792 Phil. 484

FIRST DIVISION

[G.R. No. 216130, August 03, 2016]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. GOODYEAR PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 14, 2014 and the Resolution[3] dated January 5, 2015 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 1041, which affirmed the Decision[4] dated March 25, 2013 and the Resolution[5] dated June 26, 2013 of the CTA Second Division (CTA Division) in C.T.A. Case No. 8188, ordering petitioner Commissioner of Internal Revenue (petitioner) to refund or issue a tax credit certificate (TCC) in the sum of P14,659,847.10 to respondent Goodyear Philippines, Inc. (respondent), representing erroneously withheld and remitted final withholding tax (FWT).

The Facts

Respondent is a domestic corporation duly organized and existing under the laws of the Philippines, and registered with the Bureau of Internal Revenue (BIR) as a large taxpayer with Taxpayer Identification Number 000-409-561-000.[6] On August 19, 2003, the authorized capital stock of respondent was increased from P400,000,000.00 divided into 4,000,000 shares with a par value of P100.00 each, to P1,731,863,000.00 divided into 4,000,000 common shares and 13,318,630 preferred shares with a par value of P100.00 each. Consequently, all the preferred shares were solely and exclusively subscribed by Goodyear Tire and Rubber Company (GTRC), which was a foreign company organized and existing under the laws of the State of Ohio, United States of America (US) and is unregistered in the Philippines.[7]

On May 30, 2008, the Board of Directors of respondent authorized the redemption of GTRC's 3,729,216 preferred shares on October 15, 2008 at the redemption price of P470,653,914.00, broken down as follows: P372,921,600.00 representing the aggregate par value and P97,732,314.00, representing accrued and unpaid dividends.[8]

On October 15, 2008, respondent filed an application for relief from double taxation before the International Tax Affairs Division of the BIR to confirm that the redemption was not subject to Philippine income tax, pursuant to the Republic of the Philippines (RP) - US Tax Treaty.[9] This notwithstanding, respondent still took the conservative approach, and thus, withheld and remitted the sum of P14,659,847.10 to the BIR **on November 3, 2008,** representing fifteen percent (15%) FWT, computed based on the difference of the redemption price and aggregate par value of the shares.[10]

On October 21, 2010, respondent filed an administrative claim for refund or issuance of TCC, representing 15% FWT in the sum of P14,659,847.10 before the BIR. Thereafter, or **on November 3, 2010,** it filed a judicial claim, by way of petition for review, before the CTA, docketed as C.T.A. Case No. 8188.[11]

For her part, petitioner maintained that respondent's claim must be denied, considering that: (*a*) it failed to exhaust administrative remedies by prematurely filing its petition before the CTA; and (*b*) it failed to submit complete supporting documents before the BIR.[12]

The CTA Division Ruling

In a Decision[13] dated March 25, 2013, the CTA Division granted the petition and thereby ordered petitioner to refund or issue a TCC in the sum of P14,659,847.10 to respondent for being erroneously withheld and remitted as FWT.[14] Concerning the procedural issue, the CTA Division ruled that it was appropriate for respondent to dispense with the administrative remedy before the BIR, considering that court action should be instituted within two (2) years after the payment of the tax regardless of the pendency of the administrative claim; otherwise, the taxpayer would be barred from recovering the same.[15]

On the merits, the CTA Division found that the redemption of the 3,729,216 shares issued to GTRC – which were then converted to treasury shares – was **not** subject to Philippine income tax. The CTA Division elucidated that while the general rule is that the net capital gain obtained by a non-resident foreign corporation, such as GTRC, in the redemption of shares would be subjected to tax rates of five percent (5%) and ten percent (10%) under Section 28 (B) (5) (c)[16] of the National Internal Revenue Code, as amended (Tax Code), the provisions, however, of the RP-US Tax Treaty would also apply in determining the tax implications of the redemption of GTRC's preferred shares because it is a resident of the US.[17] It pointed out that under Article 14[18] of the RP-US Tax Treaty, any gain derived by a US resident (*i.e.,* GTRC) from the alienation of its properties (*i.e.,* the preferred shares), other than those described in paragraph 1 thereof, shall only be taxable in the US. Nonetheless, the CTA Division remained mindful of the Reservation Clause[19] in the same treaty which provided that the gains derived by a US resident from the disposition of shares in a domestic corporation may be taxed in the Philippines, provided that the latter's assets **principally**[20] consist of real property. After evaluating the Audited Financial Statements (AFS) of respondent for the years 2007 and 2008, and noting that the value of its real properties – *i.e.,* property, plant, and equipment – comprise less than 50% of its total assets, the CTA Division held that respondent's assets did not principally consist of real property and, hence, exempt from capital gains tax under Section 28 (B) (5) (c) of the Tax Code.[21]

The CTA Division then determined whether the net capital gain derived by GTRC would be subjected to 15% FWT imposed on intercorporate dividends under Section 28 (B) (5) (b)[22] of the Tax Code. Citing the RP-US Tax Treaty, the CTA Division noted that dividend income shall be determined by the law of the state in which the distributing corporation is a resident,[23] which in the Philippines' case, would be Section 73 (A)[24] of the Tax Code, defining dividends for income tax purposes as distributions to shareholders arising out of its earnings or profits. Accordingly, the CTA Division held that the net capital gain of GTRC could not be regarded as "dividends," considering that it did not come from respondent's unrestricted earnings or profits, as the records would show that it did not have any unrestricted earnings from the years 2003-2009 to cover any dividend pay-outs.[25] Finally, the CTA Division explained that there is only one instance in the Tax Code which treated the gains derived from redemptions or buy back of shares as dividends, and this is found in Section 73 (B),[26] which contemplated the issuance of stock dividends. The CTA Division, however, dispelled the application of this provision, considering that the shares which respondent redeemed were neither stock dividends nor were they redeemed using unrestricted retained earnings. In sum, the CTA Division ruled that absent any law which specifically treats the gain derived by GTRC as dividends, the same could not be subjected to 15% FWT under Section 28 (B) (5) (b).[27]

Dissatisfied, petitioner moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated June 26, 2013. Thereafter, she appealed[30] to the CTA En Banc.

The CTA *En Banc* Ruling

In a Decision[31] dated August 14, 2014, the CTA *En Banc* affirmed the findings of the CTA Division. Echoing the ruling of the CTA Division, the CTA *En Banc* found that respondent was compelled to seek judicial recourse after thirteen (13) days from filing its administrative claim so as not to forfeit its right to appeal to the CTA. Anent the tax treatment of the redemption price paid by respondent to GTRC, the CTA *En Banc* fully agreed with the disposition of the CTA Division, ruling that the net capital gain received by GTRC was not subject to Philippine income tax.[32] Undaunted, petitioner filed a motion for reconsideration,[33] which was, however, denied in a Resolution[34] dated January 5, 2015; hence, this petition.

The Issues Before the Court

The issues raised by petitioner in this case are: (*a*) whether or not the judicial claim of respondent should be dismissed for non-exhaustion of administrative remedies; and (*b*) whether or not the CTA *En Banc* correctly ruled that the gain derived by GTRC was not subject to 15% FWT on dividends.

The Court's Ruling

The petition is devoid of merit.

I.

At the onset, petitioner contends that by filing the administrative and judicial claims only 13 days apart, respondent, in effect, pursued an empty remedy before the BIR, and thereby deprived the latter of the opportunity to ascertain the validity of the claim. In this regard, petitioner maintained that the mere filing of the administrative claim before the BIR did not outrightly satisfy the requirement of exhaustion of administrative remedy.[35]

The contentions are untenable.

Section 229 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, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR), *viz.*:

> 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** x x x. (Emphases and underscoring supplied)

Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – [then Section 306 of the old Tax Code] – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. In *CBK Power Company, Ltd. v. CIR,*[36] the Court enunciated:

> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener),* wherein it was held that in **no wise does the law,** *i.e.,* Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action.** In *Kiener,* the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow** x x x. [37] (Emphases and underscoring supplied)

In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period.[38] Notably, Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.

Thus, in view of the aforesaid circumstances, respondent correctly and timely sought judicial redress, notwithstanding that its administrative and judicial claims were filed only 13 days apart.

II.

For another, petitioner asserts that the net capital gain derived by GTRC from the redemption of its 3,729,216 preferred shares should be subject to 15% FWT on dividends; She claims that while the payment of the original subscription price could not be taxed as it represented a return of capital, the additional amount, however, or the component of the redemption price representing the amount of P97,732,314.00 should not be treated as a mere premium and part of the subscription price, but as accumulated dividend in arrears, and, hence, subject to 15% FWT.[39]

Again, the assertions are wrong.

The imposition of 15% FWT on intercorporate dividends received by a non-resident foreign corporation is found in Section 28 (B) (5) (b) of the Tax Code which reads:

> SEC. 28. *Rates of Income Tax on Foreign Corporations.* –
>
> xxxx
>
> (B) *Tax on Nonresident Foreign Corporation.* –
>
> xxxx
>
> (5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* –
>
>> (b) *Intercorporate Dividends.* – **<u>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</u>,** subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: *Provided,* That effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent