REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

AECOM PHILIPPINES CONSULTANTS CORPORATION,	**CTA CASE NO. 10008**
Petitioner,	Members:
	UY, *Chairperson,*
	RINGPIS-LIBAN, *and*
-versus-	**MODESTO-SAN PEDRO,** *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE,	DEC 07 2021
Respondent.	4:46 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition"), filed by petitioner, **AECOM PHILIPPINES CONSULTANTS CORPORATION,** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), praying that this Court render judgment ordering the respondent to refund, in favor of petitioner, the amount of Seventeen Million One Hundred Eighty-Four Thousand Nine Hundred Fifty-Eight Pesos (Php17,184,958.00), representing petitioner's excess and unutilized creditable income taxes withheld ("CWT") for the fiscal year ended 30 September 2016.[1]

The Parties

Petitioner is a corporation duly registered with the Securities and Exchange Commission ("SEC") with Company Registration No. A200009369. It is registered with Bureau of Internal Revenue ("BIR") as shown in its BIR Certificate of Registration No. OCN 9RC0000335819 and was assigned with Taxpayer's Identification Number ("TIN") 208-134-558-000.

[1] See Statement of the Case in the Pre-Trial Order, Records, p. 265.

Respondent 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 and approve claims for refunds as provided by law. He may be served with summons, notices, and other processes of this Court at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 16 January 2017, petitioner electronically filed, through the BIR's Electronic Filing and Payment System ("eFPS"), its original Annual Income Tax Return ("ITR") for the fiscal year ended 30 September 2016.[2] On 30 January 2017, petitioner filed, through the eFPS, an Amended Annual ITR for the same period.[3]

On 15 January 2019, petitioner filed before BIR Revenue District Office No. ("RDO") 44 an administrative claim for refund of its excess and unutilized CWT for the fiscal year ended 30 September 2016 in the amount of Seventeen Million One Hundred Eighty-Four Thousand Nine Hundred Fifty-Eight Pesos (Php17,184,958.00).[4]

In view of respondent's inaction, petitioner filed the instant Petition before this Court on 16 January 2019.[5]

On 28 January 2019, Summons was issued to respondent.[6]

On 12 February 2019, respondent filed through registered mail a Motion for Extension of Time to File Answer,[7] which was granted in a Resolution, dated 6 March 2019.[8] On 14 March 2019, respondent once more filed a Motion for Extension of Time to File Answer,[9] which was granted in a Resolution, dated 25 March 2019.[10] Finally, on 4 April 2019, respondent filed his Answer.[11]

On 10 April 2019, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 25 July 2019, at 9:00 a.m.[12]

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2 See Exhibit "P-4", *id.*, pp. 436-443.
3 See Exhibit "P-5", *id.*, pp. 444-451.
4 See Exhibits "P-13", "P-13-A", "P-13-B", "P-14", "P-14-A", "P-14-B", *id.*, pp. 486-492.
5 *Id.*, pp. 10-83.
6 *Id.*, pp. 84-85.
7 *Id.*, pp. 86-89.
8 *Id.*, pp. 90-91.
9 *Id.*, pp. 92-95.
10 *Id.*, pp. 96-97.
11 *Id.*, pp. 98-101.
12 *Id.*, pp. 102-103.

Following the Pre-Trial Conference on 25 July 2019,[13] trial ensued, with petitioner presenting two witnesses: Janis Myrtle Delos Reyes and Independent Certified Public Accountant ("ICPA") Atty. Clifford E. Chua.[14]

On 20 January 2021, petitioner filed its Memorandum.[15] Respondent, however, did not file a Memorandum.[16]

On 28 January 2021, this Court issued a Resolution submitting the instant Petition for decision.[17]

Hence, this Decision.

The Issue[18]

WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF ITS UNUTILIZED CWT FOR THE FISCAL YEAR ENDED 30 SEPTEMBER 2016 IN THE AMOUNT OF SEVENTEEN MILLION ONE HUNDRED EIGHTY-FOUR THOUSAND NINE HUNDRED FIFTY-EIGHT PESOS (PHP17,184,958.00).

Arguments of the Parties

Petitioner's Arguments[19]

Petitioner averred the following in its Memorandum:

a) Petitioner's claim for refund/issuance of Tax Credit Certificate ("TCC") was filed within two (2) years prescribed under the ***National Internal Revenue Code, as amended ("NIRC")***;

b) The income upon which the taxes were withheld was included as part of the gross income declared in income tax returns of petitioner;

c) Petitioner's unutilized CWT for fiscal year 2016 are duly substantiated by documentary evidence; and

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13 *Id.*, pp. 224-229.
14 *Id.*, pp. 348-350.
15 *Id.*, pp. 500-525.
16 *Id.*, p. 526.
17 *Id.*, pp. 527-528.
18 See Issues in the Pre-Trial Order, *id.*, p. 266.
19 See Memorandum, *id.*, pp. 505-521.

d) The amount claimed by petitioner was neither carried over nor applied to the succeeding year.

<u>Respondent's Counter-Arguments</u>[20]

Respondent alleged the following in his Answer:

a) Petitioner's claim for tax refund is subject to administrative investigation and/or examination by respondent;

b) Taxes paid and collected are presumed to have been paid in accordance with law and regulations and are, hence, not refundable;

c) Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove compliance with the following: a) that the claim for refund was filed within the two (2) year reglementary period under the ***NIRC***; b) when it is shown on the income tax return that the income payment received is being declared as part of the taxpayer's gross income; c) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor / withholding agent to the payee / recipient, known as the Certificate of Creditable Tax Withheld at Source or BIR Form No. 2307, which should show the amount paid and income tax withheld therefrom, and d) The CWT shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received;

d) Accordingly, the claimants of tax refunds bear the burden of proving the factual basis of their claims; and

e) Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the taxpayer claiming such refund.

<u>The Ruling of the Court</u>

We rule to **DENY** the instant **Petition for Review.**

[20] See Answer, *id.*, pp. 99-100.

<u>Petitioner did not give respondent sufficient opportunity to decide the administrative claim for refund/TCC.</u>

The procedure for filing of administrative and judicial claims for refund is governed by ***Sections 204(C) and 229 of the NIRC***, respectively.

Section 204 (C) of the NIRC provides:

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

(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 <u>unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment</u> 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. ..."
(Emphasis and underscoring, Ours.)

Meanwhile, ***Section 229 of the NIRC*** states:

"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, 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, **<u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax</u>** 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 and underscoring, Ours.)

As may be gleaned from the foregoing provisions, a taxpayer-claimant must first file an administrative claim for refund before respondent prior to filing a judicial claim before this Court.[21] Both the administrative and judicial claims for refund should be filed within the two (2) year prescriptive period, and the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription.[22]

Moreover, in ***ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.***,[23] the Supreme Court ruled that the two (2) year prescriptive period for claiming a refund commences to run from the date of filing of the final adjusted return or the Annual ITR. The two (2) year period starts to run from the filing of the Annual ITR since it is only the time when the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[24]

In the present case, petitioner filed its original Annual ITR for the fiscal year ended 30 September 2016 via the eFPS on 16 January 2017[25] and subsequently filed an Amended Annual ITR for the same period via the eFPS on 30 January 2017.[26] Starting from 30 January 2017 (which is considered the final adjustment return), petitioner then had until 30 January 2019 within which to file both its administrative and judicial claims for refund/TCC.

Evidence shows that petitioner filed its administrative claim before BIR RDO 44 on 15 January 2019.[27] This was immediately followed by its judicial claim for refund via the instant Petition, filed on 16 January 2019.[28]

Although both the administrative claim and the judicial claim were filed within the two (2) year prescriptive period, it cannot escape this Court's attention that petitioner did not give respondent full opportunity to decide the administrative claim.

After petitioner filed the administrative claim for refund/TCC before respondent, it immediately filed the judicial claim before this Court just after the lapse of one (1) day. Certainly, a period of one (1) day is insufficient for respondent to decide the administrative claim for refund considering that the instant claim for refund has voluminous supporting documents. In fact, during trial, petitioner even had to commission the services of an ICPA to assist this

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21 Metropolitan Bank & Trust Co. v. Commissioner of Internal Revenue, G.R. No. 182582, 17 April 2017.
22 *Ibid.*
23 G.R. No. 96322, December 20, 1991.
24 Commissioner of Internal Revenue v. TMX Sales, Inc., et al., G.R. No. 83736, 15 January 1992; Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue, G.R. No. 182582, 17 April 2017.
25 See Exhibit "P-4", Records, p. 436.
26 See Exhibit "P-5", *id.*, pp. 444.
27 See Exhibits "P-13", "P-13-A", "P-13-B", "P-14", "P-14-A", "P-14-B", *id.*, pp. 486-492.
28 *Id.*, pp. 10-83.

Court in sorting out and summarizing the voluminous documents necessary for the resolution of the instant case.

These actions displayed a stark disregard of the rule requiring the exhaustion of administrative remedies. The rationale for the rule was elucidated in ***Ejera v. Merto***,[29] as follows:

> "Thirdly, **the rule requiring the exhaustion of administrative remedies rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly**. There are both legal and practical reasons for the rule. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, therefore, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been **given an opportunity to act and correct the errors committed in the administrative forum**."
> (Emphasis and underscoring, Ours.)

Certainly, with **just one (1) day** given to respondent to resolve a claim for refund that involves voluminous supporting documents, he was not "afforded a complete chance to pass upon the matter" nor "given an opportunity to act and correct the errors committed in the administrative forum."

In the recent case of ***Chin v. Maersk-Filipinas Crewing, Inc., et al.***,[30] the Supreme Court even cautioned, to wit:

> "The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, **every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice**."
> (Emphasis and underscoring, Ours)

Judging from any perspective, with that measly one (1) day given to him, respondent cannot be said to have been given "every opportunity" "to resolve the matter and to exhaust all opportunities for a resolution" on the claim for refund/TCC of petitioner.

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[29] G.R. No. 163109, 22 January 2014, citing Union Bank of the Philippines v. Court of Appeals, G.R. No. 131729, May 19, 1998

[30] G.R. No. 247338, 2 September 2020.

Obviously, the filing of the claim with respondent and giving him just one (1) day within which to decide the same before the judicial claim was filed was simply to meet the two (2) year prescriptive period deadline. The filing of the administrative claim in the instant case appears to be merely *pro forma*, without any intent to avail of the remedy before respondent. Indeed, the filing of the judicial claim with the Court soon thereafter is a clear indication of blatant disregard of respondent's administrative powers.

This Court cannot turn a blind eye to the procedural infirmity extant in the instant case, much less be a partner in petitioner's disregard of the concept of exhaustion of administrative remedies. Under the circumstances, then, this Court finds that petitioner's case should be barred for failure to exhaust administrative remedies.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

(With due respect, please see Dissenting Opinion.)
MA. BELEN M. RINGPIS-LIBAN
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice