REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ZENITH FOODS CORPORATION,
Respondent.

CTA *EB* NO. 2409
(CTA Case No. 9165)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 23 2022 3:20 pm

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) on January 22, 2021 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the reversal and setting aside of the *Decision* dated July 29, 2020[3] (Assailed Decision) and the *Resolution* dated January 7, 2021[4] (Assailed Resolution) promulgated by the Second Division of the Court of Tax Appeals (CTA) in CTA Case No.

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[1] *Rollo*, CTA EB No. 2409, pp. 1-19.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 24-51.
[4] *Id.*, pp. 52-58.

9165 entitled "*Zenith Foods Corporation vs. Commissioner of Internal Revenue*".

THE PARTIES

Petitioner is the duly appointed CIR vested with authority, among others, to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines connecting therewith, including approval of compromise settlement and claim for refund.[5]

Respondent Zenith Foods Corporation (ZFC) is a corporation registered with the Securities and Exchange Commission (SEC) and the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number (TIN) 218-664-404-000. Its primary purpose is to engage in the planting, raising, culture, harvesting and processing of agricultural and fishery products into semi-processed or finished products, and to engage in other farm activities.[6]

THE FACTS

Respondent's books of accounts and accounting records for calendar year (CY) 2004 were subjected to an audit investigation pursuant to Letter of Authority (LOA) No. 00098183 dated 15 September 2005.[7]

On March 5, 2008, respondent availed of tax amnesty under Republic Act (RA) No. 9480 covering taxable years 2005 and prior years, thus constraining BIR-Revenue District Office No. 56 to limit its audit to withholding tax liabilities for calendar year (CY) 2004.[8]

Petitioner issued a revised Preliminary Assessment Notice (PAN) on April 11, 2008.[9]

On July 23, 2008, respondent received from BIR-Revenue Region No. 9 (RR9) a Formal Letter of Demand/Final Assessment Notice (FLD/FAN) dated July 10, 2008, demanding payment of the alleged deficiency internal revenue

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[5] *Rollo*, Decision dated July 29, 2020, p. 25
[6] *Id.*
[7] *Id.*
[8] *Id.* at pp. 25-26.
[9] *Id.* at p. 26.

taxes in the total amount of Php8,406,714.79, itemized as follows:[10]

Tax Type	Amount
Expanded Withholding Tax (EWT)	Php 3,433,669.42
Final Withholding Tax (FWT)	3,699,527.06
Fringe Benefit Tax (FBT)	1,273,518.31
Total Amount	**Php 8,406,714.79**

On August 22, 2008, respondent filed its Protest Letter to the FLD/FAN with BIR-RR9, requesting for the reinvestigation and/or reconsideration of the assessment for CY 2004.[11]

On October 2, 2009, respondent received a Preliminary Collection Letter (PCL) dated September 1, 2009, seeking the collection of its alleged tax liabilities for CY 2004.[12]

On January 27, 2010, respondent received a Final Notice Before Seizure (FNBS) giving it the final opportunity to settle its deficiency tax liabilities. Respondent responded to the FNBS through a letter dated February 1, 2010.[13]

On December 10, 2010, respondent paid the amount of Php352,295.56 as its supposed full settlement of its deficiency tax liabilities. The substantial reduction of the assessed amount from P8,406,714.79 (as stated in the FLD) was embodied in the Agreement Form which respondent's representative (Atty. Jeffrey R. Balmores) and Revenue District Officer Benito B. Wong (RDO Wong) signed. Furthermore, the said reduction was evidenced by Authority to Cancel Assessment (BIR Form No. 1402). The following comprised the tax payments made:[14]

Tax Type	Basic Tax	Interest	Compromise Penalty	Total
EWT	₱ 132,068.77	₱ 157,469.39	₱ 16,000.00	₱ 305,538.16
FBT	19,503.19	23,254.21	4,000.00	46,757.40
TOTAL	**₱ 151,571.96**	**₱ 180,723.60**	**₱ 20,000.00**	**₱ 352,295.56**

In a letter dated April 14, 2015, the Regional Director of BIR-RR9, San Pablo City, rendered a final decision on the

[10] *Rollo*, Decision dated July 29, 2020, p. 26.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.* at pp. 26-27.

deficiency tax liabilities for CY 2004. Respondent received the letter on September 4, 2015.[15]

On 23 September 2015, respondent received a Notice of Dis-Accreditation from the Bureau of Customs-Accounts Management Office (BOC-AMO) and the same appeared to have taken effect days prior to or on 16 September 2015.[16]

On October 5, 2015, respondent filed a Petition for Review before the Court in Division.[17]

On October 8, 2015, respondent likewise received a Preliminary Notice of Dis-Accreditation as Importer dated June 17, 2015 from the BIR-Accounts Receivable Monitoring Division (BIR-ARMD).[18]

On October 14, 2015, respondent paid the delinquent account for CY 2004 in the aggregate amount of Php13,628,099.53 to avert its dis-accreditation as importer. On October 20, 2015, respondent submitted its proof of payment. On November 5, 2015, petitioner issued a Certification stating that respondent had settled its deficiency liabilities.[19]

On April 12, 2016, respondent filed an administrative claim for refund or issuance of a tax credit certificate (TCC) pursuant to Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, for the Php13,628,099.53 deficiency taxes paid on October 14, 2015.[20]

On May 10, 2016, respondent filed its Supplemental Petition for Review praying for both the cancellation of the assessment and the refund or issuance of TCC of the amount paid (relating to the deficiency assessment).[21]

After trial the Court in Division rendered the Assailed Decision where the dispositive portion reads as follow:[22]

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[15] *Rollo*, Decision dated July 29, 2020, p. 27.
[16] *Id.*
[17] *Id.* at p. 28.
[18] *Id.* at p. 27.
[19] *Id.*
[20] *Id.* at p. 28.
[21] *Id.*
[22] *Id.* at pp. 49-50.

> "**WHEREFORE**, premises considered, petitioner Zenith Foods Corporation's Petition for Review, docketed as CTA Case No. 9165, is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's Formal Letter of Demand dated 10 July 2008 is declared **VOID** and the assessment for deficiency for Expanded Withholding Tax **(EWT)**, Final Withholding Tax **(FWT)** and Fringe Benefit Tax **(FBT)** for calendar year 2004 is hereby **CANCELLED** and **SET ASIDE**.
>
> Additionally, respondent is hereby **ORDERED** to refund or issue a tax credit certificate in the amount of **Thirteen Million Six Hundred Twenty-Eight Thousand Ninety-Nine Pesos and Fifty-Three Centavos (P13,628,099.53)**.
>
> **SO ORDERED**."

Petitioner then moved for the reconsideration of the Assailed Decision but was denied anew under the Assailed Resolution where the dispositive portion reads as follows:[23]

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated 29 July 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED**."

Hence, the instant Petition for Review was filed by petitioner on January 22, 2021.

On March 1, 2021, respondent was ordered[24] to file its comment on said petition.

On March 18, 2021, respondent submitted its *Comment/ Opposition (Re: Petition for Review dated January 20, 2021)*.[25]

On May 28, 2021, the case was referred[26] to mediation but the parties failed[27] to reach an agreement.

Hence, the case was submitted for decision on July 28, 2021.[28]

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[23] *Rollo*, Resolution dated January 7, 2021, pp. 57-58.
[24] *Id.*, Resolution dated March 1, 2021, pp. 60-61.
[25] *Id.*, pp. 62-83.
[26] *Id.*, pp. 85-86.
[27] *Id.*, No Agreement to Mediate dated June 21, 2021, p. 87
[28] *Id.*, Resolution dated July 28, 2021, pp. 89-90.

THE ISSUES

Petitioner assigns the following errors:

1. The Second Division of the Honorable Court erred in ruling that it has jurisdiction over the instant case;

2. The Second Division of the Honorable Court erred in ruling that the assessment issued by petitioner is void;

3. The Second Division of the Honorable Court erred in ruling that the Formal Letter of Demand/Final Assessment Notice issued is void; and

4. The Second Division of the Honorable Court erred in ruling that respondent is entitled to a refund of the amount paid.

Arguments of Petitioner[29]

Petitioner argues that the Court in Division had no jurisdiction over respondent's petition for review.

Petitioner insists that the assessment against the respondent has not prescribed and that the FLD/FAN were valid.

Petitioner also argues that the Court in Division erred in ruling that respondent is entitled to a refund of the amount paid.

Arguments of Respondent[30]

On the other hand, respondent ZFC argues that petitioner's arguments have no merit considering the said arguments were already raised in his Answer, Memorandum and Motion for Reconsideration which were already

[29] *Supra*, Note 1.
[30] *Supra*, Note 24.

exhaustively discussed and passed upon in the Assailed Decision and Resolution.

Respondent insists that the Court in Division did not err in ruling that the assessment was void because the right of the petitioner to assess respondent has already prescribed and that the Court in Division did not violate petitioner's right to due process.

Respondent further postulates that it is entitled to its claim for refund of illegally assessed and collected taxes amounting to Php13,628,099.53.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b), Rule 8 of the RRCTA provide as follows:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated January 7, 2021 and petitioner received a copy of said resolution on January 8, 2021. *cmv*

Applying the above-cited provisions, petitioner had fifteen (15) days from January 8, 2021 or until January 23, 2021 to file an appeal with the CTA *En Banc*. Thus, the filing of the instant Petition for Review on January 22, 2021 was on time.

Although the arguments raised in the instant petition are similar to those that were already embodied in his motion for reconsideration before the Court in Division, this Court shall nonetheless emphasize and re-enforce the salient portions of the ruling in the Assailed Decision and Assailed Resolution.

The CTA has jurisdiction on the Petition for Review filed by respondent before the Court in Division.

Petitioner avers that respondent's payment of the subject assessment after filing of its petition before the Court in Division should be considered acquiescence to the said assessment, hence, there is no longer any disputed assessment to tackle.

Under Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, this Court has jurisdiction, *inter alia,* on "Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments."

Paragraph 3.1.4 of Revenue Regulations (RR) No. 18-2013 dated November 28, 2013 defines a disputed assessment, to wit:

> "**3.1.4 *Disputed Assessment***. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) ***Request for reconsideration*** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) ***Request for reinvestigation*** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It

> may also involve a question of fact or of law or both..."

In *Allied Banking Corporation v. Commissioner of Internal Revenue* (*Allied Banking*),[31] the Supreme Court states that:

> "... a disputed assessment is one wherein the taxpayer or his duly authorized representative filed an administrative protest against the formal letter of demand and assessment notice within thirty (30) days from date [of] receipt thereof...."

The records of the case reveal that petitioner's FLD/FAN dated July 10, 2008 demanding payment of the alleged deficiency EWT, FWT, and FBT for CY 2004, which respondent received on July 23, 2008, was protested by the latter through its Protest Letter on August 22, 2008. Hence, the deficiency tax assessment became a disputed assessment.

It should be noted that on December 10, 2010, respondent paid the amount of Php352,295.56 as its supposed full settlement of its deficiency tax liabilities and the substantial reduction of the assessed amount from P8,406,714.79 was embodied in the Agreement Form which respondent's representative and the RDO signed. Said reduction was evidenced by the Authority to Cancel Assessment or BIR Form No. 1402.

Despite said settlement, particularly the issuance of the Authority to Cancel Assessment, the Regional Director (RD) of BIR-RR9, San Pablo City, after almost five (5) years, again rendered a final decision in his letter dated April 14, 2015, assessing respondent with deficiency tax liabilities for the same CY 2004 in the amount of Php10,727,919.04,[32] which the latter received on September 4, 2015.

Section 3.1.4 of RR No. 18-2013 which implements the provisions of the 1997 NIRC, as amended, provides that "*If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; ...*"

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[31] G.R. No. 175097, February 05, 2010.
[32] Docket, CTA Case No. 9165, Vol. II, Exhibit "P-19", pp. 879-887.

Thus, respondent had thirty (30) days from September 4, 2015 or until October 4, 2015 to file its petition. However, October 4, 2015 fell on Sunday and the next business day was on October 5, 2015. Hence, the filing of the original petition on October 5, 2015 was on time and, therefore, the Court in Division was vested with jurisdiction to hear the petition.

The payment of the tax assessment after the filing of said petition does not in anyway change the disputed nature of the assessment and as confirmed by the Court in Division, said payment was made without conceding to any tax liability. What was elevated before the Court in Division was the final decision of the RD of BIR-RR9, San Pablo City, on respondent's letter of protest.

The alleged deficiency assessments have already prescribed.

Section 203 of the 1997 NIRC, as amended, provides:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, **a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**." (*Emphasis supplied*)

Likewise, Section 2.58(A)(2)(a) of RR No. 2-98, as amended, or the Implementing Rules of RA No. 8424 relative to the withholding on income subject of EWT and FWT, withholding of income tax on compensation, withholding of creditable value-added tax and other percentage taxes, provides that the withholding tax (WHT) return on said WHTs shall be filed and paid within ten (10) days after the end of each month, except for taxes withheld for the month of December which shall be filed on or before January 15 of the following year.

However, in RR No. 26-2002 dated December 5, 2002 or the Staggered Filing of Returns of Taxpayers Enrolled in

Electronic Filing and Payment System (EFPS) Based on Industry Classification, those Manufacturer of Food, Products & Beverages are classified in Group B which are mandated to file their WHT return within fourteen (14) days following the end of the month.

The Court in Division found the following payment dates for the corresponding EWTs, to wit:

Month (For CY 2004)	Date of Payment
January	February 10, 2004
February	March 9, 2004
March	April 12, 2004
April	May 11, 2004
May	June 10, 2004
June	July 9, 2004
July	August 10, 2004
August	September 10, 2004
September	October 8, 2004
October	November 10, 2004
November	December 10, 2004
December	January 10, 2005

In the instant case, respondent's primary purpose is to engage in the planting, raising, culture, harvesting and processing of agricultural and fishery products into semi-processed or finished products, and to engage in other farm activities which is equivalent to the manufacturer of food products. Respondent did not make any filing for the FWT and FBT returns because of its firm belief that the items were only subject to EWT.[33]

As shown above, the filing dates were made before the mandated last day of filing, hence, the reckoning period of the three (3)-year prescriptive period shall be the supposed last day of filing. Hence, the following are the corresponding applicable prescriptive periods, to wit.:

Month (For CY 2004)	Last Day of Filing	End of the 3-year Prescriptive Period
January	February 16, 2004[34]	February 16, 2007

[33] *Rollo*, Decision dated July 29, 2020, p. 40.
[34] The fourteenth day fell on Saturday. am

February	March 15, 2004[35]	March 15, 2007
March	April 14, 2004	April 14, 2007
April	May 14, 2004	May 14, 2007
May	June 14, 2004	June 14, 2007
June	July 14, 2004	July 14, 2007
July	August 16, 2004[36]	August 16, 2007
August	September 14, 2004	September 14, 2007
September	October 14, 2004	October 14, 2007
October	November 15, 2004[37]	November 15, 2007
November	December 14, 2004	December 14, 2007
December	January 17, 2005[38]	January 17, 2008

Based on the records of the case, petitioner issued the FAN/FLD only on July 10, 2008, which was beyond the three (3)-year prescriptive periods outlined in the foregoing table.

Furthermore, what inescapably caught the attention of this Court is the absence of supporting evidence that will link the amount of P13,628,099.53 being assessed by the Regional Director of BIR-RR9, San Pablo City with the FAN/FLD that were earlier protested by respondent and eventually settled with RDO Wong as supported by the Agreement as well as the ATCA. In other words, this amount being demanded by petitioner from respondent was only contained indirectly in the Notice of Dis-Accreditation as Importer dated September 16, 2015.[39] No PAN, FAN or FLD were presented in support of this assessment.

In the same vein, petitioner failed to offer any evidence that will establish that this increased amount originated from the original assessment of P8,406,714.79. Hence, respondent was not accorded the opportunity to protest such assessments, a blatant disregard of the respondent's right to due process which renders such assessment void, as held in the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[40] to wit:

> "Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes,

[35] The fourteenth day fell on Sunday.
[36] The fourteenth day fell on Saturday.
[37] The fourteenth day fell on Sunday.
[38] The fourteenth day fell on Saturday.
[39] Docket, CTA Case No. 9165, Vol. II, Exh."P-29", Formal Offer of Evidence, p. 903.
[40] G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

> the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process."

Thus, on the grounds of prescription and absence of due process, the assessments are null and void.

Factual findings of the Court in Division cannot be assailed sans proof of grave abuse of discretion.

Petitioner, in assailing the ruling of the Court in Division that granted respondent's claim for refund of its erroneous payment of said assessment, argues that the amount was not illegally or erroneously collected by petitioner.

It should be noted that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the claimant.[41] Thus, it was necessary for the claimant to show this Court not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.[42]

In the Assailed Decision, the Court in Division had ruled that respondent sufficiently established that it was entitled to the refund or issuance of a tax credit certificate from an illegally collected deficiency taxes based on the evidence it submitted and presented in compliance with all the requisites of Sections 204 and 229 of the 1997 NIRC, as amended. Hence, these are all factual findings and in the absence of any empirical evidence to the contrary, such findings cannot be disturbed unless grave abuse of discretion on the part of the Court in Division can be proven as held in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*,[43] to wit:

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[41] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[42] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.
[43] G.R. No. 188016, January 14, 2015.

> "... it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

In the instant petition, aside from petitioner's plain assertion that respondent is not entitled to such claim for refund, the former failed to adduce any evidence that will show any indication of grave abuse of discretion on the part of the Court in Division in rendering the Assailed Decision and Resolution. Thus, the petition must fail on its merit.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the *Decision* dated July 29, 2020 and the *Resolution* dated January 7, 2021 are hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Marian Ivy F Reyes-Fajardo

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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