REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

AVON COSMETICS, INC., *Petitioner,*	**CTA CASE NO. 9944**
-*versus*-	Members: **Del Rosario,** *P.J., Chairperson,* **Fabon-Victorino**, *and* **Manahan,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 08 2019 ; 1:20 pm

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DECISION

DEL ROSARIO, P.J.:

The present Petition for Review seeks the refund or issuance of a tax credit certificate in the amount of P10,896,470.80, allegedly representing petitioner's erroneously paid excess final withholding Value Added Tax (VAT) for September 2015.

PARTIES

Petitioner is a corporation duly organized and existing under Philippines laws, with business address at 10th Floor, Gercon Plaza, 7901 Makati Avenue, Makati City.[1] It is a registered taxpayer with Tax Identification Number (TIN) 000-107-629-00000 per Bureau of Internal Revenue (BIR) Certificate of Registration issued on May 27, 2016.[2]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) with office address at National Office Building, BIR,

[1] Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission (Exhibit "P-1"); CTA Docket, pp. 288-305.
[2] Exhibit "P-2"; CTA Docket, p. 306.

Agham Road, Diliman, Quezon City where he may be served with summons, processes, orders and notices, from the Court.[3]

FACTS

Petitioner filed on October 9, 2015 its Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600) *via* Electronic Filing and Payment Systems *(eFPS)* facility in relation to its royalty payment to Avon Products Inc. for September 2015, with corresponding final withholding Value Added Tax (VAT) of P10,896,470.80.[4] On October 12, 2015, it first attempted to remit the tax through the Metrobank *eFPS* tax payment facility but due to technical difficulties, it was not able to complete and confirm the tax payment/remittance. On the same day, it was able to successfully processed the tax payment/remittance through the BPI Head Office *eFPS* tax payment facility.[5] It turned out that the initial attempt to remit tax through the Metrobank *eFPS* tax payment facility remained pending, and on 10 October 2016, the *eFPS* tax payment facility processed and cleared the tax payment/remittance for final withholding VAT for the month of September 2015 in the amount of P10,896,470.80.[6]

On July 9, 2018, petitioner filed before the BIR a Letter requesting for a tax credit certificate or tax refund of erroneously paid tax amounting to P10,896,470.80, representing the alleged September 2015 final VAT, which according to petitioner was inadvertently paid twice on October 12, 2015 and October 10, 2016.[7]

Due to inaction of the respondent on said claim for refund,[8] petitioner filed the present Petition for Review on October 9, 2018.[9]

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[3] Par. 2, Parties, Petition for Review, which was admitted in par. 1 of the Answer; par. 1, Joint Stipulation of Facts, CTA Docket, pp. 10, 47, 232.
[4] Exhibit "P-3", in relation to the Judicial Affidavit of Ms. Princess Carmela Anne Tinaliza V. Samoy; CTA Docket, pp. 83-92,87; 307-308.
[5] Judicial Affidavit of Ms. Princess Carmela Anne Tinaliza V. Samoy; CTA Docket, pp. 83-92,87-88.
[6] Judicial Affidavit of Ms. Princess Carmela Anne Tinaliza V. Samoy; CTA Docket, pp. 83-92,89.
[7] Exhibits "P-9" and "P-10", CTA Docket, pp. 316-319.
[8] Par. 9, Petition for Review, which was admitted in par. 1 of the Answer; par. 2, Joint Stipulation of Facts, CTA Docket, pp. 12, 47, 232.
[9] CTA Docket, p. 10.

On November 28, 2018, respondent filed his Answer, with the following special and affirmative defenses: (1) petitioner's claim for refund is subject to administrative routinary investigation/examination by the BIR; (2) the amount of P10,896,470.80 allegedly representing erroneously paid excess September 2015 Final Withholding VAT was not properly documented; (3) the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to its claim; (4) petitioner must show that it has complied with the provisions of Section 229 of the National Internal Revenue Code (NIRC) of 1997 on the prescriptive period for claiming tax refund/credit; and, (5) there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund, thereby making such claim for refund *pro-forma.*[10]

At the pre-trial stage, respondent filed his Pre-Trial Brief on January 3, 2019,[11] while petitioner's Pre-Trial Brief was filed on January 18, 2019.[12] The Pre-Trial Conference was held on January 24, 2019,[13] and the parties filed their Joint Stipulation of Facts on February 6, 2019,[14] which was approved in a Resolution dated February 20, 2019.[15] The pre-trial was terminated with the issuance of the Pre-Trial Order on April 16, 2019.[16]

During trial, petitioner presented both testimonial and documentary evidence.[17] Its formally offered exhibits - - as indicated in its Formal Offer of Evidence filed on June 11, 2019[18] with respondent's Comment (Re: Petitioner's Formal Offer of Evidence) filed on June 19, 2019[19] - - were admitted in the Resolution dated July 10, 2019.[20] In the same Resolution, the parties were directed to file their respective memoranda, in view of the manifestation of the respondent in his Comment (Re: Petitioner's Formal Offer of Evidence) that he will no longer be presenting any witness.

[10] CTA Docket, pp. 47-56.
[11] CTA Docket, p. 59.
[12] CTA Docket, p. 69.
[13] CTA Docket, pp. 229-230.
[14] CTA Docket, pp. 232-233.
[15] CTA Docket, p. 235.
[16] CTA Docket, pp. 252-262.
[17] CTA Docket, pp. 267-268, and 271-272.
[18] CTA Docket, pp. 277-287.
[19] CTA Docket, pp. 399-402.
[20] CTA Docket, pp. 405-406.

Both parties filed their respective Memoranda on August 14, 2019.[21] Hence, this case was submitted for decision on September 3, 2019.[22]

ISSUES

Whether or not petitioner is entitled to a refund or tax credit of erroneously paid final withholding VAT in the amount of P10,896,470.80.[23]

ARGUMENTS

Petitioner asserts that it is entitled to a refund or tax credit of erroneously paid final withholding VAT for September 2015 amounting to P10,896,470.80, which arose from the double remittance/payment of the tax using the *eFPS* System.

It claims that it was able to timely file its administrative and judicial claims for refund, reckoned from October 10, 2016, the date when the Metrobank *eFPS* tax payment facility erroneously processed and cleared its floating instruction to pay or remit the Final Withholding VAT on the same royalty income payments to Avon Products, Inc. (API) for September 2015 – resulting to the double remittance of Final Withholding VAT for September 2015.

Respondent counter-argues that while petitioner presented a certification issued by the BIR LT-Document Processing & Quality Assurance Division which showed payments made on 12 October 2015 and 10 October 2016 for the return period 30 September 2015 and for the same tax type, there is no categorical statement therein that petitioner made a double payment; the certification is susceptible to different interpretations other than a case of double payment or double remittance; and, the second payment could be for a different transaction. Respondent also contends that the same is true with respect to the certifications issued by BPI and Metrobank as they only certified that petitioner made BIR *e*Payments. Respondent concludes that petitioner fell short of proving the veracity of its claim of alleged double payment of final withholding VAT for September 2015.[24]

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[21] CTA Docket, pp. 407-413, and 414-431.
[22] CTA Docket, p. 436.
[23] Stipulation of Issue, Pre-Trial Order, CTA Docket, p. 253.
[24] Respondent's Memorandum, CTA Docket, pp. 407-413, 408.

Respondent avers that petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit, and its failure to comply with such period is fatal to its cause.[25]

Respondent contends that there is no record of petitioner ever submitting complete documents to substantiate its administrative claim, thereby making its administrative claim for refund *pro-forma*. Without a validly and duly filed administrative claim for refund, the Court is without jurisdiction to entertain the Petition for Review.[26]

RULING

The remedy of a taxpayer to claim for refund of erroneously paid taxes is provided in Section 229 of the NIRC of 1997, as amended, *viz.*:

> **SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

The requirements for claims for refund under Section 229 of the NIRC of 1997, as amended, are as follows:

1. A written claim for refund or tax credit must be filed by the taxpayer with the CIR;

2. The claim for refund must be a categorical demand for reimbursement;

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[25] Respondent's Memorandum, CTA Docket, pp. 407-413, 409-410.
[26] Respondent's Memorandum, CTA Docket, pp. 407-413, 409-410.

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> 3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.[27]

Petitioner has complied with the aforesaid requirements.

First, a written claim for refund or tax credit was filed by petitioner with the BIR, as shown in its letter-request for refund of erroneously paid taxes dated 29 June 2018, and in its duly accomplished Application for Tax Credits/Refunds (BIR Form No. 1914) both filed with the BIR on July 9, 2018.[28]

Second, the letter dated 29 June 2018 shows petitioner's categorical request for refund or tax credit of erroneously paid taxes citing as legal bases Sections 204 and 229 of the NIRC, as amended, including the principle of quasi-contract or _solutio indebiti_ found in Articles 2142 and 2145 of the Civil Code.

Third, the letter-claim for refund was filed with the BIR on **July 9, 2018**, and the Petition for Review was filed before this Court on **October 9, 2018**. Both claims were filed within two (2) years from the date of erroneous payment of the tax on **October 10, 2016**.

With respect to the substantiation aspect of the case, records disclose the filing of petitioner's Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld _(BIR Form No. 1600)_ on October 9, 2015, with **Reference No. 171500012823245**, for VAT Withholding from non-residents with a tax base of P90,803,923.33 and the corresponding tax withheld of P10,896,470.80.[29]

The aforesaid tax withheld of P10,896,470.80 was paid twice by petitioner to the BIR through _eFPS_, as shown in the _eFPS_ Payment Details with **Reference No. 171500012823245**. The first successful payment was through BPI facility under Payment Transaction No. 150738282 on October 12, 2015, while the second successful payment

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[27] Commissioner of Internal Revenue vs. Acosta, G.R. No. 154068, August 3, 2007.
[28] Exhibits "P-9" and "P-10"; CTA Docket, pp. 316-319.
[29] Exhibit "P-3"; CTA Docket, pp. 307-308.

was made through Metrobank facility under Payment Transaction No. 150705968 on October 10, 2016.[30]

BPI issued a certification dated February 20, 2017 that petitioner made *epayment* in the amount of P10,896,470.80 for the September 2015 return period with Filing Reference No. **171500012823245** and Payment Transaction No. 150738282.[31] Metrobank also issued a certification about the successful tax payment transaction of petitioner *via eFPS* in the amount of P10,896,470.80 under Filing Reference No. **171500012823245** and Payment Transaction No. 150705968.[32] Further, a Certification was issued on May 31, 2018 by Danilo T. Pasiliao, BIR Chief, Large Taxpayers-Document Processing & Quality Assurance Division (LTDPQAD), certifying the collection of two amounts of taxes of P10,896,470.80 on October 12, 2015 and October 10, 2016 for the September 2015 return period of the petitioner and for the same tax type, which were paid through *eFPS*.[33]

The fact of double payment of the amount of P10,896,470.80 by petitioner is also narrated in the *Judicial Affidavit of Ms. Princess Carmela Anne Tinaliza V. Samoy,*[34] *viz.*:

> "Q15. When did Petitioner file its final withholding VAT return for the month of September 2015 and remit the corresponding final withholding VAT?
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> A15. The Company filed its Monthly Remittance Return of VAT and Other Percentage Taxes (BIR Form 1600) for the month of September 2015 ("Final Withholding VAT Return") via the eFPS facility on 9 October 2015; and made its first and second attempt to remit the final withholding VAT for September 2015 on 12 October 2015.
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> xxx xxx xxx
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> Q17. In A15, you mentioned that Petitioner made its first attempt to remit the final withholding VAT for September 2015 on 12 October 2015. What happened when Petitioner made such first attempt?
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> A17. The Company's first attempt to remit the final withholding VAT for September 2015 on 12 October 2015 was made through the Metrobank eFPS tax payment facility. However, we experienced technical difficulties in processing the

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[30] Exhibits "P-4" and "P-6"; CTA Docket, pp. 309-310, 312-313.
[31] Exhibit "P-5"; CTA Docket, p. 311.
[32] Exhibit "P-7"; CTA Docket, p. 314.
[33] Exhibit "P-8"; CTA Docket, p. 315.
[34] Exhibit "P-49"; CTA Docket, pp. 83-93.

payment/remittance through the Metrobank eFPS tax payment facility and thus, were not able to complete and confirm the tax payment/remittance of final withholding VAT for September 2015.

Q18. What happened after Petitioner's first attempt to remit final withholding VAT for September 2015 via the Metrobank failed?

A18. In order to avoid penalties arising from late payment/remittance of final withholding VAT, the Company successfully processed payment/remittance of final withholding VAT for September 2015 in the amount of PhP10,896,470.80 on the same day (12 October 2015) through the BPI Head Office eFPS tax payment facility.

Q19. What is your basis for saying that the Company was able to successfully process payment/remittance of final withholding VAT for September 2015 on 12 October 2015 through the BPI Head Office eFPS tax payment facility?

A19. My bases are the BIR eFPS Payment Details and the BPI Certification of the BIR ePayment made by ACI on 12 October 2015.

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Q22. What happened after Petitioner successfully paid/remitted final withholding VAT for September 2015 via the BPI Head Office eFPS tax payment facility?

A22. It turned out that the initial attempt to remit tax payment through the Metrobank eFPS tax payment facility remained pending; and, on 10 October 2016, the Metrobank eFPS tax payment facility processed and cleared tax payment/remittance for final withholding VAT for the month of September 2015 in the amount of PhP10,896,470.80 – resulting to the double payment/remittance of final withholding VAT for September 2015.

Q23. What is your basis for saying that the Metrobank eFPS tax payment facility subsequently processed and cleared on 10 October 2016 Petitioner's payment/remittance of final withholding VAT for September 2015?

A23. My bases are the BIR eFPS Payment Details and the Metrobank Certification of the BIR ePayment made by ACI on 10 October 2016.

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> Q28. How is it possible that Metrobank still effected the payment almost one year after the payment request was made in 12 October 2015?
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> A28. As I explained earlier, the payment lodged by ACI on the Metrobank portal remained pending as a floating transaction. An ACI approver saw this floating transaction on the system a year later and, thinking that immediate payment of final withholding VAT for September 2015 was a must, approved payment/remittance of PhP10,896,470.80 to the BIR. Receiving the ACI approver's instruction to pay/remit such amount, Metrobank processed such instruction and effected the payment to the BIR."

Incidentally, there is no denying that petitioner did not apply the subject overpaid tax against any of its final withholding VAT due for the months after September 2015.[35] Truth to tell, the Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld *(BIR Form 1600)* does not permit any application or carry-over of overpaid tax from previous period, as correctly pointed out by petitioner's witness, Atty. Raquel R. Dujunco.[36]

Respondent's contention that the Certification issued by the BIR LTDPQAD is susceptible to different interpretations other than a case of double payment or double remittance, and the second payment could be for a different transaction, is bereft of merit.

It is worth re-echoing the principle that a judgment has to be based on facts. Conjectures and surmises cannot substitute for the facts.[37] A mere assumption cannot be used as basis in deciding a case.[38] Sorely, respondent remained passive as he chose not to present any evidence during trial; and this, despite his facility in checking its own records to verify the significance of the Certification of BIR LTDPQAD. Besides, the Certifications issued by BPI and Metrobank vis-à-vis the Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600) bearing **Reference No. 171500012823245** filed on October 9, 2015 and the testimony of petitioner's witness, altogether confirm that petitioner indeed paid twice the final withholding VAT of P10,896,470.80 for the same transaction and for the same taxable period of September 2015.

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[35] Exhibits P-11 to P-48; CTA Docket, pp. 320-395.
[36] Judicial Affidavit of Atty. Raquel R. Dujunco, Exhibit P-50, CTA Docket, pp. 127-136, 133.
[37] Guidangen vs. Wooden, G.R. No. 174445, February 15, 2012.
[38] *Id.*

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[39] Claims for refund, however, are civil in nature and as such, petitioner, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash.[40] Once the requirements laid down by the NIRC have been met, like in the present case, a claimant should be considered successful in discharging its burden of proving its right to refund, and the burden of going forward with the evidence shifts to the CIR to disprove the claim by presenting contrary evidence easily obtainable from its own files,[41] which the respondent, as aforestated, has failed to discharge.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Avon Cosmetics, Inc. in the amount of P10,896,470.80, representing the latter's erroneous second payment of final withholding VAT for September 2015.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[39] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015.
[40] *Id.*
[41] *Id.*

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