REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

## *Third Division*

**NEW COAST HOTEL, INC.,**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 9146**

Members:
**BAUTISTA**, *Chairperson*
**FABON-VICTORINO**, *and*
**RINGPIS-LIBAN**, *JJ.*

Promulgated:
SEP 19 2017
4:00 p.m.

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# *DECISION*

***BAUTISTA, J.:***

## *The Case*

This is a Petition for Review[1] filed on September 16, 2015, pursuant to *Section 7(a)(1)*[2] *of Republic Act ("RA") No. 1125*[3], as amended, praying that judgment be rendered ordering respondent to refund or to issue a tax credit certificate ("TCC") in favor of petitioner the amount of Php592,273.32, representing alleged illegally or erroneously assessed or collected deficiency expanded withholding tax ("EWT") for the month of August 2012, which was paid under protest on December 1, 2014.[4]

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[1] *Records, CTA Case No. 9146, Petition for Review ("PFR")*, pp. 10-75, with annexes.

[2] SEC. 7. *Jurisdiction*. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] *Records, PFR, Prayer*, p. 26.

## *The Parties*[5]

Petitioner New Coast Hotel, Inc., doing business under the name and style of New World Manila Bay Hotel,[6] is a corporation duly organized and existing under the laws of the Philippines, with principal office address at 5th Floor, New World Manila Bay Hotel, 1588 M. H. del Pilar corner Pedro Gil Streets, Malate, City of Manila. Its primary purpose is "[t]o own, operate, lease or manage one or more hotels, inns or resorts, all adjuncts and accessories thereto, and any and all other businesses as may be necessary and desirable in connection therewith; to maintain any and all services and facilities incident to the foregoing, including but not limited to the operation and maintenance of restaurants, bars, cafes, business centers, barbershops, gifts, souvenir and curio shops, boutiques, beauty shops, gyms, golf courses, tennis and pelota courts, swimming pools, other sports and recreational facilities, automobiles, buses, motorboats and tourist-oriented services; and to do and perform any and all things for the pleasure, comfort, convenience and amusement of guests in said hotels, inns or resorts."[7]

Respondent is the duly appointed Commissioner of Internal Revenue[8] ("CIR") vested with authority to carry out all the functions, duties, and responsibilities of said office, including, *inter alia*, the power to approve and grant claims for refund of erroneously assessed or collected internal revenue taxes, and to decide disputed assessments, pursuant to the provisions of the *1997 National Internal Revenue Code*[9]*, as amended ("1997 NIRC")*, and other tax laws, rules and regulations. Respondent holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

## *The Facts*

On August 11, 2012, petitioner filed its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E) for the month of July 2012[10] ("July EWT Return") through

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[5] *Records, Joint Stipulation of Facts and Issues ("JSFI"), Admitted Facts, pars. 1-2,* pp. 217-218.
[6] *Id., Exhibit "P-1," Certificate of Filing of Amended Articles of Incorporation ("AOI") issued by the Securities and Exchange Commission ("SEC"),* p. 258.
[7] *Id., Annex: Amended AOI,* p. 260.
[8] Formerly her Honorable Commissioner of Internal Revenue ("CIR") Kim S. Jacinto-Henares, now his Honorable CIR Ceasar R. Dulay.
[9] Republic Act No. 8424, January 1, 1998.
[10] *Records, Exhibit "P-3," July Expanded Withholding Tax ("EWT") Return,* pp. 273-276.

the Electronic Filing and Payment System ("eFPS") of the BIR, where it reported EWT in the amount of Php947,273.49. The EWT was paid on August 13, 2012.[11]

On September 5, 2012, petitioner filed an amended Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E) for the month of July 2012[12] ("July Amended EWT Return") through the eFPS of the BIR, where it reported EWT in the amount of Php606,504.33[13], and provided as tax payment the amount previously remitted *per* July EWT Return of Php947,273.49[14]; thus, resulting to an over remittance of Php340,769.16[15]. In the July Amended EWT Return, petitioner indicated its intention to refund the over remittance by marking the "To be Refunded" box.[16]

On September 13, 2012, petitioner filed its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E) for the month of August 2012[17] ("August EWT Return") through the eFPS of the BIR, where it reported EWT in the amount of Php577,147.73[18]. It applied as credit the Php340,769.16[19] over remittance *per* July Amended EWT Return, and paid the balance of Php236,378.57[20].

Thereafter, on March 20, 2014,[21] petitioner received a Preliminary Notice[22] dated March 12, 2014 from the Large Taxpayers - Document Processing and Quality Assurance Division ("LT-DPQAD") issued by Mr. Alfredo V. Misajon ("Mr. Misajon"), Officer-in-Charge ("OIC")-Assistant Commissioner, Large Taxpayers Service ("LTS") of the BIR, with an attached Audit Results/Assessment Notice[23] dated March 10, 2014, stating that petitioner's August EWT Return cannot be processed due to underpayment of tax in the amount of Php340,769.16, plus penalty of Php205,757.07.

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[11] *BIR Records, Payment Confirmation,* pp. 16-18.
[12] *Records, Exhibit "P-4," July Amended EWT Return,* pp. 277-278.
[13] *See Records, Exhibit "P-4," July Amended EWT Return, Line 14,* p. 278.
[14] *See Records, Exhibit "P-4," July Amended EWT Return, Line 15A,* p. 278; *Records, Exhibit "P-3," July EWT Return, Line 18,* p. 275.
[15] *See Records, Exhibit "P-4," July Amended EWT Return, Line 16,* p. 278.
[16] *Records, Exhibit "P-4," July Amended EWT Return,* p. 278.
[17] *Id., Exhibit "P-5," August EWT Return,* pp. 279-280.
[18] *See Records, Exhibit "P-5," August EWT Return, Line 14,* p. 280.
[19] *See Records, Exhibit "P-5," August EWT Return, Line 15B,* p. 280; *Records, Exhibit "P-4," July Amended EWT Return, Line 18,* p. 278.
[20] *See Records, Exhibit "P-5," August EWT Return,* p. 279.
[21] *Records, Exhibit "P-14," Sword Statement of Mr. Alejandro M. Naldoza, A10 & A20,* pp. 183, 187.
[22] *Id., Exhibit "P-6," Preliminary Notice,* p. 281.
[23] *Id., Attachment: Audit Results/Assessment Notice,* p. 282.

On March 26, 2014, petitioner responded through a letter[24] dated March 25, 2014, addressed to Mr. Misajon of LT-DPQAD, explaining the nature of the alleged underpayment.

On May 6, 2014, petitioner received a letter[25] dated April 1, 2014 from Mr. Misajon, stating that offsetting of EWT is not allowed; and that, thus, petitioner is advised to pay the total assessed amount of Php546,526.23. In the said letter, petitioner was also advised to formally request for a refund or for the issuance of a TCC on the overpayment made in its remittances of EWT in July at the Large Taxpayers Regular Audit Division 2 ("LTRAD 2") of the BIR.[26]

On May 29, 2014, petitioner submitted a letter[27] dated May 28, 2014, addressed to Mr. Misajon of LT-DPQAD, requesting for reconsideration of the letter dated April 1, 2014.

Thereafter, on June 5, 2014, petitioner filed a letter[28] addressed to the CIR, praying for the cancellation and withdrawal of the assessment made by LT-DPQAD for deficiency EWT for the month of August 2012 *per* letter dated April 1, 2014.

Without waiting for the decision of the CIR, on December 1, 2014, petitioner paid the Php592,273.32 amount representing the alleged deficiency EWT for the month of August 2012, inclusive of surcharge, interest, and compromise penalty.[29]

Subsequently, on March 3, 2015, petitioner submitted a letter[30] dated February 27, 2015 with the CIR, stating that it already paid the alleged deficiency EWT, but nevertheless, maintains its previous appeal; and that, it is requesting for the refund or issuance of a TCC for the erroneously paid or collected EWT for the month of August 2012 in the total amount of Php592,273.32.

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[24] *Records, Exhibit "P-7," Letter Re: Preliminary Notice,* pp. 283-293, with annexes.
[25] *Id., Exhibit "P-8," Letter Re: Offsetting,* p. 294.
[26] *Id.*
[27] *Id., Exhibit "P-9," Request for Reconsideration to Mr. Misajon,* pp. 295-299.
[28] *Id., Exhibit "P-10," Request for Cancellation of Assessment,* pp. 300-305.
[29] *Records, Exhibit "P-11," Payment Form,* pp. 306-307; *Records, Exhibit "P-11-1," Payment Confirmation,* p. 308.
[30] *Records, "P-12," Letter Request for Refund,* pp. 309-310; *BIR Records, Letter Request for Refund,* pp. 1-5, with annexes.

On June 30, 2015, petitioner received Letter of Authority[31] ("LOA") No. 125-2015-00000027 SN: eLA201100086791 dated June 15, 2015, issued by Mr. Nestor S. Valeroso ("Mr. Valeroso"), OIC-Assistant Commissioner of the LTS, authorizing Revenue Officer ("RO") Janice Joy So and Group Supervisor ("GS") Fe Caling to examine petitioner's books of accounts and other accounting records for EWT for the period of August 2012 pursuant to Mandatory Claims for Tax Credit on Erroneous/Double Tax Payments.

On July 6, 2015, petitioner filed a letter[32] addressed to Mr. Mitchell L. Yu, Chief, LTRAD 2 of the BIR, in response to the LOA, and reiterated its request for the granting of the claim for refund or issuance of a TCC.

On August 17, 2015, petitioner received an undated letter[33] signed by Mr. Valeroso, denying its claim for refund or issuance of a TCC for the alleged erroneous payment of EWT in the amount of Php592,273.32 for lack of legal basis.

Consequently, on September 16, 2015, petitioner filed the instant Petition for Review.[34]

After being granted extension,[35] respondent filed his Answer[36] on November 13, 2015, interposing the following Special and Affirmative Defenses: *(1)* that the Court has no jurisdiction to hear the case because the claim for refund was filed out of time; *(2)* that assuming that the Court has jurisdiction over the present controversy, the CIR has authority to ascertain the correctness of the tax return; *(3)* that there was no erroneous or unlawful payment of tax by petitioner for the month of August 2012; *(4)* that the application of the excess EWT for the month of July, as credit against petitioner's EWT liability for the month of August, is improper for lack of legal basis; *(5)* that petitioner's alleged reliance on the advice of the BIR RO cannot set aside its liability to pay the correct and exact amount of EWT for the month of August; and *(6)* that it is incumbent

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[31] *BIR Records, Exhibit "R-1," Letter of Authority ("LOA"),* p. 9.
[32] *Id., Reply to LOA,* pp. 10-86, with annexes.
[33] *Records, Exhibit "P-13," Letter Denying Request for Refund,* pp. 311-312; *BIR Records, Exhibit "R-3," Letter Denying Request for Refund,* pp. 100-101.
[34] *Records, PFR,* pp. 10-75, with annexes.
[35] *Records, Motion for Extension to File Answer,* pp. 78-82; *Records, Resolution,* p. 84.
[36] *Records, Answer,* pp. 85-98.

upon petitioner to prove that it is entitled to the refund sought, which it failed to do.

Petitioner and respondent filed their Pre-Trial Briefs on February 18, 2016[37] and February 17, 2016[38], respectively.

On March 14, 2016, the parties filed their Joint Stipulation of Facts and Issues[39] ("JSFI"); and, a Pre-Trial Order[40] was issued on April 27, 2016.

Trial ensued. Thereafter, on June 1, 2016, petitioner filed its Formal Offer of Evidence[41] ("FOE"), offering *Exhibits* "P-1," "P-2," "P-3," "P-4," "P-5," "P-6," "P-7," "P-8," "P-9," "P-10," "P-11," "P-11-1," "P-12," "P-13," "P-14," and "P-14-1" as evidence. This was resolved by the Court in a Resolution[42] dated July 11, 2016, admitting all of the foregoing exhibits.

On August 1, 2016, respondent filed his FOE[43], offering *Exhibits* "R-1," "R-2," "R-3," "R-4," and "R-4-a" as evidence. The Court admitted all the offered evidence in a Resolution[44] dated September 8, 2016.

Respondent filed his Memorandum[45] on October 19, 2016 *via* registered mail; and after being granted extension,[46] on November 2, 2016, petitioner also filed its Memorandum[47].

On November 7, 2016, the Court promulgated a Resolution[48] submitting the case for decision; hence, this Decision.

## *The Issues*[49]

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[37] *Records, Petitioner's Pre-Trial Brief,* pp. 124-200, with annexes.
[38] *Id., Respondent's Pre-Trial Brief,* pp. 107-112.
[39] *Id., JSFI,* pp. 217-222.
[40] *Id., Pre-Trial Order ("PTO"),* pp. 225-230.
[41] *Id., petitioner's Formal Offer of Evidence ("FOE"),* pp. 249-312, with annexes.
[42] *Id., Resolution,* pp. 331-332.
[43] *Records, respondent's FOE,* pp. 336-341.
[44] *Id., Resolution,* pp. 346-347.
[45] *Id., respondent's Memorandum,* pp. 354-370.
[46] *Records, Motion for Extension of Time to File Memorandum,* pp. 348-350; *Records, Resolution,* p. 352.
[47] *Records, petitioner's Memorandum,* pp. 371-393.
[48] *Id., Resolution,* p. 399.
[49] *Id., PTO, Issues,* p. 226.

WHETHER OR NOT THE COURT HAS JURISDICTION OVER THE INSTANT CASE;

WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OR FOR ISSUANCE OF A TCC IN THE AMOUNT OF PHP592,273.32, REPRESENTING ALLEGED ILLEGALLY OR ERRONEOUSLY ASSESSED OR COLLECTED DEFICIENCY EWT FOR THE MONTH OF AUGUST 2012, INCLUSIVE OF SURCHARGE, INTEREST, AND COMPROMISE PENALTY, WHICH WAS PAID UNDER PROTEST BY PETITIONER ON DECEMBER 1, 2014.

WHETHER OR NOT RESPONDENT'S DEFICIENCY EWT ASSESSMENT AGAINST PETITIONER FOR THE MONTH OF AUGUST 2012 IS VALID; AND

WHETHER OR NOT PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR FOR ISSUANCE OF A TCC IN THE AMOUNT OF PHP592,273.32, REPRESENTING ILLEGALLY OR ERRONEOUSLY ASSESSED OR COLLECTED DEFICIENCY EWT FOR THE MONTH OF AUGUST 2012, INCLUSIVE OF SURCHARGE, INTEREST, AND COMPROMISE PENALTY, WERE FILED WITHIN THE TWO (2)-YEAR PRESCRIPTIVE PERIOD UNDER THE *1997 NIRC.*

***Petitioner's Arguments***[50]

Petitioner avers that the Court has jurisdiction over the present controversy because both administrative and judicial claims for refund of illegally or erroneously assessed or collected deficiency EWT for the month of August 2012 were filed within the two (2)-year prescriptive period prescribed under *Sections 204(C) and 229 of the 1997 NIRC.*

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[50] *Records, petitioner's Memorandum, Petitioner's Arguments,* pp. 378-379.

Petitioner claims that there is no basis for respondent to assess or collect the alleged deficiency EWT for the month of August 2012. According to petitioner, there was no valid assessment because the Preliminary Notice does not qualify as an assessment notice under *Section 3*[51] *of Revenue Regulations ("RR") No. 12-1999*[52] for failure to contain a definite and unequivocal demand for the payment of deficiency taxes; and that, even assuming for the sake of argument that the tenor of the letter dated April 1, 2014 constitutes a definite and unequivocal demand for the payment of deficiency taxes, the same may not be a valid substitute for a Formal Letter of Demand or Final Assessment Notice ("FLD/FAN"), more so, that no assessment notice was attached thereto.

Petitioner further asserts that there is no basis for respondent to disallow the application of the excess EWT *per* July Amended EWT Return as credit against its EWT due for the month of August because there is no express prohibition on offsetting of EWT in the *1997 NIRC* or in any administrative regulation; and that, said application as credit does not violate the Trust Fund Doctrine of the withholding tax system because the Php340,760.16 amount has already been remitted and paid in advance to the government when it filed its July EWT Return.

Finally, petitioner submits that it is inequitable for respondent to hold petitioner liable for deficiency EWT for the month of August 2012 when its actions were taken pursuant to the recommendation of respondent's RO.

***Respondent's Counter-Arguments***[53]

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[51] SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* -

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> 3.1.4 *Formal Letter of Demand and Assessment Notice.* - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof).

[52] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[53] *Records, respondent's Memorandum, Arguments/Discussion,* pp. 356-366.

Respondent counters that there was no erroneous or unlawful payment of deficiency EWT for the month of August 2012. It is the view of respondent that, since the total EWT due for the month of August is Php577,147.73, and petitioner remitted only Php236,378.57, necessarily, it had deficiency EWT of Php340,769.16; and after computing the surcharge, interest, and compromise penalty, the total amount of deficiency liability is Php592,273.32.

Respondent maintains that it is improper and illegal for petitioner to claim as credit against its EWT due for the month of August the alleged excess EWT paid in the month of July considering that automatic offsetting is not sanctioned by law; and that, as result of such act, petitioner violated the Trust Fund Doctrine of the withholding tax system.

With regard to the alleged excess EWT paid for the month of July 2012, which, respondent claims, is not the subject matter of the present controversy, respondent asserts that petitioner is given only two (2) options under *Sections 204(C) and 229 of the 1997 NIRC*, that is, to file a claim for refund or for the issuance of a TCC. According to respondent, these options are consistent with *Section 2.58.1*[54] *of RR No. 2-1998*[55] and as ruled in the case of *Commissioner of Internal Revenue v. Goulds Pumps (Phils.), Inc.*[56] Respondent avers that petitioner should know the proper remedy in case of excess payment of tax, and not merely rely on the advice of the RO.

Respondent insists that the Court is bereft of jurisdiction to try the case since the claim for refund has prescribed. Citing the case of *ACCRA Investments Corporation v. Court of Appeals*[57] *("ACCRA Investment")*, respondent asserts that the two (2)-year prescriptive

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[54] SECTION 2.58.1. *Income of Recipient.* – Income upon which any creditable tax is required to be withheld at source shall be included in the return of its recipient. The excess of the withheld tax over the tax due on his return shall be refunded to him subject to the authority of the Commissioner to refund taxes under Sec. 204 of the NIRC. If the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Sec. 56 of the Code.

The taxes withheld by the withholding agents shall be maintained in separate accounts and should not be commingled with any other funds of the withholding agent. They shall be considered as a trust fund held for government until they are remitted.

[55] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

[56] CTA *EB* Case No. 784 (CTA Case No. 7057), August 22, 2012.

[57] G.R. No. 96322, December 20, 1991, 204 SCRA 957.

period should commence from September 10, 2012, or the last day for filing of the August EWT Return, and thus, petitioner had only until September 10, 2014 to file its claim for refund or for the issuance of a TCC with the BIR, and with the Court. Since the claim was filed with the BIR only on March 3, 2015, and with the Court on September 16, 2015, respondent claims that both administrative and judicial claims were filed out of time.

Respondent further asserts that it has authority to ascertain the correct amount of tax due pursuant to *Sections 5*[58] *and 6*[59] *of the 1997 NIRC*; and that, the payment of deficiency EWT for the month of August was legally collected by respondent.

Finally, respondent emphasized that claims for refund are construed strictly against the claimant since they partake of the nature of tax exemption, and as such, they are looked upon with disfavor; and that they are construed *strictissimi juris* against the person or entity claiming the exemption.

## *The Ruling of the Court*

**The Court has jurisdiction over the present case.**

*Section 204(C)* in relation to *Section 229 of the 1997 NIRC* requires that the filing of both administrative and judicial claims for refund be filed within two (2) years from the date of payment of the tax. The relevant provisions read:

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[58] SEC. 5. *Power of the Commissioner to Obtain Information and to Summon/Examine, and Take Testimony of Persons.* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record, or other data which may be relevant to such inquiry;

[59] SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*

(A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

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> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. <u>No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty</u>; *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> 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.
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> In any case, <u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment</u>; *Provided, however,* That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the fact of the return upon which payment has been made, such payment appears clearly to have been erroneously paid.[60]

Corollary thereto, *Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals*[61] *("RRCTA")* provides the following:

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[60] Underscoring ours.
[61] A.M. No. 05-11-07-CTA, November 22, 2005.

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> SEC. 3. *Who may appeal; period to file petition.* - (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or the expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[62]

Respondent argues that, invoking the *ACCRA Investment* case, the two (2)-year prescriptive period for the filing of a claim for refund or issuance of a TCC commences to run from the date of filing of the final adjustment return. Accordingly, respondent is of the view that, since the subject of the claim for refund or issuance of a TCC is the deficiency EWT due for the month of August 2012, where the deadline for the filing of the return is September 10, 2012, the filing of petitioner's administrative claim on March 3, 2015, and judicial claim on September 16, 2015, were made out of time.

The Court does not agree.

A cursory reading of the *ACCRA Investment* case reveals the reason why the two (2)-year prescriptive period was counted from the filing of the final adjustment return, *viz.*:

> Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated

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[62] Underscoring ours.

> April 10, 1989 in the case of *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.* (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
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> It bears emphasis at this point that <u>the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment," therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.</u>[63]

Similarly, in the case of *Commissioner of Internal Revenue v. TMX Sales, Inc., et. al*,[64] the Supreme Court held in this wise:

> It is generally recognized that before an accountant can make a certification on the financial statements or render an auditor's opinion, an audit of the books of accounts has to be conducted in accordance with generally accepted auditing standards.
>
> Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the Final Adjustment Return, where the figures of the gross receipts and deductions have been audited and adjusted, that is truly reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.

In the aforesaid cases, the premise is that the taxpayer would know if there is a refundable amount only after a final adjustment return is filed. This is not so in the case of petitioner.

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[63] Underscoring ours.
[64] G.R. No. 83736, January 15, 1992, 205 SCRA 184.

Unlike in the said cases, petitioner did not wait for the filing of its final adjustment return for the month of August 2012 to know whether a tax refund or the issuance of a TCC can be claimed. It is only when petitioner received the Preliminary Notice[65] that it became aware that its act of applying as credit the excess EWT *per* July Amended EWT Return[66] is improper for the BIR; thus, resulting to an under payment of EWT due for the month of August. Considering that its reasoning of remitting only Php236,378.57, instead of Php577,147.73, was vehemently ignored by the BIR, petitioner paid the alleged under payment, but under protest, on December 1, 2014.

Considering the circumstances, the question now is: when shall the two (2)-year prescriptive period be reckoned?

The Court holds that the same shall be counted from December 1, 2014, or the "date of the payment of the tax" pursuant to *Sections 204(C) and 229 of the 1997 NIRC*. It must be remembered that the subject of the claim for refund or issuance of a TCC is the alleged overpaid EWT for the month of August 2012 which was paid under protest by petitioner on December 1, 2014, as evidenced by Payment Form (BIR Form No. 0605)[67] and payment confirmation[68] from the BIR, under the belief that the same has already been paid in advance when petitioner remitted the amount of Php947,273.49, instead of only Php606,504.33 when it filed its July EWT Return. Petitioner is not claiming for the refund or for the issuance of a TCC of a tax erroneously or illegally paid or collected when it filed its August EWT Return. In fact, there is no overpaid tax in its August EWT Return[69]. Considering that the amount sought to be refunded is the Php592,273.32 which petitioner paid under protest on December 1, 2014 , the two (2)-year period shall commence only from that date.

As applied to the present case, the Court holds that petitioner timely filed its administrative and judicial claims for refund of erroneously or illegally assessed or collected EWT, the relevant dates of which are summarized as follows:

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[65] *Records, Exhibit "P-6," Preliminary Notice,* p. 281.
[66] *Id., Exhibit "P-4," July Amended EWT Return,* pp. 277-278.
[67] *Id., Exhibit "P-11," Payment Form,* pp. 306-307.
[68] *Id., Exhibit "P-11-1," Payment Confirmation,* p. 308.
[69] *Id., Exhibit "P-5," August EWT Return,* pp. 279-280.

| DATE OF PAYMENT | DATE OF FILING OF ADMINISTRATIVE CLAIM | DATE OF RECEIPT OF DENIAL OF CLAIM | DATE OF FILING OF PETITION FOR REVIEW | LAST DAY TO FILE BOTH CLAIMS |
|---|---|---|---|---|
| December 1, 2014 | March 3, 2015 | August 17, 2015 | September 16, 2015 | December 1, 2016 |

Apparently, the administrative claim filed on March 3, 2015 and the judicial claim filed on September 16, 2015 were timely made before the due date falling on December 1, 2016. Moreover, the Petition for Review was filed within thirty (30) days from the date of receipt of the denial of petitioner's claim.

Having settled the foregoing, it is evident that the Court has jurisdiction to try the present controversy.

**Petitioner is not entitled to the refund or issuance of a TCC in the amount of Php592,273.32.**

Central to the resolution of the issue, on whether petitioner is entitled for the refund or issuance of a TCC, is whether the Php592,273.32 amount paid under protest was validly collected by respondent. The Supreme Court has consistently ruled that tax collection should be premised on a valid assessment, which would allow the taxpayer to present his/her/its case and produce evidence for substantiation.[70] Thus, the issuance of a valid formal assessment is a substantive pre-requisite for collection of taxes.[71]

On the other hand, it must also be remembered that the right of taxpayers to question the validity of an assessment, which may have resulted in the collection of taxes, is subject to the rule that the same must be brought to the proper forum within the period prescribed by law. It is a well settled rule that that the perfection of an appeal, in the manner and within the prescribed period fixed by law, is not only mandatory but also jurisdictional, and non-compliance with these legal requirements is fatal to a party's cause.[72]

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[70] *Commissioner of Internal Revenue v. Fitness by Design, Inc.* G.R. No. 215957, November 9, 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 28, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113.

[71] *Commissioner of Internal Revenue v. Fitness by Design, Inc.* G.R. No. 215957, November 9, 2016.

[72] *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, July 11, 2012, citing *Yao v. Court of Appeals*, G.R. No. 132425, October 24, 2000, 344 SCRA 202; *Pea v. Government Service Insurance System*, G.R. No. 159520, September 19, 2006, 502 SCRA 383.

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*Section 3.1.5 of RR No. 12-1999*[73], which implemented *Section 228*[74] *of the 1997 NIRC*, provides for the procedure for protesting an assessment, the pertinent provision of which reads:

> 3.1.5 *Disputed Assessment.* -
>
> xxx xxx xxx
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: *Provided, however,* that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.[75]

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[73] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[74] SEC. 228. *Protesting of Assessment.* -

> xxx xxx xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[75] Underscoring ours.

Corollary thereto, *Section 3(A)(2), Rule 4 of the RRCTA* provides as follows:

> SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputes assessments, ... *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; ...
>
> xxx xxx xxx

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[76], citing *RCBC v. Commissioner of Internal Revenue*[77], the Supreme Court explained the remedy of filing an appeal with the CTA in case of inaction by the CIR on disputed assessments, to wit:

> Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law

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[76] G.R. No. 171251, March 5, 2012, 667 SCRA 455.
[77] G.R. No. 168498, April 24, 2007, 522 SCRA 144.

and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.

It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate - the taxpayer has two options, either: (1) to file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, these options are mutually exclusive and resort to one bars application of the other.[78]

Thus, the CIR's duly authorized representative has one hundred eighty (180) days from submission of documents in support of the protest, or from filing of the protest if no supporting documents are submitted, to decide. If the taxpayer is dissatisfied with the denial on the protest, he/she/it has thirty (30) days within which to appeal to the CTA. In the alternative, the taxpayer may elevate his/her/its protest to the CIR within the same period, in which case, the CIR's decision shall be deemed to be the final decision appealable to the CTA within thirty (30) days. The thirty (30)-day period is to be reckoned from the taxpayer's receipt of the denial of his/her/its protest by the CIR, or in case of inaction within one hundred eighty (180) days from the date of submission of documents, from the lapse thereof. These options are mutually exclusive and resort to one bars application of the other.[79]

The one hundred eighty (180)-day period is to be reckoned from the date of submission of documents in support of the protest. In *Commissioner of Internal Revenue v. Sarangani Resources Corporation*[80], this Court explained, *viz.*:

It must be stressed that Section 228 of the NIRC of 1997, as amended, provides for only one 180-day period for the CIR or her authorized representative to decide the protest. Thus, RR No. 12-99, which implements Section 228, does not provide for a fresh or separate 180-day period for the CIR to decide the appealed decision of her authorized representative.

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[78] Underscoring ours.
[79] *RCBC v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[80] CTA *EB* Case No. 1098, April 28, 2015.

> A plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99 reveals that there is only one "180-day period" which shall be counted from the date of submission of the relevant supporting documents. The date of submission of the relevant supporting documents, as expressly provided in Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99, shall be within sixty (60) days from the filing of the protest. There is no mention in either Section 228 of the NIRC of 1997, as amended, nor in Section 3.1.5 of RR No. 12-99, that upon appeal to the CIR of the decision of her duly authorized representative, the taxpayer may submit additional documents or that the taxpayer is given a fresh period of 60 days to submit such additional supporting documents.
>
> As such, respondent Sarangani Resources erred in counting a new 180-day period from October 15, 2009 for the CIR to decide on the appealed decision of her authorized representative. When the decision of the CIR's authorized representative was appealed to the CIR, the running of the 180-day period should still be counted from March 19, 2009, the date when respondent submitted the relevant supporting documents in support of its protest.[81]

In the present case, petitioner was notified of its alleged under payment of EWT for the month of August 2012 on March 20, 2014 through a Preliminary Notice[82], together with the attached Audit Results/Assessment Notice[83]. In response thereto, on March 26, 2014, petitioner submitted a letter[84] dated March 25, 2014, addressed to Mr. Misajon of LT-DPQAD, requesting for reconsideration of the assessment. Counting one hundred eighty (180) days therefrom, Mr. Misajon had until September 22, 2014 to decide. On May 6, 2014, petitioner received the decision[85] denying its protest, to which petitioner requested for reconsideration in a letter[86] with Mr. Misajon dated May 28, 2014 on May 29, 2014. Thereafter, on June 5, 2014, or within thirty (30) days from receipt of the adverse decision on May 6, 2014, petitioner likewise elevated its protest with the CIR.[87]

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[81] Emphases retained.
[82] *Records, Exhibit "P-6," Preliminary Notice,* p. 281.
[83] *Id., Attachment: Audit Results/Assessment Notice,* p. 282.
[84] *Id., Exhibit "P-7," Letter Re: Preliminary Notice,* pp. 283-293, with annexes.
[85] *Id., Exhibit "P-8," Letter Re: Offsetting,* p. 294.
[86] *Id., Exhibit "P-9," Request for Reconsideration to Mr. Misajon,* pp. 295-299.
[87] *Id., Exhibit "P-10," Request for Reconsideration,* pp. 300-305.

When petitioner filed its appeal on June 5, 2014, the CIR had only the remaining days of the one hundred eighty (180)-day period, counted from the date the protest was filed on March 26, 2014 or until September 22, 2014, to decide. Thereafter, petitioner had until October 22, 2014, to elevate its claim with the CTA. Records disclose that no decision on the disputed assessment was yet rendered by the CIR. Therefore, as in the above *Section 228* of the *1997 NIRC, Sections 3.1.5 of RR No. 12-99,* and *Section 3(A)(2), Rule 4 of the RRCTA,* after October 22, 2014, petitioner is only left with the option to wait for the decision of the CIR before it may appeal with the CTA. Accordingly, when petitioner filed the instant petition on September 16, 2015, without the final decision on the disputed assessment by the CIR, the Court is already bereft of jurisdiction to determine the legality or validity of the assessment as the same has already attained finality.

Time and again, the Supreme Court has held that while the right to appeal a decision of the CIR to the CTA is merely a statutory remedy, the requirement that it must be brought within thirty (30) days is jurisdictional.[88] If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.[89]

In *Zamboanga Forest Managers Corporation v. Pacific Timber and Supply Co.,*[90] the High Court ruled as follows:

> Although appeal is essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or part of the due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court - not even the Supreme Court - has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice

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[88] *Ker and Company, Ltd. v. The Court of Tax Appeals, et al.,* G.R. No. L-12396, January 31, 1962, 4 SCRA 163.
[89] *Id.*
[90] G.R. No. 173342, October 13, 2010, 633 SCRA 82.

> that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.

In view of the finality of the assessment, petitioner cannot now raise the question of its validity in its claim for refund or issuance of a TCC before this Court any more than it could have done so when it should have appealed the denial of the protest within the prescribed period. Instead of disguising its failure to appeal in a form of refund, petitioner should have raised its defenses by filing an appeal with the CTA to prevent the assailed assessment from becoming final and executory. Failing in this regard is detrimental to petitioner.

Petitioner argues that, assuming the assessment is valid, petitioner is nonetheless entitled to the refund or issuance of a TCC in the amount of Php592,273.32 because the Php340,769.16 excess remittance *per* July Amended EWT Return[91] can be applied as credit or offset against its EWT due for the month of August 2012. It is petitioner's view that there is no express prohibition on offsetting of EWT in the *1997 NIRC* or in any administrative regulation; and that, in any case, the application as credit does not violate the Trust Fund Doctrine of the withholding tax system considering that the Php340,760.16 amount was already remitted and paid in advance when it filed its July EWT Return. On the other hand, respondent insists that petitioner cannot perform a particular remedy which is not provided for by law.

The Court finds in favor of respondent.

Basic is the rule in statutory construction that "if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation."[92] This principle rests on the presumption that the words used by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently.[93] The legislature is presumed to know the

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[91] *Records, Exhibit "P-4," July Amended EWT Return,* pp. 277-278.

[92] *Republic of the Philippines, represented by the Department of Public Works and Highways, Commission on Audit and The National Treasurer v. Carlito Lacap,* G.R. No. 158253, March 2, 2007, 517 SCRA 255; *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005, 456 SCRA 414; *National Federation of Labor v. National Labor Relations Commission,* G.R. No. 127718, March 2, 2000, 383 Phil. 910; *Enjay, Inc. v. National Labor Relations Commission,* G.R. No. 110240, July 4, 1995, 245 SCRA 588.

[93] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* G.R. No. 159610, June 12, 2008, 554 SCRA 398.

meaning of the words employed and to have expressed its intent by use of such words as are found in the statute.[94] *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[95]

Both *Sections 204(C) and 229 of the 1997 NIRC* have expressly and unequivocally provided that in case of erroneously or illegally assessed or collected tax, the taxpayer has only two (2) options, to ask for: *(1)* a refund; or *(2)* the issuance of a TCC. In fine, the right of taxpayers to claim a refund or issuance of a TCC does not entitle them to credit or offset to other tax liabilities. The pronouncement of the Supreme Court in the case of *Philex Mining Corporation v. Commissioner of Internal Revenue*[96] on offsetting of taxes is instructive, *viz.*:

> In several instances prior to the instant case, we have already made the pronouncement that <u>taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other</u>. <u>There is material distinction between a tax and debt</u>. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. We find no cogent reason to deviate from the aforementioned distinction.
>
> Prescinding from this premise, in *Francia v. Intermediate Appellate Court*, we categorically held that taxes cannot be subject to set-off or compensation, thus:
>
>> We have consistently ruled that <u>there can be no off-setting of taxes against the claims that the taxpayer may have against the government</u>. <u>A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected.</u> <u>The collection of tax cannot await the results of a lawsuit against the government.</u>

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[94] *Southern Cross Cement Corporation v. Philippine Cement Manufacturers Corporation*, G.R. No. 158540, July 8, 2004, 434 SCRA 65.

[95] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010, 634 SCRA 429; *Padua v. People*, G.R. No. 168546, July 23, 2008, 559 SCRA 519; *Enjay, Inc. v. National Labor Relations Commission*, G.R. No. 110240, July 4, 1995, 245 SCRA 588; *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*, G.R. No. 82511, March 3, 1992, 206 SCRA 701.

[96] G.R. No. 125704, August 28, 1998, 294 SCRA 687, cited in *South African Airways v. Commissioner of Internal Revenue*, G.R. No. 180356, February 16, 2010, 612 SCRA 665.

The ruling in *Francia* has been applied to the subsequent case of *Caltex Philippines, Inc. v. Commission on Audit,* which reiterated that:

> ... a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and <u>a claim for taxes is not such a debt, demand, or contract or judgment as is allowed to be offset</u>.[97]

Evidently, the over remittance of EWT when petitioner filed its July EWT Return cannot be used to offset or be treated as advance tax payment to the succeeding EWT for which it may be held liable. Accordingly, any erroneous payment of EWT in the month of July in the amount of Php340,769.16 cannot be offset or credited against the EWT due for the month of August in the amount of Php577,147.73. When it did, petitioner availed of a remedy which is not sanctioned by law.

Notably, the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E), under Line 18 thereof, allows taxpayers to choose from any of two (2) options provided therein in case of over remittance by marking the "To be refunded" box, or the "To be issued a [TCC]" box. Clearly, the option to carry-over the excess to the subsequent month/s is not a remedy. However, the Php340,769.16 amount was applied as credit by petitioner under the belief that the same constituted as an advance payment made, hence, presented under Line 15B in the August EWT Return.

The Court holds that to treat the over remittance as an "advance payment" which may be claimed as credit is erroneous. Before any advance payment may be credited against the EWT due for a particular month, proof of payment, that is, Payment Form (BIR Form No. 0605) must be attached. The Court takes notice that BIR Form No. 0605 is accomplished every time a taxpayer pays taxes and fees which do not require the use of a tax return, such as second installment payment for income tax, deficiency tax, delinquency tax, registration fees, advance payments, deposits, installment payments, etc. In case of over remittance, BIR Form No. 0605 is not accomplished. In fact, the only proof of excess remittance is the

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[97] Citations omitted; underscoring ours.

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Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E) and payment confirmation from the BIR. Clearly, the "advance payments made" contemplated under Line 15B of Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E) does not refer to an over remittance of EWT made from previous month/s.

Based on the foregoing, the Court concludes that it is erroneous for petitioner to apply as credit (in the form of advance payments) the alleged over remittance in July 2012 from its EWT due for the month of August 2012. Hence, for remitting only Php236,378.57 in August 2012, instead of Php577,147.73, petitioner rightfully paid the deficiency; and is not entitled to the refund sought.

**WHEREFORE**, in view of the foregoing, the Petition for Review filed by petitioner New Coast Hotel, Inc., claiming for the refund of or the issuance of a tax credit certificate in the amount of Php592,273.32, is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice