an exemption from estate taxes in the instant case. Besides, the request for a confirmatory BIR ruling on the exemption of the foreign currency deposits of the Estate of Charles Marvin Romig was not forthcoming.

We therefore find that respondent failed to prove that the foreign currency deposits of the decedent with the FCDU of HSBC, should not form part of his gross estate and are exempt from estate tax.

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[32] G.R. No. 166408, October 6, 2008.
[33] Gulf Air Company Philippine Branch vs. CIR, G.R. No. 182045, September 19, 2012.

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In sum, the Court rules that there was no erroneous payment of estate taxes and that the foreign currency deposit of the decedent was correctly and legally included in the latter's net estate subject to estate tax, hence, the instant claim for refund in the amount of ₱4,565,349.07 should be denied.

However, Section 2 of RA No. 1125, as amended by RA No. 9503, provides:

> "Section 2. *Sitting En Banc or Division; Quorum; Proceedings.*
>
> xxx xxx xxx
>
> **The affirmative vote of five (5) members of the Court En Banc shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division,** as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level." (emphasis supplied)

Likewise, Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA) states that the presence at the deliberation and the affirmative votes of at least five (5) members of the Court *En Banc* shall be necessary to reverse a decision of a Division. Where the necessary majority vote cannot be had in appealed cases, the judgment or order appealed from shall stand affirmed, thus:

> Section 3. *Court en banc; quorum and voting.* – The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division xxx Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.** (emphasis supplied)

In the deliberation of the instant case, only Justice Juanito C. Castañeda, Jr., Justice Erlinda P. Uy and Justice Ma. Belen M. Ringpis-Liban concurred with the opinion of the

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ponente that the Petition for Review filed by the CIR docketed as CTA *EB* No. 2214 should be granted and that the instant claim for refund be denied.

WHEREFORE, considering that the required affirmative votes of five (5) members of the Court *En Banc* was not obtained in the instant case, pursuant to Section 2 of RA No. 1125, as amended by RA No. 9503 in relation to Section 3 of Rule 2 of the RRCTA, the Petition for Review filed by the CIR is **DENIED** and the Decision of the Court in Division promulgated on September 2, 2019 and the Resolution dated December 27, 2019 are deemed **AFFIRMED.**

Accordingly, respondent's claim for refund in the amount of ₱4,565,349.07 representing erroneously paid estate taxes of the estate of Charles Marvin Romig is **GRANTED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I vote to affirm the assailed Decision and Resolution)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(with due respect, I have a Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2214** *(CTA Case No. 9626)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
ESTATE OF MR. CHARLES MARVIN ROMIG REPRESENTED BY ITS SOLE HEIR MRS. MARICEL NARCISO ROMIG, *Respondent.*	Promulgated: OCT 28 2021 2:25 p.m.

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DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I respectfully dissent to the Decision penned by my esteemed colleague, Associate Justice Catherine T. Manahan, which denied the instant Petition for Review ("Petition") and affirmed the Decision ordering the refund of estate taxes paid by respondent.

It is my opinion that respondent's claim for refund should have been barred for failure to exhaust administrative remedies. My reasons are as follows:

The procedure for filing of administrative and judicial claims for refund is governed by ***Sections 204(C) and 229 of the Tax Code***, respectively.

Section 204 provides:

"SEC 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may

(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 <u>unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment</u> 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. ..."
(Emphasis supplied)

Meanwhile, ***Section 229*** 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, 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, **<u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax</u>** 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."
(Emphasis supplied)

As may be gleaned from the foregoing provisions, a taxpayer-claimant must first file an administrative claim for refund before the Commissioner of the BIR prior to filing a judicial claim before the Court of Tax Appeals.[1] Both the administrative and judicial claims for refund should be filed within the two (2) year prescriptive period, and the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription.[2] ƒ

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[1] Metropolitan Bank & Trust Co. v. Commissioner of Internal Revenue, G.R. No. 182582, 17 April 2017.
[2] *Ibid.*

In the present case, it has been shown that petitioner paid the taxes subject of its refund claim on 30 June 2015. It, thus, had until 30 June 2017 within which to file its administrative and judicial claims for refund. Ostensibly, petitioner's administrative claim and judicial claim for refund, **both filed on the same day** on 28 June 2017, fell within the two (2) year prescriptive period.

While both claims were, indeed, filed within the two (2) year prescriptive period, it does not escape my attention that the administrative claim was filed with the BIR merely two (2) days before the lapse of the two (2) year period, and the judicial claim with the Court merely hours after on the very same day (after office hours, even). To my mind, this displayed a stark disregard of the rule requiring the exhaustion of administrative remedies. The rationale for the rule was elucidated in ***Ejera v. Merto***,[3] as follows:

> "Thirdly, **<u>the rule requiring the exhaustion of administrative remedies rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly</u>**. There are both legal and practical reasons for the rule. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, therefore, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum."
> (Emphasis supplied)

Certainly, with **less than nine (9) hours** given respondent, he was not "afforded a complete chance to pass upon the matter" nor "given an opportunity to act and correct the errors committed in the administrative forum."

In the recent case of ***Chin v. Maersk-Filipinas Crewing, Inc., et al.***,[4] the Supreme Court even cautioned, to wit:

> "The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, **<u>every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice</u>**."
> (Emphasis supplied)

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[3] G.R. No. 163109, 22 January 2014, citing Union Bank of the Philippines v. Court of Appeals, G.R. No. 131729, May 19, 1998

[4] G.R. No. 247338, 2 September 2020.

Judging from any perspective, with that measly nine (9) hours given to him, respondent cannot be said to have been given "every opportunity" "to resolve the matter and to exhaust all opportunities for a resolution" on the claim for refund of petitioner.

Obviously, the filing of the claim with respondent mere two (2) days before the two (2) year deadline, together with the filing of the claim before this Court on the very same day, was simply to meet such deadline. Indeed, the filing of the judicial claim with the Court soon thereafter is a clear indication of a blatant disregard of respondent's administrative powers.

I cannot turn a blind eye to the procedural infirmity extant in the instant case, much less be a partner in petitioner's disregard of the concept of exhaustion of administrative remedies. Under the circumstances, then, I find that petitioner's case should be barred for failure to exhaust administrative remedies.

Premises considered, I vote that the instant Petition for Review filed by petitioner COMMISSIONER OF INTERNAL REVENUE be **GRANTED**, the Decision and Resolution, dated 2 September 2019 and 27 December 2019, respectively, which the Court's First Division promulgated in CTA Case No. 9626, be **REVERSED AND SET ASIDE**, and the case be DENIED for failure to exhaust administrative remedies.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice