

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL C.T.A. EB NO. 262
REVENUE, (C.T.A. CASE NO. 7107)
Petitioner,

-versus-

MANILA ELECTRIC COMPANY
(MERALCO),
Respondent.

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MANILA ELECTRIC COMPANY
(MERALCO),
Petitioner,

C.T.A. EB NO. 264
(C.T.A. CASE NO. 7107)

Present:

-versus-

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

ACOSTA, Presiding Justice
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

OCT 15 2007 *Subs. Palanica*

X-----X

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

Before the Court are consolidated Petitions for Review separately
filed by the Commissioner of Internal Revenue (hereafter "CIR") and

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Manila Electric Company (hereafter "MERALCO") which seek the review of the Decision dated October 16, 2006 of the First Division of this Court in C.T.A. Case No. 7107 entitled "Manila Electric Company (MERALCO) vs. Commissioner of Internal Revenue", partially granting the Petition for Review filed by MERALCO and the Resolution dated January 11, 2007, denying both MERALCO's "Partial Motion for Reconsideration" and Commissioner of Internal Revenue's "Motion for Reconsideration". The respective dispositive portions of the Decision and Resolution read as follows:

"IN VIEW OF THE FOREGOING,
petitioner's claim in the amount of TWO
HUNDRED TWENTY FOUR MILLION SEVEN
HUNDRED SIXTY THOUSAND NINE
HUNDRED TWENTY SIX PESOS & SIXTY
FIVE CENTAVOS (P224,760,926.65)
representing erroneously paid and remitted final
income taxes for the period January 1999 to July
2002 is hereby DENIED on the ground of
prescription. However, petitioner's claim in the
amount of THIRTY NINE MILLION THREE
HUNDRED FIFTY NINE THOUSAND TWO
HUNDRED FIFTY FOUR PESOS & SEVENTY
NINE CENTAVOS (P39,359,254.79) is hereby
GRANTED.

Accordingly, respondent is ORDERED TO
REFUND or ISSUE A TAX CREDIT
CERTIFICATE to petitioner in the amount of
THIRTY NINE MILLION THREE HUNDRED
FIFTY NINE THOUSAND TWO HUNDRED



FIFTY FOUR PESOS & SEVENTY NINE CENTAVOS (P39,359,254.79) representing the final withholding taxes erroneously paid and remitted for the period December 2002 to September 2003.

SO ORDERED.”

“**WHEREFORE**, the Court hereby DENIES both petitioner’s “Partial Motion for Reconsideration” and respondent’s “Motion for Reconsideration” for lack of merit.

SO ORDERED.”

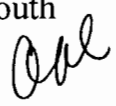
THE FACTS

The antecedent facts, as culled from the records, are as follows:

MERALCO is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Lopez Building, Ortigas Avenue, Pasig City.

The CIR, on the other hand, is the duly appointed Commissioner of Internal Revenue who holds office at the 5th Floor of the BIR National Office Building, located at Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes.

On July 6, 1998, MERALCO obtained a loan in the amount of US\$120,000,000.00 from Norddeutsche Landesbank Girozentrale, (hereafter “NORD/LB”), Singapore Branch and with ING Barings South



East Asia Limited (hereafter "ING Barings"), as the Arranger. MERALCO's loan with NORD/LB, Singapore Branch, was restructured on April 7, 2000, with ING Barings again as Arranger.

On September 4, 2000, MERALCO executed another loan agreement again with NORD/LB, Singapore Branch, for a loan facility of US\$100,000,000.00, with Citicorp International Limited, as Agent.

Pursuant to the loan agreements, MERALCO paid/remitted to the Bureau of Internal Revenue (hereafter "BIR") the corresponding ten percent (10%) final withholding tax on its interest payments to NORD/LB, Singapore Branch.

Thereafter, sometime in 2001, MERALCO discovered that NORD/LB, Singapore Branch, is a foreign government-owned financing institution of Germany. Thus, on December 20, 2001, MERALCO filed with the CIR a request for a BIR ruling as to the tax exempt status of NORD/LB, Singapore Branch, pursuant to Section 32 (B)(7)(a) of the 1997 National Internal Revenue Code (hereafter "1997 NIRC"), as amended.

On October 7, 2003, the BIR issued *Ruling No. DA-342-2003* declaring therein that interest payments made to NORD/LB, Singapore Branch, is tax exempt from ten percent (10%) final withholding tax since



it is a financing institution owned and controlled by the foreign government of Germany.

Consequently, on July 13, 2004, relying on *BIR Ruling No. DA-342-2003*, MERALCO filed with the CIR a claim for refund or issuance of tax credit certificate in the amount of P264,120,181.44, representing the erroneously paid or overpaid final withholding tax on interest payments made to NORD/LB, Singapore Branch.

On November 5, 2004, MERALCO received a letter from the CIR denying its claim for refund.

Hence, on December 6, 2004, MERALCO filed a Petition for Review with this Court, docketed as C.T.A. Case No. 7107.

In his Answer filed on February 4, 2005, the CIR alleged by way of special and affirmative defenses that CIR denied the claim for the period from January 1999 to April 2002 amounting to P213,740,920.19 on the ground that the period within which to file an administrative claim for refund had already prescribed pursuant to *Section 204 (C) of the 1997 Tax Code*; in *Section 229 of the Tax Code of 1997* which governs judicial claims for refund, the judicial claim must be filed within two (2) years from the date of payment of tax or penalty; since MERALCO's judicial claim was filed on December 6, 2004, only MERALCO's claim that fall

within two (2) years before the date of filing of the instant petition can be considered before this Court; MERALCO must prove that it withheld and remitted said taxes for the period December 2002 to September 2003 and that the interest income remitted by MERALCO to NORD/LB is not subject to Philippine Income Tax.

After trial on the merits, the First Division rendered the assailed Decision partially granting MERALCO's Petition for Review.

On November 2, 2006, the CIR filed a "Motion for Reconsideration", to which MERALCO filed its "Opposition to Motion for Reconsideration" on November 21, 2006.

On the other hand, on November 7, 2006 MERALCO filed its "Partial Motion for Reconsideration".

Finding no justifiable reason to overturn the assailed Decision, the First Division denied both the CIR's "Motion for Reconsideration" and MERALCO's "Partial Motion for Reconsideration" in a Resolution dated January 11, 2007.

Not satisfied, both the CIR and MERALCO filed the present Petitions for Review before the Court *En Banc*, docketed as C.T.A. EB No. 262 and C.T.A. EB No. 264, respectively.



C.T.A. EB No. 262
(Appeal of CIR)

On March 1, 2007, We required MERALCO to file its comment on the petition, within ten (10) days from notice.

On April 3, 2007, MERALCO filed its Comment.

C.T.A. EB No. 264
(Appeal of MERALCO)

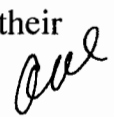
On March 5, 2007, the Court *En Banc* ordered the CIR to file his comment on the petition, within ten (10) days from notice.

On March 19, 2007, upon motion of the CIR, We granted the CIR a non-extendible period of fifteen (15) days or until April 1, 2007 to file his comment.

Thereafter, on April 3, 2007, the CIR filed his "Motion to Admit Attached Comment" and Comment, which was admitted by the Court in a Resolution dated April 25, 2007.

Consolidation of Petitions

In a Resolution dated May 9, 2007, pursuant to *Section 1, Rule 31 of the Revised Rules of Court*, the Court *En Banc* ordered the consolidation of C.T.A. EB No. 264 with C.T.A. EB No. 262, the case bearing the lower docket number, and gave due course to the consolidated petitions, and required both parties to submit their



respective consolidated memorandum, within thirty (30) days from notice.

Only the CIR filed his Consolidated Memorandum on July 2, 2007. Hence, the consolidated petitions were deemed submitted for decision on July 19, 2007.

ISSUES

CIR's Assigned Error

The CIR presents this sole issue in support of his petition for the Court *En Banc*'s consideration, to wit:

“WHETHER OR NOT SUFFICIENT EVIDENCE WAS PRESENTED TO ESTABLISH THAT NORDEUTSCHE LANDESBANK GIRONZENTRALE (NORD/LB) IS OWNED BY A FOREIGN GOVERNMENT.”

MERALCO's Assigned Error

For its part, the sole issue raised by MERALCO on which it anchors its claim, is:

“PETITIONER HUMBL Y SUBMITS THAT THE SOLE ISSUE TO BE RESOLVED IS WHETHER PETITIONER'S CLAIM FOR REFUND OF WITHHOLDING TAXES ON INTEREST PAYMENTS MADE FROM FEBRUARY 25, 1999 TO AUGUST 12, 2002 HAS ALREADY PRESCRIBED.”

THE COURT EN BANC'S RULING

Both petitions lack merit.



C.T.A. EB No. 262
(Appeal of CIR)

The CIR argues that MERALCO was not able to present a single piece of direct evidence to prove that NORD/LB is owned by a foreign government; the testimony of its officer German Martinez, Head of Tax and Tariff, referred only to the fact that he received a letter purportedly issued by the Embassy of the Federal Republic of Germany and was not based on personal knowledge, hence, it is hearsay; the documentary evidence consisting of the letter certification from the Embassy of the Federal Republic of Germany was not properly identified by any witness, therefore, it should not be given probative weight.

MERALCO counter argues that it has sufficiently established the fact that NORD/LB is owned by a foreign government through both testimonial and documentary evidence; when MERALCO formally offered its documentary evidence including both the testimony of Mr. Martinez and *Exhibit "AA"*, the certification issued by the Embassy of the Federal Republic of Germany dated March 27, 2002, the CIR interposed no objection thereto; the First Division correctly pointed out that the testimony of Mr. Martinez and the certification were given probative value in the absence of any strong evidence to disprove the



truthfulness of the claim that NORD/LB is owned by a foreign government; the CIR had already admitted the fact that NORD/LB is owned by a foreign government in the parties' Joint Stipulations of Facts and during the trial.

The CIR's contention cannot be sustained.

Record shows that MERALCO offered in evidence a certification from the Embassy of the Federal Republic of Germany dated March 7, 2002 which stated that NORD/LB is owned by the States of Lower Saxony, Saxony-Anhalt and Mecklenburg – Western Pomerania and serves as a regional bank for the said states which offers support in public sector financing (*Exhibit "AA"*). MERALCO presented as witness its Vice President, German F. Martinez, Jr., Head of Tax and Tariff, who testified on and identified the existence of such certification.

It should be noted that on the basis of said certification issued by the Embassy of Germany, the CIR himself issued BIR Ruling DA-342-2003, which categorically declared that interest income remitted by MERALCO to NORD/LB Singapore Branch is not subject to Philippine income tax and consequently, not subject to 10% withholding tax (*Exhibit "T"*). What is more, in the parties' Joint Stipulation of Facts, the CIR



admitted the issuance of *BIR Ruling DA-342-2003* and did not contest such as one of the admitted documentary evidence in Court.

Noteworthy is the fact that the letter of the CIR which denied MERALCO's claim for refund of final withholding tax remittances took into consideration the aforementioned BIR ruling and based its denial merely on prescription.

The foregoing documentary and testimonial evidence were given probative value as the First Division ruled that there was no strong evidence to disprove the truthfulness of the said pieces of evidence considering that the CIR did not present any rebuttal evidence to prove otherwise. The weight of evidence is not a question of mathematics, but depends on its effect in inducing belief, under all of the facts and circumstances proved. The probative weight of any document or any testimonial evidence must be evaluated not in isolation but in conjunction with the other evidence, testimonial, admissions, judicial notice, and presumptions, adduced or given judicial cognizance of, and if the totality of the evidence presented by both parties supports the claimant's claim, then he is entitled to a favorable judgment (*Donato C. Cruz Trading Corp. vs. Court of Appeals, 347 SCRA 13*).

As correctly found and held by the First Division:



“As proof that Norddeutsche Landesbank Gironzentrale is owned by a foreign government, petitioner presented as witness its Vice President, German F. Martinez, Jr., Head of Tax and Tariff, who testified that petitioner requested a certification from Germany to prove that Norddeutsche Landesbank Gironzentrale was created by law and owned by the Federal Republic of Germany. He also presented a certification issued by the Embassy of the Federal Republic of Germany dated March 7, 2002, which reads:

Mr. G.S. San Diego
Sr. Asst. Vice President & Head
Legal Services
MERALCO
Ortigas Avenue
Pasig City

Dear Mr. San Diego

Regarding your letter dated March 1, 2002, I can confirm the following:

NORD/LB is owned by the State (Land) of Lower Saxony to the extend of 40%, by the States of Saxony-Anhalt and Mecklenburg-Western Pomerania to the extend of 10% each. The Lower Saxony Savings Bank and Central Savings Bank Association have a share of 2666%. The Savings Bank Association Saxony-Anhalt and the Savings Bank Association Mecklenburg-Western Pomerania have a share of 666% each.

As the regional bank for Lower Saxony, Saxony-Anhalt and Mecklenburg-Western Pomerania, NORD/LB offers support in public sector financing. It fulfills as Gironzentrale the function of a central bank for the savings bank in these three states (Lander).

Yours sincerely,



b.o.
(sgd.)
Lars Leymann
First Secretary

The Court gives probative value to the testimony of said witness and the certification issued by the Embassy of the Federal Republic of Germany, without any strong evidence to disprove the truthfulness of the claim that Norddeutsche Landesbank Gironzentrale is owned by a foreign government.”

We have reviewed the foregoing findings *vis-à-vis* the evidence adduced by MERALCO and have found nothing amiss in the manner by which such evidence were appraised.

In fine, We are convinced that MERALCO’s evidence is worthy of credence and that it has sufficiently established that NORD/LB is a foreign government owned entity and hence, interest income remitted by MERALCO to NORD/LB is tax-exempt. Consequently, We hold that it is not subject to withholding tax pursuant to Section 32 (B) (7) (a) of the NIRC of 1997, as amended, which states:

“SEC. 32. Gross Income. –

xxx

xxx

(B) Exclusions from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

(7) Miscellaneous Items. –



(a) Income Derived by Foreign Government. – Income derived from investments in the Philippines, in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments.

xxx xxx.”

C.T.A. EB No. 264
(Appeal of MERALCO)

MERALCO argues that its claim has not been barred by prescription; under settled jurisprudence, the two-year period should commence to run only from the time the refund was ascertained; that the principle of solutio indebiti – “no person shall enrich himself unjustly at the expense of another” – should be applied in this case considering that it was only in 2003 that MERALCO came to know of the tax-exempt status of NORD/LB; the case of *Ramie Textiles, Inc. vs. Mathay, Sr.* (89 SCRA 586), where it was held that claims for refund must be made within six (6) years from the date of payment, should be applied in this case being one in the nature of a solutio indebiti.

On the other hand, the CIR maintains that the clear applicable provisions of law dictate that MERALCO’s claim for refund of withholding taxes on interest payments made from February 25, 1999 to



August 12, 2002 has prescribed; the plain, unequivocal language of the law clearly provides that administrative claims for refund or credit of taxes shall only be considered if filed within a two year period from the date of payment of the tax; both the administrative claim for refund of P213,740,920.19 (taxes withheld from January 1999 to April 2002), and the judicial claim for the amount of P11,019,996.46 (representing taxes withheld on August 2002) were correctly denied, for having been filed beyond the period allowed in *Section 204 (C) and Section 229 of the 1997 Tax Code*; and the principle of solutio indebiti is based on the provisions of the Civil Code which is a general law, hence, the Tax Code being a special law prevails over the Civil Code.

We rule for respondent Commissioner of Internal Revenue.

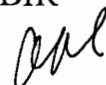
The present case involves withholding taxes which are covered by the National Internal Revenue Code, a special law that was created especially for internal revenue taxes. It is well-settled that a special law shall prevail over a general law (*The Commissioner of Internal Revenue vs. Ilagan Electric and Ice Plant Inc.*, 29 SCRA 634; *The Guagua Electric Light Co., Inc. vs. CIR*, 19 SCRA 790). The fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general – one as a general law of the land and the other



as the law of a particular case. Accordingly, the two-year prescriptive period found in *Sections 204 (C) and 229 of the NIRC of 1997*, which is a special law, shall prevail over the principle of *solutio indebiti* which grants a six-year prescriptive period under the Civil Code of the Philippines, which in turn is a general law. Simply stated, the period specifically provided in the Tax Code shall prevail over that one provided under the Civil Code. *Generalia specialibus non derogant* (*PNOC vs. CA & PNB vs. CA*, 457 SCRA 32 (2005)). Hence, the six-year prescriptive period cannot be made to apply to the case at bar.

As aptly ruled by the First Division:

“This Court cannot disregard the provisions requiring the claim for refund or issuance of a tax credit certificate within two (2) years from date of payment. We do not agree with petitioner that the two-year period, is not jurisdictional and may be suspended for reasons of equity and other special circumstances as ruled in its cited case of *Philam and Ramie Textile vs. Mathay*, G.R. No. L-32364, April 30, 1979. As correctly argued by the respondent, there is no basis that the subject exemption was provided and ascertained only through BIR Ruling No. DA-342-2003 since said BIR Ruling is not the operative act from which an entitlement to refund is determined. Simply put, there is no requirement in the law that petitioner must request first for a ruling from the BIR for exemption before it can file a claim for refund in cases of erroneous payment or overpayment of taxes. The 1997 National Internal Revenue Code provides for the exemption as well as the period within which to file a claim for refund of erroneously paid taxes and not the BIR



Ruling which merely echoes whatever is provided by the law.

Now therefore, considering the date of filing of returns and payment of taxes and the date when petitioner administratively filed its claim with the respondent and the date when it judicially filed the instant case before this Court, petitioner's claim for the refund of the following taxes paid has already prescribed:

Year	Month	NORD/LB ING BARINGS	NORD/LB CITICORP.	Date Paid	Last Day To File Claim
1999	January	P21,576,265.83		02/25/1999	02/26/2001
	July	19,115,555.70		08/25/1999	08/24/2001
2000	January	22,104,821.11		02/28/2000	02/27/2002
	April	16,578,994.45		05/24/2000	05/24/2002
	July	12,038,282.23		08/25/2000	08/26/2002
2001	January	30,569,755.85		02/26/2001	02/26/2003
	April		22,105,276.22	05/25/2001	05/26/2003
	October		16,946,251.85	11/12/2001	11/12/2003
	November	25,210,216.30		12/10/2001	12/10/2003
2002	January	17,811,700.15		02/11/2002	02/11/2004
	April		9,683,810.50	05/10/2002	05/10/2004
	July		11,019,996.46	08/12/2002	08/12/2004
TOTAL			<u>P224,760,926.65</u>		

xxx xxx."

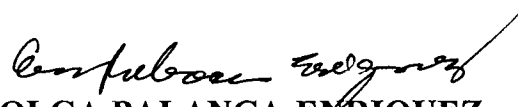
For all the foregoing and considering the dates of filing of the returns and payment of taxes and the date when MERALCO administratively filed its claim with the CIR, which is on July 13, 2004, and the date when it judicially filed the case with the First Division on December 6, 2004, it is evident that MERALCO's claim for refund of the amount of P224,760,926.65 had already prescribed.



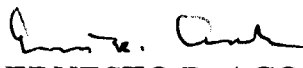
In the light of the laws and jurisprudence on the matter, We see no reason to reverse the assailed Decision dated October 16, 2006 and Resolution dated January 11, 2007 of the First Division.

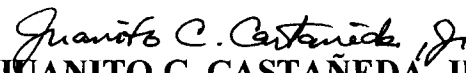
WHEREFORE, premises considered, both petitions are hereby
DISMISSED.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

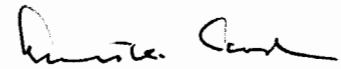

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice

(ON LEAVE)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.



ERNESTO D. ACOSTA
Presiding Justice