REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10899

CAL-COMP PRECISION (THAILAND) LIMITED,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MCLAIR D. GARCIA
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ROQUE LAW FIRM
19th Floor, Tower I, The Enterprise Center
6766 Ayala Avenue, Makati City

GREETINGS:

You are hereby notified by these presents that on **May 8, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 9, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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CAL-COMP PRECISION (THAILAND) LIMITED,
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- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10899**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 08 2025; 10:40AM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration [Decision dated 19 November 2024]"[1] (**MR**) filed on 09 December 2024, with "Comment/Opposition [Re: Respondent's Motion for Reconsideration dated 19 November 2024]"[2] (**Comment/Opposition**) filed by petitioner Cal-Comp Precision (Thailand) Limited (**petitioner**) on 27 January 2025.

The MR questions the Decision promulgated on 19 November 2024[3] (**assailed Decision**) which granted petitioner's prayer for refund of ₱33,104,921.71, representing erroneously paid capital gains tax (**CGT**) on the sale of Cal-Comp Precision (Philippines), Inc.'s (**CPPH's**) shares to Cal-Comp Precision (Singapore) (**CPSG**), by virtue of its exemption

1 Division Docket, Volume III, pp. 1561-1576.
2 Id., pp. 1582-1597.
3 Id., pp. 1533-1560.

pursuant to the Article 13(4)[4] in relation to Article 13(5)[5] of the "Convention between the Government of the Republic of the Philippines and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income" (**Philippines-Thailand Tax Treaty**).

In the MR, respondent contends that this Court erred in assuming jurisdiction over the case. Reiterating the arguments in the previous Memorandum, respondent asserts that petitioner failed to exhaust its administrative remedies before elevating its claim before this Court. He or she also explains that petitioner did not afford him or her ample time or opportunity to act on its administrative claim in violation of Revenue Memorandum Order (**RMO**) No. 14-2021.[6] Under the said RMO, tax treaty relief applications are to be processed in four (4) months from the applications' submission. Thus, when petitioner filed its judicial claim only four (4) days after it filed its administrative claim, it effectively denied respondent a fair chance to rule on the same.

Respondent adds that a taxpayer should not merely initiate the prescribed administrative procedure but await the agency's conclusion on the matter protested or appealed. Otherwise, it will end up to the former's premature resort to a judicial intervention.

Repeating the second contention in the Memorandum, respondent insists that petitioner failed to prove that CPPH is a domestic corporation whose assets do not principally consist of immovable properties located in the Philippines (as of the date of sale pursuant to Article 13 of the Philippines-Thailand Tax Treaty). He or she maintains that petitioner should have presented a lapsing schedule or an interim Audited Financial Statement (**AFS**) as of 02 June 2020, or the exact date of the alienation of shares. Without any concrete and convincing evidence to prove its tax exemption, petitioner's refund claim must fail.

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4 4. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

5 5. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2, 3, 4 of this Article and paragraph 3 of Article 12 (Royalties) shall be taxable only in the Contracting State of which the alienator is a resident.

6 Streamlining the Procedures and Documents for the Availment of Treaty Benefits.

On the other hand, petitioner avers that the Court properly assumed jurisdiction over the claim for tax refund. It posits that as long as both the administrative and judicial claims were filed within the two (2)-year period pursuant to Sections 204[7] and 229[8] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, this Court may take cognizance of the refund claim.

Moreover, Section 229 of the same law does not require any prior decision from the filed administrative claim before a judicial recourse may be sought. Citing *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*[9] (**Goodyear**), petitioner stresses that as long as an administrative claim is filed, it may appeal the judicial claim immediately before the expiration of the two (2)-year prescriptive period, otherwise its claim for refund will be barred.

Petitioner also posits that it has sufficiently established all the elements and/or requisites that will entitle it to a refund or to the issuance of a Tax Credit Certificate (**TCC**) under Article 13 of the Philippine Thailand Tax Treaty. Enumerating all the documents it presented, it counters that it was able to prove that the CGT arises from an alienation of a shares of a company, the property of which does not principally consists of immovable properties situated in the Philippines. Apart from it, it also submitted the Certificate of Entitlement to Treaty Benefits (**COE**) from the Bureau of Internal Revenue's (**BIR**'s) International Tax Affairs Division (**ITAD**) which confirmed that the alienation of the shares is exempted from CGT.

Lastly, quoting the assailed Decision, petitioner declares that under Revenue Regulations (**RR**) No. 4-86[10], the term "principally" refers to more than 50% of the entire assets in terms of value. However, considering that CPPH only had 11.87% of immovable property interest as of 31 May 2020, its assets thus do not principally consist of immovable properties located in the Philippines.

We resolve.

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[7] **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*
[8] **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*
[9] G.R. No. 216130, 03 August 2016.
[10] Determination of Whether the Assets of a Corporation Consist Principally of Real Property Interest under the Philippine Tax Treaties.

After an examination of the parties' assertions, We do not find any substantial matters that warrants the deviation or modification of Our assailed Decision.

A perusal of respondent's arguments reveal that these are mere reiterations of those previously raised and already passed upon in the assailed Decision. Although it is futile to again address these issues, We recapitulate Our previous discussions.

For the issue of jurisdiction, We agree with petitioner that a taxpayer-claimant does not need to await the BIR's decision on the claim of refund before he or she can file the judicial claim. We restate our assailed Decision[11] –

> ...
>
> The Court is also unconvinced that petitioner failed to exhaust the administrative remedies before elevating its claim to this Court. In the case of [*Goodyear*], the Supreme Court ruled that Section 229 of the NIRC of 1997, as amended, does not require the taxpayer to await the CIR's resolution on the administrative claim before filing its judicial claim –
>
> > ...
> >
> > At the onset, petitioner contends that by filing the administrative and judicial claims only 13 days apart, respondent, in effect, pursued an empty remedy before the BIR, and thereby deprived the latter of the opportunity to ascertain the validity of the claim. In this regard, petitioner maintained that the mere filing of the administrative claim before the BIR did not outrightly satisfy the requirement of exhaustion of administrative remedy.
> >
> > The contentions are untenable.
> >
> > Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR), *viz.*:
> >
> > > SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – **<u>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</u>** or illegally assessed or

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[11] Citation omitted. emphasis. italics and underscoring in the original text.

> **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** x x x.

Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – [then Section 306 of the old Tax Code] – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. In *CBK Power Company, Ltd. v. CIR,* the Court enunciated:

> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener),* wherein it was held that in **no wise does the law,** *i.e.*, Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action.** In *Kiener,* the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow** x x x.

In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period. Notably, Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have

> resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.
>
> Thus, in view of the aforesaid circumstances, respondent correctly and timely sought judicial redress, notwithstanding that its administrative and judicial claims were filed only 13 days apart.
>
> ...

As for respondent's second argument, apart from the repeated allegation, he or she does not present any contrary proof that CPPH's assets principally consist of immovable properties in the Philippines. He or she only insists that petitioner should have presented documents as of the date of sale, *i.e.*, 02 June 2020. However, Section 4[12] of RR No. 4-86 allows for the presentation of the most recent financial statement after the necessary adjustments are made to reflect transactions made during the period from the date of such financial statement to the date of the sale.

In this case, petitioner submitted CPPH's AFS for the year ended 31 December 2019[13], CPPH's Interim FS as of 31 May 2020[14], and CPPH's Lapsing Schedule as of 31 May 2020[15] to establish that CPPH's assets do not consist principally of real property interests or immovable properties located in the Philippines. Although admittedly there is a two (2) day variance from the date of the Interim AFS and Lapsing Schedule, to the date of sale, respondent did not present any evidence to show that significant transactions may have occurred on 01 June 2020 and 02 June 2020 to materially alter the composition of CPPH's the immovable assets.

In civil cases, the burden of proof rests upon the plaintiff who must establish their case by preponderance of evidence.[16]. Preponderance of evidence is the evidence that is of greater weight, or

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12 SEC. 4. *Basis*. — The value of all the assets of the subject corporation both real and personal as appearing in its financial statement on the date of sale of the share or interest in such corporation, as verified by the BIR, shall be used as the basis for determining the composition of its assets.

In case the financial statement as of the date of the sale is not available, the most recent financial statement may be used, after the necessary adjustments are made to reflect transactions made during the period from the date of such financial statement to the date of the sale.

13 Exhibit "P-27", Division Docket, Volume II, pp. 988-1032.

14 Exhibit "P-28", id., pp. 1033-1034.

15 Exhibit "P-29", id., pp. 1035-1098.

16 *Spouses Eugenio Ponce and Emiliana Nerosa v. Jesus Aldanese*, G.R. No. 216587, 04 August 2021.

more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence.[17] Once the plaintiff makes out a *prima facie* case in his or her favor in the course of the trial, however, the duty or the burden of evidence shifts to the defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff.[18]

Here, with petitioner's submission of the relevant documents vis-à-vis respondent's mere blind declaration, We are more convinced that CPPH's assets as of 31 December 2019 and 31 May 2020[19] do not principally consists of immovable properties located in the Philippines.

WHEREFORE, the foregoing premises considered, the "Motion for Reconsideration [Decision dated 19 November 2024]" filed by respondent Commissioner of Internal Revenue on 09 December 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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17 Id.

18 Id.

19 See summary of properties and amount in the table below as lifted from the Decision of 19 November 2024:

Description	**AFS as of 31 December 2019**	**Interim FS as of 31 May 2020**
Machinery	$-	$-
Leasehold Improvements	6,926,369.00	7,364,867.81
Other Equipment	-	-
Transportation Equipment	-	-
Construction in Progress	-	-
Right-of-use	5,232,943.00	4,740,965.00
Total Immovable Property	**$12,159,312.00**	**$12,105,832.81**
Total Assets	**$104,128,067.00**	**$101,965,581.00**
% of immovable property interest	**11.68%**	11.87%

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice