Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

MANILA ELECTRIC COMPANY (MERALCO),
Respondent.

G.R. No. 181459

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
VILLARAMA, JR.,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

June 9, 2014

x----------x

DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court which seeks to annul and set aside the Decision[1] of the Court of Tax Appeals, dated October 15, 2007, and its Resolution[2] dated January 9, 2008 denying petitioner's Motion for Reconsideration in the case entitled *Commissioner of Internal Revenue v. Manila Electric Company (MERALCO)*, docketed as C.T.A EB No. 262.

The facts of this case are uncontroverted.

On July 6, 1998, respondent Manila Electric Company (*MERALCO*) obtained a loan from Norddeutsche Landesbank Girozentrale (*NORD/LB*) Singapore Branch in the amount of USD120,000,000.00 with ING Barings

---

* Designated Acting Member, per Special Order No. 1691 dated May 22, 2014.
1 Penned by Associate Justice Olga Palanca-Enriquez; Annex "A" to Petition, *rollo*, pp. 30-48.
2 Annex "B" to Petition, *id.* at 49-50.

South East Asia Limited (ING Barings) as the Arranger.[3] On September 4, 2000, respondent MERALCO executed another loan agreement with NORD/LB Singapore Branch for a loan facility in the amount of USD100,000,000.00 with Citicorp International Limited as Agent.[4]

Under the foregoing loan agreements, the income received by NORD/LB, by way of respondent MERALCO's interest payments, shall be paid in full without deductions, as respondent MERALCO shall bear the obligation of paying/remitting to the BIR the corresponding ten percent (10%) final withholding tax.[5] Pursuant thereto, respondent MERALCO paid/remitted to the Bureau of Internal Revenue (*BIR*) the said withholding tax on its interest payments to NORD/LB Singapore Branch, covering the period from January 1999 to September 2003 in the aggregate sum of ₱264,120,181.44.[6]

However, sometime in 2001, respondent MERALCO discovered that NORD/LB Singapore Branch is a foreign government-owned financing institution of Germany.[7] Thus, on December 20, 2001, respondent MERALCO filed a request for a BIR Ruling with petitioner Commissioner of Internal Revenue (*CIR*) with regard to the tax exempt status of NORD/LB Singapore Branch, in accordance with Section 32(B)(7)(a) of the 1997 National Internal Revenue Code (*Tax Code*), as amended.[8]

On October 7, 2003, the BIR issued Ruling No. DA-342-2003 declaring that the interest payments made to NORD/LB Singapore Branch are exempt from the ten percent (10%) final withholding tax, since it is a financing institution owned and controlled by the foreign government of Germany.[9]

Consequently, on July 13, 2004, relying on the aforesaid BIR Ruling, respondent MERALCO filed with petitioner a claim for tax refund or issuance of tax credit certificate in the aggregate amount of ₱264,120,181.44, representing the erroneously paid or overpaid final withholding tax on interest payments made to NORD/LB Singapore Branch.[10]

On November 5, 2004, respondent MERALCO received a letter from petitioner denying its claim for tax refund on the basis that the same had already prescribed under Section 204 of the Tax Code, which gives a

---

3 *Rollo,* pp. 32-33.
4 *Id.* at 33.
5 *Id*. at 14.
6 *Id.*
7 *Id.* at 33.
8 *Id.*
9 *Id.* .
10 *Id.* at 34

taxpayer/claimant a period of two (2) years from the date of payment of tax to file a claim for refund before the BIR.[11]

Aggrieved, respondent MERALCO filed a Petition for Review with the Court of Tax Appeals (*CTA*) on December 6, 2004.[12] After trial on the merits, the CTA-First Division rendered a Decision partially granting respondent MERALCO's Petition for Review in the following wise:

> **IN VIEW OF THE FOREGOING**, petitioner's claim in the amount of TWO HUNDRED TWENTY-FOUR MILLION SEVEN HUNDRED SIXTY THOUSAND NINE HUNDRED TWENTY-SIX PESOS & SIXTY-FIVE CENTAVOS (₱224,760,926.65) representing erroneously paid and remitted final income taxes for the period January 1999 to July 2002 is hereby DENIED on the ground of prescription. However, petitioner's claim in the amount of THIRTY-NINE MILLION THREE HUNDRED FIFTY NINE THOUSAND TWO HUNDRED FIFTY-FOUR PESOS & SEVENTY-NINE CENTAVOS (₱39,359,254.79) is hereby GRANTED.
>
> Accordingly, respondent is ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE to petitioner in the amount of THIRTY-NINE MILLION THREE HUNDRED FIFTY-NINE THOUSAND TWO HUNDRED FIFTY-FOUR PESOS & SEVENTY-NINE CENTAVOS (₱39,359,254.79) representing the final withholding taxes erroneously paid and remitted for the period December 2002 to September 2003.
>
> **SO ORDERED**.[13]

On November 2, 2006, petitioner filed its Motion for Reconsideration with the CTA-First Division, while on November 7, 2006, respondent MERALCO filed its Partial Motion for Reconsideration.[14] Finding no justifiable reason to overturn its Decision, the CTA-First Division denied both the petitioner's Motion for Reconsideration and respondent MERALCO's Partial Motion for Reconsideration in a Resolution dated January 11, 2007.[15]

Unyielding to the Decision of the CTA, both petitioner and respondent MERALCO filed their respective Petitions for Review before the Court of Tax Appeals *En Banc* (CTA *En Banc*) docketed as C.T.A. EB Nos. 264 and 262, respectively.[16] In a Resolution dated May 9, 2007, the CTA *En Banc* ordered the consolidation of both cases in accordance with Section 1, Rule 31 of the Revised Rules of Court and gave due course thereto,

---

11 *Id.*
12 *Id.*
13 *Id.* at 31-32.
14 *Id.* at 35.
15 *Id.*
16 *Id.*

requiring both parties to submit their respective consolidated memoranda.[17] Only petitioner filed its Consolidated Memorandum on July 2, 2007.[18]

In its Decision[19] dated October 15, 2007, the CTA *En Banc* denied both petitions and upheld *in toto* the Decision of the CTA-First Division, the dispositive portion of which states:

> In the light of the laws and jurisprudence on the matter, We see no reason to reverse the assailed Decision dated October 16, 2006 and Resolution dated January 11, 2007 of the First Division.
>
> **WHEREFORE**, premises considered, both petitions are hereby **DISMISSED.**
>
> **SO ORDERED.**[20]

In the same vein, the motions for reconsideration filed by the respective parties were also denied in a Resolution[21] dated January 9, 2008.

Hence, the instant petition.

The sole issue presented before us is whether or not respondent MERALCO is entitled to a tax refund/credit relative to its payment of final withholding taxes on interest payments made to NORD/LB from January 1999 to September 2003.

Petitioner maintains that respondent MERALCO is not entitled to a tax refund/credit, considering that its testimonial and documentary evidence failed to categorically establish that NORD/LB is owned and controlled by the Federal Republic of Germany; hence, exempted from final withholding taxes on income derived from investments in the Philippines.[22]

On the other hand, respondent MERALCO claims that the evidence it presented in trial, consisting of the testimony of Mr. German F. Martinez, Jr., Vice-President and Head of Tax and Tariff of MERALCO, which was affirmed by a certification issued by the Embassy of the Federal Republic of Germany, dated March 27, 2002, through its Mr. Lars Leymann, clearly defined the status of NORD/LB as one being owned by various German States.[23] Respondent MERALCO further argues that in the Joint Stipulation

---

17 *Id.* at 36-37.
18 *Id*. at 37.
19 *Id.* at 30-48.
20 *Id.* at 47. (Emphasis in the original)
21 *Id.* at 49-50.
22 *Id*. at 18.
23 Comment to Petition, *id*. at 69.

of Facts, petitioner admitted the fact that NORD/LB is a financial institution owned and controlled by a foreign government.[24]

Petitioner's argument fails to persuade.

After a careful scrutiny of the records and evidence presented before us, we find that respondent MERALCO has discharged the requisite burden of proof in establishing the factual basis for its claim for tax refund.

First, as correctly decided by the CTA *En Banc*, the certification issued by the Embassy of the Federal Republic of Germany, dated March 27, 2002, explicitly states that NORD/LB is owned by the State of Lower Saxony, Saxony-Anhalt and Mecklenburg-Western Pomerania, and serves as a regional bank for the said states which offers support in the public sector financing, to wit:

> x x x x.
>
> Regarding your letter dated March 1, 2002, I can ***confirm*** the following:
>
> ***NORD/LB is owned by the State (Land) of Lower Saxony to the extent of 40%, by the States of [Saxony-]Anhalt and Mecklenburg-Western Pomerania to the extent of 10% each***. The Lower Saxony Savings Bank and Central Savings Bank Association have a share of [26.66%]. The Savings Bank Association Saxony-Anhalt and the Savings Bank Association Mecklenburg-Western Pomerania have a share of [6.66%] each.
>
> As the regional bank for Lower Saxony, Saxony-Anhalt and Mecklenburg-Western Pomerania, NORD/LB offers support in public sector financing. ***It fulfills as Girozentrale the function of a central bank for the savings bank in these three states (Lander)***.
>
> x x x[25]

Given that the same was issued by the Embassy of the Federal Republic of Germany in the regular performance of their official functions, and the due execution and authenticity thereof was not disputed when it was presented in trial, the same may be admitted as proof of the facts stated therein. Further, it is worthy to note that the Embassy of the Federal Republic of Germany was in the best position to confirm such information, being the representative of the Federal Republic of Germany here in the Philippines.

To bolster this, respondent MERALCO presented as witness its Vice-President and Head of Tax and Tariff, German F. Martinez, Jr., who testified

---

24 *Id.* at 71.

25 *Id.* at 41. (Emphasis supplied).

on and identified the existence of such certification. In this regard, we concur with the CTA *En Banc* that absent any strong evidence to disprove the truthfulness of such certification, there is no basis to controvert the findings of the CTA-First Division, to wit:

> The foregoing documentary and testimonial evidence were given probative value as the First Division ruled that there was no strong evidence to disprove the truthfulness of the said pieces of evidence, considering that the CIR did not present any rebuttal evidence to prove otherwise. The weight of evidence is not a question of mathematics, but depends on its effects in inducing belief, under all of the facts and circumstances proved. The probative weight of any document or any testimonial evidence must be evaluated not in isolation but in conjunction with other evidence, testimonial, admissions, judicial notice, and presumptions, adduced or given judicial cognizance of, and if the totality of the evidence presented by both parties supports the claimant's claim, then he is entitled to a favorable judgment. *(Donato C. Cruz Trading Corp. v. Court of Appeals, 347 SCRA 13).*[26]

Consequently, such certification was used by petitioner as basis in issuing BIR Ruling No. DA-342-2003, which categorically declared that the interest income remitted by respondent MERALCO to NORD/LB Singapore Branch is not subject to Philippine income tax, and accordingly, not subject to ten percent (10%) withholding tax. Contrary to petitioner's view, therefore, the same constitutes a compelling basis for establishing the tax-exempt status of NORD/LB, as was held in *Miguel J. Ossorio Pension Foundation, Incorporated v. Court of Appeals*,[27] which may be applied by analogy to the present case, to wit:

> Similarly, in BIR Ruling [UN-450-95], Citytrust wrote the BIR to request for a ruling exempting it from the payment of withholding tax on the sale of the land by various BIR-approved trustees and tax-exempt private employees' retirement benefit trust funds represented by Citytrust. The BIR ruled that the private employees' benefit trust funds, **which included petitioner**, have met the requirements of the law and the regulations and, therefore, qualify as reasonable retirement benefit plans within the contemplation of Republic Act No. 4917 (now Sec. 28 [b] [7] [A], Tax Code). The income from the trust fund investments is, therefore, exempt from the payment of income tax and, consequently, from the payment of the creditable withholding tax on the sale of their real property.
>
> Thus, the documents issued and certified by Citytrust showing that money from the Employees' Trust Fund was invested in the MBP lot cannot simply be brushed aside by the BIR as self-serving, in the light of previous cases holding that Citytrust was indeed handling the money of the Employees' Trust Fund. These documents, together with the notarized Memorandum of Agreement, clearly establish that petitioner, on behalf of

---

26 *Id.* at 40.

27 G.R. No. 162175, June 28, 2010, 621 SCRA 606.

> the Employees' Trust Fund, indeed invested in the purchase of the MBP lot. Thus, the Employees' Trust Fund owns 49.59% of the MBP lot.
>
> Since petitioner has proven that the income from the sale of the MBP lot came from an investment by the Employees' Trust Fund, petitioner, as trustee of the Employees' Trust Fund, is entitled to claim the tax refund of ₱3,037,500 which was erroneously paid in the sale of the MBP lot.[28]

Second, in the parties' Joint Stipulation of Facts, petitioner admitted the issuance of the aforesaid BIR Ruling and did not contest it as one of the admitted documentary evidence in Court. A judicial admission binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[29] In *Camitan v. Fidelity Investment Corporation*,[30] we sustained the judicial admission of petitioner's counsel for failure to prove the existence of palpable mistake, thus:

> x x x. A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, ***which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made***.
>
> x x x x
>
> Upon examination of the said exhibits on record, it appears that the alleged discrepancies are more imagined than real. Had these purported discrepancies been that evident during the preliminary conference, it would have been easy for petitioners' counsel to object to the authenticity of the owner's duplicate copy of the TCT presented by Fidelity. ***As shown in the transcript of the proceedings, there was ample opportunity for petitioners' counsel to examine the document, retract his admission, and point out the alleged discrepancies. But he chose not to contest the document. Thus, it cannot be said that the admission of the petitioners' counsel was made through palpable mistake***.[31]

Based on the foregoing, we are of the considered view that respondent MERALCO has shown clear and convincing evidence that NORD/LB is owned, controlled or enjoying refinancing from the Federal Republic of Germany, a foreign government, pursuant to Section 32(B)(7)(a) of the Tax Code, as amended, which provides that:

> **Section 32.** *Gross Income*. –
>
> x x x x.

---

28 *Miguel J. Ossorio Pension Foundation, Incorporated v. Court of Appeals, supra,* at 634-635.
29 *Heirs of Miguel Franco v. Court of Appeals*, 463 Phil. 417, 428 (2003).
30 574 Phil. 672 (2008).
31 *Id.* at 681-684. (Emphasis supplied).

> (B) *Exclusions from Gross Income*. − The following items shall not be included in gross income and shall be exempt from taxation under this title:
>
> x x x x
>
> (7) *Miscellaneous Items*. −
>
> (a) *Income Derived by Foreign Government*. − **Income derived from investments in the Philippines in loans**, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) ***financing institutions owned, controlled, or enjoying refinancing from foreign governments***, and (iii) international or regional financial institutions established by foreign governments.
>
> x x x x.[32]

Notwithstanding the foregoing, however, we uphold the ruling of the CTA *En Banc* that the claim for tax refund in the aggregate amount of Thirty-Nine Million Three Hundred Fifty-Nine Thousand Two Hundred Fifty-Four Pesos and Seventy-Nine Centavos (₱39,359,254.79) pertaining to the period from January 1999 to July 2002 must fail since the same has already prescribed under Section 229 of the Tax Code, to wit:

> **Section 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, ***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.[33]

As can be gleaned from the foregoing, the prescriptive period provided is mandatory regardless of any supervening cause that may arise after payment. It should be pointed out further that while the prescriptive period of two (2) years commences to run from the time that the refund is

---

32 Emphasis supplied.

33 Emphasis supplied.

ascertained, the propriety thereof is determined by law (in this case, from the date of payment of tax), and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes. The issuance by the BIR of the Ruling declaring the tax-exempt status of NORD/LB, if at all, is merely confirmatory in nature. As aptly held by the CTA-First Division, there is no basis that the subject exemption was provided and ascertained only through BIR Ruling No. DA-342-2003, since said ruling is not the operative act from which an entitlement of refund is determined.[34] In other words, the BIR is tasked only to confirm what is provided under the Tax Code on the matter of tax exemptions as well as the period within which to file a claim for refund.

In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi-contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.[35] Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[36]

In the case at bar, respondent MERALCO had ample opportunity to verify on the tax-exempt status of NORD/LB for purposes of claiming tax refund. Even assuming that respondent MERALCO could not have emphatically known the status of NORD/LB, its supposition of the same was already confirmed by the BIR Ruling which was issued on October 7, 2003. Nevertheless, it only filed its claim for tax refund on July 13, 2004, or ten (10) months from the issuance of the aforesaid Ruling. We agree with the

---

34 *Rollo*, p. 45.

35 *Genova v. De Castro*, 454 Phil. 662, 676 (2003).

36 *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010, 632 SCRA 422, 425.

CTA-First Division, therefore, that respondent MERALCO's claim for refund in the amount of Two Hundred Twenty-Four Million Seven Hundred Sixty Thousand Nine Hundred Twenty-Six Pesos and Sixty-Five Centavos (₱224,760,926.65) representing erroneously paid and remitted final income taxes for the period January 1999 to July 2002 should be denied on the ground of prescription.

Finally, we ought to remind petitioner that the arguments it raised in support of its position have already been thoroughly discussed both by the CTA-First Division and the CTA *En Banc*. Oft repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[37] This Court recognizes that the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court.[38] In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[39] It has been a long-standing policy and practice of the Court to respect the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created for the purpose of reviewing tax cases.[40]

WHEREFORE, the petition is **DENIED**. The October 15, 2007 Decision and January 9, 2008 Resolution of the Court of Tax Appeals in C.T.A. EB No. 262 are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

---

37 *Commissioner of Internal Revenue v. Asian Transmission Corporation*, G.R. No. 179617, January 19, 2011, 640 SCRA 189, 200, citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. CIR*, 529 Phil. 785, 794-795 (2006).

38 *Id.* at 795.

39 *Id.*

40 *United Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 178788, September 29, 2010, 631 SCRA 567, 582.

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice