REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CROMA MEDIC, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9584

Members:

CASTAÑEDA, JR., *Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:

AUG 16 2019
3:00 p.m.

x- x

DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is Petition for Review, filed by Croma Medic Inc., seeks refund in the amount of One Million Six Hundred Thousand Pesos (₱1,600,000.00), allegedly representing erroneously paid tax to the government pursuant to the *Double Taxation Avoidance Agreement between Philippines and Germany* tax treaty.

STATEMENT OF FACTS

Petitioner is a corporation duly organized and existing under Philippines laws, with principal office address at Unit 303 Alegria Bldg., 2229 Chino Roces Avenue Makati City. It is one hundred percent (100%) owned by German company BEPHA

Beteiligungsgesellschaft fur Pharmawerte mbH ("BEPHA" for brevity).[1]

Petitioner is duly registered under Electronic Filling and Payment System (eFPS).[2]

On the other hand, respondent Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund as provided by law. He may be served with summons, notices and other court processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 12, 2016, petitioner paid the amount of ₱3,200,000.00 as Withholding Tax – Final Return for the return period March 31, 2016.[3]

On April 18, 2016, petitioner filed with the Bureau of Internal (BIR), Revenue District Office (RDO) No. 48 an administrative claim for refund[4] for overpayment in the amount of ₱1,600,000.00. Petitioner claims that based on the *Double Taxation Avoidance Agreement between Philippines and Germany* tax treaty, a preferential dividend rate of five percent (5%) is provided instead of the usual ten percent (10%).

Thereafter, petitioner filed a Tax Treaty Relief Application for Dividend Income (BIR Form 0901-D) with the BIR International Tax Affairs Division on June 3, 2016.[5]

Due to respondent's inaction on its administrative claim for refund, petitioner elevated the matter to this Court via the filing of the present Petition for Review[6] on May 3, 2017.

On July 14, 2017, respondent filed his Answer[7], interposing the following special and affirmative defenses: gr

---

[1] Exhibit "P-1".
[2] Par. 4, Stipulation of Facts, Joint Stipulation, docket, p. 206.
[3] Exhibits "P-4" and "P-4-a".
[4] Exhibit "P-3".
[5] Exhibits "P-5" and "P-5-a".
[6] Docket, pp. 12-25.

3. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;

4. Petitioner's alleged claim for refund or issuance of tax credit certificate is still subject to administrative investigation/examination by the BIR;

5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱1,600,000.00 representing alleged overpayment of final withholding tax were not fully substantiated by proper documents.

7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claim refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

8. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

9. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***).

On August 2, 2017, a Notice of Pre-Trial Conference[8] was issued by this Court setting the case for pre-trial conference on August 31, 2017. Subsequently, petitioner filed its Pre-Trial Brief[9] on August 23, 2017, while Respondent's Pre-Trial Brief[10] was filed on August 29, 2017.

[7] *Id.*, pp. 106-108.
[8] *Id.*, pp. 110-111.
[9] *Id.*, pp. 115-122.
[10] *Id.*, pp. 192-195.

Thus, pre-trial conference ensued.

On September 20, 2017, the parties submitted their Joint Stipulation[11]. Accordingly, a Pre-Trial Order[12] was issued by this Court on September 27, 2017, adopting the parties' joint stipulations and thereby deeming the pre-trial terminated.

During trial, petitioner presented as its sole witness Ms. Elizabeth P. Ocampo, petitioner's Senior Vice President, who testified on direct by way of judicial affidavit[13]. After completing her testimony, petitioner then filed its Formal Offer of Evidence[14] on October 5, 2017, offering Exhibits "P-1" to "P-13", inclusive of sub-markings, as its documentary evidence. Hence, in the Resolutions[15] dated January 9, 2018 and July 2, 2018, respectively, all of petitioner's evidence were admitted, save for Exhibits "P-3-a" and "P-11" for petitioner's failure to lay the bases for their presentation as secondary evidence.

Furthermore, considering the manifestation[16] made by respondent that he has no evidence to present in this case, the parties were given a period of thirty days within which to submit their respective memoranda.

Accordingly, on August 14, 2018, Petitioner's Memorandum[17] was filed, while respondent failed to file his memorandum as per Records Verification[18] dated August 23, 2018. As such, in the Resolution[19] dated September 3, 2018, the present case was deemed submitted for decision.

ISSUE

The sole issue[20] submitted by the parties for this Court's resolution is whether petitioner is entitled to a refund in the amount

---

[11] *Id.*, pp. 206-210.
[12] *Id.*, pp. 276-279.
[13] Judicial Affidavit, docket, pp. 123-137 and Supplemental Judicial Affidavit, docket, pp. 214-218.
[14] Docket, pp. 281-288.
[15] *Id.*, pp.349-350 and pp.366-368.
[16] Minutes of the Hearing dated October 2, 2017, docket, p. 280.
[17] Docket, pp. 369-389.
[18] *Id.*, p. 391.
[19] *Id.*, p. 392.
[20] Common Issue, Joint Stipulation, *Id.*, p. 207.

of One Million Six Hundred Thousand Pesos (₱1,600,000.00) pursuant to the tax treaty between Philippines and Germany.

THE COURT'S RULING

Relative to the resolution of the said issue are Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which pertain to the refund of erroneously or illegally collected taxes. While Section 204 applies to administrative claims for refund, and Section 229 to judicial claims for refund, in both instances, however, the claim must be filed within two (2) years from the date of payment of the tax or penalty. Thus, Sections 204 (C) and 229 of the NIRC of 1997, as amended, pertinently provides that:

> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may –
>
> x x x
>
> (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 within two (2) years after the payment of the tax or penalty**: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> **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 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 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. *(Emphasis supplied)*

Based above, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be established and satisfied, *viz.*:

1. that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and,

2. the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.[21]

Again, petitioner has two (2) years within which to file its claim for refund which is reckoned from the date of payment of the tax. Perusal of the records show that the final withholding tax was remitted to the BIR on April 12, 2016. Consequently, petitioner had until April 13, 2018 within which to file its claim for refund both with the BIR and the corresponding appeal before this Court. By filing its administrative claim for refund on April 18, 2016 and the present Petition for Review on May 3, 2017, petitioner clearly complied with the two-year prescriptive period mandated under the aforequoted sections of the NIRC. *Jr*

---

[21] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 9104, July 27, 2018.

That having been settled, this Court shall now resolve petitioner's entitlement to the refund being claimed for.

At the outset, petitioner anchors its claim for refund on the tax treaty between Philippines and Germany entitled "*Double Taxation Avoidance Agreement between Philippine and Germany*" dated September 9, 2013, which impose a preferential rate of only five percent (5%) tax on dividends instead of the standard ten percent (10%) tax on dividends.[22] The preferential rate of 5% is provided pursuant to Sections 1 and 2 of Article 10 of the said tax treaty, which reads as follows:

Article 10

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 percent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 70 percent of the capital of the company paying the dividends;

(b) 10 percent of the gross amount of the dividends if the beneficial owner is a company (other than partnership which holds directly at least 25 percent of the capital of the company paying the dividends;

(c) 15 percent of the gross amount of the dividends in all other cases.[23]

---

[22] Par. 3, Stipulation of Facts, Joint Stipulation, docket, p. 206.
[23] Exhibit "P-2" and "P-2-a".

As borne by the records of this case, the General Information Sheet[24] filed with the Securities and Exchange Commission shows that petitioner's shares of stock was one hundred percent (100%) owned by a German Company. This was further testified to and corroborated by petitioner's Senior Vice President Ms. Elizabeth P. Ocampo on cross examination during the October 2, 2017 hearing, thus:

> Atty. Santos:
> Ms. Witness, when did you start working with the petitioner?
>
> Witness:
> August 1991, sir.
>
> Atty. Santos:
> In Question No. 9, you mentioned that BEPHA is a German Company?
>
> Witness:
> Yes, Your Honors.
>
> Atty. Santos:
> Do you have any proof that this is a German Company?
>
> Witness:
> It is in the GIS, sir.
>
> Atty. Santos:
> GIS?
>
> Witness:
> Yes, sir. In the General Information Sheet that is being submitted to the Securities and Exchange Commission (SEC), and you can find there that it is German Company.[25]

Clearly, there is no reason to deprive petitioner of the benefit of availing the preferential tax rate of 5% on dividends in accordance with the Philippines-Germany tax treaty. *Jc*

---

[24] Exhibit "P-1".
[25] Transcript of Stenographic Notes dated October 2, 2017, pp. 6-7.

Now, the question arises how much is petitioner entitled to refund and whether petitioner was able to prove that there was indeed erroneous remittance of final withholding tax on dividends to the BIR.

Petitioner avers that, on March 16, 2016, it declared cash dividends in the amount of Thirty-Two Million Pesos (₱32,000,000.00) in favor of BEPHA. Acting as the withholding agent, petitioner, on April 11, 2016, withheld the amount of ₱3,200,000.00 representing the withholding tax rate of ten percent (10%). Petitioner then paid the amount withheld to the BIR through eFPS at Metrobank, which the BIR acknowledged having received on April 12, 2016.[26]

To bolster its claim, petitioner presented Certifications respectively issued by Revenue District Officer Wilfredo V. Pilapil[27] dated May 4, 2016, and OIC-Chief Blendina Allen B. Castillo[28], Collection Section, dated May 3, 2016, both revenue officers of Revenue Region No. 08, RDO No. 048, West Makati. Indeed, while the said documents certifies that petitioner paid the amount of ₱3,200,000.00 as payment for Final Withholding Tax, they, however, do not show that the said amount paid actually pertains to the final withholding tax **on dividends**.

In the case of *EQUITABLE BANKING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE*[29], this Court had the occasion to rule that:

> In the case at bar, petitioner failed to present Certificates of Income Tax Withheld at Source to prove that the final taxes were withheld and actually remitted to the coffers of the government. **Although petitioner submitted some relevant documents to substantiate its claim for refund, the Court finds the same insufficient to grant the desired relief**. Plainly stated, since it appears that petitioner has no other evidence to show how much final withholding tax was paid on interest income it received, we are constrained not to grant petitioner's prayer. *(Emphasis Supplied)*

[26] Exhibits "P-4".
[27] *Id.*
[28] Exhibit "P-4-a".
[29] CTA Case No. 5521, September 8, 1999.

Though petitioner attempted to offer its Revised Monthly Remittance Return of Final Income Taxes Withheld (1601F) marked as Exhibit "P-3-a", the same was however denied admission by this Court.[30] Since evidence, documentary or testimonial, cannot be given probative value unless offered and admitted by the court, the denied exhibit cannot be considered by this Court as part of petitioner's evidence.

As such, by failing to provide the Original Monthly Remittance Return of Final Income Taxes Withheld (1601F) for the month of March with the corresponding payment confirmation receipt filed through the eFPS, this Court cannot clearly ascertain how much final tax were withheld and remitted by the petitioner on its dividends.

Time and again, this Court reminds that basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[31]

Hence, for having failed to substantiate the burden bestowed upon petitioner in presenting proof of its entitlement to refund the amount of ₱1,600,000.00, representing tax erroneously paid to the government, the dismissal of the instant Petition for Review is in order.

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for insufficiency of evidence.

SO ORDERED.

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

---

[30] Resolution dated January 9, 2018 and July 2, 2018, respectively.
[31] *Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue,* G.R. No. 154028, July 27, 2005.

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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