Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SUTHERLAND GLOBAL SERVICES PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7985

For: Refund of Erroneously Paid Income Tax

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated: MAR 2 8 2012

4:15 p.m

x--x

DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on October 15, 2009 by Sutherland Global Services Philippines, Inc. as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 7 (a) (2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as

---

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising

Rule 4, Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2]. It involves a

---

under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; P*rovided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

claim for the refund of the amount of ₱2,118,052.88, allegedly representing erroneously paid income tax for the period covering July 1, 2006 to June 30, 2007.

Petitioner Sutherland Global Services Philippines Inc. is a foreign corporation organized and existing under the laws of Cayman Islands and duly licensed by the Securities and Exchange Commission in accordance with the Corporation Code of the Philippines and the Foreign Investments Act of 1991 to establish its branch office in the Philippines to process consulting services, account management services, technical support/help desk services, customer care services and back office processing for operating call center.[3]

Respondent Commissioner of the Bureau of Internal Revenue (BIR) is the public official tasked with the enforcement of internal revenue laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is a non-pioneer Information Technology (IT) locator enterprise registered as an Ecozone IT Enterprise by virtue of a Philippine Economic Zone Authority (PEZA) Amended Certificate of

---

[3] Exhibit "A"

Registration No. 05-10-IT dated October 16, 2008[4] and PEZA Certificate of Registration No. 06-90-IT dated December 6, 2006[5].

Pursuant to PEZA Resolution No. 06-543 dated November 14, 2006, the PEZA Board approved the application of petitioner to conduct and operate its business within the Clark Special Economic Zone (CSEZ). Consequently, a Registration Agreement between PEZA and petitioner was executed. The scope of its registered activity included process consulting, technology support services, customer care services, and back office processing for operating call center, as well as the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at the CSEZ.[6]

Petitioner was also granted tax incentives under Republic Act (R.A.) No. 7916, as amended, and PEZA Resolution No. 00-411 (PEZA IT Guidelines). Under the Registration Agreement, petitioner "shall pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR Rules and Regulations", and "(t)ax and duty

---

[4] Exhibit "B"
[5] Exhibit "C"
[6] Exhibit "F"

exemption on importation of capital equipment, raw materials and supplies".[7]

On January 18, 2007, through PEZA Resolution No. 07-37, petitioner, along with other CSEZ export-oriented and IT locator enterprises that registered with the Clark Development Corporation (CDC) after the proclamation of CSEZ as a PEZA Special Economic Zone, was allegedly granted full PEZA incentives.[8]

Accordingly, petitioner and PEZA executed a Supplemental Agreement on February 2, 2007, wherein it was stated that "(t)he REGISTRANT shall be entitled to four (4) years Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH incentive, the REGISTRANT shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law".[9]

However, according to petitioner, from the time petitioner started its commercial operations, the four-year ITH was not applied to it, and it mistakenly paid the five percent (5%) preferential tax on its gross income in the total amount of ₱3,530,088.13. Two million one hundred eighteen thousand fifty two pesos and 88/100 (₱2,188,052.88) of this ℓ

---

[7] Exhibit "F-5"
[8] Par. 5, Petition for Review, Docket, p. 7
[9] Exhibit "G"

amount was allegedly remitted to the BIR, and the balance, in the amount of ₱1,412,036.00 was remitted to the local government of Mabalacat, Pampanga.

Realizing that it paid the 5% preferential tax when it should have been exempt for the first four years on the basis of the PEZA IT Guidelines, petitioner purportedly filed an administrative claim for refund with the BIR.

Petitioner then filed the instant Petition for Review[10] and Supplemental Petition for Review[11], both through registered mail, on October 15, 2009 and November 27, 2009, respectively.

In Answer to the Petition for Review filed on November 25, 2009[12], respondent interposed the following defenses:

> "3. Petitioner did not file any administrative claim for refund; hence, this Petition for Review should be dismissed for lack of jurisdiction. Petitioner stated in its Petition for Review that it has mailed the administrative claim for refund in October 15, 2009. Petitioner then filed its Petition for Review on October 20, 2009.
>
> 4. Respondent observing due diligence requested the records of the instant administrative claim, which prompted a Memorandum dated November 11, 2009 (Attached as Annex 'A') from the Revenue District Office which supposedly received its claim. The Memorandum states that petitioner never filed any application for tax refund. c

---

[10] Docket, pp. 6-14
[11] Docket, pp. 41-51
[12] Docket, pp. 33-37

5. Section 204 (c) and 229 of the Tax Code required the taxpayer to file a written claim for refund before he could file a judicial claim for refund:

   'Section 204 (c) 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 years after the payment of the tax or penalty. xxx.'

   'Section 229. 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 or penalty it claimed to have been collected without authority, 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 xxx.'

   Clearly, no administrative claim was filed. There was no exhaustion of administrative remedies. No documents were ever received by respondent to study the said claim.

6. It is a well-settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate and speedy. For another thing, the respect and consideration due to each branch of the government demand that the judicial department abstain; whenever possible from interfering in the acts of the other departments, except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them. (*Bagatsing vs. Ramirez, 74 SCRA 306*)

7. Equally noteworthy is the fact that the Highest Tribunal in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, GR. No. 145526 promulgated on March 26, 2007 held:**

   'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a

> failure on its part to appreciate the nature of the proceeding in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency a quo did not have reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant its claim but also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credit.xxx'
>
> Thus, as clearly stated by the above jurisprudence, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim is imperative. The filing of the petition for review to this Honorable Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said claim. Absent these circumstances, the judicial claims merely become an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating the taxpayer's claim for refund."

The case was set for pre-trial on January 15, 2010.[13] Thereafter, respondent filed her Pre-trial Brief on January 5, 2010[14]; while petitioner filed its Pre-trial Brief on January 12, 2010[15].

Respondent also filed a Motion to Dismiss on March 3, 2010, reiterating her allegation that petitioner failed to file any administrative claim for refund.[16] Petitioner filed its Opposition (Respondent's Motion to Dismiss dated 4 March 2010) on March 22, 2010, contradicting

---

[13] Docket, p. 40
[14] Docket, pp. 55-58
[15] Docket, pp. 60-65
[16] Docket, pp. 72-76

respondent's averment.[17] The said Motion was denied by this Court in a Resolution dated April 30, 2010.[18]

On March 16, 2010, the parties submitted their Joint Stipulation of Facts and Issues[19], which was approved in a Resolution dated March 26, 2010. In the same Resolution, the pre-trial conference was terminated.[20]

During trial, petitioner presented four (4) witnesses, namely: Alteza Alindogan Dy, Reggie Leo L. Sabayo, Ida M. Cortez, and Amabel P. Oliquino.

On September 9, 2010, petitioner filed its Formal Offer of Evidence with respondent's comment. This Court in its Resolutions dated November 25, 2010[21] and January 18, 2011[22] admitted Exhibits "A" to "Q", inclusive of sub-markings.

The documentary evidence formally offered by petitioner are the following:

Exhibits	Description
A	Sutherland's Certificate of Registration issued by the Securities and Exchange Commission

[17] Docket, pp. 89-94
[18] Docket, pp. 139-141
[19] Docket, pp. 101-103
[20] Docket, p. 104
[21] Docket, pp. 281-282
[22] Docket, pp. 293-294

B	PEZA Certificate of Registration No. 05-10-IT in favor of Petitioner
C	PEZA Certificate of Registration No. 06-90-IT in favor of Petitioner
D	BIR Certificates of Registration showing Petitioner's date of registration as 31 May 2005
E	BIR Registration Certificate showing Petitioner's date of registration as 24 April 2008
F to F-7	Registration Agreement between PEZA and Petitioner dated 20 December 2006
G to G-2	Supplemental Registration Agreement between PEZA and Petitioner dated 2 February 2007
H to H-3	Sutherland's Annual Income Tax Return for the Fiscal year 1 July 2006 to 30 June 2007
I to I-3	Petitioner's claim for Tax Refund addressed to Atty. Alfredo Misajon dated 15 October 2009 for erroneously paid income tax in the amount of ₱2,118,052.88 filed with the BIR Revenue Region No. 8 at Gil Puyat Avenue, Makati City
J	Registry Receipt No. 7056 dated 15 October 2009 received from the postmaster of the SM Mall of Asia Postal Station
K	Certification from the Philippine Postal Station Pasay Central Post Office issued on 18 February 2010
L	Certification from the Philippine Postal Station Makati Central Post Office issued on 22 February 2010
M	Temporary Permit to Operate issued by the Clark Development Authority in favor of Sutherland on 9 August 2006
N	Judicial Affidavit of Alteza Alindogan Dy dated 29 March 2010
N-1	Signature of Alteza Alindogan Dy
O	Judicial Affidavit of Reggie Leo Sabayo

O-1	Signature of Reggie L. Sabayo
P	Photocopy of Reggie Leo L. Sabayo's Company I.D
Q	Employment Certification of Reggie Leo L. Sabayo dated 25 May 2010 issued by his employer, Siguion Reyna Montecillo & Ongsiako Law Offices

Respondent presented the only witness, Josalyn E. Tan.

Thereafter, respondent formally offered Exhibits "1" to "8-a", which were subsequently admitted in the Resolutions dated June 16, 2011[23] and August 25, 2011[24].

The documentary evidence for the respondent are as follows:

Exhibits	Description
1	Re-Assignment Notice
2	Memorandum dated September 28, 2010
3	Memorandum to the Human Resources Division dated March 17, 2011
3-A	Signature of Raul Vicente L. Recto
4	Memorandum to the Legal Division dated March 17, 2011
4-A	Signature of Raul Vicente L. Recto
5	Certification dated March 18, 2011
5-A	Signature of Nina T. Tagnipez
6	Official Logbook of the Legal Division
6-A	Page 78 of the Logbook
6-B	Page 79 of the Logbook

[23] Docket, pp. 334-335
[24] Docket, pp. 367-368

6-C	Page 80 of the Logbook
7	Memorandum Report dated April 1, 2011
7-A	Signature of Arsenio Tadeo-Leachon
7-B	Signature of Josalyn E. Tan
8	Judicial Affidavit of Josalyn E. Tan dated April 4, 2011
8-A	Signature of Josalyn E. Tan

On August 31, 2011,[25] the case was considered submitted for decision, after petitioner filed its Memorandum on July 21, 2011[26] and respondent filed her Memorandum on August 22, 2011[27].

The parties submitted the following issue[28] for this Court's disposition:

> "Whether or not Petitioner is entitled to the refund of the amount of Two Million One Hundred Eighteen Thousand Fifty-Two Pesos and 88/100 (₱2,118,052.88) representing erroneously paid income tax for the period of 1 July 2006-30 June 2007."

At the outset, it is noted that petitioner presented evidence to prove, among others, that it was able to file its administrative claim for refund. However, respondent denied the receipt of any administrative claim for refund from petitioner and presented counter-evidence to

[25] Docket, p. 376
[26] Docket, pp. 343-360
[27] Docket, pp. 369-374
[28] Docket, p. 102

prove the same. Thus, in order to have a proper disposition of the instant case, this Court shall first address the said matter.

In the case of *Gold Line Transit, Inc. vs. Luisa Ramos*[29], the Supreme Court held that postal officials enjoy the presumption, without clear and convincing evidence to the contrary, to have regularly performed their official duty and that they have acted in good faith. *Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium.* All things are presumed to have been done correctly and with due formality until the contrary is proved. For another reason, mails are presumed to have been properly delivered and received by the addressee "in the regular course of the mail." These *juris tantum* presumptions stand even against the most well-reasoned allegations pointing to some possible irregularity or anomaly.

Section 12 of Rule 13 of the Rules of Court may be applied by analogy to the instant case and it is hereunder quoted for ready reference:

> "SEC. 12. *Proof of filing.* – The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the clerk of court on a copy of the same; if filed by registered mail, by the registry receipt and by

[29] G.R. No. 144813, August 15, 2001

the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered."

In the instant case, petitioner was able to submit evidence to support its allegation that it filed an administrative claim for refund before respondent, to wit:

1. Registry Receipt No. 7056 dated October 15, 2009 received from the postmaster of the SM Mall of Asia Postal Station to prove that petitioner's administrative claim for refund dated October 15, 2009 was sent to the BIR through registered mail;[30]

2. Certification from the Philippine Postal Corporation, Pasay Central Post Office, issued on February 18, 2010 to prove that petitioner's administrative claim covered by Registry Receipt No. 7056 was delivered by the Pasay Central Post Office to the Makati Central Post Office on October 16, 2009;[31]

3. Certification from the Philippine Postal Corporation, Makati Central Post Office issued on February 22, 2010 to prove that on October 23, 2009, the Makati Central Post Office actually delivered the subject letter covered by Registry Receipt No. 7056 to the BIR office located at No. 8 Gil Puyat Avenue, Makati City, and the same was received by a certain Maricar Umali;[32]

4. Judicial Affidavit of Reggy Leo Sabayo (should be Reggie Leo L. Sabayo), testifying that petitioner's counsel filed on October 15, 2009 a letter entitled "Claim for Refund" of erroneously paid income tax in the amount of ₱2,118,052.88 addressed to Atty. Alfredo Misajon of the Bureau of Internal Revenue located at No. 8 Gil Puyat Avenue, Makati City;[33]

5. Photocopy of Reggie Leo L. Sabayo's Company I.D.[34]; and

6. Employment Certification of Reggie Leo L. Sabayo dated May 25, 2010 issued by his employer, Siguion Reyna Montecillo & Ongsiako Law Offices.[35]

---

[30] Exhibit "J"
[31] Exhibit "K"
[32] Exhibit "L"
[33] Exhibit "O"
[34] Exhibit "P"
[35] Exhibit "Q"

Petitioner's witness, Mr. Sabayo, testified that he delivered the document with title "Claim for Refund" of erroneously paid income tax in the amount of ₱2,118,052.88" for mailing to the office of the Philippine Post Office in SM Mall of Asia, Pasay City on October 15, 2009.[36] The said document was addressed to Atty. Alfredo Misajon with office address at the Bureau of Internal Revenue, No. 8, Gil Puyat Avenue, Makati City and with Registry Receipt No. 7056. Thereafter, the said mail with the same registry receipt no. and addressee was dispatched from the Pasay Central Post Office (CPO) to Makati CPO on October 16, 2009 as evidenced by the Certification issued by the postal official from Pasay Central Post Office.[37] From the Makati Central Post Office, the same mail was duly delivered by letter carrier Mark De Guzman and it was received by Ms. Maricar Umali on October 23, 2009 as supported by the Certification issued by the Makati Central Post Office.[38]

---

[36] Exhibit "O"
[37] Exhibit "K"
[38] Exhibit "L"

On the other hand, respondent presented the following evidence to prove that she did not receive any administrative claim for refund from petitioner:

1. Memorandum dated September 28, 2010, which was submitted to prove that there was a request for submission of BIR records and memorandum report for the refund claim of petitioner;[39]

2. Memorandum to the Human Resource Division[40] and Memorandum to the Legal Division, both dated March 17, 2011[41], which were submitted to prove that an investigation was conducted;

3. Certification dated March 18, 2011 to prove that Maricar B. Umali was a contractual employee and assigned at the Legal Division at the time when the request for refund was allegedly filed by petitioner;[42]

4. Official Record Book of the Legal Division and pages 79 and 80 of the said logbook, which were submitted to prove that no claim for refund from petitioner was received by the Legal Division in the month of October 2009;[43]

5. Memorandum Report dated April 1, 2011 to prove that there was no record of any claim for refund filed by petitioner;[44] and

6. Judicial Affidavit of Josalyn E. Tan dated April 4, 2011.[45]

Significantly, in the Memorandum issued by Revenue Officer Arsenio Tadeo-Leachon on April 1, 2011[46], it is stated that no record of request for refund was recorded in the Official Record Book/Logbook of

---

[39] Exhibit "2"
[40] Exhibit "3"
[41] Exhibit "4"
[42] Exhibit "5"
[43] Exhibit "6", with sub-markings
[44] Exhibit "7"
[45] Exhibit "8"
[46] Exhibit "7"

the Legal Division, contrary to the Certification issued by the Makati Central Post Office that it was delivered on October 23, 2009. The same was affirmed by the testimony of respondent's witness, Ms. Josalyn Tan, who was tasked to investigate whether or not the BIR received an administrative claim for refund from petitioner.[47]

Nevertheless, during cross examination, the witness, Ms. Tan, was asked if she was able to verify with Ms. Maricar Umali, the one who allegedly received petitioner's request for refund, if Ms. Umali forwarded petitioner's administrative claim for refund to the Office of the Regional Director without having entered the same in the logbook of the Legal Division. Also, she was asked if she was able to check with the Office of the Regional Director whether or not petitioner's administrative claim for refund was received by their office considering that the said request was actually addressed to the Regional Director. Portions of the Transcript of Stenographic Notes taken on May 4, 2011, when the said queries were propounded by petitioner's counsel, are hereunder quoted:

> "Q: And would you also agree with me that the Office of the Regional Director also has its own logbook?
>
> A: Yes, sir.

[47] Exhibit "8"

Q: Yet, in your investigation, you only attached in your Judicial Affidavit the logbook of the Legal Division, am I correct?

A: Yes, sir.

Q: Ms. Witness, isn't it possible that this certain Ms. Maricar Umali which (sic, who) is a contractual employee of the BIR forwarded an administrative claim for refund of petitioner to the office of the Regional Director after all the administrative claim is in fact addressed to the Regional Director at that time?

xxx

Q: Ms. Witness, isn't it possible that Ms. Maricar Umali who have forwarded petitioner's administrative claim for refund to the Office of the Regional Director without having entered the same in the logbook of the Legal Division?

A: I don't think so.

Q: You don't think so?

A: Yes, sir.

Q: In your investigation, did you ask her?

A: Who?

Q: Ms. Maricar Umali, Ms. Witness?

A: No I was not able to talk with Maricar Umali because she was already out when this case was assigned because she has already resigned.

Q: And yet, does the BIR not have records of its former and current employees where they can be contacted or where their last known address?

A: I was not able to research from the Human Resource Division but as far as Maricar Umali is concerned, there is a Certification from our Human Resource Department that she was a contractual employee so more than that, I don't have knowledge about her.

Q: My next question, Ms. Witness, is, did you check with the Office of the Regional Director whether or not petitioner's administrative claim for refund was received by their office?

A: Yes, I was able to talk to person thereat at the Office of the Regional Director in-charge but they don't have any record.

Q: Did you request for their logbook?

A. I don't have any record of request but I verified that there is no such request.

Q: You verbally verified with the Office of the Regional Director whether or not there was no receipt of petitioner's administrative claim for refund. But wouldn't you agree with me that the best evidence of that would be the logbook of the office of the Regional Director, yes or no, Ms. Witness?

A: Yes."[48]

Based on the foregoing, it can be deduced that respondent failed to exert diligent efforts to locate the subject administrative claim for refund filed by petitioner. First, it is noted that respondent failed to prove that there was verification with the Regional Director on whether the subject administrative claim was with the said office. Respondent likewise failed to present the log book of the Office of the Regional Director to show that no claim for refund was filed with the said office. Respondent also did not secure certification from the said office that no such claim was filed. Similarly, the Memorandum issued by Mr. Leachon failed to indicate that no claim for refund was filed with the Regional Director to whom the subject request for refund was addressed. In the absence of proof that respondent exerted diligent

[48] Transcript of Stenographic Notes of the hearing dated May 4, 2011, pp. 8-11

efforts to verify with the Office of the Regional Director whether the subject administrative claim for refund was filed, it can be concluded that respondent failed to overturn the presumption that the administrative claim for refund was filed by petitioner.

The Court will now resolve the issue of whether or not petitioner timely filed its administrative and judicial claims for refund.

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

> "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."
>
> "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*)

The law mandates that the administrative and judicial remedies of filing a claim for refund of erroneously paid tax must be done within two (2) years from the payment of the tax.

In the instant case, petitioner filed its Annual Income Tax Return on October 31, 2007.[49] Thus, counting from such date, petitioner had until October 31, 2009 within which to file its administrative and judicial claims for refund. Clearly, petitioner's administrative and judicial claims for refund filed on October 15, 2009[50] were both filed within the two-year period provided under Sections 204 and 229 of the NIRC of 1997, as amended.

After ascertaining the timeliness of the filing of petitioner's administrative and judicial claims for refund, this Court shall now proceed to determine whether the amount claimed for refund was erroneously or illegally collected.

---

[49] Exhibit "H"
[50] Exhibits "I" and "J"

Petitioner avers that it mistakenly paid the five percent (5%) preferential tax on its gross income in the total amount of ₱3,530,088.13. Two million one hundred eighty-eight thousand fifty-two pesos and eighty-eight centavos (₱2,188,052.88) of said amount was allegedly remitted to the BIR, and the balance, in the amount of ₱1,412,036.00 was remitted to the local government of Mabalacat, Pampanga.

Petitioner claims that it is exempt from payment of the above-mentioned amounts by virtue of its entitlement to tax incentives in accordance with the Registration Agreement[51] and Supplemental Agreement[52] executed between petitioner and PEZA.

Petitioner further argues that it enjoys the 4-year Income Tax Holiday not only by virtue of contract but also as provided under Article 78 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987. Hence, the amount of ₱2,118,052.88 was erroneously paid and it must be refunded.

---

[51] Exhibit "F"
[52] Exhibit "G"

Petitioner presented its Certificate of Registration with registration no. 06-90-IT[53], which shows that petitioner is registered as an Ecozone IT Enterprise at the Clark Special Economic Zone on December 6, 2006. It likewise submitted the Registration Agreement[54] and Supplemental Agreement[55] entered into between petitioner and PEZA.

The Registration Agreement executed on December 20, 2006 indicates that petitioner's project shall be entitled to the incentives under R.A. No. 7916, as amended and under the PEZA IT Guidelines, subject to the following terms and conditions:

> "13.1 The REGISTRANT shall pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations.
>
> 13.2 Tax and duty exemption on importation of capital equipment, raw materials and supplies;
>
> ARTICLE XIV
> SPECIAL CONDITIONS
>
> 14. The incentives herein granted are subject to the following terms and conditions:
>
> 14.1 The incentives herein granted shall apply only to the registered activity. xxx"

[53] Exhibit "C"
[54] Exhibit "F"
[55] Exhibit "G"

A Supplemental Agreement was also executed between petitioner and PEZA on February 2, 2007 which, among others, provides:

> "1. The REGISTRANT shall be entitled to four (4) years Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH Incentive, the REGISTRANT shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law.
>
> 2. The REGISTRANT shall automatically revert to the enjoyment of incentives for CSEZ once the pertinent law is enacted by Congress.
>
> 3. Nothing herein contained shall be construed as amending or modifying any of the terms and conditions of the Original Contract except as herein expressly provided.
>
> 4. This Agreement shall form an integral part of the Original Contract."

Thus, it is clear that petitioner is a PEZA-registered enterprise, which was granted incentives under the PEZA Law. Now, in order to determine whether the said incentives pertain to the amount claimed for refund, this Court shall be guided by the above-cited provisions of the agreements entered between petitioner and PEZA in relation to the provisions of R.A. No. 7916 and the pertinent BIR Rules and Regulations.

Section 23 of Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995 ("PEZA Law") provides that business establishments operating within the Ecozones shall be entitled to the fiscal incentives as provided under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investments Code.

A perusal of petitioner's registration as a PEZA establishment, its non-pioneer status, its Registration Agreement, and its Supplemental Agreement would show that petitioner was entitled to a four-year Income Tax Holiday incentive commencing from the date it started business operations on August 9, 2006[56].

The Income Tax Holiday incentive allows petitioner an exemption from the payment of all taxes which may be levied by the National Government for a period of four (4) years from the start of its business operations. Thus, counting the period of four (4) years from the commencement of its operation on August 9, 2006, petitioner had until August 9, 2010 within which to enjoy such incentive, provided that it complies with the conditions as set forth by the PEZA Law.

Nonetheless, this incentive does not necessarily include all kinds of income which petitioner may receive during the period of availment.

---

[56] Exhibit "M"

In this regard, the Rules and Regulations Implementing Republic Act No. 7916, read in part:

"PART VII
Incentives to ECOZONE
Enterprises

Rule XIII
Application and Entitlement

SECTION 1. *Application for Availment of Incentives* - All applications for availment of incentives shall be filed with PEZA.

SECTION 2. *Scope of Entitlement* - New or expanding ECOZONE Developers/Operators, Export, Free Trade, Domestic Market, Utilities, Facilities and Tourism Enterprises, except ECOZONE Service Enterprises as defined under Section 2(p), Rule I of these Rules, registered on or after the effectivity of these Rules, shall be entitled to the fiscal incentives provided in Sections 24 and 42 of the Act.

xxx xxx xxx

SECTION 5. *Limitation of Entitlement to Incentives* - **Incentives granted by the PEZA shall apply only to registered operations of the ECOZONE Enterprises and only during the period of its registration with PEZA.**" (*Emphasis supplied*)

Revenue Regulations No. 20-02 clarified the tax treatment of income earned from unregistered activities, to wit:

"REVENUE REGULATIONS NO. 20-02

SUBJECT: *Clarifying the Tax Treatment of Income Earned from Unregistered Activities by Enterprises Registered under the Bases Conversion and Development Act of 1992 and the Philippine Economic Zone Act of 1995*

TO: *All Internal Revenue Officers and Others Concerned*

These Regulations are issued to clarify the internal revenue tax treatment of income earned from unregistered activities by enterprises that are registered with the Subic Bay Metropolitan Authority, the Clark Development Authority, or the Philippine Economic Zone Authority, as the case may be.

SECTION 1. *Tax Treatment.* — Income derived by an enterprise registered with the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), or the Philippine Economic Zone Authority (PEZA) from its registered activity/ies shall be subject to such tax treatment as may be specified in its terms of registration (i.e., the 5% preferential tax rate, the income tax holiday, or the regular income tax rate, as the case may be). **Nonetheless, whatever the tax treatment of said enterprise with respect to its registered activity/ies, income realized by such registered enterprise that is not related to its registered activity/ies shall be subject to the regular internal revenue taxes**, such as the 20% final income tax on interest from Philippine Currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust funds and similar arrangements, the 7.5% tax on foreign currency deposits and the 5%/10% capital gains tax or 1/2% stock transaction tax, as the case may be, on the sale of shares of stock.

Income payments made by a registered enterprise to an entity in the Customs Territory shall *not* be subject to the preferential tax rates or tax exemption enjoyed by the registered enterprise. Thus, dividends paid to the shareholders of a registered enterprise, interest payments to creditors of such registered enterprise (regardless of any tax provision for grossing up of taxes), and other such payments shall be subject to the appropriate rate of tax imposable on the recipient of such income.

SECTION 2. *Repealing Clause.* — Section 6 (f) of Revenue Regulations No. 1-95 and the provisions of all other internal revenue issuances inconsistent herewith are hereby repealed, modified or amended accordingly.

SECTION 3. *Effectivity.* — Except for the second paragraph of Section 1 which is a mere reiteration of the law already enforced, these regulations shall take effect after fifteen (15) days following publication in the Official Gazette or any newspaper of general circulation in the Philippines."

Clearly, in order to enjoy the incentives granted under the PEZA law, the taxpayer's income must be effectively related with the conduct of its registered trade or business. An effectively related income may be interpreted to mean as that income derived from the business activity in which the corporation is engaged in, considering that a taxpayer may also receive income not directly connected or related to its business activity.

Consequently, petitioner must also establish that its income relating to the subject tax refund is actually gained or received by it in relation to the conduct of its registered business activity.

After a careful perusal of the evidence presented by petitioner, this Court finds the same insufficient to support petitioner's claim for refund. Aside from its Annual Income Tax for the taxable period ending June 30, 2007, petitioner failed to present supporting documents to prove that its declared income is effectively connected with the conduct of its registered activity. Therefore, without such supporting documents, the determination of whether the amount declared in petitioner's Annual Income Tax Return for the taxable year ending June 30, 2007 is income connected with the conduct of petitioner's registered business would be impossible.

At this juncture, let it be stressed that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. The taxpayer must present convincing evidence to substantiate a claim for refund.[57] Since petitioner failed to substantiate the amount being claimed, this Court has no other option but to deny petitioner's claim for refund.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

(on wellness leave)
CAESAR A. CASANOVA
Associate Justice

C E R T I F I C A T I O N

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division

---

[57] *Philam Asset Management Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005; *Far East Bank and Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, Resolution promulgated on September 15, 2006