REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BAP CREDIT BUREAU, INC., *Petitioner,*	**CTA Case Nos. 9570**
-versus-	Members:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**CASTAÑEDA, JR.,** *Chairperson,* **MANAHAN,** *JJ.*
	Promulgated: APR 08 2019 1:10 p.m.

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DECISION

MANAHAN, *J.:*

This is a Petition for Review filed by BAP Credit Bureau, Inc., as petitioner, praying for the refund of or the issuance of a tax credit certificate (TCC) in the total amount of ONE MILLION SIXTY-TWO THOUSAND SIX HUNDRED TWENTY SIX PESOS (Php1,062,626.00) allegedly representing erroneously imposed and collected penalties on its income tax due for taxable year 2014.

THE PARTIES

Petitioner is a corporation duly organized and registered under the laws of the Philippines, with Securities and Exchange Commission (SEC) Company Registration No. 174910 issued on March 16, 1990.[1] Its principal address is at the 10th Floor, Export Bank Plaza, Sen. Gil Puyat Avenue corner Chino Roces Avenue, Makati City. Petitioner is also registered with the

[1] Exhibit "P-2", Court docket, vol. II, pp. 797-814.

Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 000-156-165-000.[2]

On the other hand, respondent is the duly appointed BIR Commissioner who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

On April 14, 2015 at 10:35 a.m. preparatory to the filing of its 2014 Annual Income Tax Return (ITR), petitioner transferred funds in the amount of ₱4,141,429.00 from its Banco de Oro (BDO) Savings Account to the BDO-BIR-CBC Hinge Account to cover the e-payment of the income tax due for taxable year 2014.[3]

Thereafter, petitioner proceeded to file the offline Annual ITR through the BIR's Electronic Filing Payment System (eFPS) on that same day April 14, 2015. However, said filing or submission was unsuccessful despite several attempts throughout the day.[4]

On April 15, 2015, petitioner again tried to file and submit its offline Annual ITR through the eFPS. Petitioner's numerous attempts remained unsuccessful.[5] In order to document the unavailability of the eFPS website, petitioner saved screenshots of the same.[6]

Before noon of the same day, petitioner's accountant, Josefina Salaveria, proceeded to the Revenue District Office (RDO) No. 48 to seek assistance regarding the unavailability and offline status of the eFPS website. RDO No. 48 OIC-Revenue District Officer Wilfredo Pilapil and Collection Head Geng Iglesias instructed Ms. Salaveria to bring the hard copies

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[2] Exhibit "P-3", docket, vol. II, p. 815.
[3] Court docket, vol. I, pp. 414-415.
[4] Court docket, vol. I, p. 415.
[5] Court docket, vol. I, pp. 415-416.
[6] Exhibits "P-4" to "P-4-p", Court docket, vol. II, pp. 700-716.

of petitioner's Annual ITR to Chinabank and told her that they will be calling the bank to auto-debit the payment.[7]

Ms. Salaveria then coordinated with and inquired from BDO if an auto debit was possible. In response thereto, a certain Marc Allen Marcelo from BDO informed Ms. Salaveria that such is not possible under the circumstance.[8] Subsequently, Ms. Salaveria returned to petitioner's office and attempted to connect to the eFPS website. However, all attempts made until 7:26 p.m. of the same day remained unsuccessful.[9]

On or about 7:30 p.m. of April 15, 2015, petitioner called the BIR Contact Center and reported the failed attempts to connect to the eFPS website to file the 2014 Annual ITR. Petitioner was instructed by a certain Mr. Arix of the BIR to follow the procedure and guidelines set forth under Revenue Memorandum Circular (RMC) No. 20-2015 dated April 15, 2015, which provides for manual filing and payment in lieu of eFPS.[10]

On April 16, 2015 at 9:12 a.m., petitioner sent an email[11] to the email address 1702Qv2008@bir.gov.ph attaching the soft copy of the offline 2014 Annual ITR and the error screenshots in compliance with the procedure outlined in RMC No. 20-2015.

After petitioner's authorized party signed the new check, petitioner proceeded to the Development Bank of the Philippines (DBP) – Gil Puyat Branch to effect manual payment at around 2:00 p.m. of the same day. Said manual payment, however, was not processed and accepted by the DBP because the 2014 Annual ITR to be filed was not signed by OIC-Revenue District Officer Wilfredo Pilapil.[12]

When consulted on the necessity of his signature on the said ITR, OIC-Revenue District Officer Pilapil informed petitioner that the filing of the ITR would now be subjected to penalty considering that the new check was already late for clearing. Petitioner was also instructed by OIC-Revenue

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[7] Court docket, vol. I, p. 416.
[8] Court docket, vol. I, p. 416.
[9] Exhibit "P-5", Court docket, vol. II, p. 717.
[10] Court docket, vol. I, p. 417.
[11] Exhibit "6", Court docket, vol. II, pp. 852-864.
[12] Court docket, vol. I, p. 418.

District Officer Pilapil to present the confirmation e-mail of the Trouble Ticket Reference No. 2590 issued by the BIR National Office before he would sign the 2014 Annual ITR.[13]

At 8:11 p.m. of April 16, 2015, petitioner finally e-filed the said offline ITR through the e-filing system, which automatically computed surcharge, interest, and compromise penalties.[14] At around 8:42 p.m. of the same day, petitioner paid electronically (e-payment) the basic taxes only.[15] Subsequently, petitioner transferred funds in the amount of ₱1,062,626.00.

On April 17, 2015, petitioner's e-payment of penalties was successfully transmitted.[16] Petitioner then followed up with the BIR National Office for the issuance of the e-mail confirmation of the Trouble Ticket Reference No. 2590. On May 26, 2015, the email confirmation was issued by the BIR National Office.[17]

On November 25, 2016, petitioner filed an administrative claim for refund or issuance of tax credit certificate for the alleged erroneously collected penalties.[18]

On March 29, 2017, petitioner sent a letter requesting for the issuance of a certification that the eFPS was unavailable and offline on April 14 and 15, 2015.[19]

During the two-year prescriptive period, respondent failed to act on petitioner's application for refund or issuance of tax credit certificate prompting the petitioner to file its judicial claim for refund on April 10, 2017 via the instant Petition for Review.[20]

On April 27, 2017, this Court issued summons against respondent and was ordered to submit an Answer to the said petition.[21] Respondent submitted his Answer[22] on July 10, 2017 after the Court granted his motions for extension to file said pleading.[23]

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[13] Court docket, vol. I, pp. 418-419.
[14] Exhibits "P-7" to "P-7-c", Court docket, vol. II, pp. 733-736.
[15] Court docket, vol. I, pp. 419-420.
[16] Exhibits "P-7-b", "P-8", and "P-8-a", Court docket, vol. II, pp. 735, 865, and 866, respectively.
[17] Exhibit "P-9", Court docket, vol. II, p. 867.
[18] Exhibits "P-11" and "P-12", Court docket, vol. II, pp. 870 and 871-885.
[19] Exhibit "P-14", Court docket, vol. II, p. 905.
[20] Exhibit "P-13", Court docket, vol. II, pp. 886-904.
[21] Court docket, vol. I, p. 175.
[22] Court docket, vol. I, pp. 187-194.
[23] Court docket, vol. I, pp. 181 and 186.

On June 1, 2017, petitioner filed another letter with the BIR following up the request for certification that the eFPS was unavailable and offline on April 14 and 15, 2015.[24] However, both letters sent on March 28 and June 1, 2017 remained unheeded.

On July 12, 2017, this Court set the pre-trial conference of the instant case and ordered both parties to submit their respective Pre-Trial Briefs.[25] Respondent submitted his Pre-Trial Brief[26] on July 27, 2017, while petitioner submitted its Pre-Trial Brief[27] on July 31, 2017.

The parties filed their Joint Stipulation of Facts and Issues[28] on August 23, 2017. Thereafter, the Court issued the Pre-Trial Order[29] on August 30, 2017.

The trial of the case ensued and petitioner presented and formally offered its evidence.[30]

The Court admitted petitioner's Exhibits "P-7", "P-7-a", "P-7-b", and "P-7-c", but denied the admission of Exhibits "P-1", "P-2", 'P-3", "P-4 to P-4-p", "P-5", "P-6", "P-8 and P-8-a", "P-9, "P-10", "P-11", "P-12", "P-13", "P-14", and "P-14-a", for failure to submit the duly marked exhibits.

On December 13, 2017, petitioner moved that the Court mark permanently Exhibits "P-4 to P-4-p", "P-5", "P-6", "P-8 and P-8-a", and admit Exhibits "P-1", "P-2", "P-3", "P-4 to P-4-p", "P-5", "P-6", "P-8 and P-8-a", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", and "P-14-a" as petitioner's documentary evidence.[31] In the Resolution dated March 26, 2018, the Court admitted Exhibits "P-1", "P-2", 'P-3", "P-4 to P-4-p", "P-5", "P-6", "P-8 and P-8-a", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", and "P-14-a", considering respondent's failure to register any opposition thereto, and in the interest of substantial justice.[32]

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[24] Exhibit "P-14-a", Ciurt docket, vol. II, p. 906.
[25] Notice of Pre-Trial Conference, Court docket, vol. II, pp. 537-538.
[26] Court docket, vol. I, pp. 195-203.
[27] Court docket, vol. I, pp. 204-214.
[28] Court docket, vol. II, pp. 556-563.
[29] Court docket, vol. II, pp. 570-573.
[30] Court docket, vol. II, Petitioner's Formal Offer of Evidence, pp. 687-699.
[31] Motion for Reconsideration (Of the Resolution dated 01 December 2017), Court docket, vol. II, pp. 787-795.
[32] Court docket, vol. II, pp. 911-912.

Considering the manifestation of respondent's counsel that there was no report of investigation submitted by the Revenue Officer and that she will no longer present any evidence, the parties were ordered to submit their respective memoranda.[33]

Petitioner submitted its Memorandum[34] on May 24, 2018. On June 7, 2018, this case was deemed submitted for decision without respondent's Memorandum.[35] On June 13, 2018, respondent filed a Motion to Admit Attached Memorandum, which the Court granted in a Resolution dated July 3, 2018.

Hence, this Decision.

THE ISSUE

The lone issue submitted by the parties for the Court's resolution is as follows:[36]

> "Whether petitioner is entitled to a refund of erroneously paid penalties in the amount of One Million Sixty Two Thousand Six Hundred Twenty Six Pesos (Php1,062,626.00)"

Petitioner's Arguments[37]

Petitioner asserts that it has complied with the following requisites for claiming a refund of erroneously collected penalties:

1. The taxpayer paid the assessed penalties;
2. The collection of the penalties is erroneous, illegal and without authority; and
3. The claim for refund was filed within two (2) years from the payment of the penalty.

Petitioner avers that when it filed its 2014 Annual ITR and paid income taxes on April 16, 2015, the BIR should not have imposed and collected any penalty because it followed all the procedures enumerated in RMC No. 20-2015 which provides

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[33] Order dated April 25, 2018, Court docket, vol. II, p. 914
[34] Court docket, vol. II, pp. 915-934.
[35] Resolution dated June 7, 2018, Court docket, vol. II, p. 936.
[36] Issue, Joint Stipulation of Facts and Issues, Court docket, vol. II, p. 557.
[37] Court docket, vol. I, pp. 18-27.

alternative steps to protect the taxpayer against the assessment of penalties. The imposition of penalties may be characterized as having been erroneously assessed and collected considering that the late filing and payment was due to the unavailability of the eFPS website, which is beyond petitioner's control.

Petitioner avers that it is readily apparent that the system downtime, glitch and unavailability of the eFPS are independent of human will as the same was caused by technological inadequacy or inefficiency, hence beyond its control. Petitioner adds that penalizing it is tantamount to an illegal and unjust governmental act in violation of the right to substantive due process of the taxpayer as well as a blatant transgression of the equitable principle of unjust enrichment.

In this case, petitioner maintains that the amount of P1,062,626.00 was collected erroneously and illegally by the BIR and must be refunded.

Respondent's Counter-Arguments[38]

Respondent, on the other hand, argues that petitioner's claim for refund has no basis in fact and in law because the imposition of penalties on petitioner's late e-filing and payment of taxes on April 16, 2015 is justified and sanctioned by law.

Respondent avers that petitioner's reliance on RMC 20-2015 is misplaced because it explicitly covers only *BIR Forms Nos. 1701Q (Annual Income Tax Return for Self-Employed Individuals, Estates and Trusts) and 1702Q (Quarterly Income Tax Return for Corporations, Partnerships and Other Non-Individual Taxpayers)* and not *BIR Forms 1700RT* or the Annual ITR. Respondent further theorizes that RMC 20-2015 protects taxpayers from imposition of penalties only if they strictly comply with the guidelines set forth therein for filing and payment of income tax using BIR Forms Nos. 1701Q and 1702Q and only in the event of unsuccessful e-filing. According to respondent, RMC 20-2015 does not exempt nor protect a taxpayer who failed to electronically file its return and pay the corresponding tax on time using forms other than those mentioned therein. Respondent then concludes that the late filing of the Annual ITR is not covered by RMC 20-2015.

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[38] Court docket, vol. I, pp. 188-191.

As a final argument, respondent submits that the failure of petitioner to timely file and pay its taxes was solely its fault. Respondent notes that petitioner allegedly started to e-file its tax return one day before the deadline on April 14, 2015 at 10:35 a.m. leaving very little time to work through any complicated situations that may arise during said period. Respondent lays the blame on petitioner for its failure to file its Annual ITR on time because it failed to file and pay its taxes within a reasonable time. According to respondent, the BIR has always been encouraging taxpayers to file their returns early to give them ample time to review their entries for any mistakes or omissions that they may have committed or to request for any missing documents that they may need to complete the transaction and to produce funds for payment. Respondent is of the view that petitioner is not entitled to the instant claim for refund.

THE COURT'S RULING

The Court shall first determine the timeliness of the filing of the present case. Pertinent to the resolution of this matter are Sections 204(C) and 229 of the 1997 National Internal Revenue Code (1997 NIRC), as amended, which provide for the periods of filing the administrative claim for refund with the BIR and the judicial claim with the Court of Tax Appeals (CTA) for recovery of tax erroneously or illegally collected, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (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." *(Emphasis supplied)*
>
> "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 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)*

Sections 204(C) and 229 of the 1997 NIRC, as amended, govern the refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the Tax Code.[39] It is worthy to note that the claims for refund under the aforequoted provisions also cover erroneously or illegally collected penalties. Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax or penalty. However, the settled rule is that both the claims for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[40]

The payment of the imposed penalties was made on April 17, 2015.[41] Thus, petitioner had until April 17, 2017 to file the

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[39] *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing Commissioner of Internal Revenue vs. Insular Lumber Co., G.R. No. L-24221, December 11, 1967

[40] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue vs. CBK Power Company Limited, G.R. Nos. 193407-08, January 14, 2015

[41] Exhibits "P-7" to "P-7-B", Court docket, vol. II, pp. 733-735.

administrative claim as well as the judicial claim for the alleged erroneous payment of said penalties.

The records of the case reveal that petitioner filed its administrative claim for refund with the respondent on November 25, 2016[42], while its judicial claim was filed before this Court on April 10, 2017[43]. Clearly, petitioner's administrative and judicial claims were filed within the two-year prescriptive period provided by law which gives the Court the requisite jurisdiction to take cognizance of the case.

The Court shall now determine whether petitioner is entitled to the refund or issuance of TCC in the amount of ₱1,062,626.00, allegedly representing erroneously and/or illegally imposed penalties.

RMC No. 20-2015 does not apply to e-filings of Annual ITRs.

Petitioner claims that RMC No. 20-2015 was issued on April 15, 2015 by respondent due to the system downtime and unavailability of the eFPS website on April 14 and 15, 2015 and that the same should have suppletory application insofar as the procedure to be followed in case of unsuccessful attempts of e-filing of the Annual ITR.

Petitioner's contention is without merit.

RMC No. 20-2015 or the *Alternative Mode in the Filing of BIR Form Nos. 1701Q and 1702Q with Payments Using the Electronic Platform of BIR* issued on April 15, 2015 provides the guidelines using the electronic platform for BIR Form Nos. 1701Q and 1702Q with payments which are due on or before April 15, 2015. Under RMC No. 20-2015, taxpayers, mandated to use the eFPS, after several unsuccessful attempts of e-filing should follow the procedures indicated therein, and we quote:

> "a. Print evidence/proof (PRINT SCREEN ON THE MESSAGE given by the system) that EFPS were tried several times but unsuccessful;

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[42] Exhibits "P-11" and "P-12", Court docket, vol. II, pp. 870-885.
[43] Exhibit "P-13", Court docket, vol. II, pp. 886-904.

> b. Report/call HELP DESK and get trouble ticket log 981-7050/9817051/9817107/9817108;
>
> c. Report to BIR CONTACT CENTER 981-8888 and get reference number of the call to protect them from penalties to be imposed in the future. Thereafter, manually file and manually pay following existing procedures. File on or before APRIL 15, 2015 attaching the proof of unsuccessful eFPS, then RE-FILE ELECTRONICALLY on or before June 15, 2015."

As can be gleaned from the foregoing, taxpayers who are mandated to use the eFPS, after several unsuccessful attempts of e-filing of *BIR Form Nos. 1701Q and 1702Q* with corresponding payments should manually file and pay following the existing procedures on or before April 15, 2015, attaching proof of unsuccessful eFPS, then re-file electronically on or before June 15, 2015. Notably, there is nothing under RMC No. 20-2015 which can be interpreted to mean that it also applies to BIR Form No. 1702RT. However, even assuming for the sake of argument that RMC No. 20-2015 should have suppletory application in this case, petitioner is still required under the said RMC to manually file its return, attaching proof of unsuccessful e-filing, and manually pay its taxes on or before April 15, 2015 and to re-file electronically on or before June 15, 2015.

Contrary to petitioner's claim that there is no applicable issuance providing for the alternative filing of the annual ITR for taxable year 2014 and thus RMC No. 20-2015 should have suppletory application insofar as the procedure to be followed in case of unsuccessful attempt of e-filing of the Annual ITR, respondent previously issued RMC No. 14-2015 dated March 30, 2015 or the "Guidelines in the Filing, Receiving and Processing using the Electronic Platform of BIR for Taxable Year 2014 Income Tax Returns (ITRs) BIR Form Nos. 1700, 1701, 1702-RT, 1702-EX and 1702-MX, All June 2013 ENCS Version under Revenue Regulations No. 2-2014". RMC No. 14-2015 provides as follows:

> "This Circular is issued to provide guidelines in the filing, receiving and processing, using the ELECTRONIC PLATFORM OF BIR for 2014 ITRs (BIR Form Nos. 1700, 1701, 1702-RT, 1702-EX and 1702-MX), as well as define policies for the filing of ITRs which are due *on or before April 15, 2015*. This circular does not cover taxpayers who are not mandated

to use eFPS/eBIRForms and who have not opted to file electronically, and thus, the existing procedures on manual filing shall apply.

For expediency, ease and convenience in filling-up the ITRs, all taxpayers mandated to use eFPS and eBIRForms are advised to use the latest version of *Offline eBIRForms Package* which can be accessed from the BIR website (www.bir.gov.ph) through the eServices→eBIRForms link. Taxpayers using the said package can directly encode data, validate the entries as it can do automatic computations, edit, save, delete, view, print and submit their tax returns following the steps below:

xxx xxx xxx

Process Flow for electronic platform in Annex A. For *eFPS,* follow the detailed guidelines shown in Annex B. For *eBIRForms,* follow the detailed guidelines shown in Annex C.

For the purpose of determining the date when the returns are filed, it shall be the date the original eFiling was duly submitted."

Annex A of RMC No. 14-2015 provides for an alternative procedure in case the ITR is not submitted via the eFPS, which is to manually file the ITR and pay (with the required attachments) to Authorized Agent Banks/Collection Agents (in proper cases), in the RDO where it is registered. Contrary to petitioner's claim, it is not left without recourse in the event of problems encountered during e-filing of its Annual ITR. In fact, as early as April 1, 2002, respondent in Revenue Memorandum Order (RMO) No. 5-2002, as amended, or the "Guidelines and Procedures in the Adoption of Electronic Filing and Payment System (EFPS)" already stated that in case the eFPS is not available during due dates, as declared by the BIR, taxpayers shall *manually* file their returns, thus:

"III. POLICIES:

xxx xxx xxx

D. The e-filing of returns shall be available 24 hours a day, 7 days a week. However, to ensure receipt by the BIR before midnight of the due date set by applicable laws and regulations for the filing of a return and the payment of the corresponding tax, the electronic return for the applicable tax must be filed on or before 10 p.m. of the due date. **In case the EFPS is not available during due dates, as declared by the BIR, taxpayers shall manually file their returns with the collecting agent (AAB or RCO/DMT) for the returns with payment, or with the Revenue District Office (RDO) or Large Taxpayers Service (LTS) or Large Taxpayers District Office (LTDO) where they are registered for no-payment returns.**" *(Emphasis supplied)*

Petitioner's claim that respondent has no relevant issuances regarding alternative procedures in the filing of annual ITRs and payment of taxes in the event of technical problems in the eFPS has no merit.

Notably, respondent also issued RMC No. 26-2015 dated May 6, 2015 or the "Alternative Mode in the Filing of Several Returns Using the Electronic Platforms of the Bureau of Internal Revenue (BIR) and Re-efiling of All Other Forms", which provides guidelines in the filing of various BIR Forms, including BIR Form No. 1702RT, using the electronic platforms of the BIR and we quote:

"Those taxpayers filing with payment or no payment using the Offline eBIRForms of the said forms shall follow the same procedures in Annex D of RMC 14-2015 and efile by attaching xml file to email. After validating the tax return, click 'FINAL COPY', open the directory 'C:\eBIRForms\IAF_RDO_Copy\' in the computer. Look for the xml file of the encoded tax return form with the following naming convention:

xxx xxx xxx

Attach the xml file to an email and send to BIR using the following email subject and email address:

Form No.	eMail Subject	eMail Address
xxx	xxx	xxx

1702RT	RDO_1702RT_TIN_taxable period	1702RTv2013@bir.gov.ph
xxx	Xxx	xxx

xxx xxx xxx

If return is with payment, print eMail Notification as evidence of efiled return from the BIR and the tax return, then proceed to Authorized Agent Bank (AAB)/Collection Agent for manual payment following existing procedures.

Those taxpayers mandated to use eFPS (*e.g.* TAMP) after several attempts of unsuccessful efiling, must print evidence/proof thereof (print screen with the message as given by the system). Further, to protect them from penalties to be imposed in the future, they should:

a. Report/call HELPDESK and get Trouble Ticket Log on or before the due date; or

a. Report to BIR CONTACT CENTER 981-8888 and get Reference Number of the call.

However, **they should manually file and manually pay on or before the due date** following existing procedures. **They should file on or before the due dates of the respective returns and attach the proof of unsuccessful eFPS attempts, then RE-FILE ELECTRONICALLY within fifteen (15) days after the statutory deadline** set for the relevant returns stating return period April 2015 which will be filed May 2015. Penalties imposed under RR 5-2015 on filing using a mode/venue different from that prescribed shall be waived provided that the subject returns would have been re-Filed electronically in the BIR's systems as mentioned in the preceding paragraph." (*Emphasis supplied*)

Applying the foregoing to petitioner's case, petitioner should have manually filed its Annual ITR and manually paid its income tax on or before the April 15 due date following existing procedures, attaching therewith the proof of unsuccessful e-filing attempts. Petitioner should have then *re-filed* electronically its ITR in May 2015 or within fifteen (15) days after the statutory deadline set for BIR Form No. 1702RT.

However, although RMC No. 26-2015 cannot be given retroactive application pursuant to Section 246[44] of the Tax Code, petitioner cannot claim ignorance of the existence of RMO No. 5-2002, which provides for manual filing and payment on or before the due date following existing procedures in case of unavailability of the eFPS during due dates. Hence, petitioner should have observed manual filing and manual payment in view of its inability to access the eFPS on April 15, 2015 in accordance with the rules.

Petitioner's failure to file its return and pay its taxes on time was not due to circumstances beyond its control.

Petitioner argues that the system downtime, glitch, and unavailability of the eFPS are independent of human will as the same is caused by technological inadequacy or inefficiency, which is independent of the will of petitioner. Petitioner avers that the system downtime prevented petitioner to e-file on April 15, 2015, which was the due date of its obligation to file its annual ITR and pay the taxes under the Tax Code. Petitioner alleges that it has no participation in causing the system downtime.

Petitioner's argument is untenable.

It bears stressing that the eFPS was developed primarily to provide Philippine taxpayers with top quality and convenient service through a much faster processing and immediate confirmation of filing of tax returns and payment of taxes due thereon. It is an alternative mode of filing returns and payment of taxes which deviates from the conventional manual process of encoding paperbound tax returns which is highly susceptible to human error and intervention. The system allows the taxpayers to directly encode, submit their tax returns and pay

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[44] SEC. 246. *Non-Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, xxx.

their taxes due on-line over the internet through the BIR website. Its aim is to reduce the government's administrative and operational costs in interacting with taxpayers and in collecting taxes.[45] Thus, Revenue Regulations (RR) No. 9-2001 dated August 3, 2001 or the "Electronic Filing of Tax Returns and Payment of Taxes" was promulgated by then Secretary of Finance Jose Isidro N. Camacho upon recommendation of respondent pursuant to Section 244 of the 1997 NIRC in relation to Section 27 of Republic Act No. 8792, to regulate the electronic filing of tax returns and payment of taxes.

Clearly, the very purpose of the eFPS was to give Philippine taxpayers top-quality and convenient service. However, as correctly pointed out by respondent, no system, even in the most advanced countries, is glitch-free. This is the reason why the tax authorities have been encouraging and promoting early filing of returns in anticipation of software glitches and internet issues that can cause unexpected problems to taxpayers who would wait until the last minute before electronically filing their returns.[46] The limited capability of eFPS during deadline date is nothing new. Hence, petitioner should have considered the same when it opted to file its Annual ITR at the last minute.

Notably, petitioner was given by respondent an alternative mode of filing its return and paying its taxes by directing it to resort to manual filing and manual payment if the e-filing mode cannot be accessed. However, petitioner still insisted to electronically file and pay its taxes despite the alleged unavailability of the eFPS on April 14 and 15, 2015 and its failed attempts to connect to the system. On cross-examination, petitioner's accountant admitted that petitioner started to file and pay its annual ITR for taxable year 2014 only a day before the April 15 deadline, thus:[47]

"ATTY. DORIA:

Q. Ms. Witness, is it correct to say that petitioner started to file and pay only its annual ITR for taxable year 2014 a day before deadline which is April 15?

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[45] Revenue Memorandum Order No. 05-2002 dated April 1, 2002.
[46] Court docket, vol. I, pp. 188-189.
[47] TSN dated September 6, 2017, pp. 7-8.

MS. SALAVERIA:

A. April 14.

ATTY. DORIA:

Q. Petitioner attempted to pay?

MS. SALAVERIA:

A. Yes.

ATTY. DORIA:

Q. When was the deadline for the filing?

MS. SALAVERIA:

A. April 15.

ATTY. DORIA:

Q. So that is one day?

MS. SALAVERIA:

A. Yes."

Apart from the testimony of petitioner's witness, Josefina Salaveria that she tried to access the eFPS facility of the BIR on April 14, 2015, petitioner presented no other evidence such as the System Logs of the eFPS Facility for petitioner or screenshots as advised by the BIR Contact Center to prove that it made several attempts of unsuccessful e-filing on April 14, 2015.

Petitioner also failed to prove that it exercised reasonable diligence in complying with its obligation to e-file its Annual ITR and e-pay its taxes on time. The perennial limited capability of the eFPS during deadlines should have been considered by petitioner when it opted to file its return on the last day. However, petitioner persisted in electronically filing its annual ITR despite difficulty in accessing the eFPS and the availability of manual filing and manual payment in case of failure to access the eFPS during due dates in accordance with existing rules and as suggested by BIR RDO No. 48:[48] We quote portions of the testimony of petitioner's witness during questioning by Justice Ringpis-Liban:

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[48] TSN dated September 6, 2017, pp. 16-18.

"JUSTICE RINGPIS-LIBAN:

> But as a... you are the... Did it not occur to you to manually pay on April 15?

MS. SALAVERIA:

A. Because we are registered under EFPS.

JUSTICE RINGPIS-LIBAN:

> In other words, why did you not ask from the BIR because you said you already called up the BIR, why did you not ask the BIR on April 15 whether you can manually file even if you are electronically enrolled since you cannot access, you did not... why did you not ask the BIR if you can do it manually?

MS. SALAVERIA:

A. When I went to BIR 48 in April 15 (*sic*), they only advised us to bring the hard copy of the return to the bank.

JUSTICE RINGPIS-LIBAN:

> So it did not occur to you... it did not enter your mind to ask BIR if you can do it... you did not explain to the BIR that you can only pay... you do not have any savings or you do not have any account with Chinabank and that your account is only with BDO and therefore, you cannot transfer the said funds from BDO to Chinabank as was advised to you.

> You did not ask? When you were advised, okay, you tell Chinabank to call us etcetera but you did not tell the BIR, that person you talked to in the BIR, but we do not have any account in Chinabank so transferring the said amount is not possible. You did not ask that?

JUSTICE CASANOVA:

> Did you ask, yes or no *lang*? *Ginawa mo ba iyon, nagtanong ka ba*?

ATTY. DORIA:

> Your Honors, the counsel...

JUSTICE RINGPIS-LIBAN:

> Okay, no answer."

Respondent cannot be faulted for petitioner's failure to e-file its return and pay its taxes on time. It must be noted that when petitioner's accountant went to RDO No. 48 on April 15, 2015 at 11:45 a.m. to report her alleged unsuccessful attempt to file petitioner's Annual ITR through the eFPS on April 14, 2015, she was instructed to bring the hard copies of petitioner's 2014 Annual ITR to Chinabank and to request the said bank to auto-debit the tax due from the account of petitioner. Thus, petitioner was not left without any recourse when it informed respondent of the alleged unavailability of the eFPS.

Petitioner's argument that the proposed alternative measure was not possible at that time as per advice of BDO is already beyond respondent's control. Petitioner's problem with transacting with its own bank and failure to pay the corresponding taxes through the payment channel advised by the BIR RDO No. 48 should not be blamed on respondent. Petitioner could have manually paid its taxes had it been zealous to timely pay its taxes, if its attempt to auto-debit the payment failed, considering that Authorized Agent Banks (AABs) are mandated to receive internal revenue tax payments through eFPS or over the counter unless receipt of manual payment is not allowed in the MOA signed with either or both the BIR and the Bureau of Treasury accrediting a bank as an eFPS AAB in accordance with Revenue Memorandum Order No. 5-2002, as amended.

Petitioner could have opted for early e-filing of its return instead of doing so one day before the deadline. Notably, RR No. 9-2001, as amended by RR No. 9-2002, provides the following relative to the time and place of filing of returns and payment of tax:

"SECTION 8. TIME AND PLACE OF PAYMENT. -

8.1 Large Taxpayers. (a) xxx

(b) xxx

8.2 Non-Large Taxpayers.

xxx xxx xxx

> The provisions of the foregoing paragraphs notwithstanding, **the filing of the return ahead of the payment of the tax due thereon is still in accordance with 'pay-as-you-file' principle** as long as the payment of the tax is made on or before the due date of the applicable tax." (*Emphasis supplied*)

Petitioner could have filed its annual ITR much earlier than its payment of the tax due and it still would have complied with the "pay-as-you-file" principle of the eFPS. Hence, petitioner cannot claim that its failure to file its return and pay its taxes within a reasonable period of time is beyond its control.

Be that as it may, petitioner could have done remedial measures immediately on April 14, 2015 the day when it discovered that e-filing proved to be difficult and not wait until the last day (for filing) on April 15, 2015 to seek assistance from the RDO as shown by the records of this case. It is indeed a reality that revenue examiners and officials have their hands full on the last day of filing of income tax returns (April 15) and may not properly address each and every concern of taxpayers having difficulties in accessing the e-filing system. Foresight and diligence on the part of the taxpayer in filing its Annual ITR could have prevented the late filing which resulted to the imposition of penalties.

Accordingly, there was no erroneous and unlawful payment of penalties that would entitle petitioner to a refund considering the prevalent circumstances when respondent imposed penalties on petitioner for late e-filing of its Annual ITR and payment of taxes on April 16, 2015.

WHEREFORE, premises considered, petitioner's claim for refund or issuance of tax credit certificate for alleged erroneously imposed and collected penalties in the filing of its Annual ITR for 2014 in the amount of Php1,062,626.00 is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice