Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

TECHNOGAS PHILIPPINES MANUFACTURING CORPORATION, Petitioner,	**CTA EB NO. 2002** (CTA Case No. 9509)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 26 2019 4:18 p.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on May 22, 2019 is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the

---

[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

Decision [2] in the case entitled Technogas Philippines Manufacturing Corporation vs. Commissioner of Internal Revenue (CIR), docketed as CTA Case No. 9509, dated October 4, 2018, rendered by the Special Second Division of this Court, and its Resolution[3] dated January 4, 2019.

The Special Second Division of this Court denied petitioner's Petition for Review and found that the claim for refund was filed out of time.

Petitioner assails both the aforesaid Decision and Resolution, the pertinent portions of which, respectively, read as follows:

Decision dated October 4, 2018:

> *"**WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit.*
>
> ***SO ORDERED**."*

Resolution January 4, 2019:

> *"**WHEREFORE**, petitioner's Motion for Reconsideration (of the Decision dated 4 October 2018) is **DENIED** for lack of merit.*
>
> ***SO ORDERED**."*

The antecedent facts as narrated by the Court in Division in its Decision read as follows:

> *"Petitioner is a corporation duly organized and existing under Philippine laws with business address at Dr. A. Santos Ave., Sucat, Parañaque City, represented in this case by its duly authorized representative, Francis T. Tan. Petitioner may be served with processes of this Honorable Court through its counsel at the latter's address at Suites A&B, 10th Floor, Strata 100 Building, F. Ortigas Jr. Road (formerly Emerald Avenue) Ortigas Center, Pasig City.*

---
[2] En Banc Docket, pp. 18-30.
[3] En Banc Docket, pp. 31-34.

L

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) represented in this case by the legal officers of the BIR Legal Division, with office address at 2/F BIR Bldg. No. 313 Sen. Gil Puyat Ave., Makati City.

Petitioner is the absolute and registered owner of a parcel of land located at Lot 4531-A-1, No. 8295 Dr. A Santos Avenue (formerly Sucat Road), Brgy. San Dionisio, Parañaque City, previously covered by TCT No. 122533 (the property).

Sometime in February 1992, petitioner mortgaged the property to Philippine National Bank (PNB) to secure a loan in the principal amount of Php49,000,000.00.

Petitioner defaulted on its payments to the PNB. On September 7, 2001, petitioner received a notice of extrajudicial sale over TCT No. 122533 on August 20, 2001 at the Parañaque City Hall.

Aggrieved, petitioner filed a complaint, dated September 18, 2001, against PNB for a Temporary Restraining Order, Injunction, and Annulment of Extrajudicial Foreclosure Sale before Branch 196 of the Regional Trial Court of Parañaque City.

Another extrajudicial sale was conducted on August 24, 2004 by the Clerk of Court and the Ex-Officio Sheriff, Atty. Clemente Boloy, wherein PNB was adjudged the winning bidder over the property. A Certificate of Sale dated September 14, 2004 was purportedly executed and an Application for Consolidation of Title was filed with the Register of Deeds.

The payment of capital gains tax (CGT) was withheld by PNB for the account of the BIR on October 4, 2004, in favor of petitioner. The CGT amount paid was Php19,283,040.00.

On November 24, 2011, RTC Branch 196-Parañaque City rendered a Decision annulling the Notice of Extrajudicial Sale dated August 16, 2001.

On December 4, 2014, petitioner and PNB entered into a Compromise Agreement, for the full settlement of petitioner's outstanding loan with PNB. Subsequent to the execution of the Compromise Agreement, petitioner filed with the Register of Deeds of Parañaque City a request for the cancellation of the Certificate of Sale. On December 23, 2014, the Register of Deeds, by way of annotation at the back of TCT No. 122533, registered the Compromise Agreement.

L

Petitioner filed an administrative claim for refund through a letter addressed to OIC-Revenue District Officer Christina C. Barroga, BIR-RDO No. 52-Parañaque on August 2, 2016. Petitioner likewise filed an administrative claim for refund through a letter addressed to the Office of the Commissioner of Internal Revenue on December 2, 2016. However, said claim has not been decided upon.

On December 21, 2016, petitioner filed the instant appeal before the Court of Tax Appeals (CTA) alleging the inaction of the CIR on its claim for refund of CGT paid amounting to Php19,283,040.00 which arose from a sale of property that was subsequently cancelled.

Respondent, instead of filing his Answer, filed a Motion to Dismiss, arguing that the claim for refund was filed out of time. In its Comment/Opposition [To Respondent's Motion to Dismiss dated 15 February 2017], petitioner argues that at the time the CGT was collected and paid, it was legally due. However, the cancellation of the sale transaction put the parties back to their positions prior to the sale, hence, there was no obligation to pay the CGT, and the BIR has no right to receive and retain the said CGT.

On April 7, 2017, the Court denied respondent's Motion to Dismiss, ruling that the factual and legal issues may best be proved through the conduct of a full-blown trial. Respondent's Motion for Reconsideration was likewise denied on June 21, 2017.

On July 26, 2017, the Court received respondent's Answer which was filed through registered mail on July 13, 2017.

The case proceeded to pre-trial. On September 15, 2017, the parties filed their Joint Stipulation of Facts and Issues (JSFI) which was approved and adopted in the Pre-Trial Order dated September 25, 2007.

During trial, petitioner presented its sole witness, Mr. Francis T. Tan on October 2, 2017. On the same date, respondent manifested that it will not present any evidence.

On December 15, 2017, petitioner filed its Formal Offer of Evidence (FOE), which was resolved in the Resolution dated January 24, 2018 wherein all the exhibits were admitted.

Petitioner filed its Memorandum on February 26, 2018, on the other hand, respondent failed to file his *memorandum. Thus, the case was submitted for decision on March 20, 2018.*

On October 4, 2018, the Special Second Division of this Court denied petitioner's Petition for Review and found that the claim for refund was filed out of time. Likewise, petitioner's Motion for Reconsideration was denied for lack of merit.

Hence, this Petition for Review was filed.

The sole ground raised in the petition reads:

> "PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND FOR THE CAPITAL GAINS TAXES PAID TO THE BUREAU OF INTERNAL REVENUE."

Petitioner argues that petitioner's right to receive a refund for the Capital Gain Tax (CGT) paid is not premised on Section 204 and 299 of the NIRC but on the principles of "unjust enrichment" and "*solutio indebiti*". Petitioner submits that respondent's retention of the taxes collected is tantamount to unjust enrichment on the part of BIR to the prejudice of petitioner. Likewise, petitioner avers that under the principle of *solutio indebiti*, respondent has the legal obligation to refund the capital gains tax paid. Further, petitioner asserts that assuming that Sections 204 and 299 of the NIRC applies, still petitioner is entitled to refund since its claim for refund was timely filed and the law does not require the impossible.

We are not persuaded.

At the outset, while the Court in Division ruled that the effect of the Compromise Agreement is analogous to that of rescission, and that petitioner and PNB are returned to their status quo ante, it does not automatically entitle petitioner to the claimed refund. The Court in Division ruled as follows:

> *"In the instant case, the parties executed a Compromise Agreement dated December 4, 2014. A portion of the recital of antecedents are quoted below:*
>
> > *WHEREAS, the Defendant extended in favor of the Plaintiff certain loans and credit accommodations (the "Credit Facilities"),*

h

secured by a real estate mortgage on a parcel of land, together with the improvements thereon, located at Lot 4531-A-1, No. 8295 Dr. A. Santos Avenue (formerly Sucat Road), Brgy. San Dionisio, Parañaque City, with an area of 15,842 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. 122533 of the Registry of Deeds for Parañaque, Metro Manila, registered in the name of the Plaintiff (the "Property");

WHEREAS, for failure of the Plaintiff to pay the outstanding obligation under the Credit Facilities, the Defendant filed a Petition for Extrajudicial Foreclosure of the Property on August 16, 2001;

xxx xxx xxx.

WHEREAS, on November 24, 2011, the RTC rendered a judgment nullifying the Defendant's foreclosure sale of the Property, which decision was reversed by the Court of Appeals on September 10, 2013;

WHEREAS, the Plaintiff appealed the Court of Appeals' decision to the Supreme Court by way of a Petition for Review dated May 2, 2014 and docketed as G.R. No. 211743, which is pending resolution to date;

WHEREAS, the parties have agreed to the compromise settlement of the Civil Case, in accordance with the terms and conditions hereinafter set forth;

xxx xxx xxx.

In the said Compromise Agreement, the petitioner and PNB agreed to the following terms of settlement:

1.01 Compromise Settlement. In settlement of the Plaintiff's obligations to the Defendant under the Credit Facilities, and the Civil Case, the parties hereby agree as follows:

(a) Simultaneous with the execution of this Agreement, the Plaintiff shall pay the Defendant the amount of Pesos: TWO HUNDRED SIXTY -SEVEN MILLION SIX HUNDRED THIRTY THOUSAND

L

> *(P267,630,000.00) [the "Compromise Amount"], payable in cash or check in readily available funds, in full settlement of its obligations under the Credit Facilities.*
>
> *(b) Upon receipt of the full proceeds of the Compromise Amount in cleared funds, the Defendant shall:*
>
> *(1) release the owner's duplicate copy of TCT No. 122533;*
>
> *(2) issue the original Release of Real Estate Mortgage to cancel the Defendant's mortgage liens under Entry Nos. 5078 and 1456 annotated on February 4, 1992 and April 22, 1997, respectively;*
>
> *(3) give its written conformity to the Plaintiff's Notice of Withdrawal of Lis Pendens to cancel Entry No. 3233 annotated on August 12, 2004;*
>
> *(4) issue the Affidavit of Cancellation of the Certificate of Sale ("COS") to cancel Entry No. 4724 annotated on September 22, 2004;*
>
> *(5) issue the Application for Withdrawal of the Consolidation of TCT No. 122533.*
>
> *(c) In connection with the foregoing, the parties shall jointly cause the approval by the Court of (1) the termination/withdrawal with prejudice of the Civil Case by filing the necessary motions/ manifestations for the said purpose, and (2) the cancellation by the Register of Deeds of Parañaque City of the annotations on the title to the Property corresponding to the COS under Entry No. 4724, the Defendant's mortgage liens under Entry Nos. 5078 and 1456, and the Plaintiff's Lis Pendens under Entry No. 3233.*
>
> *xxx xxx xxx.*

*Based on the foregoing provisions of the Compromise Agreement, the parties therein **intended to cancel** the Certificate of Sale in favor of PNB and recorded in TCT No. 122533 as Entry No. 4724. In return, petitioner* *will pay PNB the amount of Php267,630,000.00 as settlement of its obligations under the credit facilities extended to it by PNB.*

Thus, the Court finds that the effect of the Compromise Agreement is analogous to that of rescission, and petitioner and PNB are returned to their status quo ante." (Emphasis supplied)

Records reveal that petitioner filed a complaint,[4] dated September 18, 2001, against PNB for a Temporary Restraining Order, Injunction, and Annulment of Extrajudicial Foreclosure Sale before Branch 196 of the Regional Trial Court of Parañaque City[5]. A Certificate of Sale[6] dated September 14, 2004 was purportedly executed and an Application for Consolidation of Title was filed with the Register of Deeds. [7] The payment of capital gains tax (CGT) was withheld by PNB for the account of the BIR on October 4, 2004, in favor of petitioner. [8] Thereafter, on December 4, 2014, petitioner and PNB entered into a Compromise Agreement[9].

Clearly, it is incumbent upon petitioner to submit evidence that said compromise agreement was approved by Branch 196 of the Regional Trial Court of Parañaque City. Likewise, petitioner should prove before the Court in Division, the compliance by the parties over the Compromise Agreement. However, an examination of the records reveals that petitioner miserably failed to present evidence to support its case.

On this basis the petition should be denied. The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, *these are deemed to be "in derogation of sovereign authority, tax* refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. Petitioners, unfortunately, failed to discharge this burden.

---

[4] Division Docket, Exhibit "P-5", pp. 289-328.
[5] Division Docket, Petition for Review, p. 14, Memorandum, p. 538.
[6] Division Docket, Exhibit "P-3", p. 507.
[7] Division Docket, Memorandum, p. 538.
[8] Division Docket, Joint Stipulation of Facts and Issues (JSFI), p. 467.
[9] Division Docket, Exhibit "P-7", pp. 515-518.

h

Furthermore, We find no merit in petitioner's assertion that its claim for tax refund is not premised under Section 204 and 299 of the NIRC but on the principles of "unjust enrichment" and "*solutio indebiti*". Petitioner is misguided when it relied on unjust enrichment" and "*solutio indebiti*" under Article 2154[10] in relation to Article 1145[11] of the New Civil Code of the Philippines.

Between the New Civil Code, on one hand, which is a general law and the National Internal Revenue Code (NIRC) of 1997, which is special law governing national internal revenue taxes, effective January 1, 1998, the latter prevails. It has always been the rule that on a specific matter, the special law shall prevail over the general law, which, shall be resorted only, to supply deficiencies in the former. Also, where there are two (2) statutes, the latter a special law and the former a general law- it shall be construed to mean that the terms of the general law is broad enough to include the matter provided for in the special law. The fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. It is a canon in statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. [12]

The tax which petitioner seeks to refund falls under the National Internal Revenue Code, hence, it governs the period of limitation and not the Civil Code. Likewise, petitioner would not have invoked the special jurisdiction of this Court, which is dedicated exclusively for the resolution of tax problems, if the ground from which such claim is made does not involve a tax refund but rather an ordinary claim of *solutio indebiti.*

Moreover, in the case of *Commissioner of Internal Revenue vs. Manila Electric Co.*[13], the supreme Court ruled that *solutio indebiti* applies when payment is made when

---

[10] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return arises."
[11] Art. 1145. The following actions must be commenced within six years:
(1) Upon an oral contract;
(2) Upon a quasi-contract.
[12] Commissioner of Internal Revenue vs. PAL, G.R. No. 180066, July 7, 2009
[13] G.R. No. 181459, June 9, 2014.

L

there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment, to wit:

> *"In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi contract or solutio indebiti under Article 1145 of the New Civil Code. 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. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of solutio indebiti is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.*
>
> *Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "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.""*

In this case, at the time CGT was paid and withheld, there is a binding relation between respondent CIR as the taxing authority in this jurisdiction and petitioner, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Thus, We find that the Court in Division correctly ruled as follows:

> *"xxx, [W]hen the CGT was withheld and paid on October 5, 2004, the 2-year period to file a claim for refund has already started. The execution of the said Compromise Agreement on December 4, 2014, and the subsequent cancellation of the sale of property from which the CGT arose, is precisely a "supervening cause that occurs after payment" which should be disregarded in determining the prescriptive period. This is in accordance with the clear provision of Section 229 that claims for refund must be filed within two years after the date of*

payment of the tax, regardless of any supervening cause that may arise after such payment. Clearly, petitioner's claim for refund was filed out of time and must be denied."

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.

WHEREFORE, premises considered, the Petition for Review docketed as CTA EB No. 2002 is **DENIED** for lack of merit. Accordingly, the Decision dated October 4, 2018 and Resolution dated January 4, 2019 by the Special Second Division of this Court in CTA Case No. 9509 are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice