REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1118** (CTA Case No. 8307)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
LAWL PTE LTD., Respondent.	**Promulgated:** MAY 12 2015 3:48 p.m.

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DECISION

UY, *J.*:

This Petition for Review[1] filed on February 20, 2014 seeks the setting aside of the Decision[2] dated November 7, 2013 and the Resolution[3] dated January 20, 2014, both promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8307, entitled, *"LAWL PTE. LTD., Petitioner, vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read:

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[1] EB Docket, pp. 7 to 23.

[2] EB Docket, pp. 24 to 45; Penned by Associate Justice Amelia R. Cotangco-Manalastas, and concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.

[3] EB Docket, pp. 46 to 47; *supra.*

<u>Decision dated November 7, 2013</u>:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is hereby ORDERED to refund in favor of petitioner the amount of P185,003,035.81, representing erroneously paid Capital Gains Tax and interest on its sale of shares of stock in Maynilad Water Services, Inc.

SO ORDERED."

<u>Resolution dated January 20, 2014</u>:

"**WHEREFORE,** premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credit of erroneously paid or overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Lawl Pte Ltd. is a corporation duly organized and existing under the laws of Singapore, with principal office at One Marina Boulevard #28-00, Singapore. It does not engage in trade or business in the Philippines.

Maynilad Water Services, Inc. (Maynilad) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It has a Concession Agreement with the Metropolitan Waterworks and Sewerage System (MWSS), granting Maynilad the right to operate the waterworks and sewerage services of area west as a concessionaire.

Respondent owns a total of 236,000 Maynilad Class B Common Shares registered in its own name or through its nominees, with a par value of ₱1,000.00 per share. On February 9, 2009, respondent executed a Deed of Absolute Sale involving said shares in favor of Metro Pacific Investments Corp. (MPIC), a corporation organized and existing under the laws of the Philippines, for the price of ₱2,029,212,960.00.

On March 6, 2009, respondent filed with the BIR Revenue District Office (RDO) No. 39 a capital gains tax (CGT) return for the sale of its shares, indicating that it is availing of the tax exemption under the Philippines-Singapore Tax Treaty. Likewise, respondent applied for tax treaty relief with the International Tax Affairs Division (ITAD) of the BIR on March 25, 2009.

On July 6, 2009, respondent paid the corresponding CGT and interest accrued on the sale of Maynilad shares to secure the BIR Certificate Authorizing Registration for the transfer of the Maynilad shares from respondent to MPIC and to deliver the said certificate to the latter.

Petitioner, on the other hand, issued BIR Ruling No. ITAD 102-11 dated April 4, 2011, denying respondent's application for tax treaty relief for lack of legal basis. Consequently, respondent filed a letter requesting a review of the said BIR Ruling with the Secretary of Finance on May 18, 2011.

On June 14, 2011, respondent filed its administrative claim with the ITAD of the BIR for the refund of the CGT and interest paid. Respondent likewise filed a Petition for Review on July 6, 2011 (which was docketed as CTA Case No. 8307) with the Court in Division, while its administrative claim for refund and review of the BIR Ruling No. ITAD 102-11 were pending, to comply with the two-year prescriptive period within which to file a claim for tax refund.

In his letter dated August 10, 2011, the Secretary of Finance affirmed the ruling of the BIR, which was received by respondent on August 26, 2011.

In her Answer filed on August 11, 2011 in CTA Case No. 8307[4], petitioner interposed special and affirmative defenses, alleging, among others, that respondent is not entitled to the claim being sought for failure to file a timely and appropriate written claim for refund as required by Section 229, in relation to Section 204, of the National Internal Revenue Code (NIRC) of 1997, as amended; that respondent's "administrative claim for refund" dated June 13, 2011

[4] Division Docket, Vol. I, (CTA Case No. 8307), pp. 330-350

filed with the Office of the ITAD through its Chief, Atty. Roberto F. Bernardo, was in total and wanton disregard of the express provision of Sections 229 and 204 of the NIRC of 1997, as amended, which provides that taxpayers who wish to claim refund of illegally or erroneously collected taxes must file with the Commissioner of Internal Revenue (CIR) a written claim for refund; that a perusal of Revenue Administrative Order (RAO) No. 11-2000 dated August 21, 2000, which describes the organization and functions of the Legal Service including its Division and Section, would reveal that ITAD is not given authority to receive or process application and/or claims for tax refund/credit certificates; that respondent, having filed its CGT return and paid its CGT with RDO No. 39, where it is registered, should have filed its administrative claim for refund with the said office; that assuming *arguendo* that the claim for refund was properly filed, respondent's claim is unfounded; respondent failed to point out the specific provision of the Philippines-Singapore Tax Treaty which particularly finds application to its case; and that petitioner, thru BIR Ruling No. ITAD 102-11, already denied the tax relief application filed by respondent, therefore, such payment cannot be considered erroneously or illegally collected.

On August 26, 2011, respondent filed its Reply to petitioner's Answer[5] to refute the affirmative defences raised therein. According to herein respondent, its administrative claim for refund was timely filed with the Commissioner of Internal Revenue through the BIR-ITAD; that its exemption from payment of capital gains tax and corresponding claim for refund are based on Article 13 of the Philippines-Singapore Tax Treaty; and that it can rely upon previous rulings issued by herein petitioner in support of its claim for refund.

During trial, respondent presented its witnesses, namely: Atty. Ronald Policarpio, Alfredo S. Ramos, Manuel P. Quizon, Randolph T. Estrellado, and Patricia M. Empleo. Petitioner, on the other hand, presented her sole witness, Myra V. Castor.

On May 16, 2013, CTA Case No. 8307 was submitted for decision, taking into consideration respondent's Memorandum filed on April 22, 2013 and petitioner's Memorandum filed on May 14, 2013.

Finding merit in respondent's Petition for Review, the Court in Division rendered the assailed Decision[6] dated November 7, 2013,

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[5] Division Docket, Vol, I, (CTA Case No. 8307) pp. 352- 364
[6] EB Docket, pp. 24 to 45.

the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is hereby ORDERED to refund in favor of petitioner the amount of ₱185,003,035.81, representing erroneously paid Capital Gains Tax and interest on its sale of shares of stock in Maynilad Water Services, Inc.
>
> **SO ORDERED.**"

Aggrieved, petitioner filed her Motion for Reconsideration (Re: Decision dated November 7, 2013) on November 20, 2013,[7] to which respondent filed its Comment/Opposition (to the Motion for Reconsideration [Re: Decision dated 7 November 2013]) on December 6, 2013,[8] upon being ordered by the Court in Division.[9]

The said Motion was denied by the Court in Division in the assailed Resolution[10] dated January 20, 2014, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Undaunted, petitioner filed before the Court *En Banc,* a Motion for Extension of Time to File Petition for Review[11] on February 4, 2014. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from February 6, 2014, or until February 21, 2014, within which to file her Petition for Review.[12]

Petitioner filed the instant Petition for Review before the Court *En Banc* on February 20, 2014,[13] praying for the setting aside of the Decision dated November 7, 2013 and the Resolution dated January

[7] Division Docket - Vol. II (CTA Case No. 8307), pp. 666 to 676.
[8] Division Docket - Vol. II (CTA Case No. 8307), pp. 679 to 688.
[9] Resolution dated November 22, 2013, Division Docket - Vol. II (CTA Case No. 8307), p. 678.
[10] EB Docket, pp. 46 to 47.
[11] EB Docket, pp. 1 to 5.
[12] Minute Resolution dated February 7, 2014, EB Docket, p. 6.
[13] EB Docket, pp. 7 to 23.

20, 2014; and that a new one be issued denying respondent's claim for refund.

Without necessarily giving due course to the Petition for Review, the respondent was ordered by the Court *En Banc* to file its Comment thereto.[14] Thereafter, respondent filed its Comment (to the Petition for Review dated 19 February 2014) on April 10, 2014.[15]

Considering the arguments/discussion raised by petitioner in her Petition for Review, with respondent's Comment thereto, the Court *En Banc* resolved to give due course to the said Petition for Review, and required the parties to submit their respective Memorandum.[16]

On June 2, 2014, petitioner filed a Manifestation, stating that she is adopting the arguments she raised in the instant Petition for Review as her Memorandum.[17] For its part, respondent filed its Memorandum on June 10, 2014.[18] In view of the said Manifestation and the filing of respondent's Memorandum, the case was submitted for decision on June 30, 2014.[19]

Hence, this Decision.

THE ISSUE

Petitioner raises this sole issue for resolution of the Court *En Banc*, to wit:

> "Whether or not respondent is entitled to a refund or tax credit in the total amount of One Hundred Eighty Five Million Three Thousand Thirty-Five Pesos and 80/100 (185,003,035.80)[20] representing alleged erroneously collected capital gains tax."[21]

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[14] EB Docket, pp. 52 to 53.
[15] EB Docket, pp. 54 to 63.
[16] EB Docket, pp. 65 to 66.
[17] EB Docket, pp. 70 to 73.
[18] EB Docket, pp. 75 to 92.
[19] EB Docket, pp. 94 to 95.
[20] The exact amount is ₱185,003,035.81.
[21] EB Docket, p. 10.

Petitioner's arguments:

Petitioner contends that respondent did not file a claim for refund with the CIR, as required under Section 204, in relation to Section 229, both of the NIRC of 1997.

According to petitioner, while respondent alleged that it filed an administrative claim for refund, an examination of the records shows that what it filed was actually a letter dated June 13, 2011, addressed to the Chief of the ITAD. Petitioner opines that such filing is not the one contemplated under the said provisions, which requires that a taxpayer claiming a refund of illegally or erroneously collected taxes must do so by filing a written claim with the CIR.

Petitioner also stresses that the ITAD has no authority to receive or process applications or claims for tax refund or tax credit, citing Revenue Administrative Order No. 11-2000 dated August 21, 2000 (RAO No. 11-00)[22], which describes the functions of the ITAD. Petitioner alleges that ITAD's functions primarily involve the preparation of rulings on issues involving the interpretation of tax treaties, international agreements, and the evaluation of all tax treaty relief applications, which do not include receiving and processing applications for tax refund.

Moreover, petitioner is of the view that because respondent filed and paid its CGT return with RDO No. 39, where it is registered, it should have also filed its claim for refund with the said office. However, according to petitioner, it failed to file its claim for refund with the said office, within a period of two (2) years from the time of the alleged payment of the CGT. Petitioner then opines that since respondent did not file an administrative claim for refund with the proper authority, it is as if none was filed and the case should be dismissed for lack of jurisdiction.

Petitioner further asserts that assuming *arguendo* that a claim for refund was properly filed, respondent's claim should be denied, because while respondent points as basis Article 13 of the Philippines-Singapore Tax Treaty, it failed to prove that the application of the provision would justify its claim for refund.

Furthermore, petitioner maintains that this is not a case of

[22] Erroneously referred to in the Petition for Review as *"Revenue Administrative Order No. 11-2002 dated August 21, 2000"*; EB Docket, p. 12.

erroneously or illegally collected tax. According to petitioner, there is an erroneous payment when a taxpayer pays under a mistake of fact, as where he is not aware of an existing exemption in his favor at the time the payment was made. In this case, petitioner points out that respondent is aware that it is not exempt from the payment of CGT, as its tax treaty relief application was already denied in BIR Ruling No. ITAD 102-11. Thus, respondent, fully aware of such denial, cannot be considered to have made an erroneous payment.

Finally, petitioner avers that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Petitioner submits that petitioner failed to overcome such burden.

Respondent's counter-arguments

Respondent primarily argues that it was able to duly file its administrative claim for refund. RAO No. 11-00 expressly grants the ITAD the authority to process claims for tax credit/refund on erroneously collected internal revenue taxes arising from the application of tax treaty provisions including requests for exemptions.

Moreover, respondent points out that once again, counsel for the petitioner attempts to mislead this Court by deliberately omitting Section 2.3 of RAO No. 11-00. Thus, according to respondent, it is only proper that the attention of petitioner's counsel is called, to the tenets of Canon 10 of the Code of Professional Responsibility ("CPR"), which requires a lawyer to conduct himself/herself with candor, fairness and good faith before the court, and refrain from misleading or committing any falsehood before the Court as well as knowingly misquoting or misrepresenting any fact, law or decision.

Indubitably, according to respondent, it filed its administrative claim for refund with the ITAD, which has been expressly authorized to act on the same under RAO No. 11-00. In addition, petitioner points out that the claim for refund was filed within the requisite two (2) year period under Section 204 of the Tax Code, properly addressed to the CIR, and coursed through the Chief of the ITAD.

Respondent likewise contends that it was able to establish that it is entitled to a refund of erroneously or illegally collected CGT and interest, based on Article 13 of the Philippines-Singapore Tax Treaty.

According to respondent, it was able to establish that the assets of Maynilad do not consist principally of immovable property situated in the Philippines and consequently, capital gains derived by it from the sale of shares of stock of Maynilad are exempt from CGT in the Philippines, pursuant to Article 13 of the Philippines-Singapore Tax Treaty.

In addition, respondent posits that the payment of CGT and interest was not voluntary because it erroneously paid the CGT and interest on the subject transaction on July 6, 2009, almost two years before it received a copy of BIR Ruling No. ITAD 102-11 dated April 4, 2011 on April 18, 2011. Besides, it was constrained to pay the tax while its application for tax treaty relief was still pending, in order to secure the immediate release of the Certificate Authorizing Registration from the BIR and avoid a default on its obligation to deliver the Maynilad shares to MPIC.

Lastly, respondent maintains that it is not liable to pay CGT and interest under the subject transaction and therefore, the CIR is not entitled to keep the same under the principle of *solutio indebiti.*

THE COURT EN BANC'S RULING

The Petition for Review lacks merit. Petitioner failed to refute the findings and ruling of the Court in Division.

Respondent correctly filed a claim for refund with the BIR, through its International Tax Affairs Division (ITAD).

Petitioner contends that respondent did not file a claim for refund with the CIR, as required under Section 204, in relation to Section 229, both of the NIRC of 1997. Said provisions read:

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

We are not convinced.

While it may be true that the foregoing provisions state that the written claim for refund must be *"filed with the Commissioner"*, it does not necessarily follow that all of such claims must be filed with the said office, so that the same may be considered filed *"with the proper authority"*. It is *non-sequitur.* In fact, petitioner herself, in effect, share this view when she points to RDO No. 39 as the office where allegedly, respondent should have filed the instant claim.

Nonetheless, respondent was correct when it filed its written claim for refund with the ITAD of the BIR.

Contrary to petitioner's contentions, Par. III (E) (2.3) of RAO No. 11-00 specifically states that the ITAD has the authority to process claims for tax refund, to wit:

> "III. Functions:
> x x x x
>
> E. International Tax Affairs Division shall:
> x x x x
>
> 2. Tax Treaty Implementation and Exchange of Information Section shall:
> x x x x
>
> 2.3. **Process claims for tax credit/refund on erroneously collected internal revenue taxes arising from the application of tax treaty provisions including requests for exemptions**; x x x." *(Emphasis supplied)*

Considering that the ITAD is indeed the office of the BIR tasked to process claims for tax refund arising from the application of tax treaty provisions, respondent was justified in filing its claim for refund with the ITAD of the BIR. Thus, respondent is deemed to have sufficiently complied with Sections 204(C) and 229 of the NIRC of 1997, insofar as the filing of its refund claim with the proper office is concerned.

Respondent was able to prove its entitlement to the refund.

Petitioner asserts that respondent failed to prove that the application of Article 13 of the Philippines-Singapore Tax Treaty would justify its claim for refund.[23]

The argument of petitioner is untenable.

Petitioner fails to make any specific discussion to support her argument, and neglects to point out the supposed error in the findings of fact of the Court in Division or in its interpretation and application of the provisions of the law or the said tax treaty.

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[23] EB Docket, p. 17.

Plainly, the factual findings and ruling of the Court in Division in the assailed Decision are clearly supported by law and the evidence on record. Thus, We will not belabor to reiterate them in this Decision. As between a well-discussed ruling of the Court in Division and a very general and perfunctory statement made by petitioner against the said ruling, the former must perforce prevail. After all, the Court in Division's findings are always presumed correct.[24]

A wrongfully paid tax may be refunded under Section 229 of the NIRC of 1997

Petitioner argues that this is not a case of erroneously or illegally collected tax because petitioner allegedly did not proceed from a mistake of fact. Thus, the payment of the subject CGT cannot be considered as erroneous and therefore, cannot be refunded. She anchors this argument on the case of *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*,[25] wherein the Supreme Court ruled as follows:

> "xxx. In *UST Cooperative Store v. City of Manila*,[26] we explained that 'there is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made.' Such payment is held to be not voluntary and, therefore, can be recovered or refunded."

We are not convinced.

A plain reading of the foregoing jurisprudence would reveal that nowhere was it stated or implied that refund claims may only be granted when the taxpayer pays under a mistake of fact. At most, what can be taken from the said pronouncement is that a tax payment under a mistake of fact is just an example of an *"erroneous payment"*.

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*,[27] the Supreme Court defines what constitutes

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[24] Refer to *Metropolitan Fabrics, Inc., et al. vs. Prosperity Credit Resources, Inc., et al.*, G.R. No. 154390, March 17, 2014.
[25] G.R. No. 147295, February 16, 2007.
[26] G.R. No. L-17133, December 31, 1965.
[27] G.R. No. 188497, April 25, 2012, citing BLACK'S LAW DICTIONARY, Fifth Edition,

"erroneous or illegal tax" as understood under Section 229 of the NIRC of 1997, to wit :

> "Section 229 of the NIRC of 1997 allows recovery of taxes erroneously or illegally collected. **An 'erroneous or illegal tax' is defined as one levied without statutory authority, or upon property *not subject to taxation*** or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal." *(Emphasis supplied)*

Furthermore, in *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*,[28] the Supreme Court said:

> "From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is 'erroneously, x x x illegally, x x x excessively or **in any manner wrongfully** collected.' In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should '**apply only to instances of erroneous payment of illegal collection of internal revenue taxes**.' Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due**. xxx" *(Underscoring supplied)*

On the basis of the foregoing pronouncements, petitioner is in error to conclude that a claim for refund may be sustained only when the tax payment was made under a mistake of fact.

In this case, there is wrongful payment because what was paid is not legally due. In other words, the CGT and interest that were paid by petitioner is *"one levied without statutory authority"*.

Section 28(B)(5)(c) of the NIRC of 1997 imposes income tax on the sale by a nonresident foreign corporation of shares of stocks in a domestic corporation as follows:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.—*
>
> xxx xxx xxx

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p. 486.
[28] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

(B) *Tax on Nonresident Foreign Corporations.—*
xxx xxx xxx

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.—*
xxx xxx xxx

(c) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* — **A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:**

Not over P100,000.................................5%
On any amount in excess of P100,000......10%"
(Emphases supplied)

However, Article 13 of the Philippines-Singapore Tax Treaty[29] provides as follows:

"Article 13
GAINS FROM THE ALIENATION OF PROPERTY

xxx xxx xxx

3. **Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.** Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

4. **Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State of which the alienator is a resident.**" *(Emphases supplied)*

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[29] Formally known as the *Convention Between The Republic of the Philippines and The Republic of Singapore For The Avoidance of Double Taxation and The Prevention of Fiscal Evasion With Respect To Taxes on Income.*

Thus, while a CGT may be imposed on the sale by respondent of its shares of stock in Maynilad under the aforequoted Section 28(B)(5)(c) of the NIRC of 1997, Article 13 of the Philippines-Singapore Tax Treaty provides for a tax exemption. Needless to state, when a tax is paid and there exists a tax exemption, such tax payment is deemed as a wrongful payment because what was paid is not legally due.

Considering that in this case, petitioner failed to refute the finding of the Court in Division that respondent is entitled to the benefits of the said tax treaty and hence, entitled to the refund being claimed on the CGT that was paid, We see no reason to reverse or modify the said finding.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated November 7, 2013 and the Resolution dated January 20, 2014, issued by the Court in Division in CTA Case No. 8307 is hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice