Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LUCIO L. CO, SUSAN P. CO, FERDINAND VINCENT P. CO, AND PAMELA JUSTINE P. CO,
Respondents.

G.R. No. 241424

Present:

PERALTA, *C.J., Chairperson,*
CAGUIOA,
J. REYES, JR.,*
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:
FEB 26 2020

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DECISION

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision[2] dated February 28, 2018 and Resolution[3] dated August 14, 2018 of the Court of Tax Appeals *en banc* (CTA EB) in CTA EB No. 1522, which affirmed the CTA Third Division's (CTA Division) Decision[4] dated June 2, 2016 in CTA Case No. 8831 granting respondents' claim for refund of erroneously paid capital gains tax (CGT).

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* On official leave.

1 *Rollo*, pp. 50-67.

2 Id. at 75-99. Penned by Associate Justice Juanito C. Castañeda, Jr. with Presiding Justice Roman G. Del Rosario issuing a Concurring Opinion and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan, concurring.

3 Id. at 105-111. Penned by Associate Justice Juanito C. Castañeda, Jr. with Presiding Justice Roman G. Del Rosario issuing a Concurring Opinion and Associate Justices Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan, concurring while Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino, took no part and on leave, respectively.

4 Id. at 138-159. Penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justice Lovell R. Bautista, concurring and Associate Justice Ma. Belen M. Ringpis-Liban, on leave.

Facts

The facts as summarized by the CTA are as follows:

As of March 2012, the four respondents[, Lucio L. Co, Susan P. Co, Ferdinand Vincent P. Co and Pamela Justine P. Co (respondents),] collectively were the majority shareholders of Kareila Management Corporation (Kareila), a domestic corporation engaged as managers, managing agents, consignor, concessionaire, or supplier of business engaged in the operation of hotels, supermarkets, groceries and the like.

[Kareila had an authorized capital stock of ₱500,000,000.00, wherein 1,703,125 shares were subscribed and fully paid. Respondents owned 99.9999% of the total subscribed shares while Anthony Sy (Sy) owned the remaining 0.0001%.]

[Respondents were also shareholders of Puregold Price Club, Inc. (Puregold), a corporation organized under the Philippine laws and primarily engaged in the wholesale and retail of general merchandise. From Puregold's authorized capital stock of ₱3,000,000,000.00, 2,000,000,000.00 shares were subscribed and fully paid. Respondents owned 66.55% of Puregold's total subscribed shares.]

x x x x

On March 27, 2012, the Board of Directors of [Puregold] x x x approved the issuance of 766,406,250 Puregold common shares to [respondents] and [Sy] in exchange for the transfer to Puregold of the 1,703,125 shares of Kareila.

On May 8, 2012, during the Puregold annual stockholders meeting, this exchange was approved by the stockholders representing two-thirds of Puregold's outstanding capital stock.

x x x x

On May 11, 2012, [respondents] and [Sy] entered into a Deed of Exchange with [Puregold] wherein they agreed to transfer all their Kareila shares to Puregold in exchange for Puregold shares.

Under the Deed of Exchange, [respondents] and [Sy] each would receive four hundred fifty (450) Puregold shares for every one (1) Kareila share that they would transfer to Puregold. Accordingly, Puregold issued to [respondents] and [Sy] a total of 766,406,250 Puregold shares from the unissued portion of its authorized capital stock in exchange for the 1,703,125 Kareila shares:

Share swap per Deed of Exchange:		
Shareholder	**No. of Kareila Shares Transferred to Puregold**	**No. of Puregold Shares Exchanged for Kareila Shares**

Lucio Co	681,250	306,562,500
Susan Co	681,250	306,562,500
Ferdinand Co	170,312	76,640,400
Pamela Co	170,312	76,640,400
Anthony Sy	1	450
Total	1,703,125	766,406,250

As a result of the share swap under the Deed of Exchange:

1. Puregold acquired majority ownership of Kareila; and,

2. [Respondents,] who, prior to the share swap, already collectively owned 66.5720% of the outstanding capital stock of Puregold consequently increased their stockholdings to 75.8329% after the swap:

Puregold Price Club Inc.				
	Before Swap		After Swap	
Shareholder	No. of Shares Owned	Percentage Ownership	No. of Shares Owned	Percentage Ownership
Lucio Co	724,376,801	36.2188%	1,030,939,302	37.2664%
Susan Co	539,691,310	26.9846%	846,253,810	30.5904%
Ferdinand Co	33,686,354	1.6843%	110,326,754	3.9881%
Pamela Co	33,686,354	1.6843%	110,326,754	3.9881%
Total	1,311,440,820	65.5720%	2,097,846,620	75.8329%
Total Subscribed Capital	**2,000,000,000**		**2,766,406,250**	

On June 26 and 28, 2012, [respondents] collectively paid capital gains tax (CGT) including interest and/or compromise penalty on the said transfer pursuant to Section 24(C) of the National Internal Revenue Code of 1997 (NIRC), as amended. x x x

x x x x

[Respondents], however, contend that their payments of CGT were erroneous because, under Section 40(C)(2) of the NIRC, their transfer of shares through the Deed of Exchange was a tax-exempt transaction.

Thus, on May 21, 2014, or within the two-year prescriptive period provided under Section 204(c) of the NIRC of 1997, as amended, [respondents] filed their administrative claims for refund of the CGT including interest and/or compromise penalty with their respective Revenue District Offices (RDO).

x x x x

[Due to the CIR's inaction, respondents filed a Petition for Review with the CTA Division.]

In the Answer, the CIR alleged that Revenue Regulations No. 18-2001, Revenue Memorandum Order Nos. 32-2001 and 17-2002 provide that there are certain conditions or requirements which should be complied with in order to avail of the non-recognition of gain under Section 40(C)(2). Specifically, for the share swap transaction to qualify as a tax-free exchange, a *prior* application for a BIR certification or ruling must have been secured. In this case, however, no such *prior* request from the BIR was made. Accordingly, the CIR contended that, since refund claims are construed strictly against the taxpayer-claimant, the refund sought by [respondents] should be denied.

In Reply, [respondents] contend that it was impossible for them to make any prior request for a ruling since they were not aware that their transaction was in fact tax free which, thus, establishes that their CGT payments were erroneously paid. Further, they maintained that Section 40(C)(2) of the NIRC, or any other provision of law or any existing jurisprudence does not impose such condition.[5]

After a Pre-Trial Order was issued, respondents commenced presentation of their witnesses, namely, Mary S. Demetillo, their consultant on accounting of personal financial transactions, and Atty. Candy H. Dacanay-Datuon, the Corporate Secretary of Kareila and Assistant Corporate Secretary of Puregold.[6]

x x x x

Witness **Mary S. Demetillo**, declared that as [respondents'] consultant on accounting of personal financial transactions for almost 5 years, she did the accounting and computation of tax for the subject share swap transaction.

By virtue of the Deed of Exchange dated May 11, 2012, [respondents] and [Sy] transferred 1,703,125 [of] their Kareila common shares to Puregold Price Club, Inc. In return, [respondents] received 766,406,250 common shares in Puregold. At the time of the transaction, Kareila shares had a par value of P100.00 per share, while Puregold had a par value of P21.50 per share. For the said share swap transaction, [respondents] paid CGT of P1,647,615,290.07, including interest and penalty, on June 26 and 28, 2012.

Such payments of CGT, including interest and penalty were reflected in [respondents'] Annual Income Tax Returns (AITRs) for the year 2012.

On May 21, 2014, [respondents] separately filed administrative claims for refund of the erroneously paid CGT with their respective RDO followed by their filing of BIR form No. 1914 or the Applications for Tax Credits/Refund, for which she was consulted. She learned about the actual filing of such claims for refund only when she was preparing for her testimony before the Court. The said administrative claims for refund were not acted upon by [the CIR].

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5 Id. at 76-79.
6 Id. at 76-80.

Attorney **Candy H. Dacanay-Datuon**, the Corporate Secretary of Kareila since 2004 and the Assistant Corporate Secretary of Puregold since 2011, testified that she is the custodian of the records of the shares of stocks of Kareila and Puregold. She prepares and files the reportorial requirements under the law of both entities. Kareila is a domestic corporation whose primary purpose is to act as managers, managing agents, consignor, concessionaire or supplier of businesses engaged in manufacturing or trading of general merchandise, the operation of resorts, hotels, supermarkets, groceries and the like. Puregold is also a domestic corporation whose primary purpose is to engage in the wholesale and retail of general merchandise.

She further testified that [respondents] are shareholders of both corporations. Under a Deed of Exchange dated May 11, 2012, [respondents] with [Sy], transferred their 1,703,125 common shares in Kareila to Puregold in exchange for 766,406,250 common shares of Puregold.

Lucio Co and Susan Co each transferred 681,250 Kareila shares in exchange for 306,562,500 Puregold shares, while both Ferdinand Co and Pamela Co each transferred 170,312 Kareila shares for 76,640,400 Puregold shares.

The 1,703,125 Kareila shares were valued at P16.467 billion or P9,668.47 per share, while the 766,406,250 Puregold shares had a subscription price of P16,477,734,375.00 or P21.50 per share.

As a consequence of the share swap, Puregold acquired ownership of all 1,703,125 Kareila shares, while [respondents] and [Sy] were each given in trust one share or .0001% of Kareila. On the other hand, [respondents] collectively owned 1,331,440,820 Puregold shares or 66.55% of the outstanding capital stock of Puregold. After the share swap, [respondents] gained further control of Puregold as their collective shareholdings therein increased from 66.55% to 75.83%.

The amount of P1,647,615,290.07 CGT was paid for the share swap transaction, including interest and penalty, and this amount is the subject of the instant claim for refund.

With the admission of all its evidence, [respondents] rested their case.

On the other hand, [the CIR] did not present any evidence on the ground that no investigation report was submitted to [its] counsel.[7]

CTA Division Ruling

On June 2, 2016, the CTA Division rendered a Decision granting respondents' claim for refund, the dispositive portion of which reads:

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[7] Id. at 141-143.

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** in favor of petitioners Lucio Co, Susan Co, Ferdinand Co, and Pamela Co the amounts of P659,045,625.00, P659,050,632.50, P164,761,860.03 and P164,757,172.54, respectively, or a total amount of P1,647,615,290.07, representing erroneously paid capital gains tax.
>
> **SO ORDERED.**[8]

The CTA Division found that the administrative and judicial claims for refund were timely filed. According to the CTA Division, respondents' legal counsel, Zambrano and Gruba Law Offices, had the authority to represent respondents in their administrative claims for refund filed with the CIR even if the Special Power of Attorney was notarized only after its filing.[9]

The CTA Division further held that all the requisites for the non-recognition of gain or loss under Section 40(C)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, which effectively exempts the transaction from income tax, are all present in this case.[10]

The CTA Division also brushed aside the CIR's contention that respondents failed to comply with the Bureau of Internal Revenue (BIR) issuances relating to the tax exemption under Section 40(C)(2), particularly the requirement of seeking a prior BIR Ruling. According to the CTA Division, respondents could not be expected to obtain a BIR Ruling for tax exemption as they previously believed that they were liable to pay the same based on the computation and recommendation of their accounting consultant. The CTA Division also noted that the BIR issuances cited by the CIR are mere guidelines in monitoring tax-free exchange of property and in determining the gain or loss on a subsequent sale or disposition of such property. Thus, respondents cannot be deprived of their claim for refund simply because they failed to comply with said guidelines.[11]

The CIR moved for reconsideration but the same was denied by the CTA Division in its Resolution[12] dated September 1, 2016.

On appeal to the CTA EB, the CIR claimed that the tax exemption in Section 40(C)(2) of the NIRC of 1997, as amended, does not cover the subject share swap transaction because respondents, prior to the exchange, already had control of Puregold.[13]

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8 Id. at 158.
9 Id. at 147.
10 Id. at 150-154.
11 Id. at 154-157.
12 Id. at 161-163. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justices Lovell R. Bautista and Ma. Belen M. Ringpis-Liban, concurring.
13 Id. at 84.

CTA EB Ruling

In the assailed Decision, the CTA EB affirmed respondents' entitlement to refund.

The CTA EB ruled that following the Court's pronouncement in the case of *Commissioner of Internal Revenue v. Filinvest Dev't. Corp. (Filinvest)*,[14] Section 40(C)(2) covers instances of further control, when, as a result of the exchange, the transferors collectively increase their control of the transferee corporation, as in this case.[15]

The CTA EB reiterated the Division's ruling that respondents' counsel was properly authorized to file the administrative claim on their behalf.[16] The CTA EB also held that, contrary to the CIR's claim, a prior confirmatory ruling is not a condition *sine qua non* for the availment of tax exemption and a claim for refund of erroneously paid tax.[17]

The CIR moved for reconsideration but the same was denied by the CTA EB in the assailed Resolution.

Hence, this Petition.

Issue

Whether the CTA EB erred in finding that respondents are entitled to the claim for refund for erroneously paid CGT.

The Court's Ruling

The Petition lacks merit.

The subject transaction falls under Section 40(C)(2) of the NIRC of 1997, as amended

Respondents anchor their claim for refund on the tax-free exchange provision under Section 40(C)(2) of the NIRC of 1997, as amended. Said provision reads:

"(C) *Exchange of Property.* –

x x x x

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14 669 Phil. 323, 351-355 (2011); id. at 94-96.
15 *Rollo*, pp. 94-96.
16 Id. at 85-88.
17 Id. at 97-98.

> "No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: *Provided*, That stocks issued for services shall not be considered as issued in return for property.["]

In relation thereto, Section 40(C)(6)(c) of the same Code defines the term "control" as "ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote."

Based on the foregoing, the requisites for the non-recognition of gain or loss are as follows: (a) the transferee is a corporation; (b) the transferee exchanges its shares of stock for property/ies of the transferor; (c) the transfer is made by a person, acting alone or together with others, not exceeding four persons; and, (d) as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee.[18]

As regards the element of control, the Court, in *Filinvest*, clarified that it is not necessary that, after the exchange, each of the transferors individually gains control of the transferee corporation. It also does not prohibit instances when the transferor gains further control of the transferee corporation. The Court explained that the element of control is satisfied even if one of the transferors is already owning at least 51% of the shares of the transferee corporation, as long as after the exchange, the transferors, not more than five, ***collectively*** increase their equity in the transferee corporation by 51% or more.

In the said case, Filinvest Development Corporation (FDC) and Filinvest Alabang Incorporated (FAI), entered into a Deed of Exchange with Filinvest Land Incorporated (FLI), whereby the former both transferred in favor of the latter parcels of land in exchange for FLI shares.[19] Prior to the exchange, FDC owned 80% of FAI and 67.42% of FLI. After the exchange, FDC retained 80% ownership of FAI but decreased its ownership of FLI to only 61.03%. As a result, FDC together with FAI owned 70.99% of FLI.[20]

The Court held that neither FDC nor FAI is liable for income tax because both collectively gained control of FLI, the transferee corporation, as a result of the exchange:

> Then as now, the CIR argues that taxable gain should be recognized for the exchange considering that FDC's controlling interest in FLI was actually decreased as a result thereof. For said purpose, the CIR calls attention to the fact that, prior to the exchange, FDC owned

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18 *Commissioner of Internal Revenue v. Filinvest Dev't. Corp*, supra note 14, at 352.
19 Id. at 336-337.
20 Id. at 363.

2,537,358,000 or 67.42% of FLI's 3,763,535,000 outstanding capital stock. Upon the issuance of 443,094,000 additional FLI shares as a consequence of the exchange and with only 42,217,000 thereof accruing in favor of FDC for a total of 2,579,575,000 shares, said corporation's controlling interest was supposedly reduced to [61.03%] when reckoned from the transferee's aggregate 4,226,629,000 outstanding shares. Without owning a share from FLI's initial 3,763,535,000 outstanding shares, on the other hand, FAI's acquisition of 420,877,000 FLI shares as a result of the exchange purportedly resulted in its control of only 9.96% of said transferee corporation's 4,226,629,000 outstanding shares. On the principle that the transaction did not qualify as a tax-free exchange under Section 34 (c) (2) of the 1993 NIRC, the CIR asseverates that taxable gain in the sum of ₱263,386,921.00 should be recognized on the part of FDC and in the sum of ₱3,088,711,367.00 on the part of FAI.

The paucity of merit in the CIR's position is, however, evident from the categorical language of Section 34 (c) (2) of the 1993 NIRC which provides that gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceeding four persons. Rather than isolating the same as proposed by the CIR, FDC's 2,579,575,000 shares or 61.03% control of FLI's 4,226,629,000 outstanding shares should, therefore, be appreciated in combination with the 420,877,000 new shares issued to FAI which represents 9.96% control of said transferee corporation. Together FDC's 2,579,575,000 shares (61.03%) and FAI's 420,877,000 shares (9.96%) clearly add up to 3,000,452,000 shares or 70.99% of FLI's 4,226,629,000 shares. **Since the term "control" is clearly defined as "ownership of stocks in a corporation possessing at least fifty-one percent of the total voting power of classes of stocks entitled to one vote" under Section 34 (c) (6) [c] of the 1993 NIRC, the exchange of property for stocks between FDC, FAI and FLI clearly qualify as a tax-free transaction under paragraph 34 (c) (2) of the same provision**.

Against the clear tenor of Section 34(c) (2) of the 1993 NIRC, the CIR cites then Supreme Court Justice Jose Vitug and CTA Justice Ernesto D. Acosta who, in their book *Tax Law and Jurisprudence*, opined that said provision could be inapplicable if control is already vested in the exchangor prior to exchange. Aside from the fact that that the 10 September 2002 Decision in CTA Case No. 6182 upholding the tax-exempt status of the exchange between FDC, FAI and FLI was penned by no less than Justice Acosta himself, FDC and FAI significantly point out that said authors have acknowledged that the position taken by the BIR is to the effect that **"the law would apply even when the exchangor already has control of the corporation at the time of the exchange."** This was confirmed when, apprised in FLI's request for clarification about the change of percentage of ownership of its outstanding capital stock, the BIR opined as follows:

> Please be informed that regardless of the foregoing, the transferors, Filinvest Development Corp. and Filinvest Alabang, Inc. still gained control of Filinvest Land, Inc. The term 'control' shall mean ownership of stocks in a corporation by possessing at least 51% of the total voting power of all classes of stocks entitled to vote. Control is determined by the amount of stocks received, *i.e.*, total subscribed, whether for property or for services by the transferor or transferors. In determining the 51% stock ownership,

> only those persons who transferred property for stocks in the same transaction may be counted up to the maximum of five (BIR Ruling No. 547-93 dated December 29, 1993.)
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> At any rate, it also appears that the supposed reduction of FDC's shares in FLI posited by the CIR is more apparent than real. As the uncontested owner of 80% of the outstanding shares of FAI, it cannot be gainsaid that FDC ideally controls the same percentage of the 420,877,000 shares issued to its said co-transferor which, by itself, represents 7.968% of the outstanding shares of FLI. Considered alongside FDC's 61.03% control of FLI as a consequence of the 29 November 1996 Deed of Transfer, said 7.968% add up to an aggregate of 68.998% of said transferee corporation's outstanding shares of stock which is evidently still greater than the 67.42% FDC initially held prior to the exchange. This much was admitted by the parties in the 14 February 2001 Stipulation of Facts, Documents and Issues they submitted to the CTA. **Inasmuch as the combined ownership of FDC and FAI of FLI's outstanding capital stock adds up to a total of 70.99%, it stands to reason that neither of said transferors can be held liable for deficiency income taxes the CIR assessed on the supposed gain which resulted from the subject transfer.**[21]

Thus, based on *Filinvest*, the CIR clearly has no basis to claim that the share swap transaction between respondents and Puregold is not covered by the tax-free exchange as provided in Section 40(C)(2) in relation to Section 40(C)(6)(c) of the NIRC of 1997, as amended. It is undisputed that after the exchange, respondents ***collectively*** increased their control over Puregold from 66.57% to 75.83%. Accordingly, respondents cannot be held liable for income taxes on the supposed gain which may have resulted from such transfer. The CGT paid by respondents on the subject transfer are considered erroneously paid taxes and must perforce be refunded pursuant to Section 229[22] of the NIRC of 1997, as amended.

Respondents filed a valid administrative claim for refund

The CIR, however, assails the validity and timeliness of respondents' administrative claim, which was filed through respondents' counsel of record. According to the CIR, such administrative claim was defective because respondents' counsel failed to show in said letters that they were

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21 Id. at 352-355.

22 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: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

authorized by respondents to file the same on their behalf.[23] The CIR further contends that the subsequent submission of a Special Power of Attorney did not cure the defect because the same was filed beyond the two-year prescriptive period.[24]

The CIR is mistaken.

The filing of the administrative claim by respondents' counsel of record on behalf of their client gave rise to the presumption that they have the authority to file the same. This is anchored on the rule that "[a] lawyer is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client."[25]

The presumption in favor of the counsel's authority to appear in behalf of its client is a strong one,[26] as it arises from the lawyer's pledge to act with honesty, candor and fairness and not to do any falsehood or misrepresentation.[27] If a lawyer corruptly or willfully appears as an attorney for a party to a case without authority, he may be disciplined or punished for contempt as an officer of the court who has misbehaved in his official transaction.[28]

In addition, an attorney's appearance is also presumed to be with the previous knowledge and consent of the litigant until the contrary is shown.[29] In this case, the presumption of authority of respondents' counsel remains unrebutted because the CIR failed to represent any proof to the contrary.

In any event, the supposed lack of authority of respondents' counsel of record was thereafter cured when respondents executed a Special Power of Attorney and submitted the same with the CIR and before the court *a quo*. The CTA held that the said instrument clearly spells out the extent of authority granted to respondents' counsel and ratifies all prior acts done in pursuit of said authority, which includes the filing of respondents' administrative claim for refund.

In *Land Bank of the Philippines v. Pamintuan Dev't. Co.*,[30] the Court held that "[r]atification retroacts to the date of the lawyer's first appearance and validates the action taken by him." The effect is as if respondents themselves filed the administrative claim for refund on May 21, 2014, within

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23 *Rollo*, p. 56.
24 Id. at 58-59.
25 *Republic of the Phils. v. Judge Soriano*, 250 Phil. 561, 568 (1988), citing RULES OF COURT, Rule 138, Sec. 21.
26 *Land Bank of the Philippines v. Pamintuan Dev't. Co.*, 510 Phil. 839, 844 (2005), citing Agpalo, Legal Ethics, 240 (1997 ed.).
27 See *Villahermosa v. Atty. Caracol*, 751 Phil. 1, 9 (2015).
28 Id. at 7.
29 *Maersk Filipinas Crewing, Inc. v. Ramos*, 803 Phil. 375, 385 (2017).
30 Supra note 26, at 845, citing Agpalo, Legal Ethics, supra note 26, at 244.

the two-year prescriptive period provided under the NIRC of 1997, as amended.[31] Thus, the Court agrees with the CTA that respondents' administrative claim was valid and timely filed.

No prior confirmatory ruling is required for tax exemption or refund

The CIR also insists that the claim should be denied because respondents failed to secure a prior confirmatory ruling that the subject transaction qualifies as a tax-free exchange.[32] According to the CIR, the certification or ruling is important so as to confirm whether the transaction satisfies the conditions set by law; and the authority to do such is vested upon the BIR.[33]

Again, the CIR is mistaken.

BIR rulings are the official position of the Bureau to queries raised by taxpayers and other stakeholders relative to *clarification and interpretation of tax laws*.[34] In this regard, the primary purpose of a BIR Ruling is simply to determine whether a certain transaction, under the law, is taxable or not based on the circumstances provided by the taxpayer. As admitted by the CIR, rulings merely operate to "confirm" the existence of the conditions for exemption provided under the law. If all the requirements for exemption set forth under the law are complied with, the transaction is considered exempt, whether or not a prior BIR ruling was secured by the taxpayer.

In practice, a taxpayer often secures a BIR ruling, prior to entering into a transaction, to prepare for any tax liability. However, in case a taxpayer already paid the tax, believing to be liable therefor, and later on files a claim for refund on the basis of an exemption provided under the law, requiring a prior BIR ruling as a condition for the approval of the refund claim is clearly illogical. In this light, the Court echoes its pronouncement in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*,[35] to wit:

> The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance. In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period prescribed, or 15 days prior to the payment of its BPRT,

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31 See *Prieto v. Court of Appeals*, 688 Phil. 21 (2012).

32 *Rollo*, pp. 59-62.

33 Id. at 62-64.

34 See Bureau of Internal Revenue, Guide to Philippine Tax Law Research, accessed at <https://www.bir.gov.ph/index.php/legal-matters/guide-to-philippines-tax-law-research.html>.

35 716 Phil. 676 (2013).

> precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application requirement becomes illogical. Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000.
>
> Corollary thereto, Section 229 of the NIRC provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would defeat the purpose of Section 229.[36]

Moreover, as correctly pointed out by the CTA EB, there is nothing in Section 40(C)(2) of the NIRC of 1997, as amended, which requires the taxpayer to first secure a prior confirmatory ruling before the transaction may be considered as a tax-free exchange. The BIR should not impose additional requirements not provided by law, which would negate the availment of the tax exemption.[37] Instead of resorting to formalities and technicalities, the BIR should have made its own determination of the merits of respondents' claim for exemption in respondents' administrative application for refund. However, the Court notes that, in this case, the CIR not only failed to act on respondents' administrative claim for refund, it also failed to present any evidence during trial before the CTA to prove that the subject transaction is not covered by the tax exemption.

Indeed, cases filed before the CTA are litigated *de novo*. As such, party litigants should prove every minute aspect of their cases.[38] Based on the evidence on record, the CTA found that respondents were able to establish their entitlement to the claimed refund. Accordingly, the Court finds no reason to reverse the findings of the CTA.

At this juncture, the Court emphasizes that while tax refunds are strictly construed against the taxpayer, the Government should not resort to technicalities and legalisms, much less frivolous appeals, to keep the money it is not entitled to at the expense of the taxpayers.[39]

> Substantial justice, equity and fair play are on the side of [respondents]. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess

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36 Id. at 690-691.

37 See *CBK Power Company Limited v. Commissioner of Internal Revenue*, 750 Phil. 748, 761 (2015).

38 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 344 (2014).

39 See *Commissioner of Internal Revenue v. Ironcon Builders and Development Corp.*, 625 Phil. 644, 651 (2010).

payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[40]

WHEREFORE, premises considered the Decision dated February 28, 2018 and Resolution dated August 14, 2018 of the Court of Tax Appeals *en banc* in CTA EB No. 1522 are hereby **AFFIRMED.**

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

(On official leave)
JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

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40 *Filminera Resources Corp. v. CIR*, G.R. 233581, March 11, 2019 (Unsigned Resolution).

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice