SECOND DIVISION

[G.R. No. 207039, August 14, 2019]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. INTERPUBLIC GROUP OF COMPANIES, INC., RESPONDENT.

DECISION

REYES, J. JR., J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the October 23, 2012 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* and its April 15, 2013 Resolution,[2] affirming the Decision of the CTA Third Division and denying petitioner's Motion for Reconsideration, in CTA EB No. 791.

Respondent Interpublic Group of Companies, Inc. (IGC) is a non-resident foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America.

The IGC owns 2,999,998 shares or 30% of the total outstanding and voting capital stock of McCann Worldgroup Philippines, Inc. (McCann), a domestic corporation duly organized and existing under the laws of the Philippines engaged in the general advertising business.

In 2006, McCann's Board of Directors declared cash dividends in the total amount of P205,648,685.02 in favor of its stockholders of record, as follows:

Shareholder	Percentage of Shares	Amount of Dividend
Fintec Holdings, Inc.	70%	P143,954,079.51
Interpublic Group of Companies, Inc.	30%	61,694,605.51
T O T A L		P205,648,685.02

The IGC received cash dividends from McCann in the amount of P61,694,605.51. On June 15, 2006, McCann withheld a Final Withholding Tax (FWT) at the rate of 35% on IGC's cash dividends and remitted the payment of the FWT in the amount of P21,593,111.93 to petitioner Commissioner of Internal Revenue (CIR).

On September 27, 2007, the IGC established a Regional Headquarters (RHQ) in the Philippines. On April 30, 2008, the RHQ was converted into its Regional Operating Headquarters (ROHQ).

On March 5, 2008, the IGC filed an administrative claim for refund or issuance of tax credit certificate (TCC) in the amount of P12,338,921.00, representing the alleged overpaid FWT on dividends paid by McCann to IGC. In the said administrative claim, the IGC averred that as a non-resident foreign corporation, it may avail of the preferential FWT rate of 15% on dividends received from a domestic corporation under Section 28(B)(5)(b) of the Tax Code.

On May 29, 2008, the IGC submitted to CIR additional documents in support of its administrative claim for refund or issuance of TCC. The CIR failed to act on IGC's claim for refund or issuance of TCC. This prompted the IGC to file a petition for review with the CTA on June 16, 2008.

On February 21, 2011, the CTA Third Division granted the IGC's petition for review. Accordingly, the CIR was ordered to refund or to issue a TCC in favor of IGC in the amount of P12,338,921.00, representing the overpaid FWT on cash dividends for taxable year 2006.[3]

On March 14, 2011, the CIR filed a Motion for Reconsideration of the Decision dated February 21, 2011. Said motion was denied for lack of merit on May 31, 2011.

After being granted an extension, the CIR filed a Petition for Review with the CTA *En Banc* on July 7, 2011. On January 11, 2012, the case was submitted for decision.

In the Decision dated October 23, 2012, the CTA *En Banc* denied the CIR's Petition for Review and accordingly affirmed the February 21, 2011 Decision and the May 31, 2011 Resolution of the CTA Third Division.

The CIR filed a motion for reconsideration and the same was denied by the CTA *En Banc* for lack of merit in a Resolution dated April 15, 2013.

Dissatisfied, the CIR filed the instant Petition with this Court on the lone ground of –

> THE [CTA] ERRED IN RULING THAT IGC IS ENTITLED TO A TAX REFUND OR TAX CREDIT CERTIFICATE FOR THE ALLEGED OVERPAID FINAL WITHHOLDING TAX ON ITS CASH DIVIDENDS FOR TAXABLE YEAR 2006.[4]

To support its contention, the CIR argued that: (1) the IGC failed to file a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) 15 days before it paid the tax on dividends, in accordance with Revenue Memorandum Order (RMO) No. 1-2000; (2) the IGC, being an unlicensed corporation, has no capacity to sue in Philippine courts in accordance with the Corporation Code; and (3) claim for refund shall be construed *strictissimi juris* against the taxpayer and is subject to administrative investigation/examination to ascertain the veracity of the claimant's allegations.

I.

We resolve first the issue of whether or not the IGC has the capacity to sue in Philippine courts. Otherwise stated, can a non-resident foreign corporation which collects dividends from the Philippines sue here to claim tax refund?

We agree with the CTA that the issue is not one of first impression.

Section 133 of the Corporation Code provides:

> SEC. 133. *Doing business without a license*. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The aforementioned provision bars a foreign corporation "transacting business" in the Philippines without a license access to our courts. Thus, in order for a foreign corporation to sue in Philippine courts, a license is necessary only if it is "transacting or doing business" in the country.[5] Conversely, if an unlicensed foreign corporation is not transacting or doing business in the Philippines, it can be permitted to bring an action even without such license.

In the case of *B. Van Zuiden Bros., Ltd. v. GTVL Manufacturing Industries, Inc.,*[6] the court categorically explained:

> The law is clear. An unlicensed foreign corporation doing business in the Philippines cannot sue before Philippine courts. On the other hand, an unlicensed foreign corporation **not** doing business in the Philippines can sue before Philippine courts.

Explaining the rationale for this rule, the Court held:

> The purpose of the law in requiring that foreign corporations doing business in the country be licensed to do so, is to subject the foreign corporations doing business in the Philippines to the jurisdiction of the courts, otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the required license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts.
>
> The same danger does not exist among foreign corporations that are indubitably not doing business in the Philippines. Indeed, if a foreign corporation does not do business here, there would be no reason for it to be subject to the State's regulation. As we observed, in so far as the State is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the courts' jurisdiction would violate the essence of sovereignty.[7]

Apparently, it is not the absence of the prescribed license, but the "doing of business" in the Philippines without such license which debars the foreign corporation from access to our courts.[8] The operative phrase is "transacting or doing business."

The threshold question therefore is whether the IGC was doing business in the Philippines when it collected dividend earnings from sources within the Philippines. The Corporation Code provides no definition for the phrase "doing business."[9]

In the old case of *The Mentholatum Co. v. Mangaliman*,[10] the Court discussed the test to determine whether a foreign company is "doing business" in the Philippines, thus:

> No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.[11] (Citations omitted)

The foregoing definition found its way in Republic Act (R.A.) No. 7042, otherwise known as the Foreign Investments Act of 1991, which repealed Articles 44-56, Book II of the Omnibus Investments Code of 1987. Said law enumerated not only the acts or activities which constitute "doing business," but also those activities which are not deemed "doing business." Thus, Section 3(d) of R.A. No. 7042 provides:

> SEC. 3. *Definitions*. – x x x
>
> x x x x
>
> d) The phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: <u>*Provided, however,* That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business</u>, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.] (Underscoring supplied)

Inferring from the aforecited provision, mere investment as a shareholder by a foreign corporation in a duly registered domestic corporation shall not be deemed "doing business" in the Philippines. It is clear then that the IGC's act of subscribing shares of stocks from McCann, a duly registered domestic corporation, maintaining investments therein, and deriving dividend income therefrom, does not qualify as "doing business" contemplated under R.A. No. 7042. Hence, the IGC is not required to secure a license before it can file a claim for tax refund.

The CIR argues that since IGC was already maintaining an RHQ in the Philippines, which was subsequently converted into an ROHQ, said headquarters should be the proper claimant of the tax refund. The IGC explained that the ROHQ had no involvement, whatsoever, in IGC's investments in

McCann. It was only the IGC that is entitled to receive dividend income arising from such investment.

True, the alleged overpayment of FWT were incurred from the dividend income earned by IGC, which is a separate and distinct income taxpayer from their ROHQ in the Philippines. As explained by IGC, the ROHQ has a sole purpose of servicing IGC's affiliates, subsidiaries, branches and markets in the Asia-Pacific Region, but certainly not of investing in McCann. It can be concluded then that the investment in McCann was made for purposes peculiarly germane to the conduct of IGC's corporate affairs and the same was not shown to be coursed through the ROHQ. Having made an independent investment, then it is the ICG that should face the tax consequence and avail of tax reliefs (*i.e.,* refund, credit, preferential tax rate) appurtenant to such investment. Thus:

> The general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here. This rule is based on the premise that the business of the foreign corporation is conducted through its branch office, following the principal-agent relationship theory. It is understood that the branch becomes its agent here. So that when the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, not of the branch. Consequently, the taxpayer is the foreign corporation, not the branch or the resident foreign corporation.
>
> Corollarily, if the business transaction is conducted through the branch office, the latter becomes the taxpayer, and not the foreign corporation.[12]

II.

The tax treatment of dividends earned by a foreign corporation, not engaged in trade of business in the Philippines, from Philippine sources is provided under Section 28(B)(1) of the Tax Code,[13] as follows:

> SEC. 28. *Rates of Income Tax on Foreign Corporations*. –
>
> x x x x
>
> (B) *Tax on [Non-resident] Foreign Corporation*. —
>
> (1) *In General*. — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5(c) and (d): *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

However, the ordinary 35% tax rate applicable to dividend remittances to non-resident corporate stockholders of a Philippine corporation, goes down to 15% if the country of domicile of the foreign stockholder corporation "shall allow" such foreign corporation a tax credit for "taxes deemed paid in the Philippines," applicable against the tax payable to the domiciliary country by the foreign stockholder corporation.[14] Thus, Section 28(B)(5)(b) of the Tax Code,[15] which is the very basis of respondent's claim for refund of its overpaid FWT on dividends, provides:

> SEC. 28. – x x x
>
> x x x x
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation*. —
>
> x x x x
>
> (b) *Intercorporate Dividends*. — A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57(A) of this Code, subject to the condition that the country in which the [non-resident] foreign corporation is domiciled, shall allow a credit against the tax due from the [non-resident] foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%) for 1997, nineteen percent (19%) for 1998, eighteen percent (18%) for 1999, and seventeen percent (17%) thereafter, which represents the difference between the regular income tax of thirty-five percent (35%) in 1997, thirty-four percent (34%) in 1998, thirty-three percent (33%) in 1999, and thirty-two percent (32%) thereafter on corporations and the fifteen percent (15%) tax on dividends as provided in this subparagraph[.]

As it is recognized, the application of the provisions of the National Internal Revenue Code (NIRC) must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries.[16] It remains only to note that under the Philippines-US Convention "With Respect to Taxes on Income," the Philippines, *by a treaty commitment,* reduced the regular rate of dividend tax to a maximum of 20% of the gross amount of dividends paid to US parent corporations.[17] Thus, the RP-US Tax Treaty which applies on income derived or which accrued beginning January 1, 1983 provides:

> Article 11
> DIVIDENDS
>
> x x x x
>
> (2) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed —
>
> > (a) 25 percent of the gross amount of the dividend; or
> >
> > (b) *When the recipient is a corporation, 20 percent of the gross amount of*

the dividend if during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), *at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation*.[18] (Italics supplied)

The foregoing RP-US Tax Treaty, at the same time, created a treaty obligation on the part of the US that it "shall allow" to a US parent corporation receiving dividends from its Philippine subsidiary "a tax credit for the appropriate amount of taxes paid or accrued to the Philippines by the said Philippine subsidiary. The US allowed a "deemed paid" tax credit to US corporations on dividends received from foreign corporation. Thus, Section 902 of the US Internal Revenue Code, as amended, provides:

SEC. 902 — CREDIT FOR CORPORATE STOCKHOLDERS IN FOREIGN CORPORATION.

(A) ***Treatment of Taxes Paid by Foreign Corporation*** — For purposes of this subject, a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall —

(1) to the extent such dividends are paid by such foreign corporation out of accumulated profits [as defined in subsection (c) (1) (a)] of a year for which such foreign corporation is not a less developed country corporation***, be deemed to have paid the same proportion*** of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to Section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid); and

(2) ***to the extent such dividends are paid by such foreign corporation out of accumulated profits*** [as defined in subsection (c) (1) (b)] of a year for which such foreign corporation is a less developed country corporation, be deemed to have paid the same proportion of any income, war profits, or excess profits *taxes paid* or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States ***on or with respect to such accumulated profits, which the amount of such dividends bears to the amount of such accumulated profits***.[19]

For this reason, it was established on the part of the Philippines a deliberate undertaking to reduce the regular dividend tax rate of 35%.[20]

This goes to show that the IGC, being a non-resident US corporation is qualified to avail of the aforesaid 15% preferential tax rate on the dividends it earned from the Philippines. It was proven that the country which it was domiciled shall grant similar tax relief/credit against the tax due upon the dividends earned from sources within the Philippines. Clearly, the IGC has made an overpayment of its tax due of FWT by using the 35% tax rate.

The question now is whether the IGC, by failing to file a TTRA with the ITAD of the BIR pursuant to RMO No. 1-2000, was effectively deprived of its right to claim a tax refund based on the said overpayment. The issue is not of first impression.

In the case of *CBK Power Company Ltd. v. Commissioner of Internal Revenue*,[21] the Court emphasized the binding effect of international treaty which we entered into, thus:

> The Philippine Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. In this jurisdiction, treaties have the force and effect of law.[22]

Specifically, the RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into and to which we are expected to observe compliance therewith in good faith. As explained by the Court, the purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions.[23] More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.[24]

On the other hand, the mandatory wording of RMO No. 1-2000, reads:

> III. Policies:
>
> x x x x
>
> 2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction *i.e.*, payment of dividends, royalties, *etc.*, accompanied by supporting documents justifying the relief. x x x

The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment.

This apparent conflict between which should prevail was settled in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue,*[25] where the Court lengthily discussed that the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000, thus:

> x x x We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but

> the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is **not in harmony** with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.
>
> Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 **should not operate to divest entitlement to the relief** as it would constitute a **violation of the duty** required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would **impair the value** of the tax treaty. At most, the application for a tax treaty relief from the BIR should **merely operate to confirm** the entitlement of the taxpayer to the relief.
>
> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000**. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.**[26] (Emphases supplied)

Since the RP-US Tax Treaty does not provide for any other prerequisite for the availment of the benefits under the said treaty, to impose additional requirements would negate the availment of the reliefs provided for under international agreements.[27]

At any rate, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.[28] This is only applicable to taxes paid on the basis of international agreements and treaties. Once it was settled that the taxpayer is entitled to the relief under the tax treaty, then by all means it could pay its tax liabilities using the tax relief provided by the treaty. In other words, the requirements under RMO No. 1-2000 applies only to a taxpayer who is about to pay their taxes on the basis of tax reliefs provided by international agreements and treaties and to confirm its entitlement to the said reliefs.

The application for tax treaty relief is not applicable on claims for tax refund. As explained by the Court:

> However, as pointed out in *Deutsche Bank,* the underlying principle of prior application with the BIR becomes **moot in refund cases** — as in the present case — where the very basis of the claim is **erroneous or there is excessive payment** arising from the non-availment of a tax treaty relief at the first instance. Just as Deutsche Bank was not faulted by the Court for not complying with RMO No. 1-2000 prior to the transaction, so should CBK Power. In parallel, CBK Power could not have applied for a tax treaty relief 15 days prior to its payment of the final withholding tax on the interest paid to its

> lenders **precisely because it erroneously paid said tax** on the basis of the regular rate as prescribed by the NIRC, and not on the preferential tax rate provided under the different treaties. As stressed by the Court, the prior application requirement under RMO No. 1-2000 then becomes illogical.[29]

In the same manner, it would be illogical for the IGC to comply with the prior requirement under RMO No. 1-2000 before it paid the FWT on the dividends earned. At the time of the payment transaction, the IGC was not availing of the 15% preferential tax rate as prescribed pursuant to the treaty, but it was applying the 35% regular tax rate. RMO No. 1-2000 is clear that application must be filed 15 days before the transaction (time of payment). It appears then that the prior application requirement under RMO No. 1-2000 is no longer a condition precedent to refund an erroneously paid tax on the basis of the regular tax rate under the Tax Code.

Finally, we agree with the CTA that the IGC was able to comply with all the requisites in order for its claim for refund to be granted. To be granted a refund, the IGC, in addition to being able to point out the specific provision of law creating such right, the taxpayer must be able to establish the fact of payment of the tax sought to be refunded and that the filing of the claim for refund was made within the reglementary period provided for under Section 204[30] of the NIRC for its administrative claims for refund and Section 229[31] for its judicial claims for refund.

The well-settled doctrine is that factual findings of the CTA are binding upon this court and can only be disturbed on appeal if not supported by substantial evidence.[32]

The fact of payment of the tax sought to be refunded is essentially a factual finding of the CTA and as such, the same must be accorded weight and respect especially if supported by substantial evidence. Here, it was proven that on June 13, 2006, McCann withheld FWT on the dividends earned by the IGC at the rate of 35% in the amount of P21,593,111.93 and remitted the same on June 15, 2006. To prove this, the IGC submitted the Monthly Remittance Return of the Final Income Taxes Withheld of McCann and the accompanying payment transaction.[33]

As to the timeliness of the claim for refund, both in the administrative and judicial level, we again concur with the factual findings of the CTA that both were done within the reglementary period provided by law. Indeed, it was found out that McCann withheld and paid to the BIR, in behalf of the IGC, the amount of P21,593,111.93 on June 15, 2006. The IGC filed its administrative claim for refund on March 5, 2008.[34] The inaction of the CIR on IGC's claim for refund prompted the latter to file a judicial claim for refund with the CTA on June 16, 2008.[35] Indeed, the IGC may, within the statutory period of two years, proceed with its suit without waiting for the decision of the CIR.[36] The reason is that both the claim for refund with the BIR and with the CTA must be filed within the two-year period. These are mandatory requirements and non-compliance therewith is fatal to the action for refund or tax credit.

It bears stressing that tax refunds are in the nature of tax exemptions. As such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[37] The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law.[38] The IGC was able to discharge such burden of proof required by law.

WHEREFORE, the Petition is **DENIED**. The October 23, 2012 Decision and the April 15, 2013 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 791 are **AFFIRMED**.

SO ORDERED.

Caguioa, (Acting Chairperson),[*] *Lazaro-Javier,* and *Zalameda, JJ.,* concur.
Carpio, Senior Associate Justice, (Chairperson), J., on official leave.

---

[*] Per Special Order No. 2688 dated July 30, 2019.

[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla, concurring. Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino, both on leave; *rollo*, pp. 40-57.

[2] Id. at 58-60.

[3] Id. at 78-79.

[4] Id. at 24.

[5] *Eriks Pte. Ltd. v. Court of Appeals*, 335 Phil. 229, 235-236 (1997).

[6] 551 Phil. 231, 236 (2007).

[7] *Avon Insurance PLC v. Court of Appeals*, 343 Phil. 849, 861 (1997).

[8] *MR Holdings, Ltd. v. Bajar,* 430 Phil. 443, 461 (2002).

[9] *Cargill, Inc. v. Intra Strata Assurance Corp.*, 629 Phil. 320, 329 (2010).

[10] 72 Phil. 524 (1941).

[11] Id. at 528-529.

[12] *Marubeni Corp. v. Commissioner of Internal Revenue*, 258 Phil. 295, 304 (1989).

[13] Republic Act No. 8424, Tax Reform Act of 1997, December 11, 1997.

[14] *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp.,* 281 Phil. 425, 444-445 (1991).

[15] Supra note 13.

[16] *Air Canada v. Commissioner of Internal Revenue*, 776 Phil. 119, 138 (2016).

[17] *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp.,* supra note 14, at 445.

[18] Convention Between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income <https://www.bir.gov.ph/images/bir_files/international_tax_affairs/United States treaty.pdf> (visited August 9, 2019).

[19] *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp.,* supra note 14, at 446.

[20] Id. at 460.

[21] 750 Phil. 748 (2015).

[22] Id. at 759.

[23] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, 368 Phil. 388, 404 (1999).

[24] Id.

[25] 716 Phil. 676 (2013).

[26] Id. at 689-690.

[27] *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, supra note 21, at 761.

[28] Id. at 760.

[29] Id. at 760-761.

[30] 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. (Emphases supplied)

[31] 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. (Emphases supplied)

[32] *Commissioner of Internal Revenue v. Tours Specialists, Inc.,* 262 Phil. 437, 442 (1990).

[33] *Rollo,* p. 74.

[34] Id. at 78.

[35] Id.

[36] *Commissioner of Customs v. Court of Tax Appeals,* 253 Phil. 339, 343 (1989).

[37] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.,* supra note 23, at 411.

[38] Id.