CTA Form No. 8

22-000045-0042

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10754

LKY PROPERTY HOLDINGS, INC., REPRESENTED BY MS. REBECCA MARIE ABIGAIL G. LEE,
Petitioner,

- versus -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. LARA NICOLE T. GONZALES
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Senator Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. CHRISTIAN EDWARD F. ONG
ATTY. PATRICK JON B. ROMANO
3rd Flr., Norkis Bldg., 11 Calbayog coner D.M. Guevarra Sts.
Brgy. Highway Hills, Mandaluyong City

GREETINGS:

You are hereby notified by these presents that on **May 8, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 9, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LKY PROPERTY HOLDINGS, INC., REPRESENTED BY MS. REBECCA MARIE ABIGAIL G. LEE, *Petitioner,*	**CTA CASE NO. 10754**
-versus-	*Members:* **DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
THE HONORABLE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 0 8 2024 2:10PM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] filed on February 18, 2022, by petitioner LKY Property Holdings, Inc. (Petitioner) against respondent Commissioner of Internal Revenue (CIR or Respondent), praying for the refund of the alleged erroneously paid Documentary Stamp Tax (DST) and Creditable Withholding Tax (CWT) in the total amount of ₱44,250,000.00.[2]

THE PARTIES

Petitioner LKY Property Holdings, Inc. is a domestic stock corporation organized and existing under Philippine laws, with office address at LKY Center, 411 A. Flores Street, Ermita, Manila.[3]

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[1] Docket, pp. 15-51.
[2] Summary of the Case, Pre-Trial Order dated January 4, 2023, Docket, p. 290.
[3] Par. 5, *Petition for Review*, Docket, p. 17.

Respondent Commissioner of Internal Revenue (CIR) is a government official tasked by law to collect internal revenue taxes and enforce internal revenue tax laws and regulations.[4]

THE FACTS

Petitioner and LKY Resorts and Hotels, Inc. (LRH) obtained loans from United Coconut Planters Bank (UCPB) in the total amount of ₱730,000,000.00. The loans were secured by petitioner's real properties, which were mortgaged to UCPB.[5]

In October 2013, while the real estate mortgage and the loans were subsisting, LRH and petitioner filed an action for annulment of special power of attorney (SPA) and/or reformation of instrument[6] against UCPB before the Regional Trial Court (RTC) of Makati. The challenged SPA was inserted in the real estate mortgage pursuant to Act No. 3135, as amended. The case was docketed as Civil Case No. 13-1238 and raffled to Branch 141, RTC of Makati. The case was re-raffled to Branch 59, RTC Makati, in March 2014.[7]

In March 2014, UCPB initiated extrajudicial foreclosure, docketed as EJF No. 13-12-8, before the *Ex-Officio* Provincial Sheriff of Legazpi City, where the mortgaged properties were situated. Eventually, UCPB emerged as the winning bidder in a public auction conducted pursuant to Act No. 3135 and by virtue of the SPA subject of the civil action in the RTC of Makati.[8]

A Certificate of Sale was issued by Sheriff IV Carmen Imelda P. Ante of the Office of the Clerk of Court & *Ex-Officio* Provincial Sheriff of the RTC of Legazpi City on May 14, 2014,[9] attesting that by virtue of the Extrajudicial Foreclosure of the Deed of Real Estate Mortgage dated July 6, 2010, and the First Amendment to Real Estate Mortgage dated March 6, 2012, executed by petitioner and LRH in favor of UCPB, the real properties described therein were sold at public auction to the latter, being the highest bidder, on April 3, 2014.

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[4] Par. 6, *Petition for Review*, vis-à-vis par. 1, *Answer (to Petition for Review dated 17 February 2022)*, Docket, pp. 17 and 149, respectively.
[5] Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 278.
[6] Exhibit "P-2", Docket, pp. 335-349.
[7] Par. 2, JSFI, Docket, p. 278.
[8] Par. 3, JSFI, Docket, p. 279.
[9] Exhibit "P-4-2", Docket, pp. 363-369.

As a consequence of the extrajudicial foreclosure sale, UCPB paid the internal revenue taxes before the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 67, Legazpi City, as follows:[10]

a) DST... Dated July 3, 2014[11]	₱ 8,850,000.00
b) Withholding Tax................ Dated July 9, 2014[12]	₱ 35,400,000.00
	Total ₱44,250,000.00

A *Compromise Agreement* by and among petitioner, LKY Development Corporation, and UCPB was entered into on November 11, 2016,[13] with the following pertinent stipulations:

> "6.c. Upon full restitution or payment of the **FIVE HUNDRED MILLION PESOS (PhP500,000,000.00)**, the real estate mortgage in favor of **DEFENDANT** over the subject properties shall be deemed discharged and/or extinguished and the Certificate of Sale issued by the Ex-Officio Provincial Sheriff of Albay of the Regional Trial Court of Legazpi City in **EJF No. 13-12-8** shall also be deemed canceled or nullified. The discharge of the real estate mortgage and the cancellation of the Certificate of Sale shall be recorded by the Register of Deeds of Legazpi City upon presentment of and on the basis of a certified copy of the judgment approving this compromise agreement.
>
> ... ...
>
> 6.h. **DEFENDANT** shall issue or provide the necessary document or receipt to **PLAINTIFFS** pertaining to the payments of internal revenue taxes relevant to the extra-judicial foreclosure of the afore-described real properties so **PLAINTIFFS** could avail themselves of credits or deductions as may be authorized under the National Internal Revenue Code."

In the Decision dated November 17, 2016, in Civil Case No. 13-1238,[14] the said *Compromise Agreement* was approved by Branch 59, RTC of Makati, and shall, as between the parties, have the same effects and be deemed the Decision in the said case. The said judgment based on a *Compromise Agreement* immediately became final and executory.[15]

[10] Par. 4, JSFI, Docket, p. 279.
[11] Exhibits "P-5" and "P-5-1", Docket, pp. 376-379.
[12] Exhibits "P-6" and "P-6-1", Docket, pp. 371-372.
[13] Exhibit "P-3", Docket, pp. 350-355.
[14] Exhibit "P-4", Docket, pp. 356-361.
[15] Exhibit "P-4-1", Docket, p. 362.

On December 12, 2016, petitioner, joined by LRH, filed a letter-request for tax credit with the BIR through the Deputy Commissioner of Internal Revenue, Legal Group (DCIR-LG), of the aforementioned creditable withholding tax (CWT) and DST.[16]

On December 16, 2016, a Certification was issued by UCPB President Higinio O. Macadaeg, Jr.,[17] stating that UCPB paid for the internal revenue taxes (DST and withholding tax) arising from the extrajudicial foreclosure of real properties owned by petitioner and LRH, but the same taxes were charged to or added to the accountability of petitioner and LRH and that the said certification was issued pursuant to the stipulation in the *Compromise Agreement* that UCPB shall issue or provide the necessary document or receipt to petitioner and/or LRH pertaining to the payments of internal revenue taxes relevant to the extrajudicial foreclosure of the aforementioned real properties so that petitioner and/or LRH can avail themselves of credits or deductions as may be authorized under the National Internal Revenue Code (NIRC).

On April 10, 2018, petitioner and LRH wrote a follow-up letter to the request for the tax credit. This second letter, however, changed the request for a tax credit to a tax refund.[18]

Subsequently, on May 2, 2018, petitioner and LRH wrote a follow-up letter to respondent reiterating the request for the refund of CWT and DST.[19]

On January 27, 2020, petitioner reiterated the request for the refund of CWT and DST.[20]

In the letter dated February 4, 2020, OIC-Assistant Commissioner Ma. Luisa I. Belen of the Assessment Service of the BIR denied petitioner's request for a tax refund.[21]

On June 1, 2020, petitioner filed with the Office of the Commissioner a motion for reconsideration dated May 28, 2020.[22]

[16] Par. 9, JSFI, Docket, p. 279; Exhibit "P-9", Docket, pp. 381-383.
[17] Exhibit "P-8", Docket, p. 380.
[18] Par. 10, JSFI, Docket, p. 279; Exhibit "P-10", Docket, pp. 299-303.
[19] Par. 11, JSFI, Docket, p. 279; Exhibit "P-11", Docket, p. 390.
[20] Par. 12, JSFI, Docket, p. 279; Exhibit "P-12", Docket, p. 391.
[21] Par. 13, JSFI, Docket, p. 279; Exhibit "P-13", Docket, pp. 392-394.
[22] Par. 14, JSFI, Docket, p. 280; Exhibit "P-14", Docket, pp. 396-401.

Petitioner received respondent's letter dated September 24, 2021, informing the former that its motion for reconsideration cannot be acted favorably because the DCIR-LG "*upheld the denial of* [the] *claim for failure to comply with the two-year period within which to file the application for tax refund pursuant to Sections 204 (C) and 229 of the NIRC of 1997, as amended*".[23]

On February 7, 2022, petitioner filed with the Court a *Motion for Extension of Time to File Petition for Review*,[24] alleging therein that it received respondent's Decision dated September 24, 2021 on January 6, 2022. Thus, it had until February 5, 2022,[25] to interpose its *Petition for Review*, but considering the existing quarantine regulations and alert levels during the pandemic, the *Petition for Review* may not be seasonably filed, and thus, prays that the Court grant an extension of fifteen (15) days from February 5, 2022, or until February 20, 2022, to file its *Petition for Review*.

Petitioner then filed the present *Petition for Review* on February 18, 2022.[26] The case was initially raffled to this Court's Second Division.

In the Resolution dated March 10, 2022,[27] the Court granted petitioner's *Motion for Extension of Time to File Petition for Review* and, accordingly, admitted the present *Petition for Review*.

Respondent filed his *Answer (to Petition for Review dated 17 February 2022)* on May 27, 2022,[28] interposing special and affirmative defenses.

On October 17, 2022, respondent transmitted to the Court the *BIR Records* for this case, consisting of 235 pages, in one (1) folder.[29]

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[23] Par. 16, JSFI, Docket, p. 280; Exhibit "P-16", Docket, p. 409.
[24] Docket, pp. 6 to 9.
[25] February 5, 2022 fell on a Saturday.
[26] Docket, pp. 15-51.
[27] Docket, pp. 132-134.
[28] Docket, pp. 149-159.
[29] Respondent's *Compliance* dated October 14, 2022, Docket, pp. 273-275.

The Pre-Trial Conference was initially set for August 24, 2022,[30] but was reset to and held on October 5, 2022.[31] During the said conference, the Court noted the manifestation of respondent's counsel that respondent would not present any documentary and testimonial evidence in this case. Prior thereto, *Petitioner's Pre-Trial Brief* and *Respondent's Pre-Trial Brief* were filed separately on August 17, 2022.[32]

On November 2, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[33] which was admitted and approved by the Court in its Resolution dated November 11, 2022,[34] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 4, 2023, was then issued.[35]

As the trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimony of Ms. Rebecca Marie Abigail G. Lee,[36] petitioner's Treasurer and Board Member from 2013 up to July 27, 2022, and President and Chairman of the Board elected on July 28, 2022.

On March 21, 2023, *Petitioner's Formal Offer of Evidence* was filed,[37] to which respondent submitted his *Comment/Opposition Re: Petitioner's Formal Offer of Evidence* on April 12, 2023.[38] In the Resolution dated May 3, 2023,[39] the Court admitted petitioner's offered exhibits.

In the Notice dated May 29, 2023,[40] the present case was transferred to the First Division of this Court.

The *Memorandum for the Petitioner* was filed with the Court via accredited courier service on June 8, 2023,[41] while respondent's *Memorandum* was submitted on June 14, 2023.[42]

The case was submitted for decision on June 19, 2023.[43]

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[30] Notice of Pre-Trial Conference dated May 31, 2022, Docket, pp. 161-162.
[31] Notice of Resetting dated August 16, 2022, Docket, p. 163; Minutes of the hearing held on, and Order dated October 5, 2022, Docket, pp. 268 and 270-272, respectively.
[32] Docket, pp. 164-175, and 258-261, respectively.
[33] Docket, pp. 278-283.
[34] Docket, p. 285.
[35] Docket, pp. 290-295.
[36] *Judicial Affidavit of Ms. Rebecca Marie Abigail G. Lee*, Docket, pp. 176-189; Minutes of the hearing held on, and Order dated, February 8, 2023, Docket, pp. 296-298.
[37] Docket, pp. 326-332.
[38] Docket, pp. 417-420.
[39] Docket, pp. 423-426.
[40] Docket (unpaginated).
[41] Docket, pp. 442-453.
[42] Docket, pp. 458-470.
[43] Notice dated June 19, 2023, Docket (unpaginated).

THE ISSUE

As stipulated by the parties, the lone issue submitted for the Court's resolution is:

> Whether or not petitioner is entitled to the refund of the alleged erroneous payment of documentary stamp tax in the amount of Eight Million Eight Hundred and Fifty Thousand Pesos (₱8,850,000.00) and alleged erroneous payment of withholding tax in the amount of Thirty-Five Million Four Hundred Thousand Pesos (₱35,400,000.00).[44]

Petitioner's arguments:

Petitioner argues that it had no legal obligation to the BIR to pay the CWT and the DST, there being no underlying valid transaction for such tax friction or obligation; that the payments made to the BIR are not tax payments *per se*, they are pure *solutio indebiti* or pure non-tax payments erroneously made to the BIR; and that the applicable law on prescription on petitioner's request for refund is the law on *solutio indebiti* under the Civil Code and not the law on tax refunds under the NIRC.

Respondent's counter-arguments:

Respondent contends that the Court has no jurisdiction over the case, that *solutio indebiti* is not applicable, and that petitioner is not entitled to the claim for refund of DST and withholding tax.

THE COURT'S RULING

The present *Petition for Review* must be dismissed because petitioner's administrative and judicial claims were filed out of time.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

[44] Joint Statement of Issues to be Tried or Resolved, JSFI, Docket, p. 280.

... ...

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund <u>within two (2) years after the payment of the tax</u> or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." (*Emphasis added*)

"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.

In any case, no such suit or proceeding shall be filed <u>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</u>: *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." (*Emphases added*)

The afore-quoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is **mandatory** and **jurisdictional**. Thus, the Court cannot take cognizance of a judicial claim for a refund filed either prematurely or out of time. To stress, the tax law even expressly provides that the judicial claim must be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[45]

[45] *Commissioner of Internal Revenue v. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

Sections 204 and 229 fixed the same period of two (2) years for filing an administrative claim for refund before the BIR and to sue before this Court.[46] As long as these two acts fall within the two (2)-year period, there is no legal impediment to the judicial claim for refund.[47]

In this case, the payment of the subject DST and withholding tax were made on July 3, 2014[48] and July 9, 2014,[49] respectively. Hence, the two-year prescriptive period under Sections 204(C) and 229 ends on **July 3, 2016**, for the DST payment, and on **July 9, 2016**, for the CWT payment. Considering that petitioner's administrative claim and the present judicial claim were filed only on **December 12, 2016**,[50] and on **February 7, 2022**,[51] respectively, which are both beyond the two (2)-year prescriptive period, petitioner's refund claim was filed out of time. Hence, the Court cannot take cognizance of the same.

Petitioner insists that Section 229 of the NIRC of 1997, as amended, does not apply in this case but Article 1145 of the Civil Code on quasi-contracts, or the rule on *solutio indebiti*, which prescribes in six (6) years.

We disagree.

In *Commissioner of Internal Revenue v. San Miguel Corporation*,[52] the Supreme Court rejected the application of the six-year prescriptive period for actions based on *solutio indebiti* in a claim for tax refund of erroneously paid/remitted tax, and declared that the two-year prescriptive period under Section 229 of the Tax Code should apply:

> [I]n *Commissioner of Internal Revenue v. Manila Electric Co. (Meralco)*, the Court squarely addressed the issue of which prescriptive period shall apply to a claim for tax refund of erroneously paid/remitted tax on interest income, whether the two (2)-year prescriptive period under Section 229 of the Tax Reform Act of 1997 or the six (6)-year prescriptive period for actions based on *solutio indebiti* under Article 1145 of the Civil Code. The Court therein applied **the two (2)-year**

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[46] *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021.
[47] *Id.*
[48] Exhibits "P-5" and "P-5-1", Docket, pp. 376-379.
[49] Exhibits "P-6" and "P-6-1", Docket, pp. 371-372.
[50] Par. 9, JSFI, Docket, p. 279; Exhibit "P-9", Docket, pp. 381-383.
[51] The *Petition* was actually filed on February 18, 2022, Docket, p. 15, or within the extended period granted by the Court (Refer to Resolution dated March 10, 2022, Docket, pp. 132 to 134). Hence, for purposes of the two-year prescriptive period, the *Petition* was considered filed on February 7, 2022, the day when petitioner's *Motion for Extension of Time to File Petition for Review* was filed, which is the last day of the 30 days from receipt of Decision of the CIR.
[52] G.R. Nos. 180740 & 180910, November 11, 2019.

prescriptive period under the Tax Reform Act of 1997 which **is mandatory regardless of any supervening cause that may arise after payment** and categorically declared that *solutio indebiti* was inapplicable, ratiocinating as follows:

> In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi-contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since **the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.** (*Emphases added, citation omitted*).

Citing *Meralco*, the Court again, in *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue (Metrobank)*, rejected the application to tax refund cases of the principle of *solutio indebiti* as well as the six (6)-year prescriptive period for claims based on quasi-contract. It reiterated that **both administrative and judicial claims for tax refund or credit should be filed within the two (2)-year prescriptive period fixed under Section 229 of the Tax Reform Act of 1997.**

Although the *Meralco* and *Metrobank* cases involved erroneously paid taxes on interest income, these may still constitute jurisprudential precedents for the present case concerning excise tax, as both types of national revenue taxes are imposed and collected by virtue of the Tax Reform Act of 1997. Given that the excise taxes on the *Red Horse* beer product of SMC is imposed and collected under the Tax Reform Act of 1997, then its claim for refund or credit of said taxes illegally or erroneously collected shall logically be governed by the same law, including the applicable prescriptive period for such claim. **There is no need to refer to the Civil Code provisions on quasi-contract**. As already pointed out by the Court in *Meralco*, the Tax Reform Act of 1997 is a special law, and it is a basic tenet in statutory

> construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.*
>
> The assertion of SMC — that nothing in Section 229 of the Tax Reform Act of 1997 supports the contention that payments of taxes imposed under an invalid revenue law or regulation falls within its scope — is specious and constitutes a very literal and superficial understanding of said provision. Necessarily, the declaration by this Court in *Fortune Tobacco* that RR No. 17-99 is invalid and of no effect rendered the collection of taxes thereunder baseless and, thus, illegal. This gives the taxpayer **the right to request the return of such illegally collected taxes under Section 229 of the Tax Reform Act of 1997, provided it does so within the prescriptive period as prescribed in the same provision.**
>
> SMC's argument that its claims should be excepted from the two (2)-year prescriptive period based on equity considerations is untenable; **the Court cannot resort to equity when there is clear statutory law governing the matter.** (*Emphases added*)

The Court must observe the prevailing jurisprudence that the two-year period fixed in Section 229 is mandatory. This means that the administrative claim for refund must be filed with the BIR within two years from payment of the tax alleged to have been erroneously or illegally paid and that the judicial claim may thereafter be filed but not beyond the same two-year period.

As enunciated in *Commissioner of Internal Revenue v. Manila Electric Co.*,[53] the act from which an entitlement of refund under Section 229 is determined by law (*i.e.*, from the date of payment of tax) and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes.

Since petitioner paid the subject DST and CWT on July 3, 2014[54] and July 9, 2014,[55] respectively, and requested a refund to RDO No. 67, Legazpi City only on December 12, 2016, petitioner's claim had already prescribed when it filed the judicial claim with this Court on February 18, 2022.

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[53] G.R. No. 181459, June 9, 2014.
[54] Exhibits "P-5" and "P-5-1", Docket, pp. 376-379.
[55] Exhibits "P-6" and "P-6-1", Docket, pp. 371-372.

As it stands, petitioner failed to discharge the burden of proving strict compliance with Section 229 of the NIRC of 1997, as amended. And so, its claim for a refund is forever barred.[56] Since the Court cannot acquire jurisdiction over the subject matter, its only power is to dismiss the action.[57]

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[56] *Agusan Wood Industries, Inc. v. Secretary of the Department of Environment and Natural Resources*, G.R. No. 234531, July 10, 2019.
[57] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LKY PROPERTY HOLDINGS, INC., REPRESENTED BY MS. REBECCA MARIE ABIGAIL G. LEE, Petitioner,	**CTA CASE NO. 10754**
	Members: **DEL ROSARIO**, *P.J.*, *Chairperson*, **BACORRO-VILLENA**, and **CUI-DAVID**, *JJ.*
- versus -	
THE HONORABLE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 0 8 2024; 2:20PM

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SEPARATE CONCURRING OPINION

***DEL ROSARIO, P.J.*:**

I concur in the dismissal of the present Petition for Review for lack of jurisdiction, due to the belated filing of petitioner's administrative and judicial claims for refund.

I wish to point out, however, that even if the claims were timely filed, petitioner's claim for refund should still be denied for lack of merit.

As a general rule, the mortgagor may redeem the foreclosed property within one (1) year from the date of sale which has been clarified to be the date of registration of the certificate of sale.[1] Section 6 of Act No. 3135,[2] as amended, provides:

> Section 6. **In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor**

[1] *Reyes vs. Noblejas*, G.R. No. L-23691, November 25, 1967.
[2] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

> **of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale**; and such redemption shall be governed by the provisions of sections found hundred and sixty-four to four hundred and sixty-five, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Section 47 of the General Banking Law (GBL),[3] however, granted juridical persons the right to redeem their property sold in an extra-judicial foreclosure until registration of the certificate of sale with the applicable Register of Deeds which shall not be more than three (3) months from the date of foreclosure sale, whichever comes first, to wit:

> Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier.

In this case, all the requisites for the application of Section 47 of the GBL are present: *first*, the mortgagor (herein petitioner) is a juridical person; *second*, the mortgagee is United Coconut Planters Bank (UCPB), a banking institution; and *third and finally*, the mode of foreclosure is extra-judicial. Considering, however, that the records do not show the date of registration of the certificate of sale, the period to redeem the subject mortgaged properties is only three (3) months from the date of foreclosure sale.

Perusal of the Certificate of Sale executed by Ex-Officio Provincial Sheriff of Albay of the Regional Trial Court of Legazpi City Carmen Imeda P. Ante on May 14, 2014 reveals that she had sold the subject properties at a public auction to the highest bidder, UCPB, on April 3, 2014. Counting three (3) months therefrom, petitioner had until July 3, 2014 to exercise its right of redemption.

As borne out by the records, petitioner failed to effect a valid redemption of the properties within the three (3)-month period. Thus, petitioner's right to redeem the properties had elapsed on July 4, 2014.

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[3] An Act Providing for the Regulation of the Organization and Operations of Banks, Quasi-Banks, Trust Entities, and for Other Purposes Trust Entities and for Other Purposes, Republic Act No. 8791, May 23, 2000.

It appears, however, that in October 2013, while the real estate mortgage and the loans were subsisting, petitioner filed an action for annulment of special power of attorney and/or reformation of instrument against UCPB before the Regional Trial Court of Makati. While this civil action was pending, UCPB initiated the extra-judicial foreclosure of the mortgaged properties, and the public auction was held on April 3, 2014.

Still during the pendency of the civil action, the parties decided to enter into a Compromise Agreement[4] which was approved by the Regional Trial Court on November 17, 2016.[5] Such agreement provided the following pertinent provisions:

> 6. To settle this case and other collateral or derivative cases before the Regional Trial Court of Legazpi City and/or the Court of Appeals, the **PARTIES** agree and stipulate on the following terms and conditions, to wit:
>
> 6.a. **PLAINTIFFS** will restitute or pay **DEFENDANT** the sum of **FIVE HUNDRED MILLION PESOS (PHP500,000,000.00).**
>
> 6.b. Upon the signing of this compromise agreement, **PLAINTIFFS** will restitute or pay **DEFENDANT** THE SUM OF **FIVE HUNDRED MILLION PESOS (PHP500,000,000.00)** and simultaneously the latter will deliver to the former the following: *i)* The owner's copy of the transfer certificates of title over the mortgaged properties; *ii)* The certificate of discharge of the real estate mortgage; and *iii)* The certificate of cancellation of the Certificate of Sale, but such documents to be issued by **DEFENDANT** shall no longer be necessary to effect the recording of the discharge of the real estate mortgage in favor of **DEFENDANT** and the recording of the cancellation of the certificate of sale by the Office of the Register of Deeds of Legazpi City, which discharge and cancellation will already be made effective by the judicial approval of this compromise agreement.
>
> 6.c. Upon full restitution or payment of the **FIVE HUNDRED MILLION PESOS (PhP500,000,000.00)**, the real estate mortgage in favor of **DEFENDANT** over the subject properties shall be deemed discharged and/or extinguished and the Certificate of Sale issued by the Ex-Officio Provincial Sheriff of Albay of the Regional Trial Court of Legazpi City in **EJF No. 13-12-8** shall also be deemed canceled or nullfified. The discharge of the real estate mortgage and the cancellation of the Certificate of Sale shall be recorded by the Register of Deeds of Legazpi City upon presentment of and on the basis of a certified copy of the judgment approving this compromise agreement.
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> xxx xxx xxx

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[4] Exhibit "P-3", CTA Docket, pp. 350-355.
[5] Exhibit "P-4", CTA Docket, pp. 356-361.

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> 6.h. **DEFENDANT** shall issue or provide the necessary document or receipt to **PLAINTIFFS** pertaining to the payments of internal revenue taxes relevant to the extra-judicial foreclosure of the afore-described real properties so **PLAINTIFFS** could avail themselves of credits or deductions as may be authorized under the National Internal Revenue Code.

Upon thorough examination of the foregoing clauses, petitioner, by entering into the Compromise Agreement more than two (2) years after the foreclosure sale, effectively exercised the right of redemption which had long expired.

In *Mahinay vs. Dura Tire*,[6] the Supreme Court clarified that the period to redeem a property sold in an extrajudicial foreclosure sale is not extendible. Fixing a definite term within which the property should be redeemed is meant to avoid prolonged economic uncertainty over the ownership of the thing sold.[7] Moreover, the period of redemption is fixed to prevent dangerous precedent of filing of frivolous suits for annulment of mortgage intended merely to give the mortgagor more time to redeem the mortgaged property.[8] Considering that the right of redemption had expired upon the lapse of the three (3)-month period reckoned from the date of foreclosure sale, what the parties entered into is effectively one for repurchase and not for redemption. Said the Supreme Court in *Spouses Robles vs. Court of Appeals*:[9]

> **The right to redeem becomes *functus officio* on the date of its expiry, and its exercise after the period is not really one of redemption but a repurchase**. Distinction must be made because redemption is by force of law; the purchaser at public auction is bound to accept redemption. Repurchase, however, of foreclosed property after redemption, imposes no such obligation. After expiry, the purchaser may or may not re-sell the property but no law will compel him to do so. And, he is not bound by the bid price; it is entirely within his discretion to set a higher price, for after all, the property already belongs to him as owner. *(Emphasis supplied)*

Revenue Memorandum Circular (RMC) No. 58-2008 dated August 15, 2008[10] clarifies that in case of non-redemption of mortgaged ordinary assets, the creditable expanded withholding tax (EWT) and the documentary stamp tax shall be due and paid within

[6] G.R. No. 194152, June 5, 2017.
[7] *BPI Family Savings Bank vs. Spouses Veloso*, G.R. No. 141974, August 9, 2004.
[8] *Union Bank of the Philippines vs. Court of Appeals*, G.R. No. 134068, June 25, 2001.
[9] G.R. No. 128053, June 10, 2004.
[10] SUBJECT: Clarifying the Time Within Which to Reckon the Redemption Period on the Foreclosed Asset and the Period Within Which to Pay Capital Gains Tax or Creditable Withholding Tax and Documentary Stamp Tax on the Foreclosure of Real Estate Mortgage by Those Governed by the General Banking Law of 2000 (Republic Act No. 8791), as Well as the Venue for the Payment of These Taxes.

ten (10) days and five (5) days, respectively, following the end of the month in which the redemption expires, to wit:

> In case of non-redemption, the capital gains tax on the foreclosed capital asset of the mortgagor shall become due within thirty (30) days following the expiration of the redemption period referred to in the preceding paragraph. **Nonetheless, if the property is an ordinary asset of the mortgagor, the creditable expanded withholding tax shall be due and paid within ten (10) days following the end of the month in which the redemption expires.** Xxx. Moreover, **the payment of the documentary stamp tax and the filing of the return thereof shall have to be made within five (5) days from the end of the month when the redemption period expires**. The taxes due on the foreclosure sale must be based on the bid price of the highest bidder pursuant to Revenue Regulations No. 4-99.
>
> The classification of the asset as either ordinary asset or capital asset depends upon the nature of the asset in the hands of the mortgagor.
>
> **Under the foregoing circumstances, the mortgagee banks, quasi-banks, and trust companies, are considered the statutory sellers in the foreclosure sales of these foreclosed real properties, and are thus, expected to have paid the aforesaid taxes, within the period provided therefor, once the redemption period thereon has expired**, hence, without need to further wait for another or subsequent buyer before taxes on said foreclosed property shall be paid. *(Emphasis supplied)*

In this case, the EWT and the DST on the transaction were payable on August 10, 2014 and August 5, 2014, respectively. After the expiration of the period to exercise the right of redemption, *i.e.*, on July 4, 2014, UCPB paid the EWT and the DST on July 3, 2014 and July 19, 2014, respectively. Clearly, by paying these taxes, UCPB recognized its obligations under the law as clarified in RMC No. 58-2008.

Petitioner contends that since it paid UCPB the amount of ₱500,000,000.00 as stipulated in the Compromise Agreement, and that the certificate of sale was effectively nullified, the payment of the EWT and the DST was without basis, and hence, was made erroneously. Having paid the taxes erroneously, petitioner claims the refund of the same.

Petitioner's contention is unacceptable.

Upon the expiration of the period to redeem, a taxable event, *i.e.*, a perfected transfer of property, has already occurred, hence, the taxes accrued thereon could not be considered to have been erroneously paid. With the execution of the Compromise Agreement and the payment of the stipulated amount, what occurred is not an exercise of the right of redemption (which had long expired) but a repurchase, which is a separate and distinct taxable event, as previously stated.

ALL TOLD, I *VOTE* to dismiss the present Petition.

ROMAN G. DEL ROSARIO
Presiding Justice