REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **05 May 2021** *which reads as follows*:

"G.R. No. 230416 ***(Commissioner of Internal Revenue v. Nanox Philippines, Inc.)***. — This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Court of Tax Appeals' (CTA) Decision[2] dated October 3, 2016 in CTA EB No. 1256, ordering petitioner Commissioner of Internal Revenue (CIR) to refund to respondent Nanox Philippines, Inc. (Nanox) its erroneously paid final withholding tax (FWT) on dividends amounting to ₱9,495,774.38.

ANTECEDENTS

Sometime in June 2009, Nanox started discussing the possibility of declaring cash dividends to its sole stockholder, Nanox Corporation Japan (Nanox Japan). Nanox prepared the documentation for the payment of the tax on dividends and the cash dividends. On August 13, 2009, it paid and remitted to the Bureau of Internal Revenue (BIR) the amount of ₱9,755,502.97, consisting of ₱9,495,774.38 dividends tax and ₱259,728.59 royalty tax. On the same day, the BIR acknowledged receipt of the payment made by Nanox through a system-generated document.[3]

On September 1, 2009, Nanox's Vice President for Finance received an email from Nanox Japan's President to discontinue the distribution of cash dividends. As a result, Nanox did not release the cash dividends to Nanox Japan. Consequently, on November 10, 2009, Nanox filed an administrative claim for a refund of the amount of ₱9,495,774.38 representing the FWT it paid on the discontinued release of cash dividends. The CIR failed to act on the application; hence, Nanox filed a Petition for

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[1] *Rollo*, pp. 33-55.

[2] *Id.* at 65-79; penned by Associate Justice Erlinda P. Uy, with the concurrence of Presiding Justice Roman G. del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban.

[3] *Id.* at 67.

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Review on August 11, 2011, with the CTA, docketed as CTA Case No. 8320.[4]

On September 26, 2014, the CTA in division rendered judgment[5] in favor of Nanox, and ordered the CIR to refund the amount of ₱9,495,774.38.[6] The CTA found that Nanox filed its administrative and judicial claims within the two-year period prescribed under Sections 204 (c) and 229 of the 1997 National Internal Revenue Code[7] (Tax Code). Further, the FWT on cash dividends distribution that did not materialize constitutes erroneously paid tax which is refundable under the Tax Code, thus:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, [the CIR] is hereby **ORDERED TO REFUND** to [Nanox] the amount of [₱]9,495,774.38, representing [Nanox]'s erroneously paid final withholding tax.
>
> **SO ORDERED**.[8] (Emphases in the original.)

The CIR moved for reconsideration,[9] raising for the first time the issue of lack of jurisdiction. The CIR alleged that Nanox failed to exhaust administrative remedies. It is only at the judicial stage that Nanox submitted the pieces of evidence to establish its entitlement to a refund, but not at the administrative level.

The CTA in division denied the CIR's motion on December 4, 2014.[10] It held that non-submission of supporting documents at the administrative level is not fatal to the claim for a refund because judicial claims are litigated *de novo*. Even if Nanox failed to submit the necessary documents to the BIR, Nanox was able to substantiate its judicial claim to the satisfaction of the tax court.[11]

In a Decision dated October 3, 2016, the CTA *En Banc* dismissed the CIR's petition for lack of merit.[12] The CTA *En Banc* stressed that Section 229 of the Tax Code only requires that an administrative claim be filed

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4 *Id.*

5 *Id.* at 85-97; penned by Associate Justice Caesar A. Casanova, with the concurrence of Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas.

6 *Id.* at 96-97.

7 Republic Act No. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES; approved on December 11, 1997.

8 *Rollo*, pp. 96-97.

9 *Id.* at 103-109.

10 *Id.* at 98-102.

11 *Id.* at 100-101.

12 *Id.* at 65-79. The dispositive portion of the Decision reads:

> **WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **DISMISSED** for lack of merit. The Decision dated September 26, 2014 and Resolution dated December 4, 2014, both of the Court in Division, are **AFFIRMED.**
>
> Accordingly, [the CIR] is **ORDERED TO REFUND** to [Nanox] the amount of ₱9,495,774.38, representing [Nanox]'s erroneously paid final withholding tax.
>
> **SO ORDERED.** *Id.* at 78. (Emphases in the original.)

before filing a judicial claim. However, it is silent on the requirement of prior submission of necessary documents before the BIR. At any rate, Nanox's case was appealed due to the CIR's inaction; hence, the CTA may give credence to all evidence presented by Nanox, including those that were not submitted to the CIR since the case is being essentially decided for the first time. The CTA found that Nanox sufficiently proved remittance of the amount subject of the refund to the BIR's account.[13]

In his appeal by *certiorari*,[14] the CIR reiterates that Nanox violated the rule on exhaustion of administrative remedies, thereby rendering the petition before the CTA premature, on account of its failure to submit necessary supporting documents to substantiate its claim for refund at the administrative level. The CIR insists that Nanox cannot submit for the first time before the CTA pieces of evidence to support its entitlement for a refund.[15]

RULING

The petition is bereft of merit.

Section 229,[16] in relation to Section 204 (c),[17] of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, provided that the same may not be maintained until an administrative claim for refund or credit has been duly filed. The CTA aptly held that Nanox timely filed its administrative and judicial claims for refund of erroneously paid FWT on cash dividends that did not materialize. Nanox paid and remitted the FWT on August 13, 2009, and applied for a refund with the BIR on November 10, 2009. As the two-year prescriptive period was about to expire, Nanox filed its judicial claim with the CTA on August 11, 2011, without waiting for the CIR's action.

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[13] *Id.* at 77.

[14] *Id.* at 33-55.

[15] *Id.*

[16] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, 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: x x x.

[17] SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. — The Commissioner may —*

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed 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.

Nanox did not violate the rule on exhaustion of administrative remedies when it immediately instituted a judicial action without the necessary documents submitted at the administrative level. To be sure, the CIR did not request supporting documents from Nanox; he simply did not act on the claim. The Court stressed in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*,[18] that "[Sections 204 (c) and 229 of the Tax Code] only [require] that an administrative claim be priorly filed. That is, to give the BIR at the administrative level an opportunity to act on said claim. In other words, for as long as the administrative claim and the judicial claim were filed within the two-year prescriptive period, then there was exhaustion of the administrative remedies." Thus, the taxpayer-claimant need not wait for the CIR to act on its claim, or in this case, Nanox need not wait for the CIR's action or request to substantiate the refund claim by submitting necessary documents. Had Nanox awaited the action of the CIR, knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the FWT that was erroneously paid, thereby suffering irreparable damage.[19]

The CIR is mistaken that documents not submitted at the administrative level cannot be presented in support of the judicial claim. The Court's pronouncement in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[20] is instructive:

> A distinction must, thus, be made between administrative cases appealed due to **inaction** and those **dismissed** at the administrative level due to the failure of the taxpayer to submit supporting documents. **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level.** When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
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> In the present case, however, Total Gas filed its judicial claim due to the **inaction** of the BIR. **Considering that the administrative claim**

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[18] G.R. No. 231581, April 10, 2019.

[19] See *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*, 792 Phil. 484, 495 (2016); *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, 750 Phil. 748, 764 (2015).

[20] 774 Phil. 473 (2015). See also *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, *supra* note 11.

> **was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.**[21] (Emphases and underscoring supplied.)

Here, the CIR failed to notify or request supporting documents from Nanox and act on its application for a tax refund.[22] The CIR's inaction meant that there was no decision from the CIR for the CTA to review; hence, the CTA may weigh all evidence presented by Nanox before it as if the case was being tried in the first instance.[23]

At any rate, the proceedings before the CTA are not governed strictly by the technical rules of evidence.[24] The cases filed before it are litigated *de novo*, and party litigants should prove every minute aspect of their cases. The CTA is not precluded from considering evidence that was not presented with the BIR and the taxpayer-claimant may offer new and additional evidence to the CTA to support its case.[25] Thus, all pieces of evidence submitted and formally offered by Nanox before the CTA, regardless of whether they were presented at the administrative level, can be considered and be given credence in determining the propriety of the tax refund.[26]

Finally, this Court finds no reason to reverse or set aside the CTA's finding that Nanox established its entitlement to a refund corresponding to the erroneously paid FWT amounting to ₱9,495,774.38. Settled is the rule that factual findings of the CTA, which is, by the very nature of its

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[21] *Id.* at 504-505.

[22] See CTA *rollo* containing BIR Records, which composed only of 13 pages as follows: Pages 1 to 10 – Letter dated November 6, 2009 of Nanox (received by the BIR on November 10, 2009); Page 11 – Document acknowledging receipt by the BIR of photocopies of said Letter and BIR Form 1601F of Nanox for Tax Return Period "07/31/2009;" Page 13 – Letter dated September 12, 2011 by Atty. Felix Paul R. Velasco III, Assistant Chief, Litigation Division, informing the Regional Director of Revenue Region No. IV-San Fernando, Pampanga, BIR, that Nanox has filed a Petition for Review before this Court docketed as CTA Case No. 8320, and requesting "that the docket of the said taxpayer consisting of certified true copies of all documents pertinent thereto be transmitted to" Atty. Velasco's office; and Page 12 -- Letter-Indorsement dated September 23, 2011 by Ms. Araceli L. Francisco, CESO VI, regarding the said Letter of Atty. Velasco.

[23] See *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, *supra* note 11.

[24] See Section 8, RA No. 1125:

> SEC. 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

See also *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, *supra* note 11.

[25] See *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, 823 Phil. 1043, 1062 (2018).

[26] See *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, *supra* note 11; and *Commissioner of Internal Revenue. v. Philippine National Bank*, 744 Phil. 299 (2014).

function, dedicated itself to the study and consideration of tax problems, and has necessarily developed an expertise on the subject, are generally afforded with great respect upon this Court.[27] The findings shall not be reviewed nor disturbed on appeal unless a party can show that these are not supported by evidence or when there is abuse or improvident exercise of authority on the part of the CTA.[28] The CIR has not sufficiently presented a case for the application of an exception from the rule.

FOR THESE REASONS, the petition is **DENIED**.

SO ORDERED." (**J. Lopez, J.**, *designated additional Member per Special Order No. 2822 dated April 7, 2021.*)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:

MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court
28 JUL 2021

[27] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 342-343 (2014).
[28] *Commissioner of Internal Revenue v. Chevron Holdings, Inc.*, G.R. No. 233301, February 17, 2020.

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GR230416. 05/05/2021(153)URES