REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**C.T.A. EB No. 212**
	(C.T.A. Case No. 7059)
- versus -	Present: **Acosta, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, *JJ.***
THE COCA - COLA EXPORT CORPORATION, Respondent.	**Promulgated** SEP 25 2007

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DECISION

ACOSTA, *P.J.*:

The Petition for Review En Banc seeks the reversal of the Decision dated May 26, 2006 of the Second Division of this Court granting herein respondent's prayer for a refund or issuance of a tax credit certificate in the amount of **TEN MILLION THREE HUNDRED FIFTEEN THOUSAND FOUR HUNDRED TWENTY FOUR PESOS AND FORTY SIX CENTAVOS (P10,315,424.46)** representing the erroneously paid final taxes to petitioner for the period September 2002. This Petition likewise assails the Resolution dated August 11, 2006 denying petitioner's Motion for Reconsideration of the assailed Decision.

The undisputed facts, as found by the Court in Division, are as follows:

"Petitioner, a corporation organized and existing under the laws of the State of Delaware, USA., is duly licensed and registered to do business in the Philippines through a Philippine branch. Its place of business is at the 10th Floor, King's Court Building, 2129 Chino Roces (formerly Pasong Tamo) Avenue, Makati City.

Respondent is the duly appointed Commissioner of Internal Revenue empowered, among others, to grant claims for refund/tax credit of overpaid final tax, with office address at the BIR National Office Building located at Agham Road, Quezon City.

The Coca-Cola Company ('TCCC') is a company duly organized and existing under the laws of the State of Delaware, U.S.A. It is not registered as a corporation or partnership licensed to do business in the Philippines.

Effective, January 1, 2001, petitioner and TCCC entered into a Royalty Agreement, whereby petitioner agreed to pay TCCC royalty for the use of the trademarks, secret processes and formulae, other confidential know-how as well as the use of other intangibles in connection with the manufacture of concentrates beverage bases and syrups used in the preparation of beverages. The monthly royalty payments and the balance payments to the TCCC shall be made after deducting therefrom any applicable withholding tax that may be imposed on such payments by Philippine law, taking into consideration the tax treaty between the Republic of the Philippines and the United States of America.

Subsequently, the Agreement between the Government of the Republic of the Philippines and Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income came into force on March 23, 2001. The said treaty directs the payment of ten percent (10%) tax on royalties arising from the use of, or the right to use, any patent, trade mark, 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 information concerning industrial, commercial or scientific equipment.

Consequently, petitioner filed with the Bureau of Internal Revenue ('BIR') a request for confirmation that, among others, the royalties accrued and/or paid by petitioner to TCCC beginning January 1, 2002 are subject to ten percent (10%) withholding tax,

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pursuant to the RP-US Tax Treaty in relation [to] the RP-China Tax Treaty.

Pending BIR's action on the petitioner's request for confirmation, petitioner filed with the BIR its Monthly Remittance Return of Final Income Taxes Withheld for the month of September 2002 and remitted final withholding taxes totaling P80,904,360.32 on October 10, 2002, computed as follows:

	Tax Base	Tax Rate	Tax Required to be Withheld
Tax Required to be Withheld based on Regular Rates			
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	P 308,547,058.80	15%	P 46,282,058.82
Tax Required to be Withheld based on Tax Treaty Rates			
Royalty Payment (based on RP-US Tax Treaty in relation to RP-China Tax Treaty	346,223,015.00	10%	34,622,301.50
Total Amount Due			P 80,904,360.32

On July 24, 2003, BIR Assistant Commissioner Milagros V. Regalado issued BIR Ruling No. DA-ITAD 101-03, which confirmed that 'royalties arising in the Philippines and payable to TCCC for 2001 are subject to tax at the rate of 15 percent (15%) while royalty payments accruing beginning January 1, 2002 shall be subject to 10 percent (10%) pursuant to Article 13(2)(b)(iii) of the RP-US tax treaty, in relation to Article 12(2) of the RP-Russia and RP-China tax treaties, respectively (BIR Ruling No. DA-ITAD 101-03 dated July 4, 2003; RMC 46-02 dated September 2, 2002).'

On August 11, 2004, petitioner filed with the BIR an amended Monthly Remittance Return of Final Income Taxes Withheld for the month of September 2002. The amendment was brought about by an alleged error in the amount of royalty declared in the original return. The actual royalty tax base of P346,223,015.00 declared per the original return was allegedly higher than the actual royalty due in the amount of P243,068,770.38 and paid by petitioner to TCCC for the month of September 2002. Consequently, the ten percent (10%) final tax due on royalties was reduced from P34,622,301.50 to P24,306,877.04 and an over-remittance of P10,315,424.46 was reflected in the amended return as follows:

	Tax Base	Tax Rate	Tax Required to be Withheld
Tax Required to be Withheld based on Regular Rates			
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	P308,547,058.80	15%	P 46,282,058.82
Tax Required to be Withheld based on Tax Treaty Rates			
Royalty Payment (based on RP-US Tax Treaty in relation to RP-China Tax Treaty	243,068,770.40	10%	24,306,877.04
Total Amount Due			P 70,588,935.86
Less: Tax Remitted in Return Previously Filed on October 10, 2002			80,904,360.32
Total Amount of Over-remittance			P(10,315,424.46)

On August 27, 2004, petitioner filed with the BIR an administrative claim for refund/tax credit in the amount of P10,315,424.46 representing the alleged overpaid final withholding taxes on royalties it paid to TCCC for the period September 2002.

"Due to the respondent's inaction on its claim and the period within which to file a judicial action for recovery of erroneously collected national internal revenue tax is about to prescribe, petitioner filed a Petition for Review with this Court on September 29, 2004."

In a Decision dated May 26, 2006, the Second Division granted Coca-Cola Export Corporation (now respondent) Petition for Review and ordered Commissioner of Internal Revenue (now Petitioner) to refund or issue a tax credit certificate in the amount of P10,315,424.46 to respondent representing overpayment of final tax erroneously withheld and remitted to petitioner for the period September 2002.

In a Resolution dated August 11, 2006, the Second Division denied petitioner's Motion for Reconsideration for lack of merit.

Hence, within the extended period granted or on September 11, 2006, petitioner filed this present Petition raising as ground: "The Second Division of the Honorable Court erred in ruling that the quantum of proof presented by the [respondent] in this case is enough to prove that there was overpayment of final taxes withheld on royalties."

Petitioner submits that the Second Division erroneously relied on the certification dated September 1, 2004 issued by TCCC's Vice President and General Tax Counsel, Steve M. Whaley showing that respondent owed TCCC royalty payments in the amount of P243,068,770.38, instead of the declared royalty tax base of P346,223,015.00.[1] Petitioner explained that said certification should not have been given weight and probative value since Mr. Whaley was never presented in Court and he was not cross-examined to prove the veracity of his certification. Petitioner further contends that respondent never explained why the tax base of P243,068,770.38 in the amended Monthly Remittance Return of Final Taxes was the correct amount, instead of the amount of P346,223,015.00 as indicated in the original return. Petitioner did not present any proof that the claimed excess amount of royalty taxes paid was remitted by TCCC to the respondent or that credit memos were ever issued.

For its part, respondent submits that petitioner's grounds in appealing the questioned Decision have no basis in fact and in law and is anchored on conjectures alone. And contrary to petitioner's assertions, respondent posits that its documentary evidence and the testimony of its lone witness, Ms. Obciana-Magbanua, sufficiently proved that the amount of P346,223,015.00 appearing in the original return was the wrong tax base and that the amount of P243,068,770.38 was the correct one to determine the final tax on the royalty actually remitted to TCCC for the period September 2002.

Petitioner, in his Petition, raised only one issue: "whether there was indeed overpayment of final withholding taxes on royalties due to respondent's alleged use of the wrong tax base when it filed its original Monthly Remittance Return of Final Taxes Withheld."[2]

We find the petition devoid of merit.

A quantum of evidence required to sustain the proponent of an issue is by mere preponderance of evidence since tax cases are civil in nature. The Supreme

[1] Exhibits "H" and "H-1."
[2] Docket, p. 14.

Court, in **Municipality of Moncada vs. Pio Cajuigan, et. al.**,[3] explained that "'preponderance of evidence' is not necessarily the greater number of witnesses. It does not consist merely in the greater numerical array of witnesses, but it means the weight, credit and the value of the aggregate evidence on either side." In this case, respondent has sufficiently establish the propriety of its claim for a tax refund by means of material and relevant pieces of documentary evidence.[4] Taken as a whole, respondent's evidence showed its entitlement to the refund sought since there was proof that there was an actual over remittance of P10,315,424.46 final withholding taxes on royalties it paid to TCCC for the month of September 2002. The Certificate of Authentication, now being questioned by petitioner, was merely presented to further substantiate respondent's claim that it has made excess payment on its tax on royalties.

Petitioner argues that the Second Division erred in relying on Exhibits "H" and "H-1" since the same should not have been given weight and probative value because Mr. Whaley was never presented in Court, nor was he cross-examined to prove the veracity of his certification. The Certificate of Authentication in question was signed by Vice Consul Enrico T. Fos of the Philippine Consular Office for the District of Columbia and the States of Alabama, Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia and West Virginia attesting on the genuineness of the signatures of Steve Whaley and of Vicki S. William, the Notary Public before whom such instrument was acknowledged. By virtue of the attestation and acknowledgment of the notary public, what was otherwise a private document became a public document.

Under Section 30, Rule 132 of the Revised Rules of Court, "[e]very instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved." Clearly, a public document duly acknowledged before a notary public, under his hand and seal with

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[3] 21 Phil 148, January 12, 1912
[4] Exhibits B, C, D, E, H, H-1, R

his certificate thereto attached is admissible in evidence without proof of its due execution and delivery; unlike an ordinary private writing which must be shown to be genuine by the person who wrote it or by someone who saw him writing it or by one who is acquainted with his handwriting. No further proof of its due execution and delivery is required of a public document unless some question on its verity is raised.[5]

As borne by records of this case, it appears that petitioner never contested the failure of respondent to proffer the testimony of Mr. Whaley who, if required to, could have, attested on the due execution and authenticity of the certification dated September 1, 2004, nor did he question the competency of Ms. Magbanua to testify regarding the said certification. Pertinent portion of the Court Transcript of Stenographic Notes on August 10, 2005 is hereunder quoted:

> "ATTY. CURIBA
>
> Q. Will you please state again the amount of royalties that you actually remitted to the Coca-Cola Co.?
>
> ATTY. SANTIAGO
>
> Your Honors, may we please request that the witness be allowed to refer to her Affidavit and the documents attached thereto.
>
> JUSTICE CASTAÑEDA
>
> Yes, please.
>
> MS. MAGBANUA
>
> A. In my Affidavit, the royalty remitted to the Coca-Cola Co., was P243,068,770.38.
>
> ATTY. SANTIAGO
>
> Q. Just for the record clarity, actually remitted?

[5] Francisco, *Evidence*, 3rd ed., pp. 516-517.

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MS. MAGBANUA

A. Actually remitted.

ATTY. SANTIAGO

Q. Will you please read Exhibit H, paragraph 2?
ATTY. SANTIAGO.

Your Honors, if she maybe allowed to refer to the actually exhibit marked.

JUSTICE CASTAÑEDA.

Yes.

ATTY. CURIBA

Q. Exhibit H as referred to by your Affidavit, will you please read paragraph 2, specifically, Line 3 of the Table?

MS. MAGBANUA

A. Okay. Paragraph 2, "The amounts above mentioned were in fact paid as follows by [TCCEC] to [TCCC] after deducting Philippine withholding tax."

ATTY. CURIBA

Q. And for December, what is the amount remitted?

MS. MAGBANUA

A. For December 5, 2002 ... (interrupted)

Q. No, December 11.

MS. MAGBANUA

A. December 11, 2002, Gross – {343,179,055.56, 10% tax – P34,317,905.50

xxx xxx xxx."[6]

[6] TSN, August 10, 2005, pp. 4-7.

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Even though a public document may only be prima facie evidence of a fact and may be defeated by a clear, strong and convincing oral testimony, petitioner still failed to overcome such documentary evidence. What petitioner could had done, at best, was to present evidence, documentary or testimonial, controverting the fact established by the Certificate of Authentication dated September 1, 2004. Clearly, at this stage, after a decision has been issued by the Court in Division, petitioner cannot now invoke the inadmissibility of said Certification.

In sum, the Certification dated September 1, 2004 issued by Mr. Steve M. Whaley, Royalty Expense Computation Worksheet, internal financial statement, amended Monthly Return of Final Income Taxes Withheld for the month of September 2002, the Official Receipt from the Landbank of the Philippines, including the testimony of Karen Obciana-Magbanua, convincingly showed that the amount of P243,068,770.38 was the correct tax base and there was erroneous payment of the final taxes sought to be refunded. Thus, to refund or the issuance of a tax credit certificate in the amount of P10,315,424.46 in favor of respondent was just.

Since tax refunds are based on the legal principle of quasi-contract or *solutio indebiti* which provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.[7] Indubitably, even the Government comes within the scope of the *solution indebiti* principle as enunciated in **Commissioner of Internal Revenue vs. Fireman's Fund Insurance Co. and the Court of Tax Appeals,**[8] when no less than the Supreme Court pronounced that: "xxx Enshrined in the basic legal principles is the time-honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the Government is not exempted from the application of this doctrine".

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[7] Article 2154, Civil Code of the Philippines

[8] No. L-30644, March 9, 1987, 148 SCRA 315 citing *Ramie Rextiles, Inc., vs. Mathay Sr.*, No. L-32364, April 30, 1979 (89 SCRA 587).

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Fair deal is what is expected by our taxpayer from the petitioner and the duty demands that he should refund without any reasonable delay what it has erroneously collected.[9] Justice, equity and good conscience dictates it.

WHEREFORE, finding no valid reason to support a finding that the Court's Second Division committed an error in rendering the appealed Decision, the Petition for Review is hereby **DISMISSED** for lack of merit and the appealed Decision is **AFFIRMED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[9] *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd. represented by Soriamont Steamship Agencies, Inc., and the Court of Tax Appeals*, G.R. No. 68252, May 29, 1995 (244 SCRA 332).

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 this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice