REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ING BANK, N.V. MANILA BRANCH,	**CTA Case No. 10520**
Petitioner,	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	MAR 19 2025 3:50 p.m.

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DECISION

REYES-FAJARDO, *J*.:

We are called upon to adjudicate the Petition for Review filed on January 3, 2019, by ING Bank, N.V. Manila Branch, which seeks to refund or credit, the total amount of ₱1,715,533.00, representing its alleged excessively collected Documentary Stamp Tax (DST) and Capital Gains Tax (CGT) on the sale and transfer of its proprietary membership in the Manila Polo Club Inc. (MPC), covered by Stock Certificate No. 5464, under the Deed of Absolute Sale executed on April 2, 2019.

FACTS

Petitioner is a private banking corporation, duly-organized and existing under and by virtue of the laws of Netherlands, with a branch office and registered to do business in the Philippines by virtue of Amended Securities and Exchange Commission License No. F-1324.[1] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. 004-819-790-000, with business address

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1 Exhibit "P-1." Docket, pp. 493-515.

at the 22nd Floor Arthaland Century Pacific Tower, 5th Avenue corner 30th St., Bonifacio Global City, Taguig City.[2]

Respondent is the duly-appointed Commissioner of Internal Revenue, vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of his office including *inter alia,* the power to decide, approve and grant refunds or tax credits of excess payment of CGT and DST pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC), as amended, and other laws and regulations.[3]

On April 2, 2019, a Deed of Absolute Sale was executed by and between Mr. Johannes Buitenga (Buitenga), former Head of petitioner's Corporate Lending Department,[4] and Ms. Majini Oberoi (Oberoi), whereby one (1) MPC share under the former's name, was conveyed to the latter, in consideration of ₱23,000,000.00.[5] Buitenga obligated himself to pay the CGT or creditable withholding tax thereon. Petitioner *allegedly* paid under its own name, the CGT and DST due thereon, to the BIR Large Taxpayers Service - Revenue District Office No. 125 (BIR RDO No. 125).

Petitioner then requested for the issuance of a Certificate Authorizing Registration (CAR), *i.e.,* BIR Form No. 2313-P of the MPC Share from BIR RDO No. 125. However, the latter refused to, and consequently, failed to process and issue the CAR because such certificate should be issued by the RDO having jurisdiction over Buitenga; being the person in whose name the MPC share was registered.[6]

On February 4, 2020, the Deed of Absolute Sale was re-executed over the same MPC share registered under Buitenga's name, for the same consideration, by and between the latter and Oberoi; now, with a statement that Buitenga was registered as a member of MPC in his capacity as petitioner's executive officer, in accordance with the rules and policies of MPC.[7] Accordingly, Buitenga filed the following tax

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2 Exhibit "P-2." *Id.* at p. 516.
3 Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI). *Id.* at p. 313.
4 Exhibit "P-6." *Id.* at p. 568.
5 Exhibit "P-7." *Id.* at pp. 569-574.
6 Answer to Question No. 34, Exhibit "P-22" [Sworn Statement (of Witness Diana Rose Cue]. *Id.* at at p. 112.
7 Exhibit "P-10." *Id.* at pp. 583-584.

returns, and paid the following internal revenue taxes due on said transaction:

Tax Return	Date Filed	Type of Return	Amount
CGT Return (BIR Form No. 1707)[8]	March 4, 2020	Original	₱2,510,325.00
Donor's Tax Return (BIR Form No. 1800)[9]	March 4, 2020	Original	₱ 150,000.00
DST Declaration/Return (One-Time Transactions) (BIR Form No. 2000-OT)[10]	March 4, 2020	Original	₱ 7,187.50
CGT Return (BIR Form No. 1707)[11]	September 14, 2020	Amended	₱ 59,266.74
Donor's Tax Return (BIR Form No. 1800)[12]	September 14, 2020	Amended	₱ 24,696.85

With Buitenga's payment of the taxes mentioned in the immediately preceding table, BIR RDO No. 50 issued CAR No. C-2020-050-016999-M dated October 30, 2020 in his favor.[13]

On April 29, 2021, petitioner filed an administrative claim with the BIR, requesting for the refund or credit of the CGT and DST it paid to BIR-RDO No. 125 on April 30, 2019 and May 2, 2019, respectively, in the total amount of ₱1,715,533.00.[14]

On May 19, 2021, petitioner filed through electronic mail (e-mail) a Petition for Review,[15] docketed as CTA Case No. 10520, initially raffled to the Court's First Division.

On October 21, 2021, respondent filed his Answer on the Petition.[16]

On February 24, 2022, the pre-trial conference was held, whereby the parties jointly submitted, and we adopted the issue to be

8 Exhibit "P-11." *Id.* at pp. 585-588.
9 Exhibit "P-11." *Id.* at pp. 589-592.
10 Exhibit "P-11," *id.* at pp. 593-598; and Exhibit "P-12," *id.* at pp. 609-612.
11 Exhibit "P-11-1." *Id.* at pp. 599-602.
12 Exhibit "P-11-1." *Id.* at pp. 603-606.
13 Exhibit "P-13." *Id.* at p. 613.
14 Exhibit "P-14." *Id.* at pp. 614-666.
15 Manifestation dated May 19, 2021 with attached e-mail printout and Petition for Review. *Id.* at pp. 6-27.
16 *Id.* at pp. 126-130.

addressed in this case. The scheduled presentation of the parties' evidence and the date of commissioner's hearing for the marking of their respective exhibits were as well set. Moreover, the parties were directed to submit their Joint Stipulation of Facts and Issues.[17]

On March 17, 2022, the parties submitted their Joint Stipulation of Facts and Issues,[18] which was approved, through Resolution dated March 31, 2022.[19] On the basis thereof, the Pre-Trial Order[20] was issued on April 19, 2022.

Trial followed.

Petitioner presented its Chief Finance Officer Diana Rose Cue (Cue)[21] and the duly-commissioned[22] Independent Certified Public Accountant Atty. Adan T. Delamide (ICPA Delamide),[23] as witnesses.

On September 14, 2022, petitioner filed its Formal Offer of Evidence,[24] to which respondent posed his Comment (Re: Formal Offer of Evidence) on September 16, 2022.[25]

Under Resolution dated October 27, 2022,[26] the exhibits offered by petitioner were admitted, save for Exhibits "P-4-J" and "P-9," for failure to present the originals thereof for comparison.

On December 1, 2022, petitioner filed its Motion for Reconsideration (Re: Resolution dated October 27, 2022) on December 1, 2022,[27] *sans* respondent's comment.[28]

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17 See Order dated February 24, 2022. *Id.* at pp. 250-252.
18 *Id.* at pp. 313-318.
19 *Id.* at p. 334.
20 *Id.* at pp. 336-344.
21 Exhibit "P-22," *id.* at pp. 106-117; and Order dated April 19, 2022, *id.* at pp. 350-351.
22 Oath of Commission dated April 19, 2022, *id.* at p. 349; and Order dated April 19, 2022, *id.* at pp. 350-351.
23 Exhibits "P-24" and "P-25," *id.* at pp. 390-401, and 416-424, respectively; and Order dated August 16, 2022, *id.*, unpaginated.
24 Docket, pp. 475-492.
25 *Id.* at pp. 674-676.
26 *Id.* at pp. 681-682.
27 *Id.* at pp. 689-697.
28 Records Verification dated January 18, 2023 issued by the CTA Judicial Records Division. *Id.* at p. 701.

By Resolution dated February 27, 2023,[29] petitioner was granted one setting of commissioner's hearing, for the comparison of Exhibit "P-4-J" with its original. Further, the resolution of its motion for reconsideration, and filing of memorandum were held in abeyance.

On April 19, 2023, petitioner filed its Submission (Re: Resolution dated February 27, 2023),[30] submitting Exhibit "P-4-J," marked as faithful reproduction of the original.

Via Resolution dated May 26, 2023,[31] petitioner's Motion for Reconsideration (Re: Resolution dated October 27, 2022) was partly granted. Specifically, Exhibit "P-4-J" was admitted as petitioner's evidence, while Exhibit "P-9" was still denied admission, for failure to comply with the requisites for admissibility as secondary evidence.

Respondent manifested that he will not present any evidence in this case.[32]

By Resolution dated May 31, 2023,[33] CTA Case No. 10520 was transferred from the First Division to the Court's Third Division.

Through Minute Resolution dated July 14, 2023, CTA Case No. 10520 was *initially* [34] submitted for decision, considering: (1) respondent's Memorandum[35] filed on November 15, 2022; and (2) petitioner's Memorandum[36] posted on July 3, 2023.

By Minute Resolution dated November 16, 2023,[37] it was found that petitioner's Memorandum contained a Motion for Leave of Court to Admit Exhibit P-4-A and Manifest to Attach Excluded Evidence (Exhibit P-9), which remained unaddressed. For this reason, the Minute Resolution dated July 14, 2023, submitting CTA Case No. 10520 for decision was vacated.

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29 *Id.* at pp. 707-708.
30 *Id.* at pp. 714-715.
31 *Id.* at pp. 730-735.
32 See Order dated August 16, 2022, *id.*, unpaginated.
33 Notice. Docket, p. 736.
34 Minute Resolution dated July 14, 2023. *Id.* at p. 762.
35 *Id.* at pp. 683-697.
36 *Id.* at pp. 738-756.
37 *Id.* at pp. 763-764.

In the Resolution dated March 19, 2024,[38] petitioner's Motion for Leave of Court to Admit Exhibit P-4-A and Manifest to Attach Excluded Evidence (Exhibit P-9) was resolved. Exhibit "P-4-A" was admitted as petitioner's evidence, whereas the excluded Exhibit "P-9" was attached to form part of the case records. In view thereof, CTA Case No. 10520 was submitted *anew* for decision.

ISSUE[39]

Is petitioner entitled to the refund or credit of the DST and CGT it paid on April 30, 2019 and May 2, 2019, in the total sum of ₱1,715,533.00, pertaining to the sale and transfer of MPC Share?

ARGUMENTS

Petitioner argues that it successfully established all the conditions for entitlement of refund or credit anchored on Section 204(C) and 229 of the 1997 National Internal Revenue Code (NIRC), as amended. Particularly, it filed both its administrative and judicial claims within the prescribed period under said provisions of law. Further, it is the true and beneficial owner of the MPC share, at the time the DST and CGT were paid on April 30, 2019 and May 2, 2019, respectively. Finally, the amount subject of refund or credit—₱1,715,533.00, pertains to overpaid DST and CGT on the sale and transfer of such MPC Share.

Respondent counters that petitioner's claim for refund or credit must be denied. Specifically, petitioner failed to completely substantiate its administrative claim for refund, rendering said claim as pro-forma. More, taxes paid and collected by the BIR, such as the DST and CGT subject of this case, are presumed to have been made in consonance with law, and rules and regulations; petitioner failed to rebut such presumption.

RULING

We partly grant the Petition.

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38 *Id.* at pp. 768-769.

39 See Issue, JSFI. *Supra* note 18.

First, do we have jurisdiction over this case?

Yes.

Section 7(a)(2) of Republic Act (RA) No. 1125,[40] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> ...
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relations 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 provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> ...[41]

Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals[42] clarified that the CTA in Division has jurisdiction over the inaction of respondent involving refunds of internal revenue taxes, among others. Among the classes thereof is one premised upon illegal, erroneous, or excessive collection of internal revenue taxes, as recognized in Sections 204(C) and 229 of the NIRC, as amended. *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc. (Carrier)*[43] illuminated on the requirements for us to acquire jurisdiction over said type of refund case, as follows:

> Section 204 [of the NIRC, as amended] refers to the Commissioner of Internal Revenue's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax.

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40 An Act Creating the Court of Tax Appeals.
41 Boldfacing supplied.
42 A.M. 05-11-07-CTA.
43 G.R. No. 226592, July 27, 2021.

> Section 229 [of the NIRC, as amended], on the other hand, requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.
>
> Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period. Furthermore, the administrative claim must be filed before the judicial claim. This Court has previously declared that "[t]imeliness of the filing of the claim is mandatory and jurisdictional. The [Court of Tax Appeals] cannot take cognizance of a judicial claim for refund file either prematurely or out of time."

Applying *Carrier,* petitioner seasonably filed both its administrative and judicial claims for refund or credit, within two years from payment of the DST and CGT on April 30, 2019 and May 2, 2019, respectively. Consider the following presentation:

Tax Type	**Date of Payment**	**Amount**	**Date of Filing of Administrative Claim**	**Date of Filing of Petition for Review in CTA Case No. 10520**
DST	April 30, 2019[44]	₱46,983.00	April 29, 2021[45]	May 19, 2021[46]
CGT	May 2, 2019[47]	1,668,550.00		

To be sure, the last day for petitioner to file its judicial claim for refund or credit for said DST and CGT *initially* fell on April 30, 2021 and May 2, 2021, respectively. However, the *initial* deadline mentioned was *extended* by the following pertinent Supreme Court issuances:

Administrative Circular (AC) No.	**Date Issued**	**Content**
AC No. 15-2021	April 3, 2021	Re: Extension of the Physical Closure of Courts and the Filing Periods for Pleadings and Other Court Submissions in light of the Further Extension of the Enhanced Community Quarantine from April 5 to April 11, 2021

44 Exhibit "P-9." Docket, p. 582.
45 *Supra* note 14.
46 *Supra* note 15.
47 Exhibits "P-8" and "P-8-1." *Id.* at pp. 575-577, and 580, respectively.

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		"Likewise, the **filing periods** of pleadings and other court submissions that fell due or would fall due during the period from **March 29** to **April 11, 2021** are hereby **EXTENDED** for seven (7) calendar days, counted from April 12, 2021."
AC No. 21-2021	April 10, 2021	Re: Extension of Physical Closure of Courts "The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 22-2021	April 14, 2021	Re: Physical Closure of Courts in Enhanced Community Quarantine and Modified Enhanced Community Quarantine Areas "The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
AC No. 29-2021	April 30, 2021	Re: Work Arrangements in Courts on 3 - 14 May 2021 "The time for filing and service of pleadings and motions during this period in these areas is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court."
AC No. 33-2021	May, 14, 2021	Re: Court Operations Starting 17 May 2021 "Considering that the National Capital Region and nearby provinces of Bulacan, Cavite, Laguna, and Rizal, together with some provinces and cities, have been placed under General Community Quarantine (GCQ) starting 15 May until 31 May 2021, all first and second level courts, and appellate collegiate courts (except the Supreme Court), and the judicial offices in these areas under GCQ shall be physically opened with a skeleton force of at least thirty (30%) to at most fifty percent (50%), beginning 17 May 2021 until further notice."

Pursuant to AC Nos. 29-2021 and 33-2021, petitioner has seven calendar days from May 17, 2021, or until May 24, 2021, to file its judicial claim before the Court. Therefore, the timely filing of the

Petition for Review on May 19, 2021,[48] clothed us with jurisdiction over CTA Case No. 10520.

Now, is petitioner entitled to the refund or credit of the DST and CGT it paid on April 30, 2019 and May 2, 2019, respectively, to BIR RDO No. 125, allegedly pertaining to the sale of the MPC Share?

Yes, albeit in part.

Section 229[49] of the NIRC, as amended, allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[50] Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due.[51]

Again, petitioner seeks refund or credit of the DST and CGT it paid on April 30, 2019 and May 2, 2019, respectively, to BIR RDO No. 125, allegedly pertaining to the Deed of Absolute Sale of the MPC Share executed on April 2, 2019. This necessitates separate elaboration on these two items of internal revenue taxes.

I. DST paid on April 30, 2019 (₱46,983.00)

To establish that the DST paid on April 30, 2019 pertains to Buitenga's sale of MPC Share to Oberoi, petitioner presented the

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48 *Supra* note 15.

49 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, of any sum alleged to have been excessively or in any manner wrongfully 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.

... (Boldfacing supplied)

50 See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

51 See *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

Certification dated June 21, 2022[52] issued by Conrado P. Item, Chief of the Miscellaneous Operations Monitoring Division of the BIR, which is hereby reproduced below:

CERTIFICATION

This is to certify that, upon verification from the Electronic Documentary Stamp Tax (eDST) System, the documentary stamp tax with Alphnumeric Tax Code DS 102 in the amount of Forty Six Thousand Nine Hundred Eighty Three Pesos (₱46,983.00) has been paid by **ING BANK N.V. MANILA BRANCH** on April 30, 2019 under Transaction No. 190000361476 and was subsequently deducted from the eDST System Account Ledger of the said taxpayer.

This certification is issued upon the request of Salvador Llanillo Bernardo, Attorneys-At-Law, on behalf of the abovementioned taxpayer in a letter dated June 16, 2022 that the said payment was successfully affixed/paid using the eDST system of this Bureau.

Issued this 21st day of June 2022.

(signed)
CONRADO P. ITEM
Chief
Miscellaneous Operations Monitoring Division

What we can refract therefrom is that petitioner paid DST amounting to ₱46,983.00 on April 30, 2019, no more, no less. It means that no sufficient proof was presented showing that such DST payment was made for, or in connection with the sale of MPC Share under Buitenga's name to Oberoi. Therefore, petitioner's desired refund of said amount should be rejected outright.

II. CGT paid on May 2, 2019 (₱1,668,550.00)

Petitioner's claim for refund or credit thereof is hinged on erroneously or excessively collected taxes under Section 204(C) and Section 229 of the NIRC, as amended. Towards this end, the following dictum in *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue (SMI-ED)*[53] is pertinent:

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[52] Exhibit "P-9-1." Docket, p. 582.

[53] G.R. No. 175410, November 12, 2014.

> The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.
>
> **The issue of [the taxpayer]'s claim for tax refund is intertwined with the issue of the proper taxes that are due from [the taxpayer]. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.**
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> ...
>
> **If the taxpayer is found liable for taxes other than the erroneously paid 5% final tax, the amount of the taxpayer's liability should be computed and deducted from the refundable amount.**[54]

SMI-ED decreed that in a refund claim premised upon illegal, erroneous, or excessive collection of taxes, the Court is permitted to determine the *proper* tax liability other than that paid by the claimant. Above and beyond, if there exist tax liability other than that paid, the Court is bound to subtract it from the refundable amount.

More, *Commissioner of Internal Revenue v. Toledo Power Company (TPC)*[55] discoursed that the foregoing principles in *SMI-ED* finds application, when the refund claim was based on excessive or erroneous payment of taxes under Section 229 of the NIRC, as amended, because the correctness of the tax return is at issue on said type of refund case:

> In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no

54 Boldfacing ours.
55 G.R. No. 196415, December 2, 2015.

> longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.
>
> But in all these cases, **we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC.** A situation that is not present in the instant case.
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> In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. **And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC s VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.**[56]

Consistent with *SMI-ED* and *TPC*, out of ₱1,668,550.00 worth of CGT being claimed as refund or credit for being excessively collected tax, only ₱1,420,127.63 should be allowed, while ₱295,405.37 should be subtracted from said claim.

To recount, on **April 2, 2019**, a Deed of Absolute Sale was executed by and between Buitenga[57] and Oberoi, whereby one (1) MPC share under the former's name, was conveyed to the latter, in consideration of ₱23,000,000.00.[58] Petitioner filed a CGT Return and the paid the CGT thereon May 2, 2019,[59] with the following computation:

Particulars	**Amount**
Taxable Base	₱ 23,000,000.00
Less: Cost and Other Allowable Expenses	6,264,500.00
Net Capital Gain/(Loss)	₱ 16,735,500.00
CGT Due on the Entire Transaction[60]	₱ 1,668,550.00

Our examination thereof disclosed that petitioner **erred** in calculating its CGT liability at ₱1,668,550.00 because it used the **old**[61]

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56 Boldfacing ours.
57 Exhibit "P-6." *Id.* at p. 568.
58 Exhibit "P-7." *Id.* at pp. 569-574.
59 *Supra* note 47.
60 5% of the first ₱100,000.00; and 10% of 16,635,500.00. Thus, ₱5,000.00 + ₱1,663,550.00 = ₱1,668,550.00.
61 **Section 27.** *Rates of Income tax on Domestic Corporations.* -
...
(D) Rates of Tax on Certain Passive Incomes. -

final income tax rates under Section 27(D)(2) of the NIRC, *despite the transaction occurring on April 2, 2019, or* ***after*** *the effectivity of RA No. 10963 on January 1, 2018.* To underscore, Section 27(D)(2) of the NIRC, as amended by RA No. 10963,[62] provided for a *different* and *higher* final income tax rate on, among others, capital gains derived from the sale of shares of stock of a domestic corporation not traded in a local stock exchange:

> SEC. 27. *Rates of Income Tax on Domestic Corporations.* -
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> ...
>
> (D) *Rates of Tax on Certain Passive Incomes.* -
>
> ...
>
> (2) *Capital Gains from the Sale of Shares of Stock Not Traded in the Stock Exchange.* - A final tax at the rate of fifteen percent (15%) shall be imposed on net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange.

Following Section 27(D)(2) of the NIRC, as amended by RA No. 10963, the correct CGT which should have been paid by petitioner on the capital gains derived from the sale of MPC Share covered by the Deed of Absolute Sale executed on April 2, 2019 is ₱2,510,325.00 (₱16,735,500.00 x 15%).

As it stands, there is a discrepancy between the amount of CGT paid by petitioner on May 2, 2019 **(₱1,668,550.00)** vis-à-vis the correct CGT which should have been paid by petitioner on or before said date **(₱2,510,325.00)** in the sum of ₱841,775.00, as shown below:

...

(2) Capital Gains from the Sale of Shares of Stock Not Traded in the Stock Exchange. - A final tax at the rates prescribed below shall be imposed on net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange:

Not over P100,000	5%
Amount in excess of P100,000	10%

[62] Tax Reform for Acceleration and Inclusion (TRAIN).

CGT computed based on applicable rate	₱ 2,510,325.00
CGT computed based on old rate	1,668,550.00
Discrepancy	**₱ 841,775.00**

Petitioner has thirty (30) days from execution of Deed of Absolute Sale on April 2, 2019, or until May 2, 2019, to the settle the sum of ₱841,775.00 just mentioned, as mandated by Section 52(D),[63] in relation to Section 56(A)(3)[64] of the NIRC, as amended. Petitioner did pay the full amount of CGT computed based on applicable rate, albeit belatedly, only on March 4, 2020.[65] Therefore, petitioner is liable for surcharge and interest thereon, for failure to settle the same on or before the statutory due date for its payment, per Section 248(A)(4)[66] and 249(A)[67] of the same Code, in the amount of **₱295,405.37,** which shall be subtracted from the refundable amount, as commanded by *SMI-ED* and *TPC*, calculated as follows:

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63 **Section 52.** *Corporation Returns.* -

...

(D) *Return on Capital Gains Realized from Sale of Shares of Stock not Traded in the Local Stock Exchange.* - Every corporation deriving capital gains from the sale or exchange of shares of stock not traded thru a local stock exchange as prescribed under Sections 24 (c), 25 (A)(3), **27 (E)(2) [should be 27(D)(2)]**, 28(A)(8)(c) and 28 (B)(5)(c), shall file a return within thirty (30) days after each transactions and a final consolidated return of all transactions during the taxable year on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year. Note that Section 27(E)(2) of the NIRC pertains to a provision governing Minimum Corporate Income Tax. Words in brackets ours.

64 **Section 56.** *Payment and Assessment of Income Tax for Individuals and Corporation.* -

(A) Payment of Tax. -

...

(3) *Payment of Capital Gains Tax.* - The total amount of tax imposed and prescribed under Section 24 (c), 24(D), 27(E)(2) **[should be 27(D)(2)]**, 28(A)(8)(c) and 28(B)(5)(c) shall be paid on the date the return prescribed therefor is filed by the person liable thereto: .... Note that Section 27(E)(2) of the NIRC pertains to a provision governing Minimum Corporate Income Tax. Words in brackets ours.

65 Exhibit "P-11." *Id.* at pp. 585-588.

66 **Section 248.** *Civil Penalties.* -

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

...

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

67 SEC. 249. *Interest.* –

...

(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: Provided, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

Increments:	
25% Surcharge [₱841,775.00 x 25%]	₱ 210,443.75
12% Deficiency Interest (May 3, 2019 to Mar. 4, 2020) [₱841,775.00 x 12% x (307/365 days)]	84,961.62
Total Surcharge and Interest	**₱ 295,405.37**

Summing up our findings, petitioner is entitled to refund or credit of its excessively paid CGT only to the extent of ₱1,373,144.63. Consider the following table:

Total claim for refund or credit in CTA Case No. 10520		₱ 1,715,533.00
Less: Disallowed DST paid for failure to indicate the subject transaction	₱ 46,983.00	
Surcharge & interest on deficiency CGT	295,405.37	342,388.37
Refundable Amount		**₱1,373,144.63**

WHEREFORE, the Petition for Review filed on January 3, 2019, in CTA Case No. 10520, is **PARTIALLY GRANTED**. Accordingly, the Commissioner of Internal Revenue is **DIRECTED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of ING Bank, N.V. Manila Branch, the amount of **₱1,373,144.63**, representing its erroneously and excessively collected Capital Gains Tax, paid by the latter on May 2, 2019, in relation to the sale of its proprietary membership in Manila Polo Club, Inc., covered by Deed of Absolute Sale executed on April 2, 2019.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

With Concurring and Dissenting Opinion.
HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ING BANK, N.V. MANILA BRANCH, *Petitioner,*	**CTA Case No. 10520**
	Members:
- versus -	**MANAHAN,** Chairperson, **REYES-FAJARDO,** and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 19 2025 3:00 p.m.

x - x

CONCURRING AND DISSENTING OPINION

ANGELES, *J.*:

I agree with the Decision to refund or credit in favor of petitioner the amount of ₱1,373,144.63 representing erroneously collected or excessively paid Capital Gains Tax (CGT) in relation to the sale by Buitenga of a Manila Polo Club, Inc. (MPC) share of stock to Oberoi (subject sale).

However, with all due respectful to the *ponente*, I humbly disagree with the rejection of petitioner's claim for refund of erroneously collected or excessively paid Documentary Stamp Tax (DST) in the amount of ₱46,983.00.

To prove that it indeed paid, and the BIR indeed received DST on April 30, 2019 amounting to ₱46,983.00 in relation to the subject sale, petitioner presented the Certification dated June 21, 2022 issued by Conrado P. Item, Chief of the Miscellaneous Operations Monitoring Division of the BIR.

While it is true that the said Certification alone only proves that petitioner paid DST in the amount of ₱46,983.00 on April 30, 2019, and is insufficient to show that such DST payment was made for, or in connection with the subject sale, it bears noting that this was **not the**

only evidence presented by petitioner to establish the fact of payment of DST in relation to the subject sale.

Petitioner also presented the testimony of Ms. Diana Rose Cue, petitioner's Chief Finance Officer, who is responsible for petitioner's entire finance operations, including petitioner's tax compliance. In her Sworn Statement dated April 30, 2021, Ms. Cue stated that after the subject sale was executed, petitioner paid the corresponding DST on April 30, 2019 amounting to ₱46,983.00.[1] On cross examination during the hearing held on April 19, 2022, Ms. Cue confirmed that after the BIR-LTS refused to issue the Certificate Authorizing Registration (CAR) in relation to the subject sale, petitioner again paid DST, in almost the same amount which it paid on April 30, 2019.[2] On re-direct examination, Ms. Cue again confirmed that petitioner's initial payment of taxes with the BIR-LTS was made for the same transaction, referring to the subject sale.[3]

On the other hand, nowhere in the records of this case did respondent specifically deny or contradict the allegation that petitioner paid DST in the amount of ₱46,983.00 on April 30, 2019 in relation to the subject sale. Neither did he present any evidence to controvert such allegation.

Section 1, Rule 133 of the Revised Rules on Evidence sets the quantum of evidence for civil actions to preponderance of evidence. Jurisprudence has defined preponderant evidence as evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its nonexistence.[4]

In the instant case, I find the evidence of petitioner sufficient to establish that it paid DST on April 30, 2019 amounting to ₱46,983.00 in relation to the subject sale, and in excess of its liability for such tax.

Therefore, I vote to **grant** the refund or credit in favor of petitioner the amount of **₱46,983.00**, representing excessively paid DST, in addition to the refund or credit of the amount of ₱1,373,144.63, representing excessively paid CGT.

HENRY S. ANGELES
Associate Justice

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[1] Docket – Vol. I, p. 111.
[2] *Transcript of Stenographic Notes* (TSN), April 19, 2022, pp. 25-26.
[3] *Id.*, p. 31.
[4] *Far East Bank & Trust Co. v. Chante*, G.R. No. 170598, October 9, 2013.