REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

MA. JETHRA B. PASCUAL,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9566

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 30 2020
4:04 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

This is a Petition for Review[1] seeking a refund in the amount of Seven Million Eight Hundred Ninety-Seven Thousand One Hundred Fifty-Eight Pesos (₱7,897,158.00), allegedly representing erroneous/overpayment of withholding tax on compensation from Petitioner's Retirement Pay for taxable year (TY) 2014.

THE PARTIES

Petitioner is of legal age, a Filipino citizen, and a resident of 1 Hillside Drive, Blue Ridge A, Quezon City.

Respondent is the head of the BIR, the government agency mandated by law to assess and collect all national internal revenue taxes, fees, and charges, and vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law. Respondent may be served with processes, orders, notices, and pleadings at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

[1] Docket – Vol. 1, pp. 12-31, with Annexes at pp. 32-365.
[2] Docket – Vol. 1, p. 13.

THE FACTS

Petitioner was an employee of Deutsche Bank from 1995 until 2014.[3]

Petitioner's position as Managing Director of ICG Sales Philippines was abolished as a result of the downsizing program implemented by Deutsche Bank.[4]

On June 16, 2014, Petitioner received a Confirmation of Redundancy (Notice of Termination) of the same date stating, in part, that: (i) Deutsche Bank had recently undertaken a restructuring program, (ii) Petitioner's role as Managing Director of ICG Sales Philippines was declared redundant, (ii) the letter serves as Petitioner's notice of termination, and (iv) Petitioner's last day of employment shall be on September 16, 2014. The Notice of Termination also included a breakdown of the separation package to be paid to Petitioner on September 25, 2014.[5]

Deutsche Bank also sent a letter to the Department of Labor and Employment (DOLE) dated August 15, 2014, informing the DOLE of Petitioner's separation on the ground of redundancy under Article 283 of the Labor Code.[6]

On September 17, 2014, Petitioner's employment was officially terminated from Deutsche Bank. She was forty-six (46) years old at that time.

As a consequence of the termination of Petitioner's employment, she was given: (i) separation pay and (ii) "Retirement Pay". Deutsche Bank, however, included the "Retirement Pay" as part of her taxable income and effectively withheld taxes in the amount of ₱7,941,999.95. To illustrate:[7]

Taxable Income per BIR Form No. 2316	49,677,646.86
Less: "Retirement Pay"	24,818,749.82
Should be Taxable Income	24,858,897.04
Should be tax due per Section 24(A)(2) of the Tax Code	7,919,847.05
Tax withheld per BIR Form No. 2316	15,861,847.00
Overwithheld tax	7,941,999.95

[3] Exhibits "P-31", Judicial Affidavit of Ma. Jethra Pascual, and "P-24", Employment Certificate of Ma. Jethra B. Pascual.
[4] Exhibit "P-1", Confirmation of Redundancy.
[5] *Id.*
[6] Exhibit "P-2", Letter dated August 15, 2015 from Deutsche Bank to DOLE.
[7] Exhibits "P-3", BIR Form No. 2319; "P-3-C", Item No. 54-A thereof; "P-25", Certification by Deutsche Bank that Item No. 54-A includes Retirement Pay.

Deutsche Bank viewed "Retirement Pay" as not exempt from income tax since Petitioner failed to satisfy one of the requisites provided in Section 32(B)(6)(a) of the Tax Code, i.e., the employee must be at least fifty (50) years of age at the time of retirement. According to Deutsche Bank, since Petitioner was only forty-six (46) years old at the time of her termination, the "Retirement Pay" was not exempt from income tax.

Apart from compensation income received from Deutsche Bank, Petitioner's sources of income also included income from her laundry business and lease of real property. For TY 2014, Petitioner did not derive income from her laundry business but received income from her lease of real property to TSGS Mineral Investments, Inc. (TSGS) amounting to ₱315,789.48 from which TSGS withheld taxes in the sum of ₱15,789.48.[8]

On April 11, 2015, Petitioner filed her income tax return to report the income which she received from Deutsche Bank and TSGS.[9]

Since Petitioner was a mixed income earner, the excess taxes withheld by Deutsche Bank amounting to ₱7,941,999.95 was reduced and adjusted on the basis of Petitioner's consolidated income from her compensation, laundry business and rent of real property, as follows:

Taxable Income per BIR Form No. 2316		49,677,647
Less: Retirement pay		24,818,750
Should be Taxable Income per BIR Form No. 2316		24,858,897
Add: Net Income from Business		189,474
Laundry business	0	
Gross Income from lease of real property	315,790	
Less: Optional Standard Deduction per Section 34(L)	126,316	
Should be Taxable Income per Annual ITR		25,048,371
Should be tax due per Section 24(A)(2) of the Tax Code		7,980,479
Less: Tax withheld per BIR Form No. 2316	15,861,847	
Less: Creditable tax withheld from rental income	15,790	15,877,637
Overpayment		7,897,158

[8] Exhibits "P-4", BIR Form No. 2307 for the taxable period July 2014 to September 2014; "P-4-A", BIR Form No. 2307 for the taxable period October 2014 to December 2014, and "P-26", Contract of Lease dated July 22, 2014 between Petitioner and TSGS.

[9] Exhibit "P-5", Petitioner's Income Tax Return.

Consequently, Petitioner's income tax return reflected a refundable income tax of ₱7,897,158.00.[10]

On July 9, 2015, Petitioner filed an Application for Issuances of Tax Credits/Refunds (BIR Form No. 1914) and sent a letter of the same date (Claim for Refund) to the BIR respectfully requesting for the refund of taxes erroneously withheld and remitted by her former employer, Deutsche Bank.[11]

The Claim for Refund was assigned to Ms. Dolores Gillego (Ms. Gillego), examiner of Revenue District Office No. (RDO) 43A - Pasig.[12] Ms. Gillego informed the Petitioner to submit a copy of Deutsche Bank's BIR Form No. 1604CF for the year 2014 (Form 1604CF) which Petitioner, in turn, requested a copy from Deutsche Bank.

Deutsche Bank failed to accede to her request. This compelled Petitioner to write a letter dated December 18, 2015 to Mr. Danilo Pasiliao, the officer in-charge of the Large BIR Taxpayers Quality and Assurance Division (LT-QAD), requesting for a copy of the Form 1604CF.[13]

The LT-QAD advised Petitioner that only Deutsche Bank or Ms. Gillego were allowed to request for a copy of the Form 1604CF. This prompted Petitioner to follow up her request for a copy of the Form 1604CF with Deutsche Bank. In a letter dated February 15, 2016, she informed Deutsche Bank that the LT-QAD could not furnish her a copy of the Form 1604CF because she was not a proper requesting party.[14]

In a letter dated February 16, 2016, Petitioner informed the BIR and Ms. Gillego that she was unable to obtain the Form 1604CF from the LT-QAD as it was of the opinion that she was not the proper requesting party while Deutsche Bank decided not to furnish her a copy of the Form 1604CF.[15]

On the same day, Petitioner submitted the following additional documents which Ms. Gillego required, namely: (a) BIR Form No. 1604E of TSGS Mineral Investments, Inc. with Alphalist; and (b) computational breakdown of Petitioner's BIR Form No. 2316.[16]

In a letter dated February 24, 2016, Deutsche Bank responded to the February 15, 2016 Letter stating that they were unable to issue a copy of the

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[10] Exhibit "P-5".
[11] Exhibits "P-6", "P-32", and "P-7".
[12] Exhibit "P-27".
[13] Exhibit "P-8".
[14] Exhibit "P-9".
[15] Exhibit "P-10".
[16] Exhibits "P-11", "P-11-B", "P-11-C", and "P-33-A".

Form 1604CF for confidentiality reasons.[17] Deutsche Bank, however, provided Petitioner with the following documents:

a) 00044958600001231201416O4CF_DBM 2014 DAT file.pdf containing data of validation file for taxes paid for all employees which were masked with the exception of Petitioner's data;[18] and

b) Schedule 7.1_DBM 2014 Copy.pdf containing the list of resigned employees in 2014 who had income taxes withheld and paid to BIR, with all data, except that of the the Petitioner's, redacted.[19]

These documents were transmitted to Ms. Gillego on February 26, 2016.[20]

In response to the February 24, 2016 Letter, Petitioner, sent Deutsche Bank a letter dated March 15, 2016, asking again to be furnished a copy of the Form 1604CF inasmuch as Ms. Gillego insisted on being given a copy of this document to process her Claim for Refund.[21] Petitioner pointed out that Deutsche Bank's continued refusal to grant her request may cause the denial of her Claim for Refund. Petitioner likewise stated that she would pursue her legal remedies on the basis of the pecuniary loss she would sustain for Deutsche Bank's failure or refusal to furnish the document.

On March 23, 2016, Deutsche Bank furnished Petitioner a copy of the Form 1604CF.[22] This was transmitted to RDO 43A - Pasig.

Sometime in April 2016, Petitioner was advised that due to the reshuffling program of RDO 43A - Pasig, her Claim for Refund was assigned to Ms. Wilvie Polancos (Ms. Polancos).[23]

Upon following up with Ms. Polancos on the status of the Claim for Refund, Petitioner was required to submit (a) a certified true copy of the certification of accreditation of the retirement benefit plan, (b) the monthly BIR Form No. 1601-C with redacted Alphalist from January 2014 to December 2014, (c) letter explaining the composition of item 54A and de minimis benefits in the BIR Form No. 2316 of the Petitioner; and (d) a special power of attorney executed by the Petitioner authorizing her counsel to represent her before the BIR in relation to her Claim for Refund.

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[17] Exhibit "P-12".
[18] Exhibit "P-12-A".
[19] Exhibit "P-12-B".
[20] Exhibit "P-13", "P-13-B", and "P-13-C".
[21] Exhibit "P-14".
[22] Exhibit "P-15" and "P-15-A".
[23] Exhibit "P-30".

On June 16, 2016, Petitioner requested from Deutsche Bank (a) a certified true copy of the certification of accreditation of the retirement benefit plan, and (b) the monthly BIR Form No. 1601C with redacted Alphalist from January 2014 to December 2014.[24]

On July 5, 2016[25] and July 22, 2016[26], Deutsche Bank furnished Petitioner a copy of (a) a certified true copy of the BIR Ruling dated October 19, 2018 which declared that Deutsche Bank's retirement benefit is exempt from taxes,[27] and (b) Deutsche Bank's monthly BIR Form No. 1601C with redacted Alphalist from January 2014 to December 2014.[28]

Subsequently on August 2, 2016, Petitioner sent Ms. Polancos a transmittal letter[29], furnishing her copies of: (a) certified true copy of the certification of accreditation of the retirement benefit plan;[30] (b) Deutsche Bank's monthly BIR Form No. 1601C with redacted Alphalist from January 2014 to December 2014;[31] (c) letter dated August 2, 2016 explaining the composition of Item 54A and de minimis benefits in the BIR Form No. 2316 of Petitioner;[32] and (d) a special power of attorney executed by Petitioner authorizing her counsels to represent her before the BIR in relation to her Claim for Refund.[33]

As requested by Ms. Polancos, on August 16, 2016, Petitioner submitted a clearer copy of the monthly BIR Form No. 1601C with redacted Alphalist from January 2014 to December 2014, and this time with the attached certified true copy of the certification of accreditation of the retirement benefit plan of Deutsche Bank.[34]

Sometime in August 2016, Ms. Polancos informed Petitioner through undersigned firm that the docket of the Claim for Refund including her recommendation were already elevated to Revenue Region No. 7- Quezon City (Region 7).

Upon following up the status of the Claim for Refund with the reviewer, Ms. Mary Anne Micah Baltazar, Petitioner was required to provide additional documents such as: (a) the Revenue Accounting Division Certificate of Payment evidencing remittance by Deutsche Bank of the monthly withholding taxes on compensation of its employees (RAD Certificate); and (b) a

[24] Exhibit "P-16".
[25] Exhibit "P-17".
[26] Exhibit "P-18".
[27] Exhibit "P-17-A".
[28] Exhibit "P-18-A" to "P-18-L".
[29] Exhibit "P-19".
[30] Exhibit "P-19-E".
[31] Exhibits "P-19-H" to "P-19-S".
[32] Exhibit "P-19-T".
[33] Exhibit "P-19-F".
[34] Exhibits "P-20", "P-20-A" to "P-20-L", and "P-21".

certification that the breakdown of BIR Form No. 2316 previously transmitted by Petitioner originated from Deutsche Bank.

On November 22, 2016, Petitioner requested from Mr. Danilo Pasiliao of the LT-QAD the issuance of the RAD Certificate.[35]

However, the BIR informed Petitioner that they could not issue the RAD Certificate to her since she was not a proper requesting party as it should be a representative from Deutsche Bank or the Region 7 reviewer who should procure the RAD Certificate.

Petitioner then sent a letter dated December 8, 2016 to Deutsche Bank requesting it to obtain the RAD Certificate and to issue a certification that the breakdown of BIR Form No. 2316 originated from their office. However, this was ignored by Deutsche Bank.[36]

After explaining the necessity of obtaining the RAD Certificate to the Assistant Commissioner Large Taxpayers Service Atty. Teresita M. Angeles and Mr. Pasiliao, they agreed to release a RAD Certificate provided that it would be directly transmitted to Region 7 upon the latter's request.

On January 26, 2017, Petitioner informed Ms. Analyn Chu, OIC Chief of the Assessment Division of Region 7 of the arrangement discussed with Atty. Angeles and Mr. Pasiliao and requested her to secure the RAD Certificate from the BIR National Office.

On February 24, 2017, the RAD Certificate was issued and transmitted to Region 7 on February 27, 2017.[37] Further, Region 7 examiner Ms. Baltazar represented to Petitioner that it was no longer necessary to provide a certification that the breakdown of BIR Form No. 2316 originated from Deutsche Bank.

Despite completing all the documents required by the BIR, Petitioner's Claim for Refund remained unacted on. Petitioner then filed a Petition for Review[38] with the Court on April 7, 2017.

After receiving Summons, the Office of the Solicitor General (OSG) filed a Manifestation and Motion stating that the BIR handling lawyer shall handle the case lodged with this Court and asking that it be excused from filing the required Answer.[39] This was granted by the Court on May 24, 2017.[40]

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[35] Exhibit "P-22".
[36] Exhibit "P-23".
[37] BIR Records, p. 208.
[38] *Id.* at Note 1.
[39] Docket – Vol. 1, pp. 367-374.

After Respondent's Motion for Extension of Time to File Answer[41] was granted by the Court,[42] Respondent still failed to file his Answer. This prompted Petitioner to file a Motion to Declare Respondent in Default and Allow Presentation of Evidence Ex-Parte[43] on August 7, 2017. Respondent was then ordered to file his Comment on the Motion in a Resolution dated August 16, 2017.[44]

On August 18, 2017, Respondent filed a Motion to Admit Answer with Attached Answer.[45] In response thereto, Petitioner filed an Opposition (to the Respondent's Motion to Admit Answer) on September 15, 2017.[46]

On October 2, 2017, this Court issued a Resolution[47] denying Respondent's Motion to Admit Answer, granting Petitioner's Motion to Declare Respondent in Default and Allow Presentation of Evidence Ex-Parte, and declaring Respondent in default pursuant to Section 3, Rule 9 of the Rules of Court.

Respondent filed a Motion for Reconsideration on the Resolution declaring the Respondent in Default[48] on October 19, 2017 through registered mail which the Court received on October 30, 2017. On, November 29, 2017, Petitioner filed her Opposition thereto.[49] Eventually, Respondent's motion for reconsideration was denied by the Court in a Resolution dated December 12, 2017.[50]

On January 25, 2018, Petitioner filed an Omnibus Motion A. To Set Commissioner's Hearing and B. To Order Respondent to Elevate the Bureau of Internal Revenue Records of this Case[51] which was granted by the Court.[52]

Thereafter, Petitioner proceeded to present evidence *ex-parte*. Petitioner presented the following witnesses: a) Ma. Jethra B. Pascual;[53] b) Atty. Roxanne

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[40] Docket – Vol. 1, pp. 378-379.
[41] Docket – Vol. 1, pp. 375-376.
[42] Docket – Vol. 1, p. 381.
[43] Docket – Vol. 1, pp. 383-386.
[44] Docket – Vol. 1, p. 388.
[45] Docket – Vol. 1, pp. 389-395.
[46] Docket – Vol. 1, pp. 399-405.
[47] Docket – Vol. 1, pp. 407-412.
[48] Docket – Vol. 1, pp. 413-419.
[49] Docket – Vol. 1, pp. 423-431.
[50] Docket – Vol. 1, pp. 433-436.
[51] Docket – Vol. 1, pp. 437-440.
[52] Docket – Vol. 1, pp. 442-443.
[53] Testified on February 12, 2018 on her Judicial Affidavit, Exhibit "P-31" and on July 24, 2018 on her Supplemental Judicial Affidavit, Exhibit "P-39".

B. Tadique;[54] c) Atty. Hyacinth B. Aldueso[55], and d) Mr. Jonathan De Guzman.[56]

On March 20, 2018, the Court issued a Resolution[57] reiterating its Order in the Resolution dated February 6, 2018 ordering Respondent to certify and elevate to the Court the entire BIR records of this case. This was complied with by Respondent on April 13, 2018, who certified and elevated the BIR records.[58]

Petitioner, on several occasions, also filed Requests for the Issuance of a Subpoena Duces Tecum and Ad Testificandum[59] to TSGS Mineral Investments, Inc. (TSGS) for an authorized representative to appear and bring documents she wished to present as evidence. However, despite the issuance of the said subpoenas, they remained unserved due to the wrong company address.[60]

Petitioner then filed her Formal Offer of Evidence on August 17, 2018.[61] Thus, the Court admitted Petitioner's exhibits; however, all of the Judicial Affidavits of her witnesses, including hers, were denied due to failure to comply with Section 3(b) of the Judicial Affidavit Rule.[62] Consequently, the admission of the following exhibits were likewise denied, to wit:

> 1. Exhibits "P-2", "P-2-A", "P-2-B", "P-3", "P-3-A", "P-3-B", "P-3-C", "P-5", "P-5-A", "P-6", "P-6-A", "P-7", "P-7-A", "P-8", "P-8-A", "P-9", "P-9-A", "P-9-B", "P-9-C", "P-10", "P-10-A", "P-11", "P-11-A", "P-12-A", "P-12-B", "P-13", "P-13-A", "P-13-B", "P-13-C", "P-14", "P-14-A", "P-14-B", "P-14-C", "P-15", "P-17-A, P-19-E, P-21", "P-18-A to P-18-L, P-18-H to P-18-S, P-20-A to P-20-L", "P-19", "P-19-A", "P-19-B", "P-19-C", "P-19-D", "P-19-F", "P-19-T", "P-19-U", "P-19-V", "P-19-W", "P-19-X", "P-20", "P-20-M", "P-20-N", "P-22", "P-22-A", "P-23", "P-23-A", "P-23-B", "P-23-C", "P-25", "P-25-A", "P-26", "P-26-A", "P-27", "P-28", "P-28-A", "P-28-B", "P-28-C", "P-29", "P-29-A", "P-29-B", "P-29-C", "P-37", "P-37-A", "P-37-B", "P-37-C", and "P-38" for failure to identify;

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[54] Testified on February 12, 2018 on her Judicial Affidavit, Exhibit "P-32" and on May 7, 2018 on her Supplemental Judicial Affidavit, Exhibit "P-35".
[55] Testified on February 12, 2018 on her Judicial Affidavit, Exhibit "P-30".
[56] Testified on May 7, 2018 on his Judicial Affidavit, Exhibit "P-36".
[57] Docket – Vol. 1, pp. 904-905.
[58] Docket – Vol. 1, p. 906.
[59] Docket – Vol. 2, pp. 907-924; Vol. 3, pp. 988-1004.
[60] Docket – Vol. 3, p. 1006.
[61] Docket – Vol. 3, pp. 1117-1153.
[62] Exhibits "P-30", "P-30-A", "P-31", "P-31-A", "P-32", "P-32-A", "P-35", "P-35-A", "P-39", and "P-39-A".

2. Exhibits "P-4", "P-4-A", "P-11-B", "P-16-A", "P-16-B", and "P-16-C", for failure to identify and to present the originals for comparison; and

3. Exhibit "P-15-A" was likewise denied for failure to present the original for comparison.

Consequently, Petitioner filed a Motion for Partial Reconsideration (of the Resolution dated October 29, 2018).[63] Petitioner also filed a Supplement to the Motion for Partial Reconsideration Dated November 21, 2018 (of the Resolution dated October 29, 2018).[64]

On December 6, 2018, Petitioner filed her Memorandum.[65]

On March 11, 2019, the Court issued a Resolution[66] granting Petitioner's Supplement to the Motion for Partial Reconsideration Dated November 21, 2018 (of the Resolution dated October 29, 2018) and partially granting Petitioner's Motion for Partial Reconsideration (of the Resolution dated October 29, 2018). In essence, all exhibits previously denied by the Court were admitted, except Exhibits "P-4", "P-4-A", "P-11-B", as originals were still not presented for comparison. Petitioner's counsel was likewise ordered to pay a fine of ₱1,000.00 for each Judicial Affidavit that was non-compliant.

On March 25, 2019, Petitioner filed a Proffer of Excluded Evidence[67] in order for the denied exhibits to continue to form part of the records of the case. On even date, Petitioner also filed a Compliance[68] and manifested that she had paid the fine.

On June 17, 2019, the Court noted Petitioner's Proffer of Excluded Evidence and deemed this case submitted for decision.[69]

THE ISSUE[70]

Whether or not Petitioner is entitled to the refund of taxes in the amount of Seven Million Eight Hundred Ninety-Seven Thousand One Hundred Fifty-Eight Pesos (₱7,897,158.00), erroneously withheld from her

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[63] Docket – Vol. 3, pp. 1398-1421, with Annexes at pp. 1422-1443.
[64] Docket – Vol. 3, pp. 1444-1450,
[65] Docket – Vol. 3, pp. 1451-1480.
[66] Docket – Vol. 3, pp. 1483-1489.
[67] Docket – Vol. 3, pp. 1489-1491
[68] Docket – Vol. 3, pp. 1492-1495.
[69] Docket – Vol. 3, pp. 1499-1500.
[70] Memorandum-Docket-Vol.3, pp. 1470-1471.

"Retirement Pay" which was remitted to the BIR by former employer, Deutsche Bank.

THE ARGUMENTS OF PETITIONER

Petitioner argues that the purported "Retirement Pay" is exempt from income tax under Section 32(B)(6)(b) of the NIRC of 1997, as amended and that the same is a consequence of her involuntary separation from Deutsche Bank. As such, it is not a retirement benefit as contemplated under Section 32(B)(6)(a) of the NIRC of 1997, as amended.

THE RULING OF THE COURT

The provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, pertinent to claiming a tax refund of erroneously paid tax are Sections 204(C) and 229, which read as follows:

> "**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." *(Emphasis supplied)*
>
> "**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."

From the foregoing, in order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present:

1) That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2) That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3) That the suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

Petitioner Timely Filed Its Administrative and Judicial Claims

We shall first address the second and third requisites which pertain to the timeliness of the filing of petitioner's claim in the administrative and judicial levels.

Section 204(C) applies to administrative claims filed with the BIR, whereas Section 229 refers to judicial actions for the recovery of the tax. In both instances, the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.

In a long line of cases, the Supreme Court ruled that the two (2)-year prescriptive period should be counted from the filing of the final adjustment return because it is only during that date that the exact liability or refundability of the tax can be determined. Thus:

"xxx In several cases, we have already ruled that income taxes remitted partially on a periodic or quarterly basis should be credited or refunded to the taxpayer on the basis of the taxpayer's final adjusted returns, not on such periodic or quarterly basis. For instance, in the recent case of Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., the Court held:

> 'xxx When applied to taxpayers filing income tax returns on a quarterly basis, the date of payment mentioned in Section 292 (now Section 230) must be deemed to be qualified by Sections 68 and 69 of the present Tax Code xxx.
>
> It may be observed that although quarterly taxes due are required to be paid within 60 days from the close of each quarter, the fact that the amount shall be deducted from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, the taxes paid in the preceding quarters are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation.
>
> This interpretation may be gleaned from the last paragraph of Section 69 of the Tax Code which provides that the refundable amount, in a case a refund is due a corporation, is that amount which is shown on its final adjustment return and not on its quarterly returns.
>
> x x x x x x x x x

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. 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 xxxx.'"[71]

While the above Supreme Court pronouncement pertains to a corporation's income tax liability, the same applies to an individual's income tax liability.

[71] *Mitsubishi Motors Phils. Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 6426, February 15, 2017, citing *Citibank, N.A. vs. Court of Appeals, SCRA 466-467.*

For individuals who are engaged in trade/business or the practice of profession including those with mixed income (*i.e.*, those engaged in the trade/business or profession who are also earning compensation income) like herein petitioner, the Annual Income Tax Return (ITR) [BIR Form 1701] is to be filed and the income tax due thereon is to be paid on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year in accordance with Section 51 of the NIRC of 1997, as amended.

Petitioner filed her Annual ITR[72] for TY 2014 on April 11, 2015 reflecting an overpayment amounting to ₱7,897,158.00, the subject of the instant claim. Counting from this date, Petitioner had until April 11, 2017 within which to file her administrative and judicial claims for refund. Clearly, Petitioner's administrative claim[73] for refund, filed on July 9, 2015 and the subsequent appeal before this Court *via* a Petition for Review on April 7, 2017, both fell within the reglementary period.

Erroneous Withholding of Income Tax on Petitioner's Retirement Pay Exists

Petitioner anchors her claim on Section 32(B)(6)(b) of NIRC of 1997, as amended, which provides as follows:

> "SEC. 32. *Gross Income.-*
>
> 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
>
> *(6) Retirement Benefits, Pensions, Gratuities, etc.-*
>
> xxx xxx xxx
>
> (b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or **for any cause beyond the control of the said official or employee.**" *(Emphasis supplied)*

[72] Exhibit "P-5", Docket-Vol.3, p. 1162.
[73] Exhibits "P-6" and "P-7", Docket-Vol. 3, pp. 1172 and 1173, respectively.

Section 2.78.1(B)(1)(b) of Revenue Regulations (RR) No. 02-98 also provides for the exemptions from withholding tax on compensation for remunerations received as an incident of employment, to wit:

> "**SEC. 2.78.1.** ***Withholding of Income Tax on Compensation Income.*** **—**
>
> xxx xxx xxx
>
> (B) *Exemptions from withholding tax on compensation.* —
>
> xxx xxx xxx
>
> (1) ***Remunerations received as an incident of employment, as follows:***
>
> xxx xxx xxx
>
> (b) Any amount received by an official or employee or by his heirs from the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee, **such as** retrenchment, **redundancy,** or cessation of business."
>
> The phrase "**for any cause beyond the control of the said official or employee,**" connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be asked for or initiated by him. xxx xxx xxx
>
> Amounts received by reason of involuntary separation remain exempt from income tax even if the official or employee, at the time of separation, had rendered less than ten (10) years of service and/or is below fifty (50) years of age." *(Emphasis supplied)*

Based on the foregoing provisions, any amount paid by an employer to an employee as a consequence of the latter's involuntary termination from service (*i.e.* **redundancy of service),** is exempt from income tax and consequently from withholding tax, regardless of the employees' age and length of service.

Records show that on June 16, 2014, Petitioner received a letter [**"CONFIRMATION OF REDUNDANCY"**[74]] from the Human Resources of her employer, Deutsche Bank AG Manila (Deutsche). The said letter served as formal notice of the management's prerogative and decision to terminate the

[74] Exhibit "P- 1", Docket-Vol.3, pp. 1154 to 1155.

services of Petitioner as Managing Director, ICG Sales Philippines, on the ground of ***redundancy of service*** under Article 283 of the Labor Code. As indicated in the said letter, Petitioner's official last day of employment was on September 16, 2014 and that petitioner shall be entitled to a separation package, as follows:

a. Separation pay at the rate of one and a half (1.5) months per year of service, in accordance with the Bank's current policy;
b. Pro-rated 13th Month and 14th Month pay; and
c. Other accrued salaries and benefits, which may include Retirement Plan benefits, subject to the applicable vesting period and calculated as per Deutsche's retirement plan rules.

Applying the provisions of Section 32(B)(6)(b) of the NIRC of 1997, as amended, Petitioner's separation from the service was not of her own making and beyond her control. The effectivity of the management's notice and her subsequent termination is covered in the cited provision. Further, Section 2.78.1(B)(1)(b) of RR No. 02-98 categorically identified separation due to redundancy of service as one of the valid causes for tax exemption.

A scrutiny of the "Certified Computational Breakdown" of BIR Form No. 2316[75] and Certification[76] issued by Deutsche shows that Petitioner's retirement pay in the amount of ₱24,818,749.82 was included in Petitioner's "Total Taxable Compensation Income" of ₱49,727,646.86 reflected under line 55 of the Certificate of Compensation Payment/Tax Withheld [BIR Form No. 2316[77]] issued by Deutsche to petitioner for the year 2014.

Considering that Petitioner was separated from service due to redundancy, the said retirement pay of ₱24,818,749.82 was erroneously subjected to withholding tax. Thus, the "Total Amount of Taxes Withheld As Adjusted" of ₱15,861,847.00 indicated under line 31 of BIR Form No. 2316 was excessive as it included taxes withheld on Petitioner's retirement pay of ₱24,818,749.82.

The remittance to the BIR of the amount of ₱15,861,847.00 total taxes withheld on Petitioner's compensation income for the year 2014 can be traced to the redacted "Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes" [BIR Form No. 1604-CF] and Alphalist[78] filed by Deutsche for the year 2014.

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[75] Exhibits "P-25" and "P-33-A", Docket-Vol. 3, pp. 1281 and 1378, respectively.
[76] Exhibit "P-25", Docket-Vol. 3, p. 1281.
[77] Exhibit "P-3", Docket-Vol.3, p. 1159.
[78] Exhibit "P-15-A", Docket-Vol.3, pp. 1214 to 1225.

Accordingly, Petitioner correctly reflected only the amount of ₱24,858,897.00[79] as net taxable compensation income in her Annual ITR[80] filed for the year 2014. However, since Petitioner's total tax credits of ₱15,877,637.00,[81] were more than her income tax due of ₱7,980,479.00[82], Petitioner had an income tax overpayment of ₱7,897,158.00[83] representing the income taxes withheld on her retirement pay.

In fine, it was sufficiently established that Petitioner's retirement pay of ₱24,818,749.82 is exempt from income tax and consequently from withholding tax pursuant to Section 32(B)(6)(b) of the NIRC of 1997, as amended, and as implemented by Section 2.78.1(B)(1)(b) of RR No. 02-98, thus, the claimed income taxes withheld thereon in the amount of ₱7,897,158.00 constitutes erroneously paid taxes which are refundable under Sections 204(C) and 229 of the NIRC of 1997, as amended.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND** the amount of **SEVEN MILLION EIGHT HUNDRED NINETY-SEVEN THOUSAND ONE HUNDRED FIFTY-EIGHT PESOS (₱7,897,158.00)**, representing erroneous/overpayment of withholding tax on Petitioner's retirement pay for TY 2014.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

79

Total Taxable Compensation Income per BIR Form No. 2316	₱49,727,646.86
Less: Personal Exemption	50,000.00
Retirement Pay not subject to w/holding tax	24,818,749.82
Net Taxable Compensation Income per BIR Form No.1701	**₱24,858,897.04**

80 Exhibit "P-5", Line 48, Docket-Vol. 3, p. 1163.

81 The sum of ₱15,861,847.00 income taxes withheld on compensation (which includes that of the retirement pay of ₱24,818,749.82) and ₱15,790.00 (₱7,895.00 plus ₱7,895.00) income taxes withheld on rental of real property. Exhibit "P-5", Docket-Vol. 3, p. 1170.

82 Exhibit "P-5", Line 26, Docket-Vol. 3, p. 1162.

83 Exhibit "P-5", Line 27, Docket-Vol. 3, p. 1162.

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice