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

**SECOND DIVISION**

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| **GENERAL ELECTRIC COMPANY,** Petitioner, | **CTA CASE NO. 11153** |
| | *Present:* |
| vs. | **RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: |

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# DECISION

***FERRER-FLORES, J.:***

The **Petition for Review** filed on May 12, 2023 prays for the refund of the amount of **₱235,654,874.05**, allegedly representing petitioner's erroneously paid capital gains tax (CGT) for the gain on the transfer of its company shares to General Electric International (Benelux) B.V. (GEIBV).[1]

## THE PARTIES

Petitioner **General Electric Company** is a corporation incorporated under the laws of the State of New York, United States of America (USA),[2] with registered office address at 5 Necco Street, Boston, Massachusetts, USA.[3] It is a resident of the USA for tax purposes.[4] It is also registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No.

1 Summary of the Case, Pre-Trial Order dated May 20, 2024, Docket – Vol. II, p. 721.
2 Exhibit "P-5", Docket – Vol. II, pp. 762 to 816.
3 Par. 1, *Petition for Review*, Docket – Vol. I, p. 6; Par. 1, Statement of the Case, respondent's *Memorandum*, Docket – Vol. II, p. 1101.
4 Exhibit "P-3", Docket – Vol. II, pp. 759 to 760.

39, as a one-time taxpayer under Taxpayer Identification Number 436-789-360-00000.[5]

Respondent **Commissioner of Internal Revenue** (CIR) is vested with the authority, among others, to decide, approve and grant application for refund of erroneously or illegally collected or assessed national internal revenue taxes.[6]

## ANTECEDENTS (ADMINISTRATIVE LEVEL)

Prior to August 1, 2022, petitioner was the registered and beneficial owner of 874,997 shares of common stock and 1,300,000 shares of redeemable preferred stock, and the beneficial owner of three shares of common stock held in the names of its nominee directors in General Electric Philippines, Inc. (GEPI).[7] GEPI is a corporation organized and existing under the laws of the Philippines,[8] with principal place of business at 27th Floor Menarco Tower, 32nd Street Bonifacio Global City, Fort Bonifacio, Taguig City, Metro Manila.[9]

On August 1, 2022, petitioner and GEIBV executed a Deed of Absolute Sales of Shares,[10] wherein petitioner sold its 875,000 common shares, which include three common shares in the name of its nominee directors, and 1,300,000 redeemable preferred shares in GEPI in favor of GEIBV for a total consideration of US$41,729,013.66.

Relative thereto, petitioner paid CGT amounting to ₱235,654,874.05 on August 24, 2022.[11]

Thereafter, on October 10, 2022, petitioner filed with the BIR International Tax Affairs Division (ITAD), a letter application for tax treaty relief (TTRA) of even date,[12] together with the Application for Treaty Purposes (Relief from Philippine Income Tax on Capital Gains) [BIR Form

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5 Exhibit "P-16", BIR Records, p. 53.

6 Par. 2, *Petition for Review*, vis-à-vis par. 1, *Answer (Re: Petition for Review dated 12 May 2023)*, Docket – Vol. I, pp. 6 to 7, and Docket – Vol. II, p. 502, respectively.

7 Exhibit "P-9", BIR Records, pp. 205 to 216; Exhibit "13", Docket – Vol. II, p. 938; Exhibits "P-13-1" to "P-13-5", BIR Records, pp. 101 to 105; Exhibits "P-14", Docket – Vol. II, pp. 944 to 945; Exhibits "P-14-1" to "P-14-14", BIR Records, pp. 85 to 98; Exhibit "P-15", Docket – Vol. II, pp. 960 to 961; Exhibits "P-27" to "P-27-2", Docket – Vol. II, pp. 1042 to 1044; Exhibit "P-29", Docket – Vol. II, pp. 1046 to 1062.

8 Exhibits "P-23" and "P-23-1", Docket – Vol. II, pp. 984 to 1026.

9 Exhibit "P-9", BIR Records, at p. 214.

10 Exhibit "P-6", Docket – Vol. II, pp. 817 to 825.

11 Exhibits "P-7", "P-8" and "P-28", Docket – Vol. II, pp. 826 to 830 and 1045, respectively.

12 Exhibit "P-17", BIR Records, pp. 25 to 30.

No. 0901-C],[13] on the capital gains it derived from the transfer of its shares in GEPI to GEIBV, pursuant to Article 14(2) of the *Convention between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income* (RP-US Tax Treaty).

On January 20, 2023, petitioner filed with BIR RDO No. 39 a letter of even date, claiming for refund of its alleged erroneously paid CGT in the amount of ₱235,654,874.05,[14] together with an Application for Refund of Excess Withholding Tax in Accordance with the Double Taxation Convention (BIR Form No. 1913).[15]

Petitioner, through its external tax consultant, then received on April 14, 2023 the letter dated April 13, 2023 from BIR RDO No. 39,[16] stating that petitioner's application for CGT refund is recommended for denial for failure to submit complete documents, particularly, the Certificate of Exemption/Certificate of Entitlement issued by the BIR ITAD.

## PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on May 12, 2023.[17]

In the Resolution dated June 23, 2023,[18] the Court noted that the original Apostilled *Attesting Secretary's Certificate* and the *Special Power of Attorney* were not attached to the *Petition*; thus, petitioner was granted a final and non-extendible period of 10 days from notice within which to submit the same.

On July 5, 2023, petitioner filed its *Compliance with Submission (Re: Notice of Resolution dated 23 June 2023)*,[19] attaching thereto the original Apostilled *Attesting Secretary's Certificate* and the *Special Power of Attorney*,[20] both noted and admitted by the Court in its Resolution dated July 27, 2023.[21]

13 Exhibit "P-17-1", Docket – Vol. II, pp. 969 to 970.
14 Exhibit "P-20", BIR Records, pp. 328 to 334.
15 Exhibit "P-1", Docket – Vol. II, p. 755.
16 Exhibit "P-21", Docket – Vol. II, p. 982.
17 Docket – Vol. I, pp. 6 to 24.
18 Docket – Vol. I, pp. 473 to 474.
19 Docket – Vol. II, pp. 475 to 477.
20 Docket – Vol. II, pp. 478 to 487.
21 Docket – Vol. II, pp. 489 to 490.

On October 2, 2023, respondent filed his *Answer (Re: Petition for Review dated 12 May 2023)*,[22] interposing his special and affirmative defenses.

Respondent then transmitted the *BIR Records* of the present case, consisting of 363 pages in one folder on October 11, 2023.[23]

The *Pre-Trial Brief (of Petitioner General Electric Company)*[24] and *Respondent's Pre-Trial Brief*[25] were both filed on February 12, 2024.

Thereafter, Pre-Trial Conference was set and held on February 15, 2024,[26] wherein respondent manifested that he is waiving his right to present documentary and testimonial evidence.

On March 15, 2024, the parties filed their *Joint Stipulation of Facts and Issues*,[27] which was admitted and approved by the Court in its Resolution dated April 12, 2024,[28] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated May 20, 2024 was then issued.[29]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Nelson V. Soriano,[30] Executive Tax Director in the Tax Services Department of Isla Lipana & Co.; and, (2) Atty. Regina G. Santos,[31] partner at Castillo Laman Tan Pantaleon & San Jose Law Firm and the Assistant Corporate Secretary of GEPI.

The *Formal Offer of Evidence (Of Petitioner General Electric Company)* was filed on June 11, 2024,[32] to which respondent filed his *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated June*

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22 Docket – Vol. II, pp. 502 to 510.
23 *Compliance* dated October 11, 2023, Docket – Vol. II, pp. 514 to 515.
24 Docket – Vol. II, pp. 520 to 533, attached to petitioner's *Compliance with Submission (Re: Notice of Pre-trial Conference dated 10 October 2023)* dated February 12, 2024, Docket – Vol. II, pp. 517 to 519.
25 Docket – Vol. II, pp. 534 to 536.
26 Notice of Pre-Trial Conference dated October 10, 2023, Docket – Vol. II, pp. 511 to 512; Minutes of the hearing held on, and Order dated, February 15, 2024, Docket – Vol. II, pp. 537 to 538 and 541 to 543, respectively.
27 Docket – Vol. II, pp. 544 to 551.
28 Docket – Vol. II, p. 719.
29 Docket – Vol. II, pp. 721 to 725.
30 Exhibit "P-31", Docket – Vol. II, pp. 555 to 570; Minutes of the hearing held on, and Order dated, May 23, 2024, Docket – Vol. II, pp. 729 and 731, respectively.
31 Exhibit "P-32", Docket – Vol. II, pp. 624 to 632; Minutes of the hearing held on, and Order dated, May 23, 2024, Docket – Vol. II, pp. 729 and 731, respectively.
32 Docket – Vol. II, pp. 740 to 754, attached to petitioner's *Compliance with Submission (Re: Directive made [in] open court last 23 May 2024)* dated June 11, 2024, Docket – Vol. II, pp. 738 to 739.

*11, 2024)* on June 19, 2024.[33] In the Resolution dated October 2, 2024,[34] the Court admitted all of petitioner's offered exhibits.

On November 5, 2024, respondent filed his *Memorandum*,[35] while the *Memorandum (Of General Electric Company)* was submitted on November 20, 2024.[36]

The present case was considered submitted for decision on December 3, 2024.[37]

Hence, this Decision.

## THE STIPULATED ISSUE

As stipulated by the parties, the issue for this Court's resolution is:

> Whether the petitioner is entitled to a tax refund/credit certificate amounting to **TWO HUNDRED THIRTY-FIVE MILLION SIX HUNDRED FIFTY-FOUR THOUSAND EIGHT HUNDRED SEVENTY-FOUR PESOS AND 05/100 (₱235,654,874.05)**, representing its erroneously paid capital gains tax on the gain arising from the transfer of its company shares in GEPI to GEIBV.[38]

***Petitioner's arguments:***

Petitioner argues that it has sufficiently established all the requisites that will entitle it to its judicial claim for refund of its erroneously paid CGT on the gain arising from the transfer of its shares in GEPI to GEIBV amounting to ₱235,654,874.05, to wit: (1) it is registered with the BIR as a One-Time Taxpayer with TIN 436-789-360-0000; (2) the gain from the transfer of its shares in GEPI to GEIBV is exempt from CGT pursuant to Article 14(2) of the RP-US Tax Treaty in relation to Article 1 of its Reservation Clause; (3) it erroneously paid the CGT on the transfer of its shares in GEPI to GEIBV; (4) it was able to show sufficient proof of payment of the CGT, as there was an actual collection and receipt by the Government

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33 Docket – Vol. II, pp. 1067 to 1069.
34 Docket – Vol. II, pp. 1072 to 1073.
35 Docket – Vol. II, pp. 1100 to 1113.
36 Docket – Vol. II, pp. 1075 to 1097.
37 Minute Resolution dated December 3, 2024, Docket – Vol. II, p. 1115.
38 Stipulation of Issue, JSFI, Docket – Vol. II, p. 545.

of the tax sought to be recovered; and, (5) the administrative and judicial claims for tax refund were filed within the two-year prescriptive period.

***Respondent's counter-arguments:***

Respondent contends that petitioner failed to exhaust administrative remedies before elevating the case to this Court; and, that claims for refund are construed strictly against the taxpayer and in favor of the government.

## THE COURT'S RULING

The Court finds merit in the present *Petition for Review*.

***Governing provisions for refund claims.***

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, NIRC of 1997, as amended, read:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
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> 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.
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> xxx xxx xxx
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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, 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. *(Emphasis supplied)*

The aforequoted provisions are clear: within two years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and, thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that, as for the judicial claim, tax law even explicitly provides that it be filed within two years from payment of the tax "regardless of any supervening cause that may arise after payment."[39]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[40] In other words, what can be refunded or credited is a tax that is erroneously, illegally, 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.[41]

Based on the foregoing, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject CGT paid falls under the above-stated definition of "erroneous or illegal tax".

***Petitioner timely filed its administrative and judicial claims.***

In this case, petitioner paid the CGT on the subject transaction on **August 24, 2022.**[42] Counting two years therefrom, petitioner had until **August 24, 2024**, to file its administrative and judicial claims for refund. Clearly, petitioner's administrative claim filed on **January 20, 2023** with the

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[39] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[40] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[41] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

[42] Exhibits "P-7", "P-8" and "P-28", Docket – Vol. II, pp. 826 to 830 and 1045, respectively.

BIR,[43] and the subsequent appeal before this Court on **May 12, 2023**,[44] were made within the two-year reglementary period.

Respondent, however, insists that petitioner failed to exhaust administrative remedies before elevating the case to this Court. He argues that the filing of this *Petition for Review* before this Court must be due to the denial by respondent of petitioner's claim or respondent's inaction, which is tantamount to a denial of the said petitioner's claim. In this case, respondent stresses that RDO No. 39's denial is not a denial of petitioner's claim but a denial due to petitioner's failure to provide the complete documents necessary to properly evaluate its application. According to respondent, there was no inaction on the part of respondent, as the BIR ITAD already issued the *Certificate of Entitlement* dated June 30, 2023, necessary to process the refund application. Hence, petitioner can refile its refund application with RDO No. 39 to continue its application for refund. Respondent claims that petitioner hastily resorted to filing a judicial action before this Court instead of complying with or submitting the document requested by RDO No. 39.

Respondent further argues that paragraph II (B) of Revenue Memorandum Circular (RMC) No. 17-2018 dated February 27, 2018 provides that the RDO shall process all claims for refund filed by their registered taxpayers-claimants which shall be reviewed by Assessment Division, and thereafter, the Regional Director shall recommend for approval by the Deputy Commissioner-Operations Group/CIR the claim for refund exceeding 10 million pesos. Hence, contrary to petitioner's allegations, RDO No. 39 is not authorized to approve or deny its application as it plainly stated from the foregoing that the RDO merely processes taxpayers-claimants. Thus, respondent contends that petitioner neglected to avail of the administrative remedies available to it and then attempted to use judicial claim to circumvent the role and duties of the Commissioner in evaluating the taxpayer's claim for refund.

The Court disagrees with respondent.

Although respondent was correct in arguing that RDO No. 39 is not authorized to approve or deny petitioner's application for refund, still, there was no violation of the doctrine of exhaustion of administrative remedies.

In this case, the letter dated April 13, 2023 from BIR RDO No. 39,[45] signed by Revenue District Officer Bethsheba R. Bautista, stating that

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43 Exhibit "P-20", BIR Records, pp. 328 to 334.
44 Docket – Vol. I, pp. 6 to 24.
45 Exhibit "P-21", Docket – Vol. II, p. 982.

petitioner's application for CGT refund is recommended for denial for failure to submit complete documents, is not the decision of respondent that is appealable to this Court within 30 days from receipt thereof, provided under Section 11 of R.A. No. 1125,[46] as amended by R.A. No. 9282,[47] which states, in part, as follows:

> SEC. 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. *(Emphasis supplied)*

It must be emphasized, however, that the powers of respondent granted under the NIRC of 1997, as amended, may be delegated under Section 7 thereof.[48] It is axiomatic that one of the said powers granted to respondent is to decide claims for refund under Section 204(C) of the same law. This power has been delegated to certain BIR officials, pursuant to the following provisions of RMC No. 17-2018,[49] which was signed by then CIR Caesar R. Dulay, to wit:

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46 AN CREATING THE COURT OF TAX APPEALS.

47 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

48 SEC. 7. *Authority of the Commissioner to Delegate Power.* – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

(a) The powers to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: *Provided, however*, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

49 SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

II. Claims for issuance of tax refund/TCC on income tax, erroneous payment of taxes under Section 204 (C) and recovery of tax erroneously or illegally collected under Section 229 of the Tax Code, as amended, and other taxes, except VAT under Section 112

xxx xxx xxx

B. Claims of taxpayers registered with the RDO

1. **The RDO shall process all claims for tax refund/TCC** filed by their registered taxpayers-claimants which shall be reviewed by the Assessment Division prior to transmittal to the Regional Director.

2. **The Regional Director shall be the authorized approving official for claims amounting to Ten Million (10M) Pesos and below. For claims exceeding 10M Pesos, the reports on the said claims shall be signed by the Regional Director, who shall recommend the approval/issuance of the tax refund/TCC.**

3. **The docket for claims exceeding 10M shall be transmitted to the TARD for further review prior to approval of the revenue officials in accordance with the thresholds set in item no. I.B.3[50] hereof.**

4. All memorandum reports recommending claims within the applicable thresholds in item I.B.3 hereof shall be signed by the ACIR-AS prior to final approval by the DCIR-OG/CIR. *(Emphasis supplied)*

From the foregoing, for claims of taxpayers registered with the RDO, it is the power to approve claims which is delegated to certain officials, depending on the amount involved. Such power is delegated to the Regional Director for claims amounting to ₱10,000,000.00 and below, to the Assistant Commissioner – Assessment Service for claims more than ₱10,000,000.00 but not more than ₱50,000,000.00, and to the Deputy Commissioner – Operations Group for claims more than ₱50,000,000.00 up to ₱150,000,000.00. For claims more than ₱150,000,000.00, however, the Commissioner is the approving official. Notably, the RDO merely processes the claim for refund. Considering that the subject refund claim is ₱235,654,874.05,[51] or more than ₱150,000,000.00, the appealable decision to

[50] 3. The following are the authorized approving revenue officials based on the amount of claims:

| Amount of Claim | Approving Revenue Official |
|---|---|
| Not more than ₱50,000,000.00 | ACIR – Assessment Service (AS) |
| More than ₱50,000,000.00 up to ₱150,000,000.00 | DCIR – OG |
| More than ₱150,000,000.00 | CIR |

[51] Exhibit "P-20", BIR Records, pp. 328 to 334.

this Court is not the one issued by a Revenue District Officer, but by the respondent himself.

Thus, in view of the foregoing, at the time petitioner filed its judicial claim for refund on May 12, 2023,[52] there was no action yet on the part of respondent on petitioner's refund, as the letter dated April 13, 2023 from BIR RDO No. 39 is not the respondent's adverse decision appealable to this Court.

Be that as it may, in *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc.*,[53] the Supreme Court held as follows:

> A closer reading of Sections 204 and 229 of the 1997 National Internal Revenue Code, in conjunction with Section 7 of Republic Act No. 9282, reveals a problem of what is considered a "reasonable period" for the Commissioner of Internal Revenue to act on a claim for refund of taxes.
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> **Section 229, which requires a prior administrative claim before a judicial claim is filed, recognizes the Commissioner of Internal Revenue's primary jurisdiction to decide refunds of internal revenue taxes.** It gives the Commissioner "an opportunity to consider [their] mistake, if mistake has been committed," or to investigate and ascertain the veracity of the claim, before they are sued. This Court in *CBK Power Company*,[54] citing *P.J. Kiener*,[55] held that the **primary purpose of filing an administrative claim is to serve as a *notice or warning* to the Commissioner that *court action would follow unless the tax or penalty is refunded.* This necessarily implies that the Commissioner has sufficient time to examine, evaluate, and act on the matter within their jurisdiction.**
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> On the other hand, Section 7 of Republic Act No. 9282 grants the Court of Tax Appeals exclusive appellate jurisdiction over a decision or 'inaction deemed denial' of the Commissioner in a claim for refund. Under its clear wording, the Court of Tax Appeals can take cognizance of appeals in cases of the Commissioner's "inaction" only where the 1997 National Internal Revenue Code specifically provides a period for the Commissioner to act on a claim for refund. However, unlike in claims for refund of input value-added tax, **the 1997 National Internal Revenue Code does not prescribe a specific period within which the Commissioner must resolve the claim for refund or credit of erroneously paid taxes.**
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> **Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-**

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[52] Docket – Vol. I, pp. 6 to 24.
[53] G.R. No. 226592, July 27, 2021.
[54] That is, *CBK Power Company Limited vs. Commissioner of Internal Revenue*, 750 Phil. 748 (2015) [Per *J.* Perlas-Bernabe, First Division].
[55] That is, *P.J. Kiener Company, Ltd. vs. David*, 92 Phil. 945 (1953) [Per *J.* Tuason, *En Banc*].

**year period, there is no legal impediment to the judicial claim for refund.**

**Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.**

Thus, in *CBK Power Company*, as with subsequent cases, this Court upheld the propriety of the taxpayer's judicial claim instituted as early as five and 13 days after the administrative claim had been filed, on the ground that both claims were filed within the two-year prescriptive period.

The Court of Tax Appeals likewise allowed judicial claims filed simultaneously, or one to 28 days from the administrative claim's filing, on the same ground that both claims were filed within the two-year prescriptive period.

In much earlier cases, however, it was the Commissioner who was considered long delayed in resolving the administrative claims. Hence, this Court has held that the taxpayer need not wait for the Commissioner's decision, and may file its judicial claim when the two-year prescriptive period is about to lapse.

For instance, in *P.J. Kiener*, the taxpayer filed its administrative claim for refund four months after the last payment of the tax sought to be refunded. Yet, the then Collector of Internal Revenue took their time—*more than two years*—to decide on the claim, so much so that when the taxpayer filed its appeal, its action had already prescribed. This Court held: '*Having filed his claim* ***and the Collector of Internal Revenue having had ample time to study it****, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision.*'

In *Collector of Internal Revenue v. Court of Tax Appeals and Hume Pipe & Asbestos Co., Inc.*,[56] this Court deemed *two months* as ample time for the Collector to have decided the claim for refund of overpaid income tax. Hence, in that case, it upheld the taxpayer's filing of a petition for review before the Court of Tax Appeals without waiting for the Collector's decision, since the two-year prescriptive period was already about to expire.

In *Commissioner of Customs and Commissioner of Internal Revenue v. The Honorable Court of Tax Appeals and Planters Products, Inc.*,[57] *eight months and 10 days* had lapsed from the taxpayer's filing of an administrative claim, but the Commissioner had not acted on it. Ruling in the taxpayer's favor, this Court, quoting a ruling of the tax court, said:

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56 110 Phil. 680 (1961) [Per *J.* Dizon, *En Banc*].
57 253 Phil. 339 (1989) [Per *J.* Griño-Aquino, First Division].

> **The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect.**
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> . . . .
>
> It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector [(now Commissioner)] of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the [Commissioner], would have, at his personal convenience, given his go signal.

In these cases, the written claim for refund was duly filed at the administrative level, but the claim had not been acted upon by the Commissioner (then Collector) of Internal Revenue. Since the two-year period was about to lapse, the taxpayer was held justified in filing its judicial claim, without waiting for the Commissioner's decision, to protect its interest. Otherwise, should the Commissioner render an adverse decision after the two-year period, the taxpayer would be barred, to its prejudice, from pursuing its appeal to the Court of Tax Appeals.

**These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim has led to delays, to the taxpayer's prejudice. On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.**

Nonetheless, the silence or insufficiency in the law on the reasonable period for the Commissioner's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation. *(Emphases and underscoring added)*

Thus, Section 229 of the NIRC of 1997, as amended, only requires that an administrative claim be priorly filed primarily to give notice or warning to respondent that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. Moreover, the NIRC of 1997, as amended, does not prescribe a specific period within which respondent must resolve the claim for refund or credit of erroneously paid taxes.

Hence, with reference to Section 229 of the NIRC of 1997, as amended, the only requirement for a judicial claim of tax credit/refund to be maintained is that a claim of refund or credit has been filed before the respondent; there is no mention in the law that the claim before the respondent should be acted upon first before a judicial claim may be filed.[58]

Consequently, it does not matter how far apart the administrative and judicial claims were filed, or whether the respondent was actually able to rule on the administrative claim, as long as the filing of both administrative and judicial claim fall within the two-year prescriptive period, there is no legal impediment to the judicial claim for refund. In other words, for as long as the administrative claim and the judicial claim were filed within the two-year prescriptive period, then there was exhaustion of the administrative remedies.[59]

Considering that petitioner's administrative and judicial claims for refund were filed within the two-year prescriptive period, then the Court may take cognizance over the present judicial claim.

***Petitioner sufficiently established its entitlement to the refund of erroneously or illegally collected CGT.***

Petitioner contends that the gain from the transfer of its company shares in GEPI to GEIBV is exempt from CGT pursuant to Article 14(2) of the RP-US Tax Treaty, in relation to Article 1 of its Reservation Clause.

The Court finds merit in petitioner's claim.

Section 28(B)(5)(c) of the NIRC of 1997, as amended by Republic Act (R.A.) No. 11534,[60] imposes CGT on the net capital gains realized from the sale of shares of stock in a domestic corporation not traded in the stock exchange by a non-resident foreign corporation (NRFC). It reads:

> SEC. 28. *Rates of Income Tax on Foreign Corporations.* —
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> xxx xxx xxx

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[58] *Commissioner of Internal Revenue vs. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022.

[59] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019

[60] AN ACT REFORMING THE CORPORATE INCOME TAX AND INCENTIVES SYSTEM, AMENDING FOR THE PURPOSE SECTIONS 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 AND 290 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND CREATING THEREIN NEW TITLE XIII, AND FOR OTHER PURPOSES. Otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act" or "CREATE".

(B) *Tax on Nonresident Foreign Corporation.* —

xxx xxx xxx

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* –

xxx xxx xxx

(c) *Capital Gains from Sale of Shares of Stock Not Traded in the Stock Exchange.* — A final tax at the rate of fifteen percent (15%) is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange.

In relation thereto, Section 32(A)(3) and (B)(5) of the NIRC of 1997, as amended, provides as follows:

SEC. 32. *Gross Income.* —

(A) *General Definition.* — Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

xxx xxx xxx

(3) **Gains derived from dealings in property;**

xxx xxx xxx

(B) ***Exclusions from Gross Income.*** — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(5) ***Income Exempt under Treaty.*** — **Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.** *(Emphasis supplied)*

Based on the foregoing, generally, net capital gains realized by an NRFC during the taxable year from the sale or other disposition of its shares of stock in a domestic corporation not traded in the stock exchange is considered as gross income subject to CGT. The same, nevertheless, may be exempted from CGT *"to the extent required by any treaty obligation binding upon the Government of the Philippines".* Notably, the provisions of the

NIRC must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries.[61]

Here, petitioner is a resident of the USA as shown by the following documents:

(1) Certificate of Tax Residence[62] dated May 9, 2022 issued by the USA Department of the Treasury, Internal Revenue Service, Philadelphia, PA;

(2) Certificate of Incorporation;[63] and,

(3) Certification of Corporate Filing/Information[64] dated December 20, 2022, issued by the Philippine Securities and Exchange Commission.

As such, the provisions of the RP-US Tax Treaty[65] may apply. Article 14(2) thereof reads:

**Article 14**
**CAPITAL GAINS**

1. Gains from the alienation of tangible personal (movable) property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State or of tangible personal (movable) property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers operated by such resident in international traffic shall be taxable only in that State, and gains described in Article 13 (Royalties) shall be taxable only in accordance with the provisions of Article 13.

2. **Gains from the alienation of any property other than those mentioned in paragraph (1) or in Article 7 (Income From Real Property) shall be taxable only in the Contracting State of which the alienator is a resident.**"

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[61] *Air Canada vs. Commissioner of Internal Revenue*, G.R. No. 169507, January 11, 2016.
[62] Exhibit "P-3", Docket – Vol. II, pp. 759 to 760.
[63] Exhibit "P-5", Docket – Vol. II, pp. 762 to 816.
[64] Exhibit "P-4", BIR Records, p. 316.
[65] Formally known as the "CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITH RESPECT TO TAXES ON INCOME."

Note, however, that paragraph 1 of the Reservation Clause of the RP-US Tax Treaty, provides:

xxx xxx xxx

> (1) reservation that, **notwithstanding the provisions of Article 14 relating to capital gains, both the United States and the Philippines may tax gains from the disposition of an interest in a corporation if its assets consist principally of a real property interest located in that country**. Likewise, both countries may tax gain from the disposition of an interest in a partnership, trust or estate to the extent the gain is attributable to a real property interest in one of the countries. **The term "real property interest" is to have the meaning it has under the law of the country in which the underlying real property is located**; *(Emphasis supplied)*

From the foregoing, any gain that may be derived by a resident of the USA from the alienation of its properties, other than those mentioned in paragraph (1) or in Article 7, shall be taxable only in the USA. In other words, the capital gains derived by a USA resident from the sale of its shares of stock shall only be taxable in the USA.

However, in view of the Reservation Clause, the gains derived by a resident of the USA from the disposition of an interest in a corporation may also be taxed by the Philippine government **when there is a showing that the assets of the said corporation consist principally of real property interest located in the Philippines.**

Relative thereto, Revenue Regulations (RR) No. 4-86 dated April 2, 1986[66] prescribes guidelines in the determination of whether the assets of a corporation consist "principally of real property interest" under the Philippines Tax Treaties. Pertinent provisions of the said RR are quoted below:

> SECTION 2. *Definitions*. — For purposes of these regulations, the following terms and phrases shall be understood to mean –
>
> a) **"Real property interest"** — interests on properties enumerated in Section 3 which are not, however, exclusive of others that are similarly situated. **As used in the treaties in these regulations, it shall be understood to include real properties as understood under Philippines laws;**

[66] SUBJECT: Determination of Whether the Assets of a Corporation Consist Principally of Real Property Interest under the Philippine Tax Treaties.

b) "Principally", "wholly or principally", "directly principally" or "attributable" — **more than fifty percent of the entire assets in terms of value**;

xxx xxx xxx

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

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

Based on the above, the term "real property interest" refers to real properties as understood under Philippines laws, while the term "principally" refers to more than 50% of the entire assets in terms of value. Moreover, the basis for such determination shall be the value of all the assets of the corporation, both real and personal, as appearing in its financial statement (FS) on the date of the sale of the share or interest in such corporation, as verified by the BIR. If the FS as of the date of the sale is not available, the most recent FS may be used, after the necessary adjustments are made to reflect transactions made during the period from the date of such FS to the date of the sale.

In this case, petitioner and GEIBV executed the *Deed of Absolute Sales of Shares*[67] on August 1, 2022. To establish that the assets of GEPI, as of the date of the sale, do not consist principally of real property interest located in the Philippines, petitioner presented GEPI's Audited FS (AFS) for the year ended December 31, 2021 (2021 AFS),[68] GEPI's Interim FS (Statement of Financial Position) as of June 30, 2022,[69] and GEPI's Lapsing Schedule as of June 30, 2022.[70] An evaluation of the aforesaid documents reveals the following real property interest:

| Particulars | As of December 31, 2021 (2021 AFS) | As of June 30, 2022 (Interim FS, June 30, 2022) |
|---|---|---|
| Property and equipment | 16,449,000 | 14,823,000 |
| Total Assets | 3,238,873,000 | 3,592,859,000 |
| **Percentage** | **0.5079%** | **0.0041%** |

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67 Exhibit "P-6", Docket – Vol. II, pp. 817 to 825.
68 Exhibit "P-10", BIR Records, pp. 117 to 204.
69 Exhibit "P-11", BIR Records, pp. 113 to 116.
70 Exhibit "P-12", BIR Records, p. 112.

In addition, respondent, through Mr. Larry M. Barcelo, Assistant Commissioner – Legal Service, issued a Certificate of Entitlement to Treaty Benefit on June 30, 2023,[71] certifying that the capital gains derived from petitioner's sale of the subject shares in GEPI to GEIBV is exempt from CGT. Respondent concluded in this wise:

> Since GEP's [GEPI's] assets **do not consist principally of real property interest**, the **capital gains derived by GEC [petitioner] from the alienation of the subject shares to GEI [GEIBV] are exempt from the capital gains tax** imposed under Section28(B)(5)(c) of the National Internal Revenue Code of 1997, as amended. *(Emphasis supplied)*

Based on all the foregoing, GEPI's real property interest at the time of the sale did not exceed 50% of its total assets. In other words, its assets did not consist principally of real property interest in the Philippines.

With that, petitioner is deemed to have satisfactorily proven the conditions for tax exemption under the RP-US Tax Treaty; thus, petitioner's capital gains derived from its sale of its shares of stocks in GEPI should be exempt from CGT pursuant to the RP-US Tax Treaty. Consequently, the CGT thereon was erroneously paid.

In fine, petitioner is entitled to the above-stated amount of **₱235,654,874.05** representing erroneously paid CGT on the gain on the transfer of its GEPI shares to GEIBV.

**WHEREFORE**, in light of the foregoing considerations, the present **Petition for Review** is **GRANTED**.

Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱235,654,874.05**, representing petitioner's erroneously paid capital gains tax on its sale of shares in General Electric Philippines, Inc. to General Electric International (Benelux) B.V., by virtue of its exemption pursuant to the RP-US Tax Treaty.

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

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[71] Exhibit "P-24", Docket – Vol. II, pp. 1027 to 1028.

**WE CONCUR:**

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

ON LEAVE
**MARIA ROWENA MODESTO-SAN PEDRO**
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.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice
Chairperson, Second Division

## 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.

**MA. BELEN M. RINGPIS-LIBAN**
Acting Presiding Justice