22-000317-0032

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10907

TRIDHARMA MARKETING CORP.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. FELIX PAUL R. VELASCO
ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

SIGUION REYNA, MONTECILLO & ONGSIAKO
4th and 6th Floors, BDO Towers Paseo
8741 Paseo de Roxas, Makati City 1226

GREETINGS:

You are hereby notified by these presents that on **July 22, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 22, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TRIDHARMA MARKETING CORP., Petitioner,	**CTA CASE NO. 10907**
	Members:
- versus -	DEL ROSARIO, *P.J.*, Chairperson, BACORRO-VILLENA, and CUI-DAVID, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 22 2024 10:10 AM

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DECISION

DEL ROSARIO, P.J.:

Before the Court is the Petition for Review[1] filed by Tridharma Marketing Corp. on July 1, 2022 praying for the refund in cash of the compromise offer it paid to settle the deficiency value-added tax (VAT) assessment for taxable year (TY) 2010, amounting to ₱20 Million.

PARTIES

Petitioner Tridharma Marketing Corp. is a domestic corporation organized to engage in buying, selling, distributing and marketing all kinds of goods.[2]

Respondent Commissioner of Internal Revenue[3] (CIR) heads the Bureau of Internal Revenue (BIR). He is vested with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters

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[1] Docket, pp. 8-188.
[2] Id. at 2.
[3] The incumbent CIR is Hon. Romeo D. Lumagui Jr.

arising under the National Internal Revenue Code of 1997 (NIRC), as amended, or other laws administered by the BIR.[4]

FACTS

On June 4, 2014, petitioner filed with the BIR a letter requesting compromise of the income tax and VAT assessments for TY 2010 (2010 Assessment) based on their doubtful validity.[5] For the income tax assessment, petitioner offered a compromise settlement of ₱73,325,706.00 and for the VAT assessment (2010 VAT Assessment), it offered a compromise settlement of ₱122,544,705.00. On May 29, 2014, petitioner partially paid ₱50 Million as compromise offer for the income tax assessment and ₱20 Million for the 2010 VAT Assessment.[6]

On June 13, 2014, petitioner filed a Petition for Review with the Court of Tax Appeals (CTA) questioning the 2010 Assessment. The petition was docketed as CTA Case No. 8833 and raffled to the Second Division of the CTA (CTA – Second Division).

On October 24, 2014, the BIR issued a Notice of Denial,[7] disapproving petitioner's application for compromise settlement for lack of factual basis.

On February 15, 2018, the CTA – Second Division promulgated a Decision in CTA Case No. 8833, partially granting the petition thereby reducing the 2010 Assessment. The dispositive portion thereof provides:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent's deficiency VAT assessment for taxable year 2010 in the amount of ₱1,298,134,526.24 is hereby **CANCELLED AND WITHDRAWN**. On the other hand, respondent's deficiency income tax assessment for taxable year 2010 is hereby **UPHELD IN PART**. Consequently, petitioner is **ORDERED TO PAY** respondent the amount of **FIFTY-FOUR MILLION SEVEN HUNDRED FIFTEEN THOUSAND SIX HUNDRED ELEVEN PESOS AND FIFTY-THREE CENTAVOS (₱54,715,611.53)** representing basic deficiency income tax and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

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[4] Section 4, NIRC, as amended.
[5] Docket, pp. 288-290.
[6] Id. at 291-294; 355-356. The ₱50 Million compromise settlement was deducted by the Court in the Amended Decision dated July 6, 2018, in CTA Case No. 8833.
[7] Id. at 295.

Basic Deficiency Income Tax	₱ 43,772,489.22
Add: 25% Surcharge	10,943,122.31
Total	**₱ 54,715,611.53**

In addition, petitioner is also hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱43,772,489.22 computed from April 15, 2011 until full payment thereof pursuant to Section 249(8) of the NIRC, as amended.

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱54,715,611.53, and on the 20% deficiency interest, which have accrued as aforestated in (a) computed from June 2, 2014 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

Provided, further, the amount of ₱50,000,000.00 paid by petitioner as offer of compromise shall be deducted in the final settlement of the above deficiency income tax including surcharge, deficiency interest, and delinquency interest.

SO ORDERED.[8]

Upon the parties' separate motions for partial reconsideration, the CTA – Second Division promulgated an Amended Decision on July 6, 2018 further reducing the 2010 Assessment by deducting petitioner's ₱50 Million partial payment of the compromise offer for the income tax assessment made on May 29, 2014 and adjusting the computation of the deficiency and delinquency interests imposed. The dispositive portion thereof reads:

WHEREFORE, premises considered, respondent's Motion [for] Partial Reconsideration (Re: Decision promulgated on 15 February 2018) is **DENIED** for lack of merit. On the other hand, petitioner's Motion for Partial Reconsideration (of the Decision dated 15 February 2018) is **PARTIALLY GRANTED**, and that the Decision dated February 15, 2018 is hereby **AMENDED** to read as follows, viz.:

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent's assessment as to the deficiency VAT assessment for taxable year 2010 in the amount of ₱1,298,134,526.24 is hereby **CANCELLED AND WITHDRAWN**. On the other hand, respondent's deficiency income tax assessment for taxable year 2010 is hereby **UPHELD IN PART**. Consequently, petitioner is **ORDERED TO PAY** respondent the amount of **THIRTY-TWO MILLION**

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[8] Id. at 349-350.

FIFTY-EIGHT THOUSAND FOUR HUNDRED TWENTY-SIX PESOS AND SEVENTY-TWO CENTAVOS (₱32,058,426.72) representing the amount still due after petitioner's partial payment of its income tax liability on May 29, 2014, including surcharges and interests imposed under Section 248(A)(3) and Section 249(B), respectively, of the NIRC of 1997, as amended, to be computed as follows:

Basic deficiency income tax	₱ 43,772,489.23
Add: 25% Surcharge	10,943,122.31
20% p.a. Deficiency interest from April 15, 2011 to May 29, 2014	
(₱43,772,489.23 x 20% x 1,140/365 days)	27,342,815.19
Total amount due	**₱82,058,426.73**
Less: Partial payment on May 29, 2014	50,000,000.00
Amount still due after the payment made on May 29, 2014	**₱32,058,426.73**

In addition, petitioner is further **ORDERED TO PAY**:

a) Delinquency interest on the unpaid amount of ₱32,058,426.73 at the rate of 20% per annum from June 2, 2014 ***until December 31, 2017***, pursuant to Section 249(C) of the NIRC of 1997; and,

b) Delinquency interest at the rate of 12% per annum on the unpaid amount of ₱32,058,426.73 ***from January 1, 2018 until the amount is fully paid pursuant to Sec. 249(C) of the NIRC of 1997, in relation to Sec. 249(A) of the same Code, as amended by the TRAIN law***.

SO ORDERED.

SO ORDERED.[9]

The CTA – Second Division affirmed the Amended Decision in its Resolution dated August 31, 2018.[10]

Both parties appealed the Amended Decision to the CTA *En Banc*. Their appeals were consolidated under CTA EB Nos. 1891 and 1931, respectively.[11]

While CTA EB Nos. 1891 and 1931 were pending, the parties entered into a Judicial Compromise Agreement (JCA) on February 12, 2019.[12]

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[9] Id. at 357-358.
[10] Id. at 259.
[11] Id. at 261.
[12] Id.

On July 20, 2020, the CTA *En Banc* promulgated a Judgment on Compromise Agreement[13] (Judgment) approving the parties' JCA, and deeming the case closed and terminated.[14]

Following the finality of the CTA *En Banc's* Judgment, on February 3, 2021, petitioner filed a Letter dated January 25, 2021 with the BIR to claim a refund of the ₱20 Million compromise offer it paid in connection with the 2010 VAT Assessment.[15]

In the Decision dated May 26, 2022,[16] received by petitioner on June 2, 2022,[17] respondent denied petitioner's claim for refund of the ₱20 Million compromise offer solely on the ground that it was filed beyond the two (2)-year period for filing of refund claims under Section 229 of the National Internal Revenue Code of 1997 (NIRC), as amended, to wit:

> It is well settled that the prescriptive period runs from the time the right of action has already accrued. Your application/offer for compromise settlement was denied in a letter dated October 24, 2014. Upon denial of compromise settlement, the prescriptive period for filing for a refund was already running from its reckoning period (i.e. date of payment of offer of compromise) as provided for under the above provision. Hence, you have two years from May 29, 2014 or until May 29, 2016 within which to file for a refund. Your request was only filed February 3, 2021 which is beyond the two-year period to file for a refund.
>
> In view of the foregoing and in adherence to the principle that refund of or exemption to any internal revenue taxes should be construed *strictissimi juris* against the taxpayer, your request for the refund of the offer of compromise for VAT assessment for the taxable year 2010 amounting to ₱20,000,000.00 cannot be granted for being filed beyond the prescriptive period.[18]

Thus, on July 1, 2022, petitioner filed the present Petition for Review assailing the CIR's Decision dated May 26, 2022.

Summonses were served upon the Office of the Solicitor General and the Bureau of Internal Revenue on July 15, 2022.[19]

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[13] Id. at 362-372.
[14] Id. at 370.
[15] Id. at 261.
[16] Id. at 286-287.
[17] Id. at 287.
[18] Id. at 286-287.
[19] Id. at 189-190.

On August 15, 2022, respondent filed a Motion for Extension of Time to File Answer,[20] which the Court granted in its Order dated August 16, 2022, giving respondent until September 13, 2022 to file an Answer.[21]

On September 13, 2022, respondent filed his Answer,[22] submitting the following special and affirmative defenses: *(i)* the case must be dismissed on the ground of *res judicata*; *(ii)* both administrative and judicial claims for refund were filed out of time; *(iii) solutio indebiti* does not apply in the instant case; and, *(iv)* petitioner is not entitled to the claim for refund.

Petitioner filed its Pre-Trial Brief[23] on April 18, 2022 while respondent filed his Pre-Trial Brief[24] on April 20, 2022. The Pre-Trial Conference was conducted on April 26, 2023,[25] where the parties were given until May 26, 2023 to file their Joint Stipulation of Facts and Issues (JSFI). On May 26, 2023, the parties filed their JSFI.[26]

On May 29, 2023, the case was transferred to the Court's First Division in view of the reorganization of the Court's composition.[27]

On August 2, 2023, the Pre-Trial Order[28] was issued.

Trial ensued. Petitioner presented the testimony of its sole witness, Atty. Frances Grace Allyana E. Orbeta,[29] a partner of the law firm that assisted petitioner in its present refund claim and represented petitioner in the related request for compromise of the 2010 VAT Assessment. Respondent did not present any testimonial evidence.[30]

On August 24, 2023, petitioner filed its Formal Offer of Evidence[31] while respondent belatedly filed his comment[32] thereon on August 31, 2023. In the Resolution dated September 22, 2023,[33] the Court admitted all of petitioner's offered exhibits and reiterated its

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[20] Id. at 191-194.
[21] Id. at 195.
[22] Id. at 197-206.
[23] Id. at 214-221.
[24] Id. at 222-226.
[25] Id. at 230-233.
[26] Id. at 235-242.
[27] Id. at 243.
[28] Id. at 256-265.
[29] Id. at 269-275
[30] Id. at 241 and 259.
[31] Id. at 281-445.
[32] Id. at 446-448.
[33] Id. at 452-453.

directive for the parties to file their respective memoranda within 30 days from notice thereof.

The Memorandum for Petitioner[34] was filed on October 26, 2023. Respondent, on the other hand, filed a Motion to Admit Attached Memorandum[35] on November 8, 2023.

In the Minute Resolution dated November 22, 2023,[36] the Court granted respondent's motion, admitted the attached Memorandum, and submitted the case for decision.

ISSUES

The parties stipulated on the following issues:

1. Whether or not petitioner is entitled to the refund of the denied VAT compromise payment paid on May 29, 2014 in the total amount of ₱20,000,000.00;

2. Whether or not the Court has jurisdiction over the present case; and,

3. Whether or not the present case is barred by *res judicata*.[37]

ARGUMENTS OF THE PARTIES

Petitioner argues that the Court has jurisdiction over the present case pursuant to Section 7 of Republic Act (RA) No. 1125, as amended and Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA). Petitioner explains that its Petition assails respondent's decision denying the refund of its payment of the compromise offer of ₱20 Million that respondent received pursuant to his authority to compromise taxes under Section 204(A) of the NIRC, as amended. As the case involves an adverse decision of respondent on a refund claim arising from a payment made under the NIRC, as amended, petitioner asserts that the jurisdiction to review the decision lies clearly and exclusively with the CTA.

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[34] Id. at 454-478.
[35] Id. at 479-493.
[36] Id. at 494.
[37] Id. at 262.

Petitioner submits that it is entitled to the refund of the compromise offer paid on May 29, 2014. It contends that based on the doctrine against unjust enrichment, respondent has a legal obligation to return the money received from petitioner which was not due the BIR.

Petitioner avers that its refund claim was timely filed within six (6) years from the time its right of action accured, based on the quasi-contract of *solutio indebiti*. It maintains that the two (2)-year prescriptive period under Section 229 of the NIRC, as amended, is inapplicable to its present refund claim. It clarifies that it is seeking to recover the amount it paid as compromise offer to the BIR, which payment is only a deposit or in the nature thereof and remained to be so until and unless accepted by the BIR or is applied to its outstanding tax liabilities.

Assuming arguendo that the two (2)-year period under Section 229 of the NIRC, as amended, applies, petitioner submits that the reckoning date for the determination of the proper application of the compromise offer paid is July 20, 2020 when the Judgment in CTA EB Nos. 1891 and 1931 became final. Petitioner explains that it was only at this point when the amount of the compromise offer paid could be finally applied to petitioner's outstanding income tax and VAT liabilities.

Finally, petitioner argues that the present case is not barred by *res judicata* because there is no identity of subject matter and cause of action with CTA Case No. 8833 and CTA EB Nos. 1891 and 1931. Thus, it is entitled to the refund of the ₱20 Million compromise offer paid.

Respondent counters that the present case must be dismissed on the ground of *res judicata*. He submits that all the requisites of *res judicata* exist in the instant case: *(i)* the Judgment in CTA EB Nos. 1891 and 1931 is final and executory, *(ii)* the Judgment is based on the merits, *(iii)* the Judgment was rendered by the CTA *En Banc* which has jurisdiction over the parties therein and the subject matter thereof, and (*iv*) there is identity of the parties, subject matter and cause of action between the present petition and CTA EB Nos. 1891 and 1931. As to the subject matter, respondent emphasizes that the subject matter and cause of action of both cases stem from the 2010 Assessment issued against petitioner.

Respondent posits that even assuming that the principle of *res judicata* does not apply, the petition should be dismissed for being

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belatedly filed. He claims that the administrative and judicial claims for refund were filed out of time. He noted that, as admitted by petitioner, it paid the ₱20 Million compromise offer on May 29, 2014, thus, it had only until May 28, 2016 to file a refund claim pursuant to Section 229 of the NIRC, as amended.

Respondent reiterates that *solutio indebiti* does not apply in the instant case. He argues that the ₱20 Million, paid by petitioner, is in the nature of a tax having been paid through the BIR's Electronic Filing and Payment System (eFPS), the system developed and maintained by the BIR for electronic filing of tax returns, including attachments, if any, and paying taxes due thereon. Further, respondent insists that there exists a binding relation between petitioner, as duty bound to pay the assessed deficiency tax and respondent, as the taxing authority. Further, the payment of the compromise offer was not made through mistake but voluntarily by petitioner in view of its application for compromise settlement. Also, he submits that the payment is still proper because the 2010 VAT assessment is still presumed to be valid and enforceable as the ruling in CTA Case No. 8833 cancelling the 2010 VAT assessment has never attained finality considering that respondent appealed the same.

Respondent adds, even assuming but without conceding, that *solutio indebiti* applies, the refund is still filed out of time. Respondent asserts that the six (6)-year period for petitioner to assert its right to refund should be reckoned from the denial of its application for compromise on October 24, 2014 not from the finality of the Judgment in CTA EB Nos. 1891 and 1931 on July 20, 2020.

Respondent posits that petitioner is not entitled to the claim for refund by virtue of their compromise agreement which encompassed all issues related to the 2010 Assessment.

Lastly, respondent also emphasizes that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such they are looked upon with disfavor. Therefore, the petition should be dismissed for lack of jurisdiction or in the alternative, be denied for utter lack of merit.

RULING OF THE COURT

The Petition for Review is meritorious.

The Court has jurisdiction over the present Petition for Review.

Section 3(a), Rule 4 of the RRCTA, which implements Section 7(a), RA No. 1125, as amended,[38] defining the jurisdiction of the CTA, states:

> 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:
>
> (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**; xxx (Boldfacing added)

Petitioner's payment of compromise offer was made pursuant to Section 204 of the NIRC, as amended,[39] as implemented by Revenue Regulations (RR) No. 30-2002,[40] as amended by RR No. 9-2013.[41]

Section 6 of RR No. 30-2002, as amended by RR No. 9-2013, provides that in case of disapproval of the application for compromise, the compromise offer paid in support of the application shall be deducted from the applicant's total outstanding tax liabilities, *viz.*:

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[38] 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 or other laws administered by the Bureau of Internal Revenue; xxx

[39] **SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*** – The Commissioner may –
(A) *Compromise the payment of any internal revenue tax,* when:
(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
The compromise settlement of any tax liability shall be subject to the following minimum amounts: For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax. Xxx *(Boldfacing added)*

[40] SUBJECT: Revenue Regulations Implementing Section 7(c), 204(A), and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001, December 16, 2002.

[41] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 30-2002, May 10, 2013.

> SEC. 6. Approval of Offer of Compromise. — Except for offers of compromise where the approval is delegated to the REB pursuant to the succeeding paragraph, all compromise settlements within the jurisdiction of the National Office (NO) shall be approved by a majority of all the members of the NEB composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner.
>
> xxx xxx xxx
>
> The compromise offer shall be paid by the taxpayer upon filing of the application for compromise settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount. **In case of disapproval of the application for compromise settlement, the amount paid upon filing of the aforesaid application <u>shall</u> be deducted from the total outstanding tax liabilities**. (Boldfacing and underscoring added)

Pursuant to Section 6 of RR No. 30-2002, the compromise offer petitioner paid in effect became a partial payment of its assessed deficiency taxes with the disapproval of its application for compromise settlement. Thus, the Decision dated May 26, 2022, denying petitioner's refund claim of the compromise offer it paid, is a decision of the CIR involving a refund of internal revenue tax reviewable by this Court.

As regards the timeliness of the filing of the petition, Section 3(a), Rule 8 of the RRCTA,[42] implementing Section 11 of RA No. 1125, as amended,[43] provides that a party adversely affected by a decision of the CIR may file an appeal with the CTA within thirty (30) days from receipt of the CIR's decision.

Petitioner received the CIR's Decision dated May 26, 2022 denying its refund claim on June 2, 2022; therefore, it had until July 1,

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[42] Section 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, xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or 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.

[43] Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx

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2022 to appeal. Accordingly, the filing of the present petition on July 1, 2022 was timely and the Court has acquired jurisdiction to take cognizance of the present petition.

***Solutio indebiti* does not apply to the present case.**

Solutio indebiti is articulated in Article 2154 of the Civil Code, *viz.*:

> Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

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.[44]

Here, while there was no compromise agreement reached relative to the ₱20 Million compromise offer paid, petitioner, as the applicant for compromise settlement, and respondent, who is vested with exclusive authority to act on applications for compromise settlement of tax liabilities, are nonetheless governed by Section 204 of the NIRC of 1997, as amended, and the relevant regulations thereon.

Petitioner's payment of the compromise offer was not made through mistake. Petitioner knew that payment of the compromise offer is a requirement for applications for compromise settlement pursuant to RR No. 30-2002, as amended. Fully aware of such requirement, petitioner voluntarily paid the compromise offer when it opted to apply for compromise settlement of the 2010 VAT Assessment. Therefore, *solutio indebiti* finds no application in this instance.

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[44] *Commissioner of Internal Revenue vs. San Miguel Corporation*, G.R. Nos. 180740-180910, November 11, 2019.

The Judgment in CTA EB Nos. 1891 and 1931 and the parties' Judicial Compromise Agreement do not bar the litigation of the present petition.

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits. It bars a party from litigating the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[45]

The doctrine of *res judicata* is embodied in Section 47, Rule 39 of the Rules of Court, *viz.*:

> SEC. 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> xxx xxx xxx
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
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> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Section 47(b) above pertains to the principle of *res judicata* by way of "bar by prior judgment" and Section 47(c) refers to *res judicata* by way of "conclusiveness of judgment."

To distinguish, there is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case

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[45] *Commissioner of Internal Revenue vs. Court of Tax Appeals (First Division) and Pilipinas Shell Petroleum Corporation,* G.R. Nos. 210501, 211294 and 212490, March 15, 2021.

that is sought to be barred, there is identity of parties, subject matter, and causes of action. In effect, the judgment in the first case constitutes an absolute bar to the subsequent action; it is final as to the claim or demand in controversy. In contrast, there is a "conclusiveness of judgment" where there is merely an identity of parties in the first and second cases, but the causes of action are completely distinct. Thus, the first judgment is conclusive only as to "those matters actually and directly controverted and determined and not as to matters merely involved therein."[46]

In the case at bar, respondent seeks to apply the principle of *res judicata* in its concept of "bar by prior judgment" by pointing out that their Judicial Compromise Agreement, approved in the Judgment rendered in CTA EB Nos. 1891 and 1931, constitutes a bar to the litigation of the instant petition.

For *res judicata* to absolutely bar a subsequent action, the following requisites must concur: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and parties; and *(d)* there must be between the first and second actions, identity of parties, of subject matter, and of causes of action.[47]

There is no dispute that the Judgment in CTA EB Nos. 1891 and 1931, is a final judgment on the merits and rendered by a court having jurisdiction over the subject matter thereof and the parties therein. The identity of the parties is likewise not disputed. The bone of contention pertains to the identity of the subject matter and cause of action.

The subject matter of the action is "the matter or thing with respect to which the controversy has arisen, concerning which the wrong has been done, and this ordinarily is the property, or the contract and its subject matter, or the thing in dispute." The cause of action is "the legal wrong threatened or committed".[48]

The subject matter of CTA Case No. 8833 and CTA EB Nos. 1891 and 1931 is the 2010 Assessment issued by respondent against petitioner, while the subject matter of the present case is the refund of the compromise offer previously paid by petitioner to support its

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[46] *Arnaldo M. Espinas vs. Office of the Ombudsman*, G.R. No. 250013, June 15, 2022.
[47] *Teresa R. Ignacio vs. Office of the City Treasurer of Quezon City et al.*, G.R. No. 221620, September 11, 2017.
[48] *Ferdinand S. Agustin vs. Spouses Mariano and Presentacion Delos Santos*, G.R. No. 168139, January 20, 2009, citing *Pelagio Yusingco, et al. vs. Ong Hing Lian et al.*, G.R. No. L-26523, December 24, 1971.

application for compromise of its 2010 VAT Assessment. Clearly, there is no identity of subject matter in the present Petition for Review, CTA Case No. 8833 and CTA EB Nos. 1891 and 1931.

As regards the causes of action, the cause of action in CTA Case No. 8833, which was the subject of appeal in CTA EB Nos. 1891 and 1931, is respondent's alleged issuance of an invalid assessment. In the present case the cause of action is respondent's alleged unjustified retention of the compromise offer paid by petitioner to settle the 2010 VAT assessment, premised on the Judgment in CTA EB Nos. 1891 and 1931 which supposedly settled the 2010 assessment, which includes the 2010 VAT Assessment.

Plainly, there is no identity of subject matter and causes of action between the present case and CTA Case No. 8833 and CTA EB Nos. 1891 and 1931. Thus, *res judicata* by way of bar by prior judgment does not apply. As there is identity of parties but distinct subject matter and causes of action, *res judicata* by way of conclusiveness of judgment applies with respect only to those matters actually and directly controverted in CTA Case No. 8833 and CTA EB Nos. 1891 and 1931, i.e., validity and enforceability of the 2010 Assessment.

Sections 204(C) and 229 of the NIRC apply to the present case.

The refund of erroneously or illegally collected taxes are governed by Sections 204 and 229 of the NIRC, as amended. Section 204 pertains to administrative claims for refund, while Section 229 pertains to judicial claims for refund, *viz.*:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (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. 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: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. xxx

> 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 without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, xxx illegally, xxx excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[49] Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. [50]

At the time of petitioner's payment of the compromise offer, the amount paid is correct and proper. With the finality of the Judgment in CTA EB Nos. 1891 and 1931, however, the 2010 Assessment, which included the 2010 VAT assessment, has been settled. Thus, between petitioner and respondent, there is no more 2010 Assessment to speak of.

Respondent's claim that the 2010 Assessment is still valid and enforceable[51] is contradicted by the parties' JCA. Although the JCA was not offered in evidence by either petitioner or respondent, relevant provisions thereof were quoted in the Judgment in CTA EB Nos. 1891 and 1931, which was formally offered and admitted in evidence.

It is a settled rule that the intent of parties to an agreement is embodied in the writing itself, and when the words are clear and

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[49] *Coca-cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.
[50] Id.
[51] Id. at 202 and 490.

unambiguous the intent is to be discovered only from the express language of the agreement.[52]

Reproduced below are the quoted provisions of the parties' JCA:

> NOW, THEREFORE, for and in consideration of the foregoing premises, the PARTIES hereto have agreed as follows:
>
> Section 1. Judicial Compromise Amount. **In order to settle the above-mentioned case, the TAXPAYER has offered and paid and the BIR has accepted the total compromise amount of SIXTY FIVE MILLION PESOS (Php65,000,000.00) ("Judicial Compromise Amount")**.
>
> xxx xxx xxx
>
> Section 3. Effectivity of the Agreement. This Agreement shall only take effect and bind the PARTIES upon final approval by the Honorable CTA. This Agreement shall thereafter remain in force and effect until the completion and fulfillment of the covenants [and] undertaking of the PARTIES thereto.
>
> Section 4. Deliverables of the PARTIES upon approval of this Agreement of the Honorable CTA. **Upon final approval by the Honorable CTA of this Agreement, the BIR undertakes to execute and deliver to the Taxpayer any and all documents as may be required to effectively withdraw and cancel the FAN dated 16 February 2013 and the FDDA dated 28 February 2014**.
>
> Section 5. Authority to Enter Compromise Agreement. The BIR, through Commissioner Caesar R. Dulay warrants that he has the necessary authority and capacity under the law to enter, sign, and execute this Agreement, and to deliver its implementing documents upon its approval of the Honorable CTA.
>
> The TAXPAYER through its, President, Mr. Stewart L. Ong, similarly warrants that he is duly authorized by the Board of Directors of the TAXPAYER and has full legal capacity to enter, sign, and execute this Agreement, and to deliver payment of the above-agreed Compromise Amount.
>
> Section 6. Full and Final Settlement. **This Agreement is executed by the PARTIES for the purpose of amicably settling and ending CTA Case No. 8833 and the Petitions filed related thereto. Upon performance by the TAXPAYER of its obligations under Section 1 hereof. <u>The BIR recognizes the full satisfaction of the supposed tax liability of the TAXPAYER in connection with CTA Case No. 8833 and acknowledges that the TAXPAYER no longer has any tax liability whatsoever based upon, arising</u>**

[52] *Republic vs. Legal Heirs of Jose L. Africa*, G.R. No. 205722, August 19, 2015.

from or in connection with the particular subject of CTA Case No. 8833. xxx [53] (Boldfacing and underscoring added)

As clearly stated in Section 6 above, the parties executed the JCA for the purpose of amicably settling and terminating CTA Case No. 8833 and the petitions filed related thereto. The approval of the JCA by the Court, wrote *finis* to the issues pertaining to subject matter of CTA Case No. 8833 and the petitions filed relative thereto, i.e., 2010 Assessment, and bound the parties to their stipulations in the JCA.

Under the JCA, petitioner is obliged to pay the Judicial Compromise Amount of ₱65 Million and to continue to be bound by the JCA's provisions upon its approval. In return, respondent, through the BIR, undertook to recognize the full satisfaction of the supposed tax liability of petitioner in connection with CTA Case No. 8833 and to acknowledge that petitioner no longer has any tax liability whatsoever based upon, arising from or in connection with the 2010 Assessment subject of CTA Case No. 8833. These covenants by the parties are too clear to be misunderstood.

Strikingly, in rejecting petitioner's refund claim the only reason given by respondent is the belated filing of the claim in accordance with Section 229 of the NIRC, as amended.[54] Apart from respondent's insistence that the 2010 Assessment is still valid and enforceable,[55] respondent also did not present any evidence or alleged any other tax liability due from petitioner which the ₱20 Million compromise offer may be applied as payment.[56] Neither did respondent allege and present proof that petitioner breached any of the terms of the JCA.

Section 1 of the JCA is clear and categorical that in order to settle the case, petitioner has offered and paid and the BIR has accepted the total compromise amount of ₱65 Million. There is nothing in the JCA which mentions the ₱20 Million compromise offer paid, much more, indicate that the parties intended to consider the same as additional consideration on top of the ₱65 Million Judicial Compromise Amount paid by petitioner for the execution of the JCA.

As to the reckoning of the two (2)-year period to file the refund claim, the Court is guided by the pronouncement in *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan*

[53] Id. at 368-369.
[54] Id. at 286-287.
[55] Id. at 202,490.
[56] Id. at 241 and 259.

on

Motor Philippines, Inc.) (Univation Motor),[57] explaining that two (2)-year period is counted from the date when the the taxpayer would know whether a tax is still due or a refund can be claimed:

> Indeed, the two-year period in filing a claim for tax refund is crucial. While the law provides that the two-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, 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."

While *Univation Motor* involves a refund claim for creditable income tax, the pronouncement on when the right of action accrues in cases of refunds under Sections 204(C) and 229 similarly applies to the present case.

It must be stressed that under RR No. 30-2002, as amended, in case of disapproval of the application for compromise settlement, the amount paid as compromise offer upon filing of the application shall be deducted from the total outstanding liabilities of the taxpayer-applicant. Petitioner's tax liability was still uncertain when the Notice of Denial dated October 24, 2014 was issued as the 2010 Assessment was still subject of a pending case, i.e., CTA Case No. 8833. Thus, back then, petitioner could not have filed a refund claim and respondent may not have applied the compromise offer paid to petitioner's tax liabilities.

The amount of petitioner's tax liabilities was only determinable when the Judgment in CTA EB Nos. 1891 and 1931 approving their JCA was promulgated on July 20, 2020. At that point, petitioner knew for certain that it no longer has tax liabilities which the ₱20 Million may be applied as payment. As such, it has excess tax payment which may be claimed for refund under Sections 204(C) and 229 of the NIRC, as amended.

In this light, petitioner's right to refund accrued upon the finality of the Judgment in CTA EB Nos. 1891 and 1931 on July 20, 2020. Consequently, petitioner had until July 19, 2022 to file its administrative and judicial claims for refund reckoned from July 20, 2020. Having filed its administrative claim for refund on February 3, 2021 and its judicial

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[57] G.R. No. 231581, April 10, 2019.

claim for refund on July 1, 2022, petitioner's refund claims were timely filed.

To support its refund claim, petitioner presented the eFPS Payment Details as proof of successful payment of the ₱20 Million compromise offer and the Judgment in CTA EB Nos. 1891 and 1931 as proof that the JCA was judicially approved. As there is no proof that petitioner has outstanding tax liabilities with the BIR, the Court finds these sufficient to establish that petitioner has excess tax payments which may be refunded.

The Court finds it apt to quote the learned disquisition of the Supreme Court in *Commissioner of Internal Revenue vs. Lucio L. Co, et al.*:[58]

> At this juncture, the Court emphasizes that while tax refunds are strictly construed against the taxpayer, the Government should not resort to technicalities and legalisms to keep the money it is not entitled to at the expense of the taxpayers.
>
> Substantial justice, equity and fair play are on the side of [petitioner]. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.

WHEREFORE, premises considered, the Petition for Review filed on July 1, 2022 is hereby **GRANTED**. As prayed for, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND IN CASH**, in favor of petitioner Tridharma Marketing Corp., the compromise offer it paid amounting to ₱20 Million.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[58] G.R. No. 241424, February 26, 2020.

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(Inhibited)
LANEE S. CUI-DAVID
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice