REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1389** (CTA Case No. 8692)
- versus -	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
PHILIP MORRIS PHILIPPINES MANUFACTURING, INC., Respondent.	Promulgated: APR 25 2017 11:35 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review[1] seeking the nullification of the Decision[2] dated June 30, 2015 (assailed Decision) and Resolution[3] dated November 5, 2015 (assailed Resolution) of the Court of Tax Appeals Second Division (Second Division), granting respondent's claim for refund or issuance of a tax credit certificate in the amount of ₱29,651,951.79, representing the excess withholding tax it erroneously paid on its royalty payments to Philip Morris Global Brands Inc. (PMGB), in consideration for the exclusive right to

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1 Under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.
2 Penned by Associate Justice Caesar A. Casanova, with Senior Associate Justice Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring. Docket, pp. 29-59.
3 Docket, pp. 60-67.

use various trademarks and other intellectual property rights of PMGB for the period of July 2011 to October 2012.

The Facts

The facts as found by the Second Division are as follows:

> [Respondent] is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address 27th Floor, Tower 1, The Enterprise Centre, 6766 Ayala Avenue corner Paseo de Roxas, Makati City.
>
> On the other hand, [petitioner] is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City.
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> On January 1, 2011, [respondent] entered into an Agreement ("TLA") with Philip Morris Global Brands (PMGB), a non-resident foreign corporation duly organized and existing under the laws of the State of Delaware United States of America, wherein [respondent] was granted the exclusive right to use the various trademarks and other intellectual property rights of PMGB. The TLA was duly registered with and approved by the Intellectual Property Office (IPO), as shown in IPO Certificate of Compliance No. 5-2012-00116.
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> Pursuant to the provisions of the TLA, [respondent] paid royalties to PMGB from July 2011 to October 2012 in the aggregate gross amount of ₱148,259,758.96 x x x.
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> From August 15, 2011 to November 14, 2012, [respondent] withheld and remitted to [petitioner] income tax in the aggregate amount of ₱44,477,927.68, representing the 30% withholding tax due on royalty payments under the TLA for the period of July 2011 to October 2012.
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> On July 31, 2013, [respondent], as withholding agent of PMGB, filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Service an administrative claim for refund or issuance of a tax credit certificate in the total amount of ₱29,651,951.79, corresponding to the alleged excess withholding tax remittances on royalty payments it made to PMGB for the period of July 2011 to October 2012.

> [Respondent's] claim for tax refund is based on Article 13(2)(b)(iii) of the Convention between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income ("PH-US Tax Treaty"), in relation to Article 12(2)(b) of the Agreement between the Government of the Republic of the Philippines and the 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 ("PH-China Tax Treaty") and Article 12(2) of the Agreement between the Government of the Republic of the Philippines and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital ("PH-UAE Tax Treaty"). These effectively provide a preferential rate of 10% on royalties remitted by a Philippine corporation to residents of the United States.
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> Due to [petitioner's] failure to act on the administrative claim, [respondent] filed the instant Petition on August 12, 2013.
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> Within the extended time granted by the Court, [petitioner] filed [his] Answer on September 30, 2013 x x x.[4]

The Rulings of the Second Division

On June 30, 2015, the First Division promulgated the assailed Decision granting the Petition for Review, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **Twenty Nine Million Six Hundred Fifty One Thousand Nine Hundred Fifty One and 79/100 (₱29,651,951.79)** to petitioner Philip Morris Manufacturing, Inc., representing the excess withholding tax it erroneously paid on its royalty payments to Philip Morris Global Brands Inc. in consideration of the exclusive right to use various trademarks and other intellectual property rights of PMGB for the period of July 2011 to October 2012.[5]

Aggrieved, petitioner filed a Motion for Reconsideration on July 20, 2015, which the Second Division denied in the assailed Resolution, thus:

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4 Docket, pp. 29-31.
5 Docket, p. 33.

> **WHEREFORE**, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent's **Motion for Reconsideration (Re: Decision Promulgated on July 1, 2015)** is hereby denied for lack of merit.[6]

On November 27, 2015, petitioner filed a Motion for Extension of Time to File Petition for Review,[7] which the Court granted in a Resolution[8] dated December 7, 2015. On December 14, 2015, petitioner filed the present Petition for Review.

On January 22, 2016, the Court issued a Resolution[9] ordered respondent to comment on the Petition for Review. Respondent filed on February 12, 2016 a Motion for Extension of Time to File Comment,[10] which the Court granted on February 17, 2016,[11] giving respondent until February 22, 2016 within which to file its comment. On February 22, 2016, respondent filed its Comment/Opposition (To the Petition for Review dated 11 December 2015).[12]

On March 9, 2016, the Court issued a Resolution[13] giving due course to the instant petition, and requiring the parties to submit their respective memoranda. Respondent filed its Memorandum for Respondent with Manifestation[14] on May 2, 2016, within the extension period granted by the Court.[15] In its Memorandum, respondent manifested, as follows:

> **<u>Manifestation</u>**
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> 47. Respondent respectfully manifests that, on 18 April 2016, Petitioner released to Respondent a tax credit certificate for the amount of ₱17,763,755.13, one centavo less than the amount of ₱17,763,755.14. corresponding to the excess withholding tax remittances on its royalty payments to PMGB for the period of January to October 2012. For this Honorable Court's reference, a copy of said tax credit certificate is attached to this Memorandum as **Annex "A"**.
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> 48. In this connection, Respondent respectfully notes that, by issuing the aforementioned tax credit certificate, Petitioner

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6 Docket, p. 66.
7 Docket, pp. 1-3.
8 Docket, p. 6.
9 Docket, pp. 75-76.
10 Docket, pp. 77-79.
11 Docket, p. 80.
12 Docket, pp. 81-89
13 Docket, pp. 92-93.
14 Docket, pp. 98-113.
15 Docket, p. 97.

has already partially recognized the merits of Respondent's present claim for refund, which covers excess withholding tax remittances on its royalty payments to PMGB for the period of July 2011 to October 2012.

49. More importantly, Respondent's claim for excess withholding tax remittances on its royalty payments to PMGB for the period of July 2011 to December 2011 are premised on the same factual antecedents and supported by the same documents submitted in connection with excess withholding tax remittances on its royalty payments to PMGB for the period of January to October 2012.

50. Clearly, Respondent is entitled to its claim for refund of its excess withholding tax remittances on its royalty payments to PMGB for the period of July 2011 to October 2012.[16]

On the other hand, petitioner failed to file his memorandum.[17] Hence, on June 8, 2016, the Court issued a Resolution[18] submitting the case for decision.

The Issues

Petitioner raises the following issues:

1. Whether respondent has legal capacity in this case;

2. Whether the Deutsche case is applicable in this case;

3. Whether respondent is entitled to its claim for refund and/or issuance of tax credit certificate in the amount of Twenty Nine Million Six Hundred Fifty One Thousand Nine Hundred Fifty One and 79/100 (₱29,651,951.79), allegedly representing the excess withholding tax erroneously paid on its royalty payments to Philip Morris Global Brands Inc. (PMGB), in consideration for the exclusive right to use various trademarks and other intellectual property rights of PMGB for the period of July 2011 to October 2012.[19]

The Ruling of the Court

The petition is bereft of merit.

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[16] Docket, pp. 110-111.

[17] Records Verification Report issued by the Judicial Records Division on May 4, 2016 stating that petitioner failed to file his memorandum.; docket, p. 114.

[18] Docket, pp. 116-117.

[19] Docket, p. 11.

Petitioner maintains that respondent is not the real party-in-interest in this case since it is not the statutory taxpayer or the person liable for the tax, and to allow the respondent to claim a refund or credit would result in unjust enrichment. Petitioner's argument is untenable.

In *Commissioner of Internal Revenue v. Smart Communication, Inc.*,[20] the Supreme Court held that: (1) a withholding agent is a person having legal interest to bring a suit for refund;[21] (2) the withholding agent is in fact the agent of both the government and the statutory taxpayer;[22] and (3) the right of a withholding agent to claim a refund of erroneously or illegally withheld taxes comes with the responsibility to return the same to the principal taxpayer. The Supreme Court held –

> Pursuant to [Sections 204(c) and 229 of the National Internal Revenue Code], the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.
>
> x x x
>
> x x x [A] withholding agent has a legal right to file a claim for refund for two reasons. *First*, he is considered a taxpayer under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second*, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.
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> In this connection, it is however significant to add that while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.[23]

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20 G.R. No. 179045-46, August 25, 2010.

21 G.R Nos. 179045-46, August 25, 2010, Citing *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*, G.R. No. 66838, December 2, 1991.

22 G.R Nos. 179045-46, August 25, 2010, Citing *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. L-22074, April 30, 1965.

23 *Commissioner of Internal Revenue v. Smart Communication, Inc.*, supra, note 20.

Petitioner also maintains his position that availment of a tax treaty must be preceded by an application with the International Tax Affairs Division (ITAD) before the occurrence of the first taxable event, in accordance with Revenue Memorandum Order (RMO) No. 1-2000. Petitioner further argues that *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*[24] does not apply in this case.

Petitioner's insistence, that a prior application is required to avail of the tax treaty relief, is misplaced. *Deutsche Bank*[25] clearly finds application in this case. The Supreme Court held –

> **The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance.** In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period prescribed, or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, **the prior application requirement becomes illogical.** Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative for refund should be deemed substantial compliance with RMO No. 1-2000.
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> Corollary thereto, Section 229 of the NIRC provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. **The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would defeat the purpose of Section. 229.**[26] *(Emphasis supplied.)*

Petitioner's argument that applying *Deutsche Bank* in cases where, as in this case, the erroneous payment occurred prior to the promulgation of *Deutsche Bank* on August 19, 2013, would violate the principle of prospectivity of statutes, is absurd and should be retired. The Supreme Court has already interpreted that the application of RMO No. 1-2000 in terms of its prior application rule as illogical.

[24] G.R. No. 188550, August 19, 2013.
[25] Id.
[26] Id.

The Supreme Court declared that the obligation to comply with tax treaties takes precedence over the additional requirements imposed by the BIR, thus:

> Bearing in mind the rationale of tax treaties, **the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty.** At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.
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> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000.** Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax relief.[27] *(Emphasis supplied.)*

Petitioner does not seriously dispute the Second Division's findings as to the compliance with the requisites to be entitled to a refund of erroneously collected tax, despite raising the third issue in this petition.[28] The Court finds that the Second Division amply discussed, passed upon and considered the requirements for refund, and correctly found that having complied therewith, respondent is entitled to the claimed refund or tax credit.

Finally, the Court notes respondent's Manifestation. The Court agrees with respondent that petitioner appears to have recognized the merit of respondent's claim for refund or issuance of tax credit certificate considering that he no longer filed a Memorandum, and released to respondent on April 18, 2016 a Tax Credit Certificate for the period January to October 2012.

WHEREFORE, premises considered, the Court hereby **DENIES** the Petition for Review for lack of merit. The Decision dated June 30, 2015 and the

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[27] Id.

[28] In his discussion of the third assigned issue, petitioner set forth a general statement that the burden is on the taxpayer to prove that he has complied with and satisfied all the statutory and administrative requirements. See page 17 of the Petition for Review, docket, p. 23.

Resolution dated November 5, 2015 of the Second Division in CTA Case No. 8692 are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
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
CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, 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.

ROMAN G. DEL ROSARIO
Presiding Justice