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THIRD DIVISION

[G.R. No. 181459, June 09, 2014]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MANILA ELECTRIC COMPANY (MERALCO), RESPONDENT.

D E C I S I O N

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 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 P264,120,181.44.[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 P264,120,181.44, 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 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 (P224,760,926.65) 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 (P39,359,254.79) is hereby GRANTED.
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> 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 (P39,359,254.79) 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, 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 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 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.
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> 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 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 P3,037,500 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: