REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ATLANTA LAND CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 79
(C.T.A. CASE NO. 6987)

Present:
Acosta, *Presiding Justice,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:

MAY 23 2006

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DECISION

CASTAÑEDA, JR., *J.:*

This is an appeal from the March 30, 2005 Resolution of the Court in Division in C.T.A. Case No. 6987 involving the same parties denying petitioner's Motion for Reconsideration of the Resolution dated September 24, 2004 rendered by the then Court of Tax Appeals. The Court in Division dismissed petitioner's claim for refund of taxes on the ground of prescription of petitioner's right to claim a refund of the taxes paid.

The facts as stated by the petitioner are as follows:

On 28 February 2002, the petitioner paid the appropriate taxes in the amount of P1,171,234.00 for the transfer of properties in favor of Land Bank of the Philippines (LBP for brevity), through *dacion en pago*, in partial payment of petitioner's outstanding obligation to LBP. Again on 17 May 2002, the petitioner paid another taxes in the amount of P4,100,512.97 for the next batch of properties in favor of LBP, through *dacion en pago*.

On August 5, 2002, the Bank issued a letter to the petitioner rescinding the dacion en pago. LBP filed a foreclosure proceeding against the collaterals of the petitioner. The petitioner has disputed the act of rescission and foreclosure. It filed a case against LBP which is now pending with the Regional Trial Court of Makati, Branch 148 and docketed as Civil Case No. 02-1137.

The unimplemented *dacion en pago* due to unresolved issues between the petitioner and LBP was overtaken by the passage and approval of Republic Act No. 9182 or known as Special Purpose Vehicle Act of 2002 (SPV LAW for brevity) on 23 December 2002. Under Section 15, Article IV of SPV LAW, a dacion en pago in favor of a financial institution like LBP is exempted from all taxes such as documentary stamp tax, capital gains tax, creditable withholding tax and value added tax.

Considering the uncertainty of whether LBP would continue with the dacion en pago as there is a bright prospect for amicable settlement, the pending issue of the validity of the act of rescission, the passage of SPV LAW and the expiration of the two-year prescriptive period to file a tax refund or credit, petitioner was left with no other recourse but to simultaneously file a claim for refund before the Bureau of Internal Revenue of Cabanatuan City on 17 May 2004 and a Petition for Review to the CTA on May 18, 2004.

On June 8, 2004, the respondent filed a Motion to Dismiss anchored on the ground that petitioner's claim is already barred by prescription. Petitioner filed an Opposition on August 3, 2004.

In a Resolution dated September 24, 2004, the Court in Division ruled as follows:

> "Based on the documents attached to the Petition for Review, Petitioner has only until February

> 28, 2004 within which to file its claim for refund of taxes paid for the first transfer of property and it has only until May 16, 2004 within which to file its claim for refund of taxes paid for the second transfer of property. The present petition was filed with this Court on May 18, 2004 which was beyond the regiementary period. Consequently, any attempt to recover the amount paid as taxes for the two transfers of properties, however erroneous or illegal the assessment or collection thereof, must necessarily fail. (**Philippine Acetylene Co., Inc. vs. Commissioner**, CTA Case No. 1331, November 7, 1965)
>
> There is also no merit to petitioner's argument that the 2-year period should be counted from the date the bank rescinded the "*dacion en pago*". As admitted by petitioner, it filed a case (docketed as Civil Case No. 02-1137) against the Land Bank of the Philippines disputing the latter's unilateral act of rescinding the "*dacion en pago*" which was still pending before the Regional Trial Court of Makati City, Branch 178. As the rescission is still subject to judicial determination by the trial court (**Philippine National Construction Corp. vs. Mars Construction Enterprises, Inc.**, G.R. No. 133909. February 15, 2000), it is premature to treat the taxes paid as "erroneous payment" which entitles petitioner to rightfully claim for refund.
>
> Further, there is no basis to countenance the petitioner's position that it has a right to claim for refund under R.A. 9182. The subsequent enactment of "The Special Purpose Vehicle Act of 2002" is a supervening cause which has no bearing in determining when the prescriptive period commenced to run within which the Petitioner should have filed its claim for refund under the National Internal Revenue Code of 1997. It emphatically states that a claim for refund must be filed within 2-years from date of payment **"regardless of any supervening cause that may arise after payment."**

Petitioner filed a Motion for Reconsideration on October 12, 2004. The Court in Division, in a Resolution dated March 30, 2005, denied petitioner's Motion for Reconsideration for lack of merit. The Court in Division ruled as follows:

"The dismissal of the petition was based on the *prescription of petitioner's right to file a claim for refund* as provided for in Section 229 of the 1997 National Internal Revenue Code (NIRC). Said section reads:

> 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.
>
> **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)

Petitioner failed to file a written claim for refund and, likewise, failed to file its petition for refund within the two-year prescriptive period from the date of payment of the tax. xxx xxx xxx"

Hence, this appeal.

ASSIGNED ERRORS

1. THE COURT A QUO ERRED WHEN IT RULED THAT PETITIONER'S CLAIM FOR REFUND HAS BEEN FILED BEYOND THE TWO-YEAR PRESCRIPTIVE PERIOD;

2. THE COURT A QUO ALSO ERRED WHEN IT DID NOT RECOGNIZED THE EXCEPTIONAL CIRCUMSTANCES OF THE CLAIM OF REFUND AND THAT THE TWO-YEAR PRESCRIPTIVE PERIOD MAY BE SUSPENDED FOR REASONS OF EQUITY AND OTHER CIRCUMSTANCES;

3. THE COURT A QUO TRANSGRESSED ON THE PRINCIPLE OF *SOLUTIO INDEBITI*;

4. THE COURT A QUO GOT IT WRONG WHEN IT RULED THAT THE CASE OF CITIBANK, N.A. vs. COURT OF APPEALS DO NOT APPLY, BY ANALOGY, IN THE INSTANT CASE;

5. THE COURT A QUO IS MISTAKEN WHEN IT RULED THAT THE PETITION FOR REVIEW WILL HAVE TO BE DISMISSED CONSIDERING THAT THE VALIDITY OF RESCISSION IS STILL SUBJECT OF A PENDING LITIGATION;

6. THE COURT GRAVELY ERRED WHEN IT CONFLICTINGLY DECLARED THAT A CLAIM FOR REFUND MUST BE FILED WITHIN TWO (2) YEARS FROM ACTUAL PAYMENT AND YET IT DISMISSED THE PRESENT CASE AS PREMATURE PENDING THE JUDICIAL DETERMINATION OF THE ACT OF RESCISSION WHICH MAY BE DECIDED AFTER THE LAPSE OF THE TWO YEAR PERIOD;

7. THE COURT A QUO ERRED WHEN IT DECLARED THAT THE SPV LAW IS NOT RELEVANT IN THE PRESENT CASE.

In support of its assigned errors, petitioner avers the following arguments:

1. While the petitioner concedes that the tax refund should be filed within two (2) years, petitioner disputes the period when the two year period begins to run. The two (2) year period should start only from August 5, 2002, the date when the *dacion en pago* was rescinded, or until 05 August 2004.

2. The exceptional circumstance of the present claim of refund should suspend the two-year prescriptive period citing the case of CIR vs. Philippine American Life Insurance Co. (G.R. No. 105208, May 29, 1995) where the Supreme Court held that:

> "Moreover, even if the two-year prescriptive period had already lapsed, the same is not jurisdictional and may be suspended for reasons of equity and other special circumstances.
>
> In said case, Honorable Justice J. Vitug, in his concurring opinion, held that:

> This two-year period, unlike the thirty-day period of appeal from the decision of the Commissioner, is not jurisdictional **and it may thereby be suspended under exceptional circumstances**."

Petitioner claims that the exceptional circumstance in this case is its "predicament of whether to file the claim within the 2 year period from the time of payment of taxes or to wait for the judicial determination of the act of rescission. Logic, equity and good reason dictates that it should be filed after the judicial determination of the act of rescission as it is not yet determined if the tax is due and payable to the government."

3. The principle of *Solutio Indebiti* should be applied in the present case. Petitioner again invokes the ruling by the Supreme Court in the Citibank case:

> "Hence, under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something when 'there [was] no right to demand it, and thus the obligation to return arises.' Heavily militating against Respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires speedy refund of the wrongly held taxes."

4. In the Citibank case, it was held that the prescriptive period of two years "should commence to run only from the time the refund is ascertained. It can only be determined after the final adjustment return is ascertained." "By analogy, the final determination of the tax, if the rescission is adjudged as valid, is likened to the "final adjustment return" as defined in the case of Citibank. Like the final adjustment of the withholding tax, the validity of the payment of tax is conditioned upon the judicial determination of the act of rescission."

5. The petition for review should not be dismissed on the ground that the validity of the rescission is still subject of a pending litigation. It is illogical to declare the claim of refund must be filed within two years from actual payment and that the present case is premature pending the judicial determination of the act of rescission.

6. The Special Purpose Vehicle Law is Relevant in the present case.

In its Memorandum filed on September 6, 2005, petitioner reiterates its argument that "the prescriptive period must commence from the date of the judicial declaration of the validity of the act of rescission". *(Memorandum, V.6, p.9).* However, petitioner later on argues that since petitioner opposed the extra-judicial rescission made by the bank, "it should not wait for the judicial determination of the act of rescission that was brought by the petitioner itself. What is more logical, therefore, is to declare that the two year prescriptive period should start from the date the *dacion en pago* was actually rescinded." *(Memorandum, V.8 and V.9, pp. 9-10)* In addition, petitioner argues that Section 229 of the NIRC of 1997 is not an absolute provision. It admits of several exemptions such as the principle of *solutio indebiti* relying on the ruling of the Supreme Court in the case of *Citibank, N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997. *(Memorandum, V.13, p.10)*

Respondent, on the other hand, in his Comment filed on June 29, 2005 proffers the following arguments:

> "One of the requisites for a valid claim for refund is that it must be filed within two years from the date of payment of the tax as provided under Section 229 of the Tax Code:
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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.
>
> **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)

Furthermore, Section 204 (C) of the Tax Code provides:

> Sec. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. –
>
> The Commissioner may –
>
> (A) xxx xxx xxx
> (B) xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, xxx xxx xxx. **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 payment of the tax or penalty**: x x x x
>
> xxx xxx xxx

In its petition for review, petitioner alleges that on May 17, 2002, it paid taxes in the amount of P4,100,512.97 for the transfer of properties. Petitioner claims that it had until May 17, 2004 within which to file its administrative and legal remedies.

Petitioner misses the point. It had only until May 16, 2004 within which to file the instant case since 2004 is a leap year. The said period lapsed by two days because it appears that the instant case was filed only on May 18, 2004, while the administrative claim was allegedly filed on May 17, 2004. We, therefore, submit that the petitioner's claim is barred by prescription."

THE COURT'S RULING

The Petition for Review has no merit.

The Petition for Review was filed beyond the prescriptive period

The factual finding of the Court in Division that the petition for review was filed beyond the prescriptive period is in accordance with Section 229 of the 1997 National Internal Revenue Code (NIRC). Said section provides:

> 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.
>
> 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.

The language of the law is unequivocal, it provides that no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax 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.

The date of payment of the tax is the reckoning point of the two-year period within which a valid claim for refund may be filed in both the administrative [Sec. 204 (C) NIRC] and judicial levels. Any claim or proceeding for the recovery of taxes shall be filed within the two-year prescriptive period, otherwise, the taxpayer loses his right *ipso facto* to recover any tax alleged to have been erroneously or illegally collected.

A review of the material dates involved in this case reveals that the Petition for Review was filed beyond the two-year prescriptive period provided for in Section 229. Petitioner claimed that it paid the taxes sought to be recovered on February 28, 2002 in the amount of P1,171,234.00 and on May 17, 2002 in the amount of P4,100,512.97. On August 5, 2002, the petitioner was notified by its creditor bank that the *dacion en pago* arrangement had been rescinded[1]. Therefore, as early as August 5, 2002 petitioner could have filed its administrative claim for refund and thereafter filed its petition for review for the recovery of the taxes it paid on February 28, 2002 and May 17, 2002. Petitioner had more than enough time to avail of the remedies allowed by law. Petitioner, however, did not do so.

Taking May 17, 2002, the later date of payment of the taxes sought to be recovered, as the reference date, the two-year prescriptive period for this payment commenced to run on May 18, 2002.

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[1] Petition for Review, p. 4.

"According to Article 13 of the Civil Code of the Philippines, when the law speaks of years, it shall be understood that the years are of 365 days each"[2], therefore, the two-year prescriptive period is equivalent to 730 days. Counting 730 days, petitioner had only until May 16, 2004[3] within which to file its petition for review with the Court of Tax Appeals. However, considering that May 16, 2004 fell on a Sunday, petitioner should have filed its Petition for Review on May 17, 2004 pursuant to Section 1 of Rule 22 of the Rules of Court which provides that "[i]f the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day". However, as borne by the records of the case, petitioner filed its Petition for Review with the Court in Division only on May 18, 2004 or one (1) day beyond the two-year prescriptive period. It is of course understood that the right of the petitioner to file an action for the recovery of the February 28, 2002 tax payment had prescribed much earlier. Thus, the action for refund was barred by prescription[4].

Petitioner's arguments cannot be sustained

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2 *Bank of Philippine Islands vs. Commissioner of Internal Revenue,* G.R. No. 139736, October 17, 2005 (see endnote no. 21).

3 The year 2004 was a leap year, hence, the month of February had an extra day.

4 *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals, and Bank of Philippine Islands as Liquidator of Paramount Acceptance Corporation,* G.R. No. 117254, January 21, 1999.

The argument proffered by the petitioner that the two-year period should commence from the date of the extra-judicial rescission of the *dacion en pago* arrangement is contrary to the clear language of Section 229 of the 1997 NIRC. The same is true with respect to the other arguments raised by the petitioner, to wit: that the two-year period should be reckoned from the date of judicial determination of the act of rescission, the pendency of the litigation between the petitioner and its creditor bank and the enactment of R.A. 9182 otherwise known as *"The Special Purpose Vehicle Act"*. These are all extraneous matters from the date of payment of the tax. In fact, they occurred after the payment of the tax, thus, not relevant in determining the prescriptive period. Section 229 explicitly states that the two-year prescriptive period is not affected by any supervening cause, hence, the phrase *"regardless of any supervening cause"*. This phrase was originally added by P.D. No. 69 dated November 24, 1972 and was retained in both the 1977 and 1997 National Internal Revenue Code. The intent of the law is unmistakable, to establish as a condition *sine qua non* that all claims and actions for refund of any tax or penalty shall be filed within two years from the date of payment of such tax or penalty, "even if the taxpayer had no cause for refund as the tax or penalty, was legally collected, and even if after the lapse of the two-year period, a supervening cause should arise which would entitle the taxpayer to refund"[5].

We concur with the ruling of the Court in Division that "the two-year prescriptive period for filing an action for tax refund was purposely included in Section 229 of the 1997 NIRC to enable the government to settle claims for refund at the earliest possible time considering that *taxes are the lifeblood of the Government and their prompt and certain availability is an imperious need (Commissioner of Internal Revenue vs. Pineda, 21 SCRA 105).* The availability of funds from the collection of taxes cannot forever be left subject to the contingency of refund brought about by certain acts which are solely within the exclusive control of the private contracting parties, otherwise, fiscal adequacy cannot be achieved"[6].

The cases cited by the petitioner, namely: *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., et al.,* G.R. No. 105208, May 29, 1995 and *Citibank N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997 are not applicable. The issue involved in the cases cited was the reckoning point of the two-year prescriptive period for the recovery of taxes when the law requires the filing of a final adjustment return on a specified date after the end of the taxable year. In the aforementioned cases, it was held that the

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[5] Arañas, Annotations and Jurisprudence on the National Internal Revenue Code of 1977, As Amended, Sixth Edition, p. 571.
[6] Assailed Resolution, C.T.A. CASE No. 6987, March 30, 2005.

action for refund was filed within the prescriptive period. The Supreme Court in the above-cited *Philamlife* case ruled as follows:

> "xxx Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review as brought before the CTA on January 2, 1986. **Both dates are within the two-year reglementary period**. Private respondent being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier said in the TMX Sales case, Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be considered in conjunction with it." (Emphasis supplied)

In the *Citibank N. A.* case, *supra,* Citibank filed its corporate income tax returns for the year 1979 on April 15, 1980 and for the year 1980 on April 15, 1981. On October 31, 1981, Citibank submitted its claim for refund and on October 12, 1981 filed a petition for review with the Court of Tax Appeals concerning its claim for tax refund. As can be plainly seen, both the administrative claim for refund as well as the action for refund were both filed within the two-year prescriptive period. The distinction between the aforementioned cases and herein petitioner's case are the following: in petitioner's case, there is no final adjustment return required to be filed and the tax involved is not a creditable withholding tax which has been held to be in the nature of provisional tax payments subject to adjustment through the filing of a final adjustment return.

Finally, the principle of *solutio indebiti* is likewise not applicable. *Solutio indebiti* is a principle in Civil Law found in the Civil Code of the Philippines[7], a general law, whereas the two-year prescriptive period for the recovery of erroneously paid taxes is found in Section 229 of the 1997 NIRC which is a special law. It is well-settled that "[a] special law (Tax Code) shall prevail over a general law (Civil Code)"[8]. Accordingly, the two-year prescriptive period found in Section 229 of the 1997 NIRC shall prevail over the principle of *solutio indebiti*. *Generalia specialibus non derogant.*[9]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the **DISMISSAL** of the Petition for Review in C.T.A. CASE No. 6987 enunciated in the assailed Resolutions dated September 24, 2004 and March 30, 2005 is **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

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[7] Republic Act No. 386.

[8] *Guagua Electric Light Co., Inc. vs. Collector of Internal Revenue and The Honorable Court of Tax Appeals,* L-23611, April 24, 1967.

[9] *Philippine National Oil Company vs. The Hon. Court of Appeals, et al.; and Philippine National Bank vs. The Hon. Court of Appeals, et al.,* G. R. Nos. 109976 and 112800, April 26, 2005 citing *Manila Railroad Co., v. Rafferty*, 40 Phil 224 (1919).

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice