REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TRUMP MARKS PHILIPPINES LLC,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8969

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

MAR 21 2018 : 1:52 pm

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution are the following:

1. respondent's **Motion for Reconsideration (Re: Decision dated November 03, 2017)**, filed on November 20, 2017 with petitioner's **Comment (To Motion for Reconsideration dated 17 November 2017),** filed on December 18, 2017; and

2. petitioner's **Motion for Partial Reconsideration (of Decision dated 3 November 2017)**, filed on November 22, 2017 without respondent's comment as per Records Verification dated December 27, 2017.

Both parties seek reconsideration of this Court's Decision dated November 3, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱14,483,633.30** representing excess FWT remittances on royalty payments made by Century City to petitioner for the months of December 2012 to July 2014.
>
> **SO ORDERED.**"

In the said Decision, the Court ruled that petitioner has sufficiently proven its entitlement to a refund of erroneously paid FWT on royalties but only for the months covering December 2012 to July 2014 in the amount of ₱14,483,633.30, computed as follows:

Total Substantiated FWT Claim	₱ 19,496,852.62
Less: Prescribed Portion	5,013,219.32
Total Refundable Claim	**₱ 14,483,633.30**

Respondent, in his motion for reconsideration, claims that petitioner is not entitled to the refund of its excess final withholding tax (FWT) remittances on royalty payments made by Century City for the months of December 2012 to July 2014 for failure of the petitioner to substantiate its claim for refund.

Further, respondent asserts that, being a non-resident foreign corporation, petitioner is subject to thirty (30%) income tax on royalties from Philippines sources.

Petitioner opposes the above motion, stating that the same does not raise any new, cogent or substantial ground to warrant a reversal or modification of the Decision of this Court.

Petitioner likewise claims that respondent did not provide any basis to question the Court's finding that the preferential income tax treaty rate of 10% under Article 13(2)(b)(iii) of the PH-US Tax Treaty is applicable to the royalty payments paid by Century City to petitioner. Petitioner further states that respondent, in BIR Ruling No. ITAD 026-14 dated April 4, 2014, has found that such royalty payments are indeed subject of the preferential income tax treaty rate of 10%.

Respondent's motion finds no basis in fact and in law.

As previously taken up in the assailed decision, the income tax rate of 30% can be further reduced by an international agreement between the Philippines and another state. In the present case, the relevant treaty is the RP-US Tax Treaty.

Moreover, the Court found that petitioner has sufficiently proven its entitlement to a refund of erroneously paid FWT on royalties for the months covering December 2012 to July 2014 based on the documents presented before this Court. Thus, the Court finds respondent's motion bereft of merit.

On the other hand, petitioner, in its motion for partial reconsideration, contends that the application of the two-year prescriptive period is not absolute. Petitioner cited various Supreme Court rulings which held that even if the two-year period already elapsed, the same is not jurisdictional and may be suspended for reasons of equity and other special circumstances or it may be tempered on moral and equitable grounds.

Petitioner further quoted the case of *Taganito Minining Corp. vs. Commissioner of Internal Revenue*[1], stating that the two-year period under Section 229 of the National Internal Revenue Code (NIRC), as amended, does not apply to claims for a refund or tax credit of taxes that are not excessively withheld.

Moreover, petitioner cited *Manila Electric Company vs. Commissioner of Internal Revenue*[2], which relaxed the application of the two-year prescriptive period because the taxes sought to be refunded was not considered erroneous, or without authority, excessive or in any manner wrongfully collected. In the same case, it was further held that respondent cannot collect taxes on income that does not exist for it would be tantamount to unjust enrichment for the government at the expense of the taxpayer.

Petitioner states that pursuant to Supreme Court's decision in *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* on August 19, 2013[3], its right to claim the benefits of Article 12(2)(b)(iii) of the Philippines-United States Tax Treaty without

[1] G.R. No. 198076, November 19, 2014.
[2] CTA Case No. 7242, April 15, 2011.
[3] G.R. No. 188550.

waiting for the resolution of its tax treaty relief application by respondent was affirmed and the previous requirement of an approved tax treaty relief application to support a claim for refund was set aside by the Supreme Court. Petitioner submits that based on the facts attendant in this case, the two-year prescriptive period for claiming refund based on its Tax Treaty Relief Application must be deemed suspended from August 25, 2010 until August 28, 2013 when petitioner was still considered disqualified from pursuing a refund claim under Revenue Memorandum Order (RMO) No. 72-2010 and the CTA *En Banc* Decision in Deutsche Bank AG Manila Branch[4].

Lastly, petitioner invokes the principle of *solutio indebiti* in the instant claim for the respondent allegedly received something that he was not entitled to.

We are not persuaded.

Petitioner's contention that Section 229 of the NIRC of 1997, as amended does not apply in the instant case is incorrect.

This Court has consistently ruled that Section 229 of the NIRC of 1997, as amended, governs exclusively all kinds of refund or credit of internal revenue taxes erroneously or illegally imposed or collected pursuant to the Tax Code. The Court reiterates the settled rule that both the claim for refund with the BIR and the subsequent appeal to this Court must be filed within the two-year period from the date of payment of the tax, regardless of any supervening cause that may arise after payment.

The FWT remitted from January 10, 2012 (for taxable month of December 2011) to November 12, 2012 (for the taxable month of October 2012) should not be considered in the instant claim for having filed beyond the two-year period counted from the date of payment.

Period Covered	**Date of Payment of FWT**	**Last Day to File Admin. and Judicial Claim**	**Excess FWT Paid**
Dec. 2011	10-Jan-12	10-Jan-14	₱ 101,912.75
March 2012	10-Apr-12	10-Apr-14	1,766,822.33
April 2012	10-May-12	10-May-14	545,536.99

[4] CTA *EB* No. 456, May 29, 2009.

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May 2012	11-Jun-12	11-Jun-14	707,358.09
June 2012	10-Jul-12	10-Jul-14	268,897.91
Aug. 2012	10-Sep-12	10-Sep-14	835,749.29
Oct. 2012	12-Nov-12	12-Nov-14	786,941.96
	Prescribed Claim		**₱ 5,013,219.32**

Petitioner's contention that the two-year prescriptive period for claiming refund based on its Tax Treaty Relief Application must be deemed suspended from August 25, 2010 until August 28, 2013 when petitioner was still considered disqualified from pursuing a refund lacks basis in fact and in law.

Note that at the time the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*[5] was promulgated, which was on August 19, 2013, the two-year prescriptive period to file the administrative and judicial claim has not yet lapsed, and hence, petitioner should have filed its claim for refund as early as the said date. However, it was only on December 1, 2014[6] and on January 14, 2015[7] when petitioner filed the administrative and judicial claim, respectively.

Finally, the Court finds petitioner's reliance on *solutio indebiti* principle untenable.

In *Commissioner of Internal Revenue vs. Manila Electric Company*[8], the Court rejected the application of said principle to tax refund cases, *viz.*:

> "In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. **Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the**

[5] G.R. No. 188550.
[6] Exhibit "P-10", docket, vol. I, pp.355-360
[7] Petition for Review, docket, vol. I, p. 6.
[8] G.R. No. 181459, June 9, 2014.

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> **law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid**." (*Emphasis supplied.*)

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim"[9].

Based on the foregoing, this Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated November 03, 2017)**, and petitioner's **Motion for Partial Reconsideration (of Decision dated 3 November 2017)** are hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[9] *Metropolitan Bank & Trust Co. vs. Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.