REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

BAP CREDIT BUREAU, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2095
(CTA Case No. 9570)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 23 2021 10:21 am

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner's "Motion for Reconsideration of the Decision dated 03 September 2020" (**MR**) filed on 29 September 2020, with respondent's "Opposition (Re: Motion for Reconsideration)", filed on 24 November 2020.

In support of its MR, petitioner raises the following arguments, to wit:

1. There is no "assumption of risk" when it had until 15 April 2015 to file the 2014 Annual Income Tax Return (**ITR**);

2. The decision on *Hon. Kim S. Jacinto-Henares, Commissioner of Internal Revenue v. Philippine Plaza Holdings, Inc.*[1] (**PPHI case**) is applicable to its case;

3. RMC No. 14-2015 is addressed to "all internal revenue officers and others concerned" and therefore could not be considered as a definitive rule imposing additional burden on the taxpayers; and,

4. Petitioner's good faith compliance should not be penalized.

From the above, petitioner remains firm in its assertion that the late filing of its Annual ITR for 2014 was due to circumstances beyond its control and that it was in good faith in its efforts to observe the deadline. Thus, petitioner now insists that it should not be penalized as it nevertheless intended to comply with the Electronic Payment and Filing System (**eFPS**) filing.

In refutation, respondent echoes the Decision of the Court in Division and adds that tax refunds are in the nature of tax exemption and is strictly construed against the claimant (unless allowed in the most explicit and categorical language).

We resolve.

Except for petitioner's second argument, the rest of the arguments put forward herein are mere reiterations of its previous contentions which the Court has already passed upon and resolved.

As to whether the *PPHI* case is on all fours with petitioner's case and may thus accordingly be applied herein, We shall discuss accordingly below.

In the said case of *PPHI*, the Supreme Court *via* a Resolution affirmed the CTA *En Banc*'s ruling upholding the refund of value-added tax (**VAT**) surcharge paid. Succinctly, therein respondent PPHI's VAT return was filed four (4) hours past the deadline due to a system glitch. Subsequently, it filed an application for abatement of

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1 G.R. No. 247662, 10 December 2019; CTA EB Case No. 1571, 03 August 2018.

the surcharge and voluntarily paid the interest due. Although there was a recommendation for approval of the abatement of surcharges, the application was still denied for lack of legal and factual basis. Such denial prompted PPHI to appeal to this Court. During the pendency of the petition, PPHI paid the surcharge imposed.

Petitioner argues that the facts of the case are obtaining considering that it failed to file its Annual ITR for 2014 due to the Bureau of Internal Revenue's (BIR's) eFPS system failure, similar to the *PPHI* case where the late filing of the VAT Return was attributable to the system downtime.

Unfortunately, We find petitioner's reliance on the *PPHI* case, misplaced.

At first blush, the instant petition may appear to have similar factual *milieu* as that of the *PPHI* case. However, a closer study of the two cases reveals that there is a stark difference with respect to the remedies availed of. The case at bar involves a claim for refund under Section 229 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, whereas the *PPHI* case resulted from a denial of PPHI's application for abatement of surcharge under Section 204(B) of the same code.

Section 229 of the NIRC, as amended, provides:

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

> 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.[2]
>
> ...

On the other hand, Section 204(B) of the NIRC, as amended, reads:

> ...
>
> **SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may –
>
> > ...
> >
> > *(B) Abate or cancel a tax liability, when:*
> >
> > (1) **The tax or any portion thereof appears to be unjustly or excessively assessed**; or
> >
> > (2) The administration and collection costs involved do not justify the collection of the amount due.[3]
> >
> > ...
>
> ...

The difference between the two afore-quoted provisions is too glaring to be mistaken. Section 229 provides a remedy to taxpayers seeking the refund of taxes that were *erroneously paid or illegally collected* without authority. In contrast, Section 204(B) empowers the Commissioner of Internal Revenue (CIR) to abate taxes or any portion thereof that appears to be *unjustly or excessively assessed* or when the administration and collection costs do not justify the collection of the amount due.

Comparable to the *PPHI* case, petitioner's payment of surcharge could have been an appropriate subject of an application for abatement. The Supreme Court's disquisition therein is reproduced in part below:

> ...
>
> Anent PPHI's entitlement to the refund claim, the Court sustains the findings of the CTA *EB*. The CTA *EB* found that PPHI has sufficiently proved that the late filing of its VAT return for the 2nd quarter of 2011 and payment of the corresponding tax therein can be attributed to the system error in the Electronic Filing and

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2 Emphasis supplied.
3 Emphasis supplied.

> Payment System (EFPS) facility of the Bureau of Internal Revenue (BIR), a circumstance beyond PPHI's control. **Thus, the penalties and/or interest incurred by PPHI for said late filing and payment should be abated or cancelled pursuant to Section 2 of RR 13-2001.**[4]
>
> ...

To elaborate further, Section 2 of Revenue Regulations (RR) 13-2001[5] enumerates the instances when penalties and/or interests imposed may be abated or cancelled, *viz*:

> ...
>
> **Section 2.** *Instances When the Penalties and/or Interest Imposed on the Taxpayer May be Abated or Cancelled on the Ground That the Imposition Thereof is Unjust or Excessive.* –
>
> ...
>
> 2.5 **When taxpayer fails to file the return and pay the correct tax on time due to circumstances beyond his control**, provided, however, that abatement shall cover only the surcharge and the compromise penalty and not the interest;
>
> 2.6 **Late payment of the tax under meritorious circumstances** such as those provided hereunder:
>
> 2.6.1 One day late filing and remittance due to failure to beat bank cut-off time;
>
> ...
>
> 2.6.10 Such other instances which the Commissioner may deem analogous to the enumeration above.
>
> 2.7. Other cases similar or synonymous thereto.[6]
>
> ...

As stated in the Decision, the Court is not unmindful of petitioner's plight but it is nevertheless constrained to not grant its claim for refund under Section 229 of the NIRC, as amended. And while petitioner may continue to argue that the imposition of surcharge is unreasonable since it was only a day late in its payment, still such payment could not qualify as erroneous or illegal to aptly fall within the purview of Section 229.

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4 Citation omitted and emphasis supplied.

5 *Implementing Section 204(B), in Relation to Section 290 of the Tax Code of 1997, Regarding Abatement or Cancellation of Internal Revenue Tax Liabilities.*

6 Emphasis supplied.

Lastly, the Court cannot, on the one hand, entertain the petition hinged on Section 229 of the NIRC, as amended, and on the other, grant a relief based on Section 204(B) of the same Tax Code, wielding a power that does not belong to it but to respondent. Succinctly, courts are to interpret and apply the laws as they are, and they cannot accord a relief not contemplated in the statutes.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration of the Decision dated 03 September 2020 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

We concur:

(With due respect, I maintain my D.O.)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

(With due respect, I maintain my D.O.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

***CATHERINE* T. MANAHAN**
Associate Justice

(With due respect, I maintain my D.O.)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice