REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**THIRD DIVISION**

LUCIO L. CO, SUSAN P. CO, FERDINAND VINCENT P. CO and PAMELA JUSTINE P. CO,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8831

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 01 2016
9:38 a.m.

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**RESOLUTION**

***Fabon-Victorino, J.*:**

This resolves the Motion Reconsideration dated June 28, 2016 filed by respondent assailing the Decision dated June 2, 2016 which granted petitioners' claim for refund of erroneously paid capital gains tax arising from an exchange of shares of stock.

In his Motion, respondent claims (1) that the administrative claims for refund initially filed by the Zambrano and Gruba Law Offices were without authorization from petitioners, hence, invalid and did not toll the two-year prescriptive period; (2) that the administrative claim through the subsequently filed letters by petitioners reiterating and confirming the earlier written claims for refund were filed out of time depriving the Court of jurisdiction; (3) that petitioners failed to secure a certification/ruling from the Bureau of Internal Revenue that the subject exchange of shares of stock is exempt from capital gains tax (CGT) pursuant to Revenue Regulations (RR) No. 18-2001, and Revenue Memorandum Order (RMO)

Nos. 32-2001 and 17-2002, in relation to Section 40(C)(2) of the National Internal Revenue Code (NIRC), as amended, which is a condition for the grant of the claim for refund; and (4) that petitioners' exchanged shares of stock certificates do not bear the annotation required under Section 58(E) of the NIRC, as amended, which is a requisite to the recognition of exemption of the transaction from CGT, and the granting of the refund sought.

By way of opposition, [1] petitioner counters that respondent failed to point out the legal basis for his allegation that the initial written claims filed by its counsel needs a written authority or conformity from petitioners.

Respondent's allegation that the initial written claims for refund were without authority from petitioners are without basis since there is a presumptive authority of counsel to act in behalf of its client. At any rate, assuming that a written mandate was required, such was satisfied by the subsequent execution by petitioners of a Special Power of Attorney (SPA), which also ratified the action previously made by their counsel.

Also, the written claims met all the requirements for a valid administrative claim as provided under Section 229 of the NIRC, as amended. The written claims were filed with the Commissioner of the BIR within 2 years from the payment of the tax categorically demanded for reimbursement.

The initial lack of any BIR Form No. 1914, or the Application for Tax Credits/Refunds is of no moment since all the information required in said BIR Form was provided by petitioners in their written claims, constituting substantial compliance of the said legal requirement. Jurisprudence also has it that compliance with the requisites under the law constitutes a valid administrative claim even in the absence of BIR Form No. 1914.

Finally, petitioners opine that the Court was correct in finding that petitioners complied with all the four (4) requisites as provided under Section 40(C)(2) of the NIRC

[1] Opposition (to the Respondent's Motion for Reconsideration of the Decision dated 02 June 2016) dated August 10, 2016

to be entitled to exemption from CGT for the subject transaction. The failure to secure a prior certification or ruling from the BIR on the exempt status of the transaction, based on RR No. 18-2001 and RMO Nos. 32-2001 and 17-2002 should not deprive a taxpayer of claiming exemption. In addition, the said issuances are mere guidelines for the proper monitoring and investigation of the basis of the properties transferred pursuant to a tax-free exchnge, as explicitly stated in said issuances.

On a final note, the arguments in the instant Motion are but reiteration of the issues previously raised by respondent which have already been addressed, and rejected in the Decision dated June 2, 2016.

**WHEREFORE**, the Motion Reconsideration (sic) (Re: Decision dated 02 June 2016) dated June 28, 2016 filed by respondent is hereby **DENIED**, for lack of merit.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

*We concur:*

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice