REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MANILA ELECTRIC COMPANY, INC.,
Respondent.

C.T.A. EB NO. 773
(C.T.A. CASE NO. 7242)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

MAY 08 2012 1:30 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

When the law is clear, there is no other recourse but to apply it regardless of its perceived harshness. *Dura lex sed lex (Obiasca vs. Basallote, 613 SCRA 119).* As a court, our duty is to apply the law. We have no choice but to see to it that the mandate of the law is obeyed.

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereinafter "CIR") under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to reverse the Decision dated December 6, 2010 and Resolution dated April 15, 2011 rendered by the Second Division of this Court in C.T.A. Case No. 7242, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, premises considered, the Amended Petition for Review is GRANTED, as follows:
>
> 1. Respondent's denial due to prescription of MERALCO's claim for a tax refund or credit for the taxable years 1994-1998 and 2000 is REVERSED and SET ASIDE;
>
> 2. Respondent is ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of MERALCO in the amount of P5,796,342,792.71, corresponding to the claim for a tax refund or credit for the taxable years 1994-1998 and 2000, subject to and in proportion that the refund or credit to future consumption due to the customers concerned in the average amount of P0.167 per kilowatthour arising from the Supreme Court's Decision in G.R. Nos. 141314 and 141369, has been actually given or credited to them by MERALCO.
>
> **SO ORDERED**."

"**WHEREFORE**, premises considered, both respondent's 'Motion for Reconsideration' and petitioner's 'Motion for Partial Reconsideration and Clarification' are hereby **DENIED**.

SO ORDERED."

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue empowered to assess and collect all national internal revenue taxes, fees, and charges, including the power to decide refunds of internal revenue taxes, fees or other charges, with office address at the Bureau of Internal Revenue (hereinafter "BIR") National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes.

On the other hand, respondent Manila Electric Company (hereinafter "MERALCO") is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Lopez Building, Ortigas Avenue, Pasig City, and engaged in the business of distributing and supplying electric power within its franchise area. It is a registered taxpayer with TIN 000-101-528-000 and Certificate of Registration No. OCN8RC0000016119 issued by the BIR.

THE FACTS

The facts, as found by the Second Division, are, as follows:

On December 23, 1993, MERALCO filed with the Energy Regulatory Board (hereinafter "ERB") an application for the revision of its rate schedules with a prayer for a provisional approval of the increase, docketed as ERB Case No. 93-118. On January 28, 1994, the ERB issued an Order granting a provisional increase of P0.184 per kwh, subject to the condition that after hearing and evaluation, should MERALCO be entitled to a lesser increase in rates, all excess amounts collected by MERALCO shall be refunded to its customers or credited to their future consumption.

Thus, MERALCO paid the income tax due on its taxable income based on gross electric revenue computed at an average basic distribution rate of P2.996 per kwh (*i.e.*, existing average rate of P2.812 per kwh, plus provisional increase of P0.184).

On February 16, 1998, the ERB rendered a decision granting a rate increase of only P0.017 per kwh and ordering MERALCO to refund or credit to its customers the average amount of P0.167 per kwh beginning February 1994.

MERALCO appealed the decision of the ERB to the Court of Appeals, docketed as CA-G.R. SP No. 46888. On February 24, 1999, the Court of Appeals rendered a decision reversing the ERB decision.

The CIR and the Lawyers Against Monopoly and Poverty, et al. appealed the decision of the Court of Appeals to the Supreme Court, docketed as *G.R.*

No. 141314 entitled "Republic of the Philippines, represented by Energy Regulatory Board vs. Manila Electric Company", and G.R. No. 141369 entitled "Lawyers Against Monopoly and Poverty (LAMP), et al. vs. Manila Electric Company", respectively.

On November 15, 2002, the Supreme Court rendered a decision in *G.R. Nos. 141314 and 141369* reversing the decision of the Court of Appeals, the dispositive portion of which reads, as follows:

> "WHEREFORE, in view of the foregoing, the instant petitions are GRANTED and the decision of the Court of Appeals in C.A. G.R. SP No. 46888 is REVERSED. Respondent MERALCO is authorized to adopt a rate adjustment in the amount of P0.017 per kilowatthour, effective with respect to MERALCO's billing cycles beginning February 1994. Further, in accordance with the decision of the ERB dated February 16, 1998, the excess average amount of P0.167 per kilowatthour starting with the applicant's billing cycles beginning February 1998 is ordered to be refunded to MERALCO's customers or correspondingly credited in their favor for future consumption.
>
> SO ORDERED."

On May 5, 2003, the decision of the Supreme Court became final and executory.

Consequently, MERALCO's gross electric revenue during the taxable years 1994-1998 and 2000-2001, taxable income and income tax liability were reduced, thereby resulting to excess income tax payments, as follows:

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YEAR	ORIGINAL TAXABLE INCOME	REDUCED TAXABLE INCOME	INCOME TAX ORIGINALLY PAID	INCOME TAX ACTUALLY PAID	EXCESS INCOME TAX
1994	₱5,277,676,049	₱3,073,619,745	₱1,847,186,617	₱1,075,766,911	₱771,419,706
1995	6,036,169,086	3,447,481,566	2,112,659,180	1,206,618,548	906,040,632
1996	7,432,351,531	4,526,289,260	2,601,323,036	1,584,201,241	1,017,121,795
1997	7,403,742,914	4,275,202,476	2,591,310,020	1,496,320,866	1,094,989,154
1998	6,946,399,606	3,629,126,440	2,361,775,866	1,233,902,990	1,127,872,876
2000	4,869,247,048	1,373,796,730	1,558,159,055	439,614,954	1,118,544,101
2001	4,012,193,155	387,079,475	1,283,901,810	212,355,792	1,071,546,018
TOTAL	**₱41,977,779,389**	**₱20,712,595,692**	**₱14,356,315,584**	**₱7,248,781,302**	**₱7,107,534,282**

On November 27, 2003, MERALCO filed a claim for tax refund or credit of excess income tax payments with the CIR.

On May 4, 2005, due to inaction, MERALCO appealed to this Court in Division its claim for refund or tax credit of excess income tax payment by way of a "Petition for Review (*Ad Cautelam*)".

In her answer, by way of special and affirmative defenses, the CIR alleged: this Court is without jurisdiction to entertain the instant petition; MERALCO's assertion that the two (2)-year period should be reckoned from the time the Supreme Court decision came out cannot be sustained; MERALCO has no cause of action under the provision of *solutio indebiti;* equity belongs to those who come to court with clean hands; MERALCO had the opportunity to claim for refund as early as 1998 when the ERB issued its decision ordering MERALCO to refund P0.167 per kilowatthour to its consumers; and the inequity of MERALCO is further exposed when it prayed for the refund of the entire amount of alleged erroneously collected income taxes it paid from 1994-

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1998 and 2000-2001, when it has not even showed proof that it paid all of the amounts it should refund to its consumers.

On November 22, 2005, MERALCO filed a "Motion for Leave to Amend Petition for Review *(Ad Cautelam)*" with attached "Amended Petition for Review *(Ad Cautelam)*" for the purpose of excluding its claim for tax refund or credit for taxable year 2001 in the amount of P1,071,546,018.00 on the ground that on October 3, 2005, MERALCO received the letter-decision dated September 21, 2005 from the CIR partially granting its administrative claim for refund or credit for taxable year 2001 to the extent of P894,473,932.58, but denying the claim for taxable years 1994-1998 and 2000 due to prescription. In its "Amended Petition for Review *(Ad Cautelam)*", MERALCO prayed that it be refunded or issued a tax credit certificate in the amount of P6,035,988,264.00, representing excess income tax payments for taxable years 1994-1998 and 2000.

On November 24, 2005, the Second Division granted MERALCO's "Motion for Leave to Amend Petition for Review *(Ad Cautelam)*", admitted the "Amended Petition for Review *(Ad Cautelam)*", and granted the CIR fifteen (15) days from notice to file her amended answer.

On December 9, 2005, the CIR filed her "Answer" to the Amended Petition for Review *(Ad Cautelam)*.

After the pre-trial was terminated, on May 5, 2006, MERALCO filed a "Motion to Suspend Proceedings", which the Court granted.

On September 20, 2006, the CIR filed a "Manifestation with Motion to Admit Attached Supplemental Answer", which the Court granted. On November 30, 2006, MERALCO filed its "Reply" to the supplemental answer.

After trial on the merits, on December 6, 2010, the Second Division rendered the assailed Decision granting the Amended Petition for Review.

On December 23, 2010, MERALCO filed a "Motion for Partial Reconsideration and Clarification", while on December 28, 2010, the CIR filed her "Motion for Reconsideration". In a Resolution dated April 15, 2011, both motions were denied for lack of merit.

Not satisfied, the CIR filed the instant "Petition for Review" raising the sole:

ISSUE

> WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN GRANTING RESPONDENT'S CLAIM FOR REFUND IN THE AGGREGATE AMOUNT OF ₱5,796,342,792.71 FOR TAXABLE YEARS 1994-1998 AND 2000 DESPITE THE FACT THAT SAID CLAIM IS BARRED ON ACCOUNT OF PRESCRIPTION.

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Without necessarily giving due course to the Petition for Review, on May 27, 2011, we required MERALCO to file its comment, within ten (10) days from notice.

On June 27, 2011, after it filed a "Motion for Extension of Time to File Comment on Commissioner of Internal Revenue's Petition for Review", MERALCO filed its Comment to the Petition for Review.

On July 7, 2011, we ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the petition shall be deemed submitted for decision.

On August 22, 2011, MERALCO filed its "Memorandum". On the other hand, on September 9, 2011, the CIR filed a "Motion to Admit Attached Memorandum", which the Court, in the interest of substantial justice, granted in its Resolution dated September 28, 2011, and the case was deemed submitted for decision.

Petitioner CIR's Arguments

The CIR argues that a claim for refund cannot be made after the two (2)-year prescriptive period provided under *Section 229 of the NIRC of 1997, as amended.* Since the claim for refund covers the taxable periods 1994 to 1998 and 2000, the Petition for Review filed on May 4, 2005 was evidently filed beyond the prescriptive period, and with the recommendation of denial from the

Revenue Examiners on the ground of prescription, the inescapable conclusion is that MERALCO is barred from recovering income taxes paid for the subject taxable years.

Respondent MERALCO's Counter-Arguments

Respondent MERALCO, on the other hand, counter-argues that no one, not even the State should enrich itself at the expense of another.

Relying in good faith on the ERB's issuance of the provisional increase, the decision of the ERB on the allowable increase, the appeal to the Court of Appeals and the subsequent decision of the Supreme Court in G.R. Nos. 141314 and 141369, MERALCO claims that on said interim periods, it should not be penalized for declaring for tax purposes the income it derived therefrom, and thus, prays for the dismissal of the petition.

THE COURT *EN BANC'S* RULING

We grant the petition.

The reckoning of the two (2)-year prescriptive period under Section 229 of the 1997 NIRC has been previously ruled upon by the former CTA En Banc, which decision was affirmed by the Supreme Court

At the outset, it must be stressed that the issue raised herein as regards the reckoning of the two (2)-year prescriptive period under *Section 229* is not novel as said issue had been previously ruled upon by the then six-member

CTA *En Banc* under the *ponencia* of Associate Justice Juanito C. Castañeda, Jr. in the case of *Atlanta Land Corporation vs. Commissioner of Internal Revenue, C.T.A. EB No. 79, May 23, 2006 ("Atlanta case")*, where the CTA *En Banc* unanimously ruled, as follows:

> "The language of the law is unequivocal, it provides that no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax 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.
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> The date of payment of the tax is the reckoning point of the two-year period within which a valid claim for refund may be filed in both the administrative [Sec. 204 (C) NIRC] and judicial levels. Any claim or proceeding for the recovery of taxes shall be filed within the two-year prescriptive period, otherwise, the taxpayer loses his right *ipso facto* to recover any tax alleged to have been erroneously or illegally collected.
>
> xxx xxx.
>
> The argument proffered by the petitioner that the two-year period should commence from the date of the extra-judicial rescission of the *dacion en pago* arrangement is contrary to the clear language of Section 229 of the 1997 NIRC. The same is true with respect to the other arguments raised by the petitioner, to wit: that the two-year period should be reckoned from the date of judicial determination of the act of rescission, the pendency of the litigation between the petitioner and its creditor bank and the enactment of R.A. 9182 otherwise known as *'The Special Purpose Vehicle Act'*. These are all extraneous matters from the date of payment of the tax. In fact, they occurred after the payment of the tax, thus, not relevant in determining the prescriptive period. Section 229 explicitly states that the two-year prescriptive period is not affected by any supervening cause, hence, the phrase 'regardless of any supervening cause'. This phrase was originally

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added by P.D. No. 69 dated November 24, 1972 and was retained in both the 1977 and 1997 National Internal Revenue Code. The intent of the law is unmistakable, to establish as a condition sine qua non that all claims and actions for refund of any tax or penalty shall be filed within two years from the date of payment of such tax or penalty, 'even if the taxpayer had no cause for refund as the tax or penalty, was legally collected, and even if after the lapse of the two-year period, a supervening cause should arise which would entitle the taxpayer to refund.

We concur with the ruling of the Court in Division that 'the two-year prescriptive period for filing an action for tax refund was purposedly included in Section 229 of the 1997 NIRC to enable the government to settle claims for refund at the earliest possible time considering that taxes are the lifeblood of the Government and their prompt and certain availability is an imperious need *(Commissioner of Internal Revenue vs. Pineda, 21 SCRA 105)*. The availability of funds from the collection of taxes cannot forever be left subject to the contingency of refund brought about by certain acts which are solely within the exclusive control of the private contracting parties, otherwise, fiscal adequacy cannot be achieved."

The above CTA *En Banc* decision was affirmed by the Supreme Court in G.R. No. 172773, entitled *"Atlanta Land Corporation vs. Commissioner of Internal Revenue"* in a Resolution dated June 18, 2007 which reads, as follows:

"Quoted hereunder, for your information, is a resolution of the First Division of this Court dated 18 June 2007.

G.R. No. 172773 (Atlanta Land Corporation vs. Commissioner of Internal Revenue). – It appearing that Atty. Emilio C. Baligod, counsel for petitioner, failed to file reply to the comment on the petition for review on certiorari as required in the Resolution dated 06 December 2006 within the period which expired on 22 January 2007, the petition is hereby ordered

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> ***DENIED*** for failure to comply with said resolution, which amounts to failure to prosecute.
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> **In any event, petitioner failed to sufficiently show that the Court of Tax Appeals committed any reversible error in the challenged decision as to warrant the exercise of this Court's discretionary appellate jurisdiction.**" (*Emphasis ours.*)

On August 22, 2007, the above Resolution of the Supreme Court dated June 18, 2007 became final and executory and Entry of Judgment was accordingly issued.

Considering that the Supreme Court had already settled that the reckoning point of the two (2) year prescriptive period under *Section 229 of the NIRC of 1997, as amended*, is the date of payment of the tax regardless of any supervening cause that may arise after payment, we therefore adhere to said ruling.

Thus, in this case we reiterate and stress the above settled rule that under *Section 229* claims for refund of erroneously, illegally, excessively and wrongfully collected NIRC tax should be filed within two (2) years from the date of payment of the tax regardless of any supervening cause that may arise after payment.

The instant case involves a claim for refund or tax credit of excess income tax payments for taxable years 1994-1998 and 2000, as a result of the reduction of the rate per kilowatthour that was granted by the ERB to

MERALCO, as affirmed by the Supreme Court in G.R. Nos. 141314 and 141369. Hence, MERALCO's claim for refund or credit falls within the ambit of *Section 229 of the NIRC of 1997, as amended.*

Records show that for taxable years 1994-1998 and 2000, MERALCO filed its annual corporate income tax returns (final adjustment returns) and paid the income taxes due on its taxable income on April 7, 1995 for taxable year 1994, on April 15, 1996 for taxable year 1995, on April 15, 1997 for taxable year 1996, on April 15, 1998 for taxable year 1997, on April 15, 1999 for taxable year 1998, and on April 11, 2001 for taxable year 2000. Counting two (2) years from April 7, 1995, April 15, 1996, April 15, 1997, April 15, 1998, April 15, 1999, and April 11, 2001, MERALCO had until the following dates to file its administrative and judicial claims:

Year	Date of Payment of Tax	Deadline to File Administrative and Judicial Claims	Number of Years/Months Late in Filing Administrative Claim	Number of Years Late in Filing Judicial Claim
1994	April 7, 1995	April 7, 1997	6 yrs, 7 months & 20 days	8 yrs & 27 days
1995	April 15, 1996	April 15, 1998	5 yrs, 7 months & 12 days	7 yrs & 19 days
1996	April 15, 1997	April 15, 1999	4 yrs, 7 months & 12 days	6 yrs & 19 days
1997	April 15, 1998	April 15, 2000	3 yrs, 7 months & 12 days	5 yrs & 19 days
1998	April 15, 1999	April 15, 2001	2 yrs, 7 months & 12 days	4 yrs & 19 days
2000	April 11, 2001	April 11, 2003	7 months & 16 days	2 yrs & 23 days

Records show, however, that it was only on November 27, 2003 that MERALCO filed with the CIR its administrative claim for refund or tax credit of excess income tax payments for the years mentioned, and it was only on May

4, 2005 that MERALCO filed its judicial claim for refund or credit with this Court in Division. Clearly, both the administrative and judicial claims were filed way beyond the two (2)-year prescriptive period.

The two (2)-year prescriptive period under Section 229 is mandatory

Section 229 provides:

> "**SEC. 229**. Recovery of Tax Erroenously or Illegally Collected.
>
> xxx xxx
>
> In any case, no such suit or proceeding **shall be filed** after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid". *(Emphasis supplied)*

Corollary thereto, the *last sentence of Section 3 (a) (2), Rule 4 of the 2005 Revised Rules of the CTA, as amended*, provides: "*xxx Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer **must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**". Cebl

It is clear from the above provisions that *Section 229* uses the phrase "shall be filed" and not "may be filed", while *Section 3 (a) (2), Rule 4 of the 2005 Revised Rules of the CTA, as amended*, uses the phrase "must file" and not "may file", which clearly show that the two (2)-year period to file the claim for refund or credit is mandatory, and not merely permissive. The use of the words "shall" and "must" is imperative, operating to impose a duty. This is a settled rule in this jurisdiction.

Section 229 of the 1997 NIRC does not provide for any exception to give way to special circumstances to justify relaxation of the rule

We find it hard to agree with the ruling of the Second Division that MERALCO is entitled to its claim for tax refund or credit for taxable years 1994-1998 and 2000 due to the special circumstance in the instant case and that the two (2)-year prescriptive period should commence to run only on May 5, 2003, the date the decision of the Supreme Court in G.R. Nos. 141314 and 141369 had become final and executory, as it was only at that time that the right to claim for a tax refund or credit had become determinable and the basis for the excessive or erroneous payment had arisen.

As the former CTA *En Banc* had previously ruled in the Atlanta case, *Section 229 of the NIRC of 1997, as amended*, does not provide for any exception or qualification. However, as regards corporate income taxes, the

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provision of *Section 229* in filing claims for refund of erroneously, illegally, excessively and wrongfully collected income taxes should be correlated with the provisions of *Sections 75 and 76 of the same Code* requiring corporations to file quarterly income tax returns and final adjustment returns, respectively. Hence, as regards corporate income taxes, the two (2)-year prescriptive period under *Section 229* to file erroneously, illegally, excessively and wrongfully collected taxes should be reckoned from the date of filing of the final adjustment return and payment of the tax thereof. In all other cases, the reckoning point of the two (2)-year prescriptive period should be from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after payment. The two (2)-year period, therefore, cannot be stretched to allow for other special circumstances, when none has been provided. Where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application *(Cebu Portland Cement Company vs. Municipality of Naga, Cebu, 24 SCRA 712)*. The Court may not construe a statute that is free from doubt *(Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), 462 SCRA 220)*.

With the inclusion of the phrase "regardless of any supervening cause that may arise after payment", the intention of the law is to provide a condition sine qua non that all claims for refund of erroneously, illegally, excessively or

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wrongfully collected taxes or penalty shall be filed within two (2) years from the date of payment of the tax or penalty

It must be stressed that the phrase "regardless of any supervening cause" was incorporated by *P.D. No. 69 ("Amending Certain Sections of the National Internal Revenue Code"),* which took effect on January 1, 1973, and said phrase had been carried over both in the *1977 Tax Code* and *NIRC of 1997, as amended.* The phrase having been carried over in every revision of the NIRC, the lawmaker's intention to establish as a condition *sine qua non* that all claims for refund of erroneously or illegally collected NIRC tax, penalty claimed without authority, and sum excessively or wrongfully collected, shall be filed within two years from the date of the payment of the tax or penalty, is very evident. The two (2)-year period shall always be reckoned from the date of payment of the tax regardless of any supervening cause that may arise after payment.

This is because the rationale behind the two (2)-year prescriptive period is the basic principle that "taxes are the lifeblood of the nation". Thus, in the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 250,* the Supreme Court ruled:

> "Basic is the principle that 'taxes are the lifeblood of the nation.' The primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal.

> Due process of law under the Constitution does not require judicial proceedings in tax cases. This must necessarily be so because it is upon taxation that the government chiefly relies to obtain the means to carry on its operations and it is of utmost importance that the modes adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.
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> From the same perspective, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters".

Without the strict observance of the two (2)-year prescriptive period, the government will always be at the losing end, refunding taxes whenever supervening cause arises even after the expiration of the two (2)-year period, thus making the phrase "regardless of any supervening cause" futile and inoperative.

Therefore, MERALCO's claim for refund should have been filed within the two (2)-year prescribed period, reckoned from the dates the income taxes thereon had been paid, and not from May 5, 2003, the date the decision of the Supreme Court in G.R. Nos. 141314 and 141369 had become final and executory. MERALCO's appeals to the Court of Appeals and to the Supreme Court are both extraneous matters that occurred after payment of the tax, hence, not relevant in determining the prescriptive period.

<u>The rule on solutio indebiti cannot be applied to MERALCO</u>

MERALCO cannot invoke the rule of *solutio indebiti* to justify its claim for refund.

In the case of *Bank of the Philippine Islands vs. Sarmiento, 484 SCRA 271*, the Supreme Court held:

> "There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. x x x The quasi-contract of *solutio indebiti* is based on the ancient principle that no one shall enrich himself unjustly at the expense of another" *(Power Commercial and Industrial Corporation v. Court of Appeals, G.R. No. 119745, June 20, 1997, 274 SCRA 597, 612, 613).*

Pursuant to the above ruling, the elements of *solutio indebiti* are: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.

Both elements are lacking in the present case. First, there exists a binding relation between MERALCO and the CIR. MERALCO is a taxpayer obligated to pay income taxes on the income it declared in its income tax returns for the years 1994-1998 and 2000. Second, there is no mistake on the part of

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MERALCO when it paid income taxes to the BIR for the years 1994-1998 and 2000. MERALCO was fully aware of the status of its application for revision of its rate schedule and the proceedings that transpired thereafter. It was fully aware that the increase granted to it in the ERB Order dated January 28, 1994 was merely provisional and subject to the condition that after hearing and evaluation, should MERALCO be entitled to a lesser increase in rates, all excess collected by MERALCO shall be refunded to its customers or credited to their future consumption. At the outset, when the ERB provisionally granted and subjected to a condition its application for increase, MERALCO should have known the consequences of a possible reduction of its application.

Thusly:

> "Neither can we hold PEA liable based on *solutio indebiti*, the legal maxim that no one should enrich itself at the expense of another. As we explained in *Powton Conglomerate, Inc. vs. Agcolicol*,
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> 'the principle of unjust enrichment cannot be validly invoked by the respondent who, through his own act or omission, took the risk of being denied payment for additional costs by not giving the petitioners prior notice of such costs and/or by not securing their written consent thereto, as required by law and their contract.'
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> xxx xxx" *(Uy vs. Public Estates Authority, 589 SCRA 20).*

In fact, even in the case of *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation, 516 SCRA 102-103*, cited by MERALCO in support of its claim for refund or credit on the ground of equity considerations, the Supreme Court declared:

> "When money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact, where it would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it" *(4 Am. Jur. 514).*

Thus, pursuant to the above rulings of the Supreme Court, there is no mistake of fact on the part of MERALCO. MERALCO, therefore, cannot validly invoke the provision of unjust enrichment.

Equity applies only in the absence of law

We cannot likewise agree with the Second Division's ruling that "if the circumstances warrant, the interpretation on the law on prescription may be relaxed for equitable reason".

Basic is the rule that equity is applied only in the absence of, and never against statutory law or judicial rules of procedure *(Mendiola vs. Court of Appeals, 258 SCRA 502)*. Thus:

> "While equity which has been aptly described as 'justice outside legality' is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem*. For all its conceded merit, equity is available only in the absence of law and not as its replacement" *(Parents-Teachers Association (PTA)*

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of St. Mathew Christian Academy vs. Metropolitan Bank and Trust Co., 614 SCRA 61-62).

Verily, equity will operate only in cases where there are no applicable law or rule or when the provisions and interpretation of the law are doubtful, which is not obtaining in this case.

In this case, considering the clear and explicit provision of *Section 229 of the NIRC of 1997, as amended*, equity will not apply; otherwise, it would be tantamount to overruling or supplanting the express provision of the law.

All the foregoing considered, we have no alternative, but to deny MERALCO's claim for refund for having been filed way beyond the two (2)-year prescribed period. The decision appealed from must, therefore, be reversed.

WHEREFORE, premises considered, the present Petition for Review is hereby **GRANTED.** Accordingly, the Decision dated December 6, 2010 and Resolution dated April 15, 2011 rendered by the Second Division in C.T.A. Case No. 7242 are hereby **REVERSED** and **SET ASIDE**. The Petition for Review filed by MERALCO in C.T.A. Case No. 7242 is hereby **DISMISSED** for having been filed way beyond the two (2)-year prescribed period.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Associate Justice

(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I join Justice Lovell R. Bautista's Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(I join the Dissenting Opinion of Justice Lovell R. Bautista)
CIELITO N. MINDARO-GRULLA
Associate Justice

(I join the Dissenting Opinion of Justice Lovell R. Bautista)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MANILA ELECTRIC COMPANY, INC.,
Respondent.

CTA EB No. 773
(CTA Case No. 7242)

Present:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:
MAY 08 2012 1:30 p.m.

x---x

SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I concur in the decision penned by Associate Justice Olga Palanca-Enriquez and vote to GRANT the Petition for Review based on the grounds set forth in the decision and on the following grounds:

I. The claim has already prescribed.

a. Claims for refund should be exercised within the prescriptive period fixed under Section 229 of 1997 NIRC regardless of any supervening cause that may arise after payment;

b. Rationale behind the two (2)-year prescriptive period rests on the principle that taxes are the lifeblood of the nation and sound taxation calls for fiscal adequacy;

c. Meralco's overcharges from 1994-1998 and 2000 were actually received and recognized as income in the said years. Income is taxable in the year realized and not in the year when court litigation has ended involving the same income. Accordingly, prescription in refund begins to run upon recognition of income; and

d. The final termination of the litigation was not considered to be relevant or critical in determining the period to file refund in case of overpayment or in determining the period to recognize income.

II. The claim was not duly proven.

a. The granting of refund cannot be made to depend upon the happening of a condition or a contingency.

I.
The claim has already prescribed.

I.a ***Claims for refund should be exercised within the prescriptive period fixed by law <u>regardless of any supervening cause</u> as emphatically provided under Section 229 of 1997 NIRC.***

In a claim for refund, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim. [1] Section 229 of the 1997 National Internal Revenue Code (NIRC) allows the taxpayer a period of two (2) years from date of payment of the tax **regardless of any supervening cause** within which to file a claim for refund. This provision, which is, mandatory, is not subject to any qualification, and, hence, it applies regardless of the conditions under which the payment has been made. [2] The said provision categorically states:

> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** Provided, however, That the Commissioner may, even without a written claim 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 ours)

The law is clear and unambiguous. Under the *verba legis* rule, if the words of the law are clear, plain, and free from ambiguity, it must be given its literal

[1] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010, 632 SCRA 422.
[2] *Guagua Electric Light Plant Co., Inc. vs. Collector of Internal Revenue*, G.R. No. 14421, April 29, 1961, 1 SCRA 1221, 1225.

meaning and applied without any interpretation, [3] the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. [4] All that has to be done is to apply it in every case that falls within its terms.[5]

Applying the above provision to the instant case, prescription has already set in, both in the administrative level (November 27, 2003) and judicial level (May 4, 2005) for the taxable years 1994-1998 and 2000. As expressly stated by law, the two (2)-year prescriptive period has already lapsed reckoned from the date of payment of the tax without consideration to any supervening cause that may arise after payment.

I.b ***Rationale behind the two (2) year prescriptive rests on the principle that taxes are the lifeblood of the nation and sound taxation calls for fiscal adequacy.***

The advent of the phrase "***regardless of any supervening cause***" espouses the rationale behind the two (2)-year prescriptive period which rests on the basic principles that "taxes are the lifeblood of the nation." Corollarily, a sound taxation requires that there is fiscal adequacy. The proceeds of tax revenue should coincide with, and approximate the needs of, government

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[3] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159610, June 12, 2008, 554 SCRA 398.
[4] *Carmelino F. Pansacola vs. Commissioner of Internal Revenue*, G.R. No. 159991, November 16, 2006, 507 SCRA 81 citing the case of *Allied Brokerage Corporation vs. Commissioner of Customs,* No. L- 27641, August 31, 1971, 40 SCRA 555, 559, 560.
[5] *Ibid.*

expenditures. *Neither an excess nor a deficiency of revenue vis-à-vis the needs of government would be in keeping with the principle.* [6]

In the case of *Atlanta Land Corporation vs. Commissioner of Internal Revenue* [7] the CTA *En Banc* denied the claim for refund for being time-barred. The court disregarded the supervening causes such as the rescission of *dacion en pago* arrangement and subsequent enactment of RA 9182 or "The Special Purpose Vehicle Act" in reckoning the 2-year prescriptive period. The court explained that the **availability of funds from the collection of taxes cannot forever be left subject to the contingency of refund brought about by certain acts which are solely within the exclusive control of the private contracting parties, otherwise, fiscal adequacy cannot be achieved.**[8] Without the strict observance of the prescriptive period, the government will always be at the losing end, refunding the taxes whenever supervening cause arises even after the expiration of the two (2)-year period and making the phrase "***regardless of any supervening cause***" futile and inoperative. In addition, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters.[9]

[6] Vitug and Acosta, *Tax Law and Jurisprudence*, Third Edition, page 2.
[7] C.T.A. EB No. 79, May 23, 2006. Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Affirmed in G.R. No. 172773 dated June 18, 2007.
[8] *Ibid.*
[9] *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* G.R. No. 112024, January 28, 1999, 302 SCRA 241, 250.

In the recent case of *United States vs. Clintwood Elkhorn Mining Co. et al.*,[10] (*Clintwood* case) US Supreme Court was unanimous in holding that the US Internal Revenue Code which provides for a two (2) and three (3)-year period of limitations in a claim for refund prevails over the longer period of limitations under the Tucker Act. In the said case, the taxpayers sought the refund of coal taxes which was later on ruled as unconstitutional. The US Supreme Court explained the rationale of the period of limitation in a claim for tax refund in this wise:

> The Code further establishes a time limit for filing such a refund claim with the IRS: To receive a "refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return," a refund claim must be filed no later than "3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such period expires the later." §6511(a). And §6511(b)(1) mandates that "[n]o credit or refund shall be allowed or made" if a claim is not filed within the time limits set forth in §6511(a). "Read together, the import of these sections is clear: unless a claim for refund of a tax has been filed within the time limits imposed by §6511(a), a suit for refund... may not be maintained in any court." *Dalm, supra*, at 602.
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> xxx xxx xxx
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> Indeed, we all but decided the question presented over six decades ago in United States v. A.S. Kreider Co., 313 U.S. 443 (1941). Section 1113(a) of the Revenue Act of 1926, like the refund claim provision in §7422(a) of the current Code, prescribed that "[n]o suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax 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 excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal

[10] No. 07-308, April 15, 2008, 553 U.S. __ (2008), http://www.supremecourt.gov/opinions/07pdf/07-308.pdf

Revenue," and established a time limit for bringing suit once the claim-filing requirement had been met. 44 Stat. 116. Like the companies here, A.S. Kreider had failed to file a tax-refund action within that limitations period. See 313 U.S., at 446. And, like the companies here, A.S. Kreider argued that it was instead subject only to the longer 6-year statute of limitations under the Tucker Act. *Id.*, at 447.

We rejected the claim, holding that the Tucker Act limitations period "was intended merely to place an outside limit on the period within which all suits must be initiated" under that Act, and that "Congress left it open to provide less liberally for particular actions which, because of special considerations, required different treatment." *Ibid.* **We held that the limitations period in §1113(a) was "precisely that type of provision," finding that Congress created a shorter statute of limitations for tax claims because "suits against the United States for the recovery of taxes impede effective administration of the revenue laws. *Ibid.* If such suits were allowed to be brought subject only to the 6-year limitations period in the Tucker Act, we explained, §1113(a) would have "no meaning whatever."** *Id.*, at 448. So too here. The refund scheme in the current Code would have "no meaning whatever" if taxpayers failing to comply with it were nonetheless allowed to bring suit subject only to the Tucker Act's longer time bar.

xxx xxx xxx

In any event, we see no constitutional problem at all. Congress has indeed established a detailed refund scheme that subjects complaining taxpayers to various requirements before they can bring suit. This scheme is designed "**to advise the appropriate officials of the demands or claims intended to be asserted, so as to insure an orderly administration of the revenue**," *United States v. Felt & Tarrant Mfg. Co.*, 283 U.S. 269, 272 (1931), **to provide that refund claims are made promptly, and to allow the IRS to avoid unnecessary litigation by correcting conceded errors. Even when the constitutionality of a tax is challenged, taxing authorities do in fact have an "exceedingly strong interest in financial stability**," *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation,* 496 U.S. 18,

> 37 (1990), **an interest they may pursue through provisions of the sort at issue here.**[11] (emphasis ours)
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> xxx xxx xxx

It is to be noted that the US Supreme Court strictly applied the period of limitation under its tax code despite the constitutional nature of the taxpayer's claim. The taxpayer succumbed to an unconstitutional tax, and sought recourse only after it has been unlawfully exacted.[12] Nonetheless, the US Supreme Court rejected the claim for failure to comply with the refund scheme and for being time-barred. It ruled that unconstitutional taxation claim is also subject to prescriptive period just as any other claim can, it says:

> The outcome here is clear given the language of the pertinent provisions. Title 26 U.S.C. §7422(a) states that "[n]o suit... shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund... has been duly filed with" the IRS. (Emphasis added.) Here the companies did not file a refund claim with the IRS for the 1994-1996 taxes, and therefore may bring "[n]o suit" in "any court" to recover "any internal revenue tax" or "any sum" alleged to have been wrongfully collected "in any manner." Five "any's" in one sentence and it begins to seem that Congress meant the statute to have expansive reach.
>
> Moreover, the time limits for filing administrative refund claims in §6511-set forth in an "unusually emphatic form," United States v. Brockamp, 519 U.S. 347, 350 (1997)-apply to "any tax imposed by this title," 26 U.S.C. §6511(a) (emphasis added). The statute further provides that "[n]o credit or refund shall be allowed or made after the expiration of the period of limitation prescribed

[11] *Supra* note 10.
[12] *Supra* note 10.

subsection (a)... unless a claim for credit or refund is filed by the taxpayer within such period." §6511(b)(1). Again, this language on its face plainly covers the companies' claim for a "refund" of "tax[es] imposed by" Title 26, specifically 26 U.S.C. §4121. The companies argue that these statutory provisions are ambiguous, Brief for Respondents 43-45, but we cannot imagine what language could more clearly state that taxpayers seeking refunds of unlawfully assessed taxes must comply with the Code's refund scheme before bringing suit, including the requirement to file a timely administrative claim.

xxx xxx xxx

The companies do not argue for such an exemption simply because their claims are based on a constitutional violation. As they acknowledge, *id.*, at 34, a "**constitutional claim can become time barred just as any other claim can,**" *Block v. North Dakota ex rel. Board of Univ. and School Lands*, 461 U.S. 273, 292 (1983). xxx (emphasis ours)

xxx We see no reason why compliance with straightforward administrative requirements and reasonable time limits to seek a refund once a tax has been paid should lead to a different result.[13]

xxx xxx xxx

1.c *Meralco's overcharges from 1994-1998 and 2000 were actually received and recognized in the said years. Income is taxable in the year realized and not in the year when court litigation has ended involving the same income. Accordingly, prescription in refund begins to run upon recognition of income.*

When Meralco received the provisional increase imposed upon its consumers, it unqualifiedly asserted its right over the amount and voluntarily

[13] *Supra* note 10.

reported the same as income, hence, prescription begins to run when petitioner recognizes income from overcharges.

In the claim-of-right doctrine, if a taxpayer receives money or other property and treats it as its own under the claim of right that the payments are made absolutely and not contingently, such amounts are included in the taxpayer's income, even though the right to the income has not been perfected at that time. It does not matter that the taxpayer's title to the property is in dispute and that the property may later be recovered from the taxpayer.[14]

In American jurisprudence, the claim-of-right doctrine was applied in several cases involving public utilities one of which is the case of *Brooklyn Union Gas Co. v. Comm., 62* F2d 505 (CCA2 1933) [15] (*Brooklyn* case). *Brooklyn* the utility company, in the course of rate dispute, had certain funds made available to it by an interlocutory order of court, subject to the taxpayer's posting of a security bond or securities of equal value. The taxpayer preferred not to take the funds on such conditions, and instead took them at the conclusion of litigation two years later. The taxpayer realized income in the earlier year under the claim-of-right rule, because the taxpayer had the power to secure the release of the funds, that is, there remained no effective restriction upon the taxpayer's dominion over them. In the present case, Meralco actually received and

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[14] Merten's *The Law of Federal Income Taxation*, Section 12A.145, Volume 2, (1995) citing Safety Tube Corp. v. Comm., 8 TC 757 (1947), affd 168 F2d 787 (CCA6 1948); Westover Co. v. Smyth, 43 AFTR 1283 (ND Cal 1951), citing Mertens text; Johns v. Comm., TC Memo 1956-119; Mensik v. Comm., 37 TC 703 (1962), affd 328 F2d 147 (CA7 1964); Marquardt Corp. v. Comm., 39 TC 443 (1962).
[15] As cited in Merten's *The Law of Federal Income Taxation*, Section 12A.152, Volume 2, (1995).

unconditionally recognized income from 1994-1998 and 2000, hence, it is with more reason that the claim of right applies to Meralco.

Under this doctrine, if **the taxpayer who has included amounts in income pursuant to the claim-of-right doctrine subsequently repays those amounts, the taxpayer may be entitled to a deduction in the year of repayment.[16] However, to be entitled to a deduction, the taxpayer must meet the requirements of a statutory provision entitling him or her to a deduction.[17] For instance, it must qualify as a trade or business expense xxx,[18] or as a loss.[19]**

In the case of *S. Lowenstein & Son, Inc. v. Comm.*, 21 TC 648, affd 222 F2d 919 (CA6 1955),[20] **it was ruled that the taxpayer's renunciation in a subsequent year of income received under claim of right does not defeat the earlier inclusion, but enables only the deduction in that subsequent year**.

These American cases have persuasive effect in our jurisdiction, because Philippine income tax law is patterned after its US counterpart.[21] The local application of the claim of right doctrine was explained in the book *Philippine*

[16] *Supra* note 15, Section 12A.146 citing *Gaddis v. US.*, 330 F Supp 741 (D Miss 1971).
[17] *Supra* note 15, Section 12A.146 citing E.g., IRC Section 162(a). See Grandview Mines v. Comm., 32 TC 759 (1959), affd 282 F2d 700 (CA9 1060); Berger v. Comm., 37 TC 1026 (1962). See also Equitable Life Ins. Co. of Iowa v. U.S., 340 F2d 9 (CA8 1965); National Life & Accident Ins. Co v. U.S., 244 F Supp 135 (MD Tenn 1965), citing Mertens text, affd 385 F2d 832 (CA6 1967) (deductions under life insurance companies' provisions of the Code).
[18] *Ibid.*, citing Oswald v. Comm., 49 TC 645 (1968).
[19] *Ibid.*, citing Comm. V. Switlik, 184 F2d 299 (CA3 1950); O'Meara v. Comm., 8 TC 622 (1947).
[20] As cited in Merten's *The Law of Federal Income Taxation*, Section 12A.146, Volume 2, (1995).
[21] *Commissioner of Internal Revenue vs. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 453.

Income Tax[22] citing the case of *Commissioner of Internal Revenue vs. Javier, Jr.*,[23] among others, to wit:

> ***3. Claim of right doctrine***. – A taxable gain is conditioned upon the presence of a claim of right to the alleged gain and the absence of a definite unconditional obligation to return or repay that which would otherwise constitute gain. To collect a tax would give the government an unjustified preference as to the part of the money that rightfully and completely belongs to the victim. The embezzlers title is void. (*Commissioner vs. Wilcox, 286 U.S. 417, 424*).
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> xxx "The taxpayer was the recipient of some money from abroad which he presumed to be a gift but turned out to be an 'error' and is now subject of litigation" but did not declare it as income. The court ruled that the amount received is income subject to tax, but the tax return filed cannot be considered as fraudulent because petitioner literally "laid his cards on the table" for respondent to examine. Error or mistake of fact or law is not fraud (*Commissioner vs. Javier, G.R. No. 71479, July 31, 1991, 199 SCRA 824*).
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> ***Award of damages by lower court is taxable despite possibility of repayment in case judgment is reversed by appellate court.*** - If a taxpayer obtains earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to include in his tax return, even though it may be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent. Thus, where a taxpayer sued and was awarded damages by the trial court, and the award was received pending appeal, the money received is includible in his gross income, notwithstanding the possibility of repayment in case the judgment would be reversed by the appellate court (*North American Oil Consolidated vs. Burnett, 286 U.S. 417*).

[22] Victorino C. Mamalateo, 2010 edition, pages 79-80.
[23] G.R. No. 78953, July 31, 1991, 199 SCRA 824.

In this case, by virtue of the claim-of-right doctrine and consistent with the recognition of income and deduction under the NIRC of 1997, Meralco recognized a bona fide claim over the amounts received out of its overcharged rate as early as 1995 and not when the Decision of the Supreme Court became final on 2003. It is proper that the overcharges be taxed at the time of income recognition. A fortiori, the two (2)-year prescriptive period for filing a claim for refund should be reckoned from the time when income was recognized, i.e. "the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment xxx." [24]

1.d ***The final termination of the litigation was not considered to be relevant or critical in determining the period to file refund in case of overpayment or in determining the period to recognize income.***

In the case of *North American Oil Consolidated v. Burnet*, 286 U.S. 417 (1932),[25] (*North American* case) the United States Supreme Court held that North American became entitled to the funds in 1917 under a claim of right, the year when it received funds subject of ongoing litigation NOT in the year 1922 when the case was finally resolved. Such rule gave substance to the annual accounting period as it afforded finality to the tax year by not holding it open

[24] Section 229 of the 1997 NIRC.
[25] Cited by Sanford M. Guerin and Philip F. Postlewaite, *Problems and Materials in Federal Income Taxation*, Fourth Edition, 1994, pages 824-826.

until the eventual resolution of the dispute.[26] Following this argument, the reckoning of the two (2)-year prescriptive period under Section 229 of 1997 NIRC should all the more apply in this case counting from the filing of ITR and payment of tax because Meralco declared the overcharges as income even before the Supreme Court decided the case with finality. Meralco's provisional increase was undeniably treated as income thereby forming part of Meralco's taxable income in the year of receipt.

For taxable year 1994, the reckoning of the two (2)-year period should be on April 7, 1995 when Meralco unqualifiedly recognized the overcharges as income. The same applies for succeeding taxable years as shown below:

		Date Actually Filed		
Taxable Year	Date annual ITR filed and tax paid	Administrative claim	Judicial claim (Original)	Judicial claim (Amended)
1994	7 April 1995 [27]	November 27, 2003	May 4, 2005	November 22, 2005
1995	15 April 1996 [28]	-do-	-do-	-do-
1996	15 April 1997 [29]	-do-	-do-	-do-
1997	15 April 1998 [30]	-do-	-do-	-do-
1998	13 April 1999 [31]	-do-	-do-	-do-
2000	11 April 2001 [32]	-do-	-do-	-do-

gc

[26] *Ibid.*
[27] Respondent's Formal Offer of Evidence, Exhibit "FF"
[28] Respondent's Formal Offer of Evidence, Exhibit "II"
[29] Respondent's Formal Offer of Evidence, Exhibit "LL"
[30] Respondent's Formal Offer of Evidence, Exhibit "OO"
[31] Respondent's Formal Offer of Evidence, Exhibit "RR"
[32] Respondent's Formal Offer of Evidence, Exhibit "XX"

Granting without conceding that the claim-of-right doctrine does not apply, then petitioner should NOT have recognized the overcharges as income from the time it filed its annual ITRs. American jurisprudence, having persuasive effect in our jurisdiction, dictates that in order to avoid the application of the claim-of-right doctrine, a taxpayer must in the year of receipt at least establish its obligation to repay the amount received and make provision for repayment. Establishment of a merely contingent obligation to repay will not suffice.[33] In this case, Meralco unconditionally recognized the overcharges as income from the time it filed its annual ITRs. It already claimed a right over an income knowing fully well the uncertainty and possible reversal of its case before the Supreme Court. When it took the risk of imposing higher rates to its consumers, it also assumed the risk of paying excess income taxes bearing in mind that the prescriptive period for refund disregards any supervening cause that may arise after payment.

Moreover, it is to be noted that in cited cases of *Clintwood, North American* and *Brooklyn*, the final termination of the litigation was not considered to be relevant or critical in determining the period to file refund in case of overpayment or in determining the period to recognize income. If at all, termination of the litigation merely determined whether or not there is right to retain income already received.

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[33] As cited in Merten's *The Law of Federal Income Taxation*, Section 12A.150, Volume 2, (1995) citing Nordberg v. Comm., 79 TC 655 (1982), affd 720 F2d 658 (CA1 1983), quoting Hope v. Comm., 55 TC 1020 (1971), affd 471 F2d 738 (CA3 1972), cert den 414 US 824 (1973).

II.
The claim was not duly proven.

II.a *The granting of refund cannot be made to depend upon the happening of a condition or a contingency.*

Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. [34] Thus, the burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implications. [35] Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven. [36]

Assuming without conceding, Meralco's claim has not yet prescribed, the claim is at best premature and would still fail with respect to the overcharges not yet refunded to petitioner's consumers. The amount to be refunded has not yet been fully returned to the consumers. In Meralco's Notes to Financial

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[34] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, G.R. No. 127105, June 25, 1999, 309 SCRA 87, 108 citing *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 332; *Province of Tarlac vs. Alcantara*, 216 SCRA 790, *Magsaysay Lines, Inc. vs. Court of Appeals*, 260 SCRA 513.
[35] *Ibid.*
[36] *Commissioner of Internal Revenue vs. Far East Bank & Trust Co.* (now BPI), G.R. No. 173854, March 15, 2010, 615 SCRA 417, 431 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 150, 163.

Statements[37] for the year ended December 31, 2007, assuming the previous payments were indeed repaid, there remained an estimated balance of P14,396M not yet refunded.

Moreso, the refund is subject to a condition that the overcharges should have been actually given or credited to future consumption of Meralco's consumers. Meralco admitted that some of the electric service accounts of its consumers entitled to refund are terminated, hence, it acceded to the probability that the entire gross refund amount of P30,230,092,522.39 may not be fully refunded or credited to future consumption.[38] This only shows that the instant case would still fail due to insufficiency of evidence to determine whether the total amount was actually repaid to Meralco's consumers.

The determination of the amount repaid is necessary in granting this tax refund otherwise the government would be in a position of refunding an income tax, the tax base of which is still within the coffers of Meralco and may or may not be repaid to its consumers. Until and unless repayment can be ascertained, Meralco's overcharges are still considered income under the claim of right doctrine, thus, the claim for refund under this situation must fail.

In light of the foregoing, I vote to GRANT the "Petition for Review" filed by Commissioner of Internal Revenue, and accordingly REVERSE and SET ASIDE

[37] Respondent's Formal Offer of Evidence, Exhibit "PPP"
[38] Respondent's Motion for Partial Reconsideration and Clarification, Division docket p. 1259.

the Decision dated December 6, 2010 and Resolution dated April 15, 2011 rendered by the CTA Second Division.

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

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Respondent.

CTA EB CASE NO. 773
(CTA Case No. 7242)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
MAY 08 2012 EApolinario 1:30 p.m.

x---x

DISSENTING OPINION

BAUTISTA, J.:

Applying the basic postulate that no one should unjustly enrich himself at the expense of another, the caveat likewise covers the government,[1] the return of what was erroneously paid - respondent's right to claim for refund - emanates from the said principle, and not from Section 229 of the 1997 NIRC, as amended.

In contrast to the disquisition made by the majority, I find the Petition for Review bereft of merit.

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[1] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]. G.R. No. 172129, September 12, 2008, 565 SCRA 154, *citing Commissioner of Internal Revenue v. Fireman's Fund Insurance Co., No. L-30644, March 9, 1987, 148 SCRA 315.*

Section 229 of the 1997 National Internal Revenue Code ("NIRC"), as amended, provides in part, to quote:

> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – xxx
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

It is true that the above-quoted provision explicitly states that "*[i]n 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,*" the factual milieu surrounding the case at bench, however, deserves this Court's recognition as well.

Based on the records of the case, on January 28, 1994, the then Energy Regulatory Board ("ERB") issued an Order, docketed as ERB Case No. 93-118, which states as follows:

> WHEREFORE, premises considered, and in accordance with Section 8 of Executive Order No. 172 and the applicable provisions of the Public Service Act, as amended, **this Board hereby provisionally authorizes applicant Manila Electric Company to adopt and implement the attached rate schedules embodying the aforementioned rate adjustment in the average amount of 18.4 centavos per kwh, effective with respect to applicant's billing cycles beginning February 1994**.
>
> In the event, however, that the Board finds, after hearing and submission by the Commission on Audit of an audit report on the books and records of account of the applicant, that the latter is entitled to a lesser increase in rates, all excess amounts collected from the applicant's customers as a result of this Order shall be refunded to

> them or correspondingly credited in their favor for application to electric bills covering future consumptions.
>
> xxx xxx xxx
>
> SO ORDERED.[2] (*Boldfacing supplied.*)

On February 16, 1998, the ERB rendered a Decision, to quote:

> WHEREFORE, premises considered, the Board hereby authorizes applicant Manila Electric Company to adopt and implement a rate adjustment in the average amount of ₱0.017 per kilowatthour, effective with respect to applicant's billing cycles beginning February 1994. Accordingly, the provisional relief in the amount of ₱0.184 per kilowatthour granted under the Board's Order dated January 28, 1994 is hereby superseded and modified and the excess average amount of ₱0.167 per kilowatthour starting with the applicant's billing cycles beginning February 1994 until its billing cycles beginning February 1998, be refunded to applicant's customers or correspondingly credited in their favor for future consumption. For purposes of refund, MERALCO is hereby directed to submit to this Board, within ten (10) days from receipt hereof, the following data: kilowatthour sales statistics on a per customer class from February 1994 to February 1998, bill frequency for 1997 and other pertinent data that are necessary to implement the directives contained in this Decision.
>
> SO ORDERED.[3]

On February 24, 1999, the Court of Appeals promulgated a Decision in the case of *Manila Electric Company v. Energy Regulatory Board, et al.*, docketed as CA-G.R. SP No. 46888, to wit:

> THE FOREGOING CONSIDERED, judgment is hereby rendered, setting aside the contested Decision insofar as it directed reduction of the Meralco rates by an average of ₱0.167 per kilowatthour, supposedly effective after February 1998, and its refund to the customers starting with the billing cycle from February 1994 until the billing cycle beginning February 1998.

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[2] *Records*, CTA Case No. 7242, pp. 49-50.
[3] *Id.*, at pp. 222-223.

SO ORDERED.[4]

Lastly, on November 15, 2002, the Supreme Court rendered the following in the case of *Republic of the Philippines, et al., v. Manila Electric Company, Inc.*, docketed as G.R. Nos. 141314 and 141369, to wit:

> **WHEREFORE**, in view of the foregoing, the instant petitions are **GRANTED** and the decision of the Court of Appeals in C.A. G.R. SP No. 46888 is **REVERSED**. Respondent MERALCO is authorized to adopt a rate adjustment in the amount of ₱0.017 per kilowatthour, effective with respect to MERALCO's billing cycles beginning February 1994. Further, in accordance with the decision of the ERB dated February 16, 1998, **the excess average amount of ₱0.167 per kilowatthour starting with the applicant's billing cycles beginning February 1998 is ordered to be refunded to MERALCO's customers or correspondingly credited in their favor for future consumption.**
>
> **SO ORDERED.**[5] (*Boldfacing supplied.*)

From the issuance of the ERB Order dated January 28, 1994 that respondent MERALCO was authorized to adopt and implement the rate adjustment in the average amount of ₱0.184 per kilowatthour, effective with the billing cycles beginning February 1994, until the Supreme Court finally ruled that only a rate adjustment in the amount of ₱0.017 per kilowatthour is considered just and reasonable, ***the case at bench may have consequences which cannot just be simply ignored by this Court***.

As observed by the Second Division of the Court in its Decision dated December 6, 2010, "the special circumstance in the instant case demands that it be given a different treatment. While MERALCO diligently filed its final adjustment

[4] *Id.*, at p. 245.
[5] *Id.*, at p. 273.

return and paid the income tax thereon, it is beyond cavil that neither the right to claim for refund can be determined nor there was basis for MERALCO to know that the income tax payments for the taxable years 1994-1998 and 2000 were erroneous and excessive. Such fact arose only when the Supreme Court's Decision in G.R. Nos. 141314 and 141369 became final and executory on May 5, 2003."[6] Thus, I agree with the following disquisitions:

> In the instant case, it is clear that MERALCO's right to claim for a tax refund for the taxable years 1994-1998 and 2000 cannot yet be ascertained or determined at the filing of the final adjustment return. xxx.
>
> We are aware that equity is available only in the absence of law and not as its replacement. Indisputably, at the time MERALCO filed its final adjustment return and paid the income tax thereon, the amount being claimed for refund cannot be said to be "excessively and wrongfully collected." **It was only on May 5, 2003, that the income tax payments for the taxable years 1994-1998 and 2000 being claimed for refund were determined as "excessively and wrongfully collected."**[7] (*Boldfacing supplied.*)

The Supreme Court has in the past sanctioned the application of the provisions on *solutio indebiti* in cases when taxes were collected thru error or mistake.[8] Thus, a claim for refund must be commenced within six (6) years in accordance with Article 1145(2)[9] of the Civil Code.[10]

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[6] *Rollo*, p.43.
[7] *Ibid.*, p. 44.
[8] Commissioner of Internal Revenue *v.* Philippine Phosphate Fertilizer Corporation, G.R. No. 144440, September 1, 2004, *citing Gonzalo Puyat & Sons, Inc. v. City of Manila, et al., 117 Phil. 985, 989 (1963). See* also Citibank N.A. *v.* Court of Appeals, 345 Phil. 695, 713 (2001).
[9] ART. 1145. The following actions must be commenced within six years:
sxx xxx xxx
(2) Upon a quasi-contract.
[10] *Supra*, note 8, *citing Ramie Textiles, Inc. v. Hon. Mathay, Sr., G.R. No. L-32364, April 30, 1979, 89 SCRA 586, 592; National Development Company v. Cebu City, G.R. No. 51593, November 5, 1992, 215 SCRA 382, 396.*

In the case of *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*,[11] the High Tribunal aptly penned as follows:

> Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.
>
> A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.
>
> **Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another**. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.
>
> **The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers.** (*Citations omitted and boldfacing supplied.*)

In the case at bench, and for emphasis, it was only on May 5, 2003 that the income tax payments for the subject years being claimed for refund were determined as excessively and wrongfully collected.

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[11] G.R. Nos. 167274-75, July 21, 2008.

Reckoning from the time the Supreme Court's ruling became final on May 5, 2003, respondent had until May 5, 2009 within which to file its claim under the principle of *solutio indebiti*; the administrative claim was filed on November 23, 2003, while the Petition for Review before this Court was filed on May 4, 2005. Clearly then, respondent's right to refund has not yet prescribed.

For this Court to rule that the right to recover its excess income tax has prescribed under the foregoing circumstances would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.[12]

Thus, the principle of *solutio indebiti* should be applied in the present case. The government should not use technicalities to hold on to money that does not belong to it.[13]

I further quote with approval the ruling made in the assailed Decision, to wit:

> The Notes to Financial Statements, attached to MERALCO's Audited Financial Statements for the years ended December 31, 2003 and 2002, stated:
>
> > "xxx The loss arising from the SC decision amounted to ₱28,728 million, which represents the amount of refund to its customers of ₱0.167 per kwh for billing cycles from February 1994 to December 31, 2002. The Company's 2002 financial statements have been restated to reflect the loss arising from the SC decision. Refunds covering the periods February 1994 to December 31, 2001, amounting to ₱23,817

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[12] Columbia Pictures, Inc. *v.* Court of Appeals, G.R. No. 110318, August 28, 1996, 261 SCRA 144, 168.
[13] Southern Philippines Power Corporation *v.* Commissioner of Internal Revenue, G.R. No. 179632, October 19, 2011, *citing State Land Investment Corporation v. Commissioner of Internal Revenue, G.R. No. 171956, January 18, 2008, 542 SCRA 114, 123.*

million, net of tax effect for 1999 of ₱1,126 million (*see Note 23*), were accounted for as an extraordinary loss in the 2002 statement of income. Refunds covering the period January 1, 2002 to December 31, 2002, amounting to ₱3,785 million were reflected as a reversal of 2002 revenues. The related tax effect of ₱1,133 million is reflected as a reduction in the provision for income tax (*see Note 23*). The Company's revenues for the first five months of 2003 were adjusted to reflect a rollback of its distribution rates totalling approximately ₱1,595 million."

Based from the foregoing, the amounts to be refunded to or credited against future consumption of MERALCO's customers pursuant to the Supreme Court Decision in G.R. Nos. 141314 and 141369 totalled ₱30,323 million, broken down as follows:

Period Covered	**Amount of Refund (in millions)**
Feb. 1994 to December 31, 2001	₱ 24,943
Jan. 1, 2002 to Dec. 31, 2002	3,785
Jan. 1 to May 2003	1,595
	₱ 30,323

A scrutiny of MERALCO's Statement of Income (as restated) for the year ended December 31, 2002 shows that MERALCO treated the refundable amount covering the period of February 1994 to December 31, 2001 as an extraordinary loss but in the amount of ₱23,817 million, net of tax effect for 1999 of ₱1,126 million. Likewise, MERALCO reflected the refundable amount of ₱3,785 million as reduction from the revenues of ₱121,606 million originally reported by MERALCO, resulting in a reduced revenue amount of ₱117,821 million for the said year. The related tax effect of ₱1,133 million was shown as a reduction from the provision for income tax.

However, in its Amended Annual Income Tax Return for the taxable year 2002, MERALCO did not charge to expense or loss nor deduct against its revenues for the year 2002 any of the refundable amounts of ₱23,817 million and ₱3,785 million covering the periods February 1994 to December 31, 2001 and January 1, 2002 to December 31, 2002, respectively. This can be clearly seen from MERALCO's Reconciliation of Net Income Per Books Against Taxable Income for the taxable year 2002, wherein MERALCO's net taxable income per return in the amount of ₱1,166,760,574.00 was based on MERALCO's net loss per books in the amount of ₱2,015,232,945.00. It must be noted that the net loss per books of ₱2,015,232,945.00 was the amount reported by MERALCO before it reflected the refundable amounts of ₱23,817 million and ₱3,785 million as extraordinary loss and revenue reversal for the year 2002, respectively.

In its Statement of Income for the year ended December 31, 2003, MERALCO reflected the refundable amount of ₱1,595 million as reduction of its revenues for the months of January to May 2003. With regard to the refundable amounts covering the periods February 1994 to December 31, 2001 and January 1, 2002 to December 31, 2002, MERALCO reflected the same in its Balance Sheet as of December 31, 2003 under the "Unappropriated Retained Earnings" account as "Prior period adjustments arising from customers refund" in the amount of ₱26,469 million net of the tax effect for 1999 and 2002 in the respective amounts of ₱1,126 million and ₱1,133 million. In other words, in arriving at its net income per books of ₱907 million for the year ended December 31, 2003, MERALCO deducted from its revenues only the refundable amount of ₱1,595 million pertaining to the months of January to May 2003.

Inasmuch as it was the net income per books in the amount of ₱907 million which was reconciled with the net income per Annual Income Tax Return for the year ended December 31, 2003 and none of the reconciling items pertain to the amounts to be refunded/credited to MERALCO's customers, it may be safely concluded that MERALCO did not charge to expense/loss nor deduct against its revenues for the said year the amounts to be refunded or credited to its customers pertaining to the period February 1994 to December 31, 2002.

As for the taxable years 2004 and 2005, MERALCO's Audited Financial Statements and Annual Income Tax Returns for the said years also proved that it did not charge to expense or loss nor deduct against its revenues for the said years the amounts it has refunded/credited to its customers pursuant to the Supreme Court's Decision in G.R. Nos. 141314 and 141369.

Based on its liability account for Customers Refund as reflected in its Audited Balance Sheets as of the years ended December 31, 2002, 2003, 2004 and 2005, MERALCO refunded a total amount of ₱10,566 million as of December 31, 2005 which was charged to the said account and not to any expense/revenue account for the said years, as summarized below:

		2002	2003	2004	2005
		(AMOUNTS IN MILLIONS)			
Balance, January 1		₱ -	₱ 28,728	₱ 25,608	₱ 20,551
Add:	Set up of Refund	28,728	1,595	-	-
	Subtotal	₱ 28,728	₱ 30,323	₱ 25,608	₱ 20,551
Less:	Refunded	-	4,715	5,057	794
Balance, December 31		₱ 28,728	₱ 25,608	₱ 20,551	₱ 19,757
Present Value Effect					(4,234)
Balance as shown in Balance Sheet, Dec. 31 (Nominal)		₱ 28,728	₱ 25,608	₱ 20,551	₱ 15,523
Breakdown of AP-Customers Refund as shown in B/S					
	Current	₱ 22,594	₱ 6,919	₱ 5,409	₱ 3,787
	Non-Current	6,134	18,689	15,142	11,736
	Total	₱ 28,728	₱ 25,608	₱ 20,551	₱ 15,523
Total Refunded to customers to date		₱ -	₱ 4,715	₱ 9,772	₱ 10,566
Balance, December 31 (Real)		28,728	25,608	20,551	19,757
Total		₱ 28,728	₱ 30,323	₱ 30,323	₱ 30,323

However, while MERALCO's Audited Balance Sheets show that MERALCO has refunded/credited to its customers a total amount of ₱10,566 million as of December 31, 2005, such amount does not reconcile with the figure of ₱10,565 million shown in the Manifestation dated September 25, 2006, which MERALCO filed with the Energy Regulatory Commission (ERC) on October 2, 2006. Apparently, there were discrepancies on the amounts actually refunded by MERALCO to the prejudice of the consuming public but this does not negate the findings of this Court that MERALCO did not charge to expense/loss nor deduct against its revenues for the said years the amounts to be refunded or credited to its customers pertaining to the period from February 1994 to December 31, 2002.[14]

And considering that the basis of the present claim for refund is the increased rate adjustment in the average amount of ₱0.184 per kilowatthour, pursuant to ERB's Order dated January 28, 1994, which was subsequently lowered by ERB's Decision dated February 16, 1998, and resolved with finality by the Supreme Court in the case of *Republic of the Philippines, et al., v. Manila Electric*

[14] *Rollo*, pp. 48-53.

Company, Inc,[15] I see no reason to deviate from the pronouncement that the order of refund or issuance of tax credit certificate is subject to and in proportion to the refund/credit to future consumption due to respondent's customers in the average amount of ₱0.167 per kilowatthour. Indeed, it will amount to injustice if respondent can recover all the excess income tax payments without refunding/crediting the amount it overcharged to its customers.

Accordingly, I vote for the **DENIAL** of the Petition for Review for lack of merit. Therefore, the impugned Decision dated December 6, 2010 and Resolution dated April 15, 2011, in CTA Case No. 7242 should be **AFFIRMED** *in toto*.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[15] G.R. Nos. 141314 and 141369, November 15, 2002, 391 SCRA 700.