REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1040** (CTA Case No. 8266)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
SONOMA SERVICES, INCORPORATED, *Respondent.*	Promulgated: SEP 11 2015

x- 3:25 p.m. - - - x

RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves petitioner's "Motion for Reconsideration", filed through registered mail on February 25, 2015 and received by the Court on March 5, 2015, with respondent's "Comment (Re: Motion for Reconsideration dated February 23, 2015)", filed on April 28, 2015.

Petitioner prays for the reversal of the Decision issued by the CTA *En Banc* on January 30, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the above-captioned Petition for Review is hereby **DISMISSED** for being moot and academic.
>
> **SO ORDERED**."[1]

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[1] *Rollo*, p. 122.

The CTA *En Banc* rendered the case moot and academic upon receipt of respondent's Manifestation[2] filed on January 9, 2014, stating that, on December 18, 2013, respondent received a letter dated December 17, 2013 from the Bureau of Internal Revenue (BIR), signed by Erlinda A. Simple, Assistant Commissioner, Assessment Service, for Kim S. Jacinto-Henares, Commissioner of Internal Revenue (CIR), informing respondent that its administrative claim for refund of excess and unutilized creditable withholding taxes (CWT) for the year 2008 in the amount of ₱3,683,100.00 has been found meritorious and was approved by the BIR in its entirety. A photocopy of the letter[3] was likewise attached to the Manifestation. Meanwhile, petitioner did not file her comment, objection, or opposition to the said Manifestation.

In her motion, petitioner raises the following grounds:

1. The issuance of the alleged Letter dated December 17, 2013 signed by Erlinda A. Simple, Asst. Commissioner, Assessment Service, for Kim S. Jacinto-Henares, CIR, informing respondent that its administrative claim for refund of excess and unutilized CWT for calendar year 2008 in the amount of ₱3,683,100.00 has been found meritorious and was approved by the BIR, in its entirety, violates the provisions of Section 204(c) of the 1997 Tax Code in relation to RMC 29-2009 and RMC 37-2007, and thus, void and of no binding effect.[4]

2. The absence of any entry in the "Creditable Tax Withheld" column in respondent's 2008 Annual Income Tax Return (ITR) would mean that no part of the gross income reported therein were ever subjected by respondent to creditable withholding tax; thus, the supposed income payments to which taxes were withheld cannot be said to have been declared as part of the gross income of respondent in its 2008 ITR.[5]

3. Respondent failed to present the source documents, such as official receipts, management, consultancy and service agreements/contracts, detailed general ledger and sales register to prove that the income payments related to the claimed creditable taxes withheld formed part of its taxable gross income in its 2008 Annual ITR.[6]

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[2] *Rollo*, pp. 106-108.
[3] *Rollo*, p. 109.
[4] *Rollo*, pp. 127-128.
[5] *Rollo*, p. 128.
[6] *Rollo*, pp. 129-130.

4. Proof of actual remittance to the BIR of the income taxes withheld and testimonial evidence of the payors and withholding agents are required to be presented in Court, which respondent failed to prove in the instant case.[7]

5. Tax refunds being in the nature of tax exemption is construed *strictissimi juris* against respondent.[8]

On the other hand, respondent raises the following arguments in its Comment[9] (Re: Motion for Reconsideration dated February 23, 2015):

A. Petitioner's Letter is a valid exercise of the Assistant Commissioner's delegated authority under RMO No. 51-2007 and, therefore, constitutes a valid official act of the petitioner.

B. There is no legal basis for petitioner's argument that the absence of any entry in the 'Creditable Tax Withheld' column in Schedule 1 of respondent's Annual ITR for CY 2008 gives rise to a conclusive presumption that the income from which the CWTs being claimed for refund were withheld was not declared as part of its gross income for CY 2008.

C. There is no factual basis for petitioner's allegation that respondent failed to present the source documents which prove that the income from which the CWTs being claimed for refund were withheld was reported as part of respondent's gross income.

D. It is well-settled that the presentation of the Certificates of Creditable Tax Withheld at Source (BIR Form 2307) issued by withholding agents constitute sufficient proof of the existence and validity of a taxpayer's CWT.

E. The rule that "claims for refunds of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of overpaid or erroneously paid taxes, such as this case.

The foregoing grounds relied on by petitioner, except the first argument, are a mere rehash of her previous arguments contained in the Petition for Review, which the Court already passed upon in the assailed Decision as well as in the Decision[10] and Resolution[11] of the CTA Special Third Division. Hence,

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[7] *Rollo*, p. 132.
[8] *Rollo*, p. 134.
[9] *Rollo*, pp. 146-172.
[10] *Rollo*, pp. 20-33.

the Court shall limit the discussion on the new argument regarding the "Letter" dated December 17, 2013 issued by Assistant Commissioner Erlinda A. Simple, granting the administrative claim.

Petitioner maintains that the Letter issued on her behalf by Assistant Commissioner Erlinda A. Simple, which found the administrative claim meritorious and approved the same in its entirety, is void citing Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Memorandum Circular (RMC) No. 29-2009 dated April 16, 2009, and RMC No. 37-07 dated May 26, 2007.

Upon examination of the mentioned RMCs, petitioner failed to cite bases that will show any violation of the law and RMCs in the issuance of the subject Letter. Under Section 7 of the NIRC of 1997, the CIR may delegate the powers vested in her under the pertinent provisions of the Code "to any or such subordinate officials with the rank equivalent to a division chief or higher", the pertinent portions of the provision state:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however*, That the following powers of the Commissioner shall not be delegated:
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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: xxx; and
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

Based on the foregoing, Assistant Commissioner Simple has the legal authority to sign the subject Letter considering that the issuance of the Letter

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[11] *Rollo*, pp. 35-39.

granting the administrative claim does not fall under any of the abovementioned exceptions.

Moreover, petitioner is now estopped from claiming the invalidity of the Letter which was issued under her authority. According to Article 1431 of the Civil Code of the Philippines, the doctrine of estoppel is "an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

While generally, the State is not subject to estoppel, the rule is not absolute. In fact, the doctrine of estoppel was recognized and applied against the BIR in the recent case of *China Banking Corporation v. Commissioner of Internal Revenue*[12].

Also, in the case of *Republic v. Court of Appeals*[13]:

> "The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exception, *viz.*:
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> > 'Estoppels against the public are little favored. They should not be invoked except in rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, **the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing**; and subject to limitations x x x, the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.'" *(Emphasis ours)*

Thus, petitioner is precluded from denying the validity of the Letter to the prejudice of the respondent. "Substantial justice dictates that the government should not keep money that does not belong to it at the expense

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[12] G.R. No. 172509, February 4, 2015.
[13] G.R. No. 116111, January 21, 1999.

of citizens."[14] In the case of *Commissioner of Internal Revenue v. Bank of the Philippine Islands*[15], the Supreme Court held:

> "Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. **If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes.** Indeed, the State must lead by its own example of honor, dignity and uprightness." *(Emphasis ours)*

Even in the absence of the subject Letter granting the administrative claim, the Court has already granted respondent's judicial claim, hence, petitioner's Motion for Reconsideration must fail.

WHEREFORE, in view of the foregoing, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

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

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[14] *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

[15] G.R. No. 178490, July 7, 2009, citing *BPI-Family Savings Bank, Inc. v. Court of Appeals*, G.R. No. 122480, April 12, 2000.

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice