

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

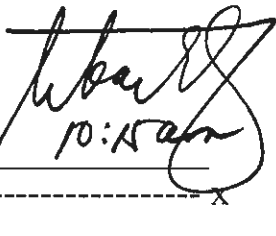
COMMISSIONER OF INTERNAL REVENUE, CTA EB NO. 2878
(CTA Case No. 9998)
Petitioner,

Present:

-versus-

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

BRITISH AMERICAN TOBACCO (PHILIPPINES), LIMITED, Promulgated:
Respondent. NOV 27 2024


10:15 am

X ----- X

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a *Petition for Review*, filed on March 11, 2024, seeking the reversal of the Decision, dated September 12, 2023 (“Assailed Decision”), and Resolution, dated February 2, 2024 (“Assailed Resolution”), both rendered by the Court’s Special Second Division, which granted respondent’s judicial claim for refund.

The Parties¹

Petitioner is the duly appointed Commissioner of Internal Revenue (“CIR”), who holds office at the Bureau of Internal Revenue (“BIR”) National Office Building at Agham Road, Diliman, Quezon City.

Respondent is a corporation duly organized and existing under the laws of the United Kingdom. It has a License to Transact Business in the Philippines through its branch office in the country.

The Facts

On December 13, 2017, respondent’s head office resolved to cease all operations of and close its branch office in the Philippines, leaving its remaining deposits with the Internal Revenue Stamp Integrated System (“IRSIS”) and the value of all unused and spoiled stamps and bad orders (credited back to the IRSIS) unutilized.²

After the BIR gave due course to several of respondent’s requests for credit back for spoiled stamps and bad orders, respondent filed an administrative claim for excise tax refund for IRSIS credits, representing unused stamps and unutilized balance, on June 22, 2018, and another administrative claim for refund or credit back for the value of spoiled stamps and bad orders on December 20, 2018.³

With action on its administrative claims still pending, respondent filed a Petition for Review before the Court in Division on December 21, 2018, while petitioner filed his Answer thereto on March 22, 2019.⁴

After trial, during which petitioner chose to forego presenting evidence,⁵ the Court in Division issued a Decision denying respondent’s Petition for Review for lack of merit on June 28, 2021⁶ (“First Decision”).

Aggrieved, respondent moved for reconsideration and new trial on July 16, 2021, with petitioner filing his Comment thereto on October 26, 2021.⁷ The Court in Division denied the prayer for reconsideration but granted the prayer for new trial on February 7, 2022.⁸ Petitioner then assailed the grant of

¹ Decision, dated September 12, 2023, p. 2, *Rollo*, p. 30.

² *Id.*

³ Decision, dated September 12, 2023, pp. 3-4, *id.* at 31-32.

⁴ Decision, dated September 12, 2023, p. 4, *id.* at 32.

⁵ Decision, dated September 12, 2023, p. 5, *id.* at 33.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

a new trial through a Motion for Reconsideration, filed on March 3, 2022, to which respondent filed a Comment on March 25, 2022, but the Court in Division denied the Motion on April 13, 2022.⁹

After the conduct of the new trial,¹⁰ the Court in Division issued the Assailed Decision on September 12, 2023. Petitioner moved for the reconsideration of said issuance on October 6, 2023, but this was denied through the Assailed Resolution, dated February 4, 2024.

The denial prompted petitioner to file a Motion for Extension of Time to File Petition for Review with this Court *En Banc* on February 23, 2024.¹¹ The Court granted the Motion through a Minute Resolution,¹² dated February 27, 2024, giving petitioner until March 9, 2024 within which to file a Petition, on the condition that said Motion was timely filed.

Petitioner filed the instant Petition for Review on March 11, 2024, while respondent filed its Comment¹³ thereto on May 3, 2024. The Court then submitted this case for decision on May 15, 2024.¹⁴

Hence, this Decision.

*The Assigned Error*¹⁵

The sole error assigned by petitioner is the Court in Division's ruling that respondent is entitled to the refund or tax credit in the total amount of ₱305,823,304.00, paid for the period from December 29, 2016 to May 18, 2017.

The Arguments

Petitioner raises two major arguments: (1) respondent failed to exhaust administrative remedies before resorting to a judicial claim for refund as it filed said judicial claim a single day after filing its administrative claim;¹⁶ and (2) the evidence presented by respondent during the new trial was neither unavailable prior to the submission of the case for resolution nor newly discovered and consequently should not have been admitted.¹⁷

⁹ Decision, dated September 12, 2023, p. 7, *id.* at 35.

¹⁰ Decision, dated September 12, 2023, pp. 7-8, *id.* at 35-36.

¹¹ *Id.* at 1-4.

¹² *Id.* at 6.

¹³ *Id.* at 67-78.

¹⁴ Minute Resolution, dated May 15, 2024, *id.*, unpaginated.

¹⁵ Petition for Review, p. 4, *id.* at 10.

¹⁶ Petition for Review, pp. 4-7, *id.* at 10-13.

¹⁷ Petition for Review, pp. 7-14, *id.* at 13-20.

Respondent counters the above by contending that (1) the law only requires that an administrative claim be filed before a judicial claim and that both be filed within two years from the payment of the tax sought to be refunded;¹⁸ and (2) the evidence it presented during new trial was issued only after the case was submitted for decision, with such delay having been caused by petitioner's own tardy action on respondent's application for tax clearance.¹⁹

The Ruling of the Court

The Petition for Review is bereft of merit. Both of petitioner's arguments have already been decisively refuted by the Court in Division.

The Court has jurisdiction over the instant Petition

Under *Rule 4, Section 2(a)(1) of the Revised Rules of the Court of Tax Appeals, as amended ("RRCTA")*, this Court *En Banc* has jurisdiction over rulings of the Court in Division in cases involving administrative agencies, such as the present case. Meanwhile, *Rule 8, Section 3(b) of the RRCTA* requires that a Petition assailing such a ruling of the Court in Division be filed with the Court *En Banc* within 15 days from the aggrieved party's receipt of the adverse ruling. The period can be extended by an additional 15 days once.

Records show that petitioner received the Assailed Resolution on February 8, 2024.²⁰ This gave him until February 23, 2024 within which to file a Petition for Review. He then filed his Motion for Extension to File Petition for Review exactly on February 23, 2024. The Court granted said Motion and gave petitioner until March 9, 2024 within which to file a Petition. That date fell on a Saturday, so petitioner effectively had until March 11, 2024 within which to assail the Court in Division's ruling. As petitioner filed the instant Petition for Review on March 11, 2024, he filed his Petition on time.

The Court thus properly assumed jurisdiction over this case. This timely filing, however, does not call for a favorable ruling. *✓*

¹⁸ Comment [On Petitioner's Petition for Review dated March 8, 2024], pp. 3-8, *id.* at 69-74.

¹⁹ Comment [On Petitioner's Petition for Review dated March 8, 2024, pp. 8-10, *id.* at 74-76.

²⁰ Notice of Resolution, dated February 2, 2024, Division Records Vol. 4, p. 1599.

*Respondent exhausted all
administrative remedies*

Petitioner's argument that respondent failed to exhaust administrative remedies is based on the latter's timing in filing its administrative and judicial claims. To review, respondent filed its (second) administrative claim on December 20, 2018 then filed its judicial claim with the Court in Division on December 21, 2018, the very next day. Having been given a single day to act on the administrative claim, petitioner insists that this cannot be considered a proper recourse to, much less an exhaustion of, administrative remedies.

Petitioner is mistaken.

As already discussed in the Assailed Resolution, the Supreme Court has allowed such a lack of time between administrative and judicial claims in *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*²¹ ("*Carrier*"), saying:

... it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.

The above declaration completely undermines petitioner's position. While the *National Internal Revenue Code of 1997, as amended* ("*NIRC*"), lays down a two-year prescriptive period for the filing of refund claims, it does not provide a grace period between the filing of administrative and judicial claims. The *NIRC* does not identify a specific span of time within which the CIR must act on an administrative claim. Concomitantly, it does not require a specific amount of time to have passed after the filing of an administrative claim before a judicial claim can be validly raised.

We are not unsympathetic to petitioner's plight. The lack of a grace period can potentially nullify petitioner's authority over refund claims. We see this at play in the case at bar, where respondent gave petitioner a single day to act on its second administrative claim. The timing effectively robbed petitioner of his power to act on refund claims, a power granted to him by the *NIRC* itself.

However, as observed by the Supreme Court in *Carrier*, the issue is a legislative one, a problem that stems from the law as it was written. It thus calls for a legislative solution and not judicial intervention. The High Court itself refrained from acting on an issue it so clearly perceived, so this Court

²¹ G.R. No. 226592, July 27, 2021.

En Banc must follow such prudence. We thus consider respondent to have validly exhausted all administrative remedies despite the next-day filing of its judicial claim.

In short, We cannot accept petitioner's first argument.

*The Court in Division correctly called
for the conduct of New Trial*

Petitioner's second argument challenges the trial conducted after the issuance of the Court in Division's First Decision. To review, the Court in Division denied respondent's Petition for Review through the First Decision, promulgated on June 28, 2021. Respondent then moved for the conduct of new trial, which the Court in Division granted, allowing respondent to present additional evidence. Petitioner takes umbrage with this post-ruling presentation of evidence, decrying it as unjustified and the new evidence as not newly discovered.

Petitioner is woefully mistaken.

The Court notes that in his Comment²² to respondent's Motion for Reconsideration and for New Trial, his Motion for Reconsideration²³ to the grant of the new trial, and even in the present Petition for Review, petitioner *merely claims* that the evidence was not newly discovered or otherwise sufficient to open a new trial. However, he does not substantially explain why said evidence should not be considered newly discovered. He does not acknowledge the timeline constructed by the Court in Division to show that the evidence was not available to respondent until after trial or the Court in Division's observation that respondent had applied for the cancellation of its registration with the BIR prior to its filing of its judicial claim.²⁴ He does not address the fact that the Certificate of No Outstanding Tax Liability²⁵ and Certificate of Withdrawal of License of a Foreign Corporation²⁶ were issued on July 29, 2020 and June 16, 2021, respectively, *after* the Court had resolved respondent's Formal Offer of Evidence on September 10, 2019²⁷ and submitted the case for decision on July 7, 2020.²⁸ In short, petitioner's claim that the evidence presented was not newly discovered has no factual, legal, or rational basis.

✓

²² Division Records Vol. 3, pp. 1429-1435.

²³ *Id.* at 1469-1474.

²⁴ Resolution, dated February 7, 2022, pp. 8-9. *Id.* at 1448-1449.

²⁵ *Id.* at 1423.

²⁶ *Id.* at 1424.

²⁷ Resolution, dated September 10, 2019, *id.* at 1333-1334.

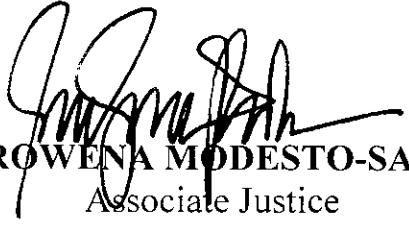
²⁸ Resolution, dated July 7, 2020, *id.* at 1388.

The Court is not compelled to accept baseless claims, especially those clearly refuted by the evidence on record. Quite the opposite, in fact. Consequently, We reject petitioner's second argument.

All told, We see no reason to disturb the ruling of the Court *a quo*.

ACCORDINGLY, the instant Petition for Review, filed on March 11, 2024, is hereby **DENIED** for lack of merit. The Decision, dated September 12, 2023, and Resolution, dated February 2, 2024, both rendered by the Court's Special Second Division, are hereby **AFFIRMED**.

SO ORDERED.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

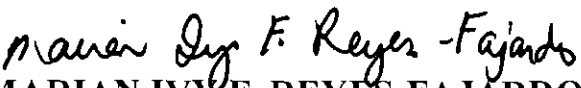
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 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.


ROMAN G. DEL ROSARIO
Presiding Justice