REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, ***Petitioner,***	**C.T.A. EB NO. 598** **(C.T.A. CASE NO. 6863)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
WRIGLEY PHILIPPINES, INC., ***Respondent.***	**Promulgated:** AUG 27 2010

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner CIR"), under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended,* which seeks to set aside the Decision dated December 08, 2008 and Resolution dated February 2,

2010 rendered by the Special First Division of this Court in C.T.A. Case No. 6863, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **FOUR MILLION ONE HUNDRED FIFTY-ONE THOUSAND SEVEN HUNDRED TWENTY FIVE and 70/100 PESOS (P4,151,725.70)**, representing petitioner's overpayment of final withholding taxes on royalties for calendar year 2002.
>
> **SO ORDERED**."

> "**WHEREFORE,** finding no basis, factual or legal to grant the reconsideration sought, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue, with office address at the 5/F, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Wrigley Philippines, Inc. (hereafter "respondent Wrigley"), on the other hand, is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Marcos Highway, Sitio Puting Bato, Barangay Inarawan,

1049

Antipolo City. It is registered as a value-added tax (VAT) entity, with TIN/VAT No. 000-208-753-000 and BIR Certificate of Registration No. 8RC000016763, dated January 1, 1996.

THE FACTS

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

On July 2, 1993, respondent Wrigley entered into a ten (10)-year License Agreement with Wm. Wrigley Jr. Company (Wrigley-US), a non-resident foreign corporation duly organized and existing under the State of Delaware, USA, with business address at 410 North Michigan Avenue, Chicago, Illinois, USA. Said agreement was renewed for another ten (10) years or until July 1, 2013.

For the rights and benefits received by respondent Wrigley, it agreed to pay Wrigley-US a fee of five percent (5%) based on the Net Sales, plus two percent (2%) based on its Net Foreign Exchange Earnings, with respect to all its manufactured and sold chewing gums. Moreover, Philippine withholding taxes on all payments under the said License Agreement shall be withheld and deducted from the payments due to Wrigley-US.

In accordance with the provisions of the License Agreement dated July 1, 1993, respondent Wrigley paid Wrigley-US the royalty fees due thereon for calendar year 2002. Said royalty fees were subjected to fifteen percent (15%) withholding tax rate, pursuant to the "most favored nation" clause of the Philippines-US Tax Treaty, in relation to the provisions of the RP-Russia, RP-Denmark or RP-Sweden Tax Treaties.

On November 18, 1999, the Philippines entered into an agreement with People's Republic of China under the RP-China Tax Treaty, which took effect on January 1, 2002. The agreement provides for only a ten percent (10%) withholding tax rate on royalty payments arising from the use of, or the right to use, any patent, trademark design or model, plan, secret formula or process, or from the use of, or the right to use industrial, commercial, or scientific equipment or for the information concerning industrial, commercial or scientific experience.

Subsequently, the BIR issued Revenue Memorandum Circular No. 46-2002 (RMC No. 46-2002), dated September 2, 2002, stating that the "tax on royalty payments to residents of US and China are paid under similar circumstances, i.e., the amount of royalty income tax paid or accrued to the Philippines under the respective tax treaties is available as

tax credit against the income tax payable in their respective countries", and "US residents may, therefore, invoke the preferential rate of 10% on royalties, accruing beginning January 1, 2002, arising in the Philippines 'from the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, xxx, or for information concerning industrial, commercial or scientific experience' under the RP-China Tax Treaty, pursuant to the 'most-favored nation' clause of the RP-US Tax Treaty".

The above, notwithstanding, respondent Wrigley has been withholding and remitting to petitioner CIR the tax on its royalty payments at fifteen percent (15%) tax rate.

Thus, on February 27, 2003, pursuant to the BIR Revenue Memorandum Order No. 01-2000 (RMO No. 01-2000), herein respondent Wrigley filed with the BIR's International Tax Affairs Division (ITAD) a written request for a ruling confirming that respondent Wrigley's technical service fee or royalty payments to Wrigley-US are subject to ten percent (10%) withholding tax rate, pursuant to the "most favored nation clause" under the Philippines-US Tax Treaty, in relation to the provisions of the RP-China Tax Treaty, with a claim for refund or

issuance of a tax credit certificate for the amount of P4,151,725.70, representing overpaid withholding taxes it made starting January 1, 2002, when the RP-China Tax Treaty took effect.

In response thereto, the BIR-ITAD, through BIR Assistant Commissioner Milagros V. Regalado, issued BIR Ruling No. DA-ITAD-142-03, dated September 23, 2003, confirming that royalty payments of respondent Wrigley to Wrigley-US under the License Agreement are subject to final withholding tax at the rate of 10%, pursuant to the "most-favored nation clause".

As to respondent Wrigley's claim for refund, in the same BIR Ruling, Assistant Commissioner Milagros V. Regalado stated that:

> "This ruling is issued on the basis of the facts as presented and is rendered only for the purpose of determining whether Wrigley is entitled to the benefits of the RP-US tax treaty. The determination on whether your request for tax refund should be given due course is upon the Office which will be conducting the investigation for that purpose. Thus, the docket pertaining thereto (including copy of this ruling) shall be endorsed to the proper office for processing and investigation."

Under RMO No. 01-2000, in case of a claim for issuance of a tax credit certificate, ITAD shall forward to the BIR's Appellate Division its Indorsement Memo, with a certified true copy of the approved ruling for

the issuance of a tax credit certificate. The Appellate Division, in turn, shall issue a tax credit certificate in the name of the withholding agent for the account of the "non-resident taxpayer/recipient of the income". The Appellate Division shall forward the duly signed tax credit certificate to the ITAD for its release.

For failure of petitioner CIR to act on the claim for refund, on February 9, 2004, respondent Wrigley filed a Petition for Review with the Special First Division of this Court, docketed as C.T.A. Case No. 6863.

In his Answer, petitioner CIR alleged by way of special and affirmative defenses, that respondent Wrigley's claim for refund is subject to administrative routinary investigation/examination by the Bureau; that the amount of P4,151,725.70 being claimed by respondent Wrigley, as allegedly representing overpaid withholding taxes for calendar year 2002, was not properly documented; that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit; that respondent Wrigley must show that it has complied with the provisions of *Sections 204 (C) and 229 of the Tax Code* on the prescriptive period for claiming tax refund/credit; and that claims for

refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

After trial on the merits, on December 8, 2008, the Special First Division rendered the assailed Decision granting the Petition for Review.

On January 5, 2009, petitioner CIR filed a "Motion for Reconsideration" on the ground that respondent Wrigley failed to comply with the mandatory requirements of RMO No. 01-2000 prior to availment of tax treaty relief.

In a Resolution dated February 2, 2010, the Special First Division denied petitioner CIR's "Motion for Reconsideration" for lack of merit.

Thus, on March 5, 2010, petitioner CIR filed the instant Petition for Review raising this sole:

ISSUE

> THE SPECIAL FIRST DIVISION OF THE HONORABLE COURT FAILED TO CONSIDER RESPONDENT'S FAILURE TO OBSERVE THE MANDATORY REQUIREMENTS OF REVENUE MEMORANDUM ORDER NO. 1-2000 (RMO 1-00) PRIOR TO AVAILMENT OF TAX TREATY RELIEF. AN OMISSION WHICH IS FATAL TO ITS CLAIM FOR REFUND.

On March 29, 2010, without necessarily giving due course to the petition, respondent was ordered to file its comment within ten (10) days

from notice. For failure of the respondent to file its comment within the period granted, both parties were ordered to file their simultaneous memoranda within thirty (30) days from notice.

On June 16, 2010, respondent Wrigley filed a "Manifestation with Motion to Admit Comment on Petition for Review" and its "Memorandum", which the Court granted. With the admission of respondent Wrigley's "Comment" and "Memorandum", this case was deemed submitted for decision on July 15, 2010.

Hence, this decision.

Petitioner CIR's arguments

Petitioner CIR mainly contends that respondent failed to satisfy the mandatory requirements to avail of a preferential rate under RMO No. 01-2000 for the period in question; that the availment of a tax treaty provision must be preceded by an application for tax treaty relief with the BIR ITAD, since its purpose is to prevent any erroneous interpretation and application of the treaty provisions of which the Philippines is a signatory; that *Section III of RMO No. 01-2000* strictly provides that any availment of the tax treaty relief shall be preceded by an application duly filed with the ITAD at least 15 days before the transaction; petitioner CIR

1050

further invokes the applicability in the present case of the decision of this Court, dated May 29, 2009, in the case of Deutsche Bank AG Manila Branch vs. CIR *(C.T.A. EB No.456),* citing the Resolution, dated November 12, 2007, of the Supreme Court in the case of Mirant vs. CIR in *G.R. No. 168531*, which affirmed the decision of this Court dated June 7, 2005, in C.T.A. EB No. 40 holding that a ruling from the ITAD of the BIR must be secured prior to availment of a preferential tax rate under a tax treaty.

Respondent Wrigley's Counter-Arguments

On the other hand, respondent Wrigley maintains that it has substantially proven and established that it is entitled to the refund or issuance of a tax credit certificate for overpaid withholding taxes for calendar year 2002 amounting to P4,151,725.70, invoking RMC No. 46-2002, dated September 2, 2002, which is the basis of its claim for refund; that on February 28, 2003, it filed a written request with the ITAD for a ruling confirming the applicable rate to respondent Wrigley, to which petitioner CIR replied on September 23, 2003 through BIR Ruling No. DA-ITAD-142-03. Accordingly, respondent Wrigley maintains that the

Former First Division did not err in ruling that respondent has substantially complied with RMO No. 01-2000.

THE COURT *EN BANC'S* RULING

The petition is bereft of merit.

At the outset, it must be pointed out that petitioner CIR does not dispute the findings of the Court in Division that the provisions of the RP-China Tax Treaty, more particularly, the reduced tax rate on royalties at ten percent (10%), apply to respondent Wrigley. Undeniably also, petitioner CIR does not question the findings of the Court in Division that respondent Wrigley actually withheld and remitted the total amount of P4,151,725.70 for taxable year 2002, as withholding taxes on its royalty payments to Wrigley-US, which amount is based on the concessional rate of fifteen percent (15%).

The only question left for the Court's resolution is whether respondent Wrigley has complied with the prescribed mandatory requirements of RMO No. 01-2000 prior to availment of a tax treaty relief, particularly *Section III (2)* thereof, which provides:

> "2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction i.e. payment of dividends,

1053

> royalties, etc., accompanied by supporting documents justifying the relief. Consequently, BIR Form Nos. TC 001 and TC 002 prescribed under RMO 10-92 are hereby declared obsolete."

We rule for respondent Wrigley.

Petitioner CIR principally anchors his position on the Resolution of the Supreme Court, dated November 12, 2007, in Mirant vs. CIR (G.R. No. 168531), which affirmed the decision of this Court, dated June 7, 2005, in C.T.A. EB No. 40, to wit:

> "However, it must be remembered that a foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that indeed the provisions of the tax treaty applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provisions of the National Internal Revenue Code, unless it is shown that the treaty provisions apply to the said corporation, and that, in cases the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked.
>
> Under Revenue Memorandum Order 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with its International Tax Affairs Division (ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory to. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same."

1059

Petitioner contends that when the Supreme Court affirmed the decision dated June 7, 2005 of the CTA En Banc in Mirant vs. CIR (C.T.A. EB No. 40), it becomes mandatory for the taxpayer to seek for a ruling with the BIR before it may invoke the benefits provided for under a tax treaty. However, a careful reading of the facts of the Mirant case shows that it is not squarely applicable in the present case. In the said case, this Court found that Mirant failed to secure a ruling from the ITAD, which is pertinently applicable to its transactions, thus:

> "The Court notes that ***nowhere in the records of the case was it shown that petitioner indeed took the liberty of properly observing the provisions of the said order. Petitioner quotes various BIR, as well as ITAD Rulings issued to several foreign corporations seeking for a tax relief from the office of the respondent. However, not any one of these rulings pertains to the petitioner.*** It must be stressed that BIR rulings are issued based on the facts and circumstances surrounding particular issue/issues in question and are resolved on a case-to-case basis. It would be thus erroneous to invoke the ruling of the respondent in specific cases, which have no bearing to the case of petitioner." (Emphasis supplied)

Clearly, in that case, Mirant failed to show any proof of compliance with RMO No. 01-2000, which is not the same with the instant case.

It may be true that pursuant to RMO No. 01-2000, the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with the ITAD; however, non-compliance with the period of fifteen (15) days is not fatal to respondent Wrigley's claim for refund.

First, it is highly improbable for respondent Wrigley to apply for a tax treaty relief with ITAD fifteen (15) days prior to the transaction, considering that RMC No. 46-2002, which confirms that the rate under the RP-China Tax Treaty is applicable also to US residents under the "most favored nation clause", was issued only on September 2, 2002. Respondent Wrigley's payment and withholding of tax on royalty payments for calendar year 2002 was done on a monthly basis, thus, it cannot possibly apply for a tax treaty relief prior to the effectivity of the RP-China Tax Treaty on January 1, 2002 and prior to the BIR's confirmation on September 2, 2002. The fact that respondent Wrigley filed a claim for refund shows that notwithstanding the effectivity of the RP-China Tax Treaty on January 1, 2002, respondent Wrigley did not automatically withheld at the rate of ten percent (10%) on its royalty payments and it continuously used the rate of fifteen percent (15%) for calendar year of 2002. Considering the BIR's clarification in RMC No.

46-2002, which provides that the application of the ten percent (10%) rate is retroactive beginning January 1, 2002, payments in excess of the ten percent (10%) rate from January 1, 2002 may be refunded by taxpayers under the "most-favored nation clause". Clearly, therefore, the provision of RMO No. 01-2000 requiring the application for a tax treaty relief fifteen (15) days prior to its transaction, is not applicable in the present case.

Nevertheless, we find that respondent Wrigley has substantially complied with RMO No. 01-2000. Records show that on February 28, 2003, respondent Wrigley filed a written request for a ruling *(Exhibit "F")*, and on September 23, 2003, the BIR issued ITAD Ruling No. DA-ITAD-142-03, pertaining to respondent Wrigley, in response to its request, which reads:

> "Such being the case, this Office is of the opinion and so holds that the royalty payments of WPI to Wrigley-US under the License Agreement are subject to final withholding tax at the rate of 10% pursuant to the 'most favored nation' provision of the RP-US tax treaty in relation to the RP-China tax treaty effective January 1, 2002 [Revenue Memorandum Circular (RMC) No. 46-2002 dated September 2, 2002; BIR Ruling No. DA-ITAD 101-03 dated July 24, 2003]. WPI shall deduct and withhold the tax at the time the royalty income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, and whichever comes first. The term 'payable'

> refers to the date the obligation become due, demandable, or illegally enforceable. [Section 4-Time of Withholding, Revenue Regulations No. 12-2001]"

The purpose of the application for a tax treaty relief with ITAD, which is to prevent any erroneous interpretation and/or application of the treaty provisions, had been served with the issuance of ITAD Ruling No. DA-ITAD-142-03. It is clear, therefore, that respondent Wrigley has substantially complied with RMO No. 01-2000.

For all the foregoing, we find that respondent Wrigley has legally and factually proven its entitlement for a refund since it should have withheld and remitted only at the rate of ten percent (10%) of its royalty payments to its US counterparts beginning January 1, 2002, pursuant to the "most-favored nation clause".

As the Supreme Court ruled "that tax refunds (or tax credits) are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti,* which covers not only mistake in fact but also mistake in law. The Government is not exempt from the application of *solutio indebiti.* Indeed, the taxpayer

expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers" *(CIR vs. Fortune Tobacco Corporation, 559 SCRA 160)*.

Finding no reversible error, we affirm the assailed Decision dated December 8, 2008 and Resolution dated February 2, 2010 rendered by the Special First Division of this Court in C.T.A. Case No. 6863.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED,** and accordingly **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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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