REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LAWL PTE LTD.,
Respondent.

CTA EB No. 1118
(CTA Case No. 8307)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 12 2015

x - 2:20 p.m. - - x

RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (Re: Decision Promulgated On May 11, 2015)"**[1] filed on June 4, 2015, with respondent's **"COMMENT/OPPOSITION (to Petitioner's Motion for Reconsideration (Re: Decision Promulgated on 12 May 2015)),"**[2] praying the reconsideration of this Court's Decision dated May 12, 2015, the dispositive portion of which reads:

[1] Docket, pp. 120 to 125.
[2] Docket, pp. 129 to 136.

"**WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated November 7, 2013 and the Resolution dated January 20, 2014, issued by the Court in Division in CTA Case No. 8307 is hereby **AFFIRMED.**

SO ORDERED."

In support of her Motion, petitioner raises the following arguments, to wit:

1. Respondent did not meet the requirement of filing a formal claim for refund as required under Section 204, in relation to Section 229, both of the National Internal Revenue Code (NIRC) of 1997, as the filing of the claim with the International Tax Affairs Division (ITAD) was erroneous. Paragraph III E (2.3) of RAO No. 11-00 does not authorize ITAD to grant/deny claims for refund. When Paragraph 2.3 stated that ITAD shall process claims for tax credit/refund on erroneously collected internal revenue taxes arising from the application of tax treaty provisions, the same may be construed to mean issuing tax rulings to be used as basis for its claim for refund, but ITAD has no authority to grant/deny a claim for refund, and the application by respondent was lodged in an office without authority to act on the same.

2. Revenue Delegation Authority Order (RDAO) No. 03-02 dated February 15, 2002 states that claims for tax refund shall be processed by the Revenue District Office of the BIR where the taxpayer is registered or required to be registered.

3. Respondent has not proven its entitlement to a tax exemption. To prove that Maynilad's assets did not principally consist of immovable properties, respondent submitted and offered as evidence Maynilad's Schedule and List of Property Plant and Equipment. At best, it is self-serving evidence that would not merit the grant of tax exemption in favor of respondent.

4. This is not a case of erroneously or illegally collected tax as the payment of tax was not made under a mistake of fact. There was no wrongful payment in this case because a final tax is imposed upon the net capital gains realized by respondent during the taxable year under Section 28

(B)(5)(c) of the Tax Code. Respondent was aware of its obligation to pay the tax and the tax treaty purportedly granting it a tax exemption. In fact, respondent paid the tax on July 6, 2009, or after applying for tax treaty relief with the ITAD on March 25, 2009. Thus, respondent is estopped from claiming refund.

In its Comment, respondent counters that:

1. Petitioner's Motion for Reconsideration is a mere *pro forma* submission containing a rehash of old arguments which have been considered and thoroughly addressed by this Court and the Second Division of this Court (Court in Division).

2. Respondent duly filed its administrative claim for refund with petitioner.

3. Respondent was able to establish that it is entitled to a refund of erroneously or illegally collected capital gains tax and interest.

THE COURT *EN BANC'S* RULING

Petitioner's Motion lacks merit.

Respondent was correct in filing its claim for refund with the BIR, through the International Tax Affairs Division (ITAD).

Petitioner contends, once again, that respondent did not meet the requirements of filing a formal claim for refund, as set forth in Section 204, in relation to Section 229, both of the NIRC of 1997, because the filing of the claim with the ITAD was erroneous.

We are not convinced.

Section 204(C),[3] in relation to Section 229,[4] both of the NIRC of 1997, states that in order to successfully obtain a refund of taxes erroneously or illegally collected, a taxpayer must first file a written claim for refund with the Commissioner of the Bureau of Internal Revenue within two (2) years from the date of payment of the tax.

In this case, respondent paid the capital gains tax on the stocks on July 6, 2009.[5] Thus, respondent had two years from the said date, or until July 6, 2011, within which to file its administrative and judicial claims for refund. Accordingly, respondent filed its administrative claim for refund within the prescriptive period, on June 14, 2011, with the BIR, addressed to Commissioner Kim S. Jacinto-Henares, through the BIR-ITAD.[6]

Petitioner argues, however, that respondent erroneously filed its written claim for refund with the Chief of the ITAD, instead of the Revenue District Office of the BIR where the taxpayer is registered or required to be registered.

Respondent is mistaken.

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[3] "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

x x x x

(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."

[4] "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."

[5] Formal Offer of Evidence, Exhibits "M," "N," and "O."

[6] Formal Offer of Evidence, Exhibits "R" to "R-3."

Par. III (E) (2.3) of Revenue Administrative Order No. 11-00 dated August 21, 2000 categorically states that ITAD has the authority to process claims for tax refund, to wit:

> "III. Functions:
>
> x x x x
>
> E. International Tax Affairs Division shall:
>
> x x x x
>
> 2. Tax Treaty Implementation and Exchange of Information Section shall:
>
> x x x x
>
> 2.3. **Process claims for tax credit/refund** on erroneously collected internal revenue taxes arising from the application of tax treaty provisions including requests for exemptions; x x x." *(Emphasis supplied.)*

Based on the foregoing, it is clear that ITAD is the office designated to process claims for tax refund arising from the application of tax treaty provisions. Accordingly, respondent was correct in filing its claim for refund with the ITAD, and is considered to have sufficiently complied with Sections 204 (C) and 229 of the NIRC of 1997.

In a last ditch attempt to convince this Court that the ITAD has no authority to process claims for tax refund, petitioner belatedly invokes Section 2 of Revenue Delegation Authority Order No. 03-02 dated February 15, 2002, which states:

> "Section 2. *Venue for the Processing of Applications/Claims for Tax Credit/Refund. –*
>
> 2.1.1. Tax refund/credit requests of taxpayers covering all internal revenue taxes shall be processed by the RDO/BIR Office where the taxpayer is registered or required to be registered; x x x."

We are not swayed.

Petitioner's evidence is bereft of any indication as to which "RDO/BIR Office" is respondent "registered". Needless to state, such matter is a question of fact, and thus, requires the presentation of evidence. Correspondingly, We cannot apply the above-quoted Section 2 in this case.

Such being the case, this Court maintains that the BIR Office, *i.e.*, the ITAD, is the proper venue for the subject claim for refund, considering that it is explicitly mandated to process claims for refund involving the application of tax treaty provisions as shown in the proceedings *a quo*.

Petitioner has ample power to obtain sufficient information to dispute respondent's evidence.

Moreover, We still cannot subscribe to petitioner's contention that respondent has not proven its entitlement to a tax exemption.

In this case, petitioner neglects to point out any flaw in the findings of fact of the Court in Division with respect to the conclusion that Maynilad's assets did not principally consist of immovable properties, but simply insists that, at best, respondent has provided self-serving evidence that would not merit the grant of a tax exemption in its favor.

A blanket statement with regard to the alleged self-serving nature of the respondent's proof, absent any logical argument or a specific evidence to counter the same, is unacceptable.

It bears stressing that petitioner, as the Commissioner of the Bureau of Internal Revenue, is vested with vast and ample power to obtain information under Section 5 of the NIRC of 1997,[7] and present

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[7] "SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and evidence to show that Maynilad's assets principally consists of immovable properties.

In fact, as the Commissioner of the BIR, she ought to know the tax records of all taxpayers, and could have easily disproved the claimants' allegations. That she chose not to amounts to a waiver of that right.[8]

Respondent's payment of the capital gains tax is deemed as wrongful payment because what was paid is not legally due.

Petitioner argues again that respondent did not make an erroneous tax payment since such payment was not made under a mistake of fact.

We are still not convinced.

As explained at length in Our Decision dated May 12, 2015, an

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instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;
(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;
(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and
(E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.
The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code."

[8] *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation,* G.R. No. 180042, February 8, 2010.

erroneous or illegal tax is one levied without statutory authority. In other words, a payment of tax is erroneous or illegal when there exists a corresponding tax exemption under a law or treaty.

Considering that petitioner's argument on this point was already exhaustively discussed, and she fails to specify any errors in law or in fact to support her argument, this Court finds that there is no longer any need to belabor or reiterate Our disquisition on the matter.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(On Leave)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice