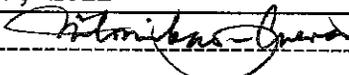


EN BANC

G.R. No. 226592 (*Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*)

Promulgated:

July 27, 2021

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CONCURRING OPINION

LAZARO-JAVIER, J.:

I join the concurring opinion of my esteemed colleague, Senior Associate Justice Estela M. Perlas-Bernabe.

To recall, the core issue here is *whether the administrative and judicial claims for refund of overpaid income taxes should be simultaneously or successively filed.*<sup>1</sup>

We reckon with Sections 204 and 229 of the National Internal Revenue Code (NIRC), *viz.*:

**Sec. 204.** *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*— The Commissioner may —

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(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. (Emphasis supplied)

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**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 illegal assessed or collected,** or of any penalty claimed to have been collected without authority, or of any sum alleged to have

<sup>1</sup> Decision, p. 6.



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**; Provided, however, That the Commissioner may, even without a written claim therefore, 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. (Emphasis supplied)

The NIRC explicitly provides that within two (2) years from tax payment, the claimant must first file an administrative claim with the Bureau of Internal Revenue (BIR) before initiating its judicial claim. Significantly, both claims must be filed within the crucial two (2)-year prescriptive period.

Here, as found by the Court of Tax Appeals, respondent filed its administrative claim on November 29, 2011, and subsequently, its judicial claim ten (10) days later or on December 9, 2011. Indubitably, both administrative and judicial claims were commenced within the two (2)-year prescriptive period.<sup>2</sup>

As eloquently discussed by my esteemed colleague, Senior Associate Justice Perlas-Bernabe,<sup>3</sup> and cited by the *ponencia* itself,<sup>4</sup> ***CBK Power Company Limited v. Commissioner of Internal Revenue is the case law in point.***<sup>5</sup> There, the Court rejected the CIR's claim that since the judicial claim was filed a mere five (5) days after the administrative claim was itself initiated, he was deprived of the opportunity to act on said claim; that CBK Power's failure to give him reasonable time to act thereon was violative of the doctrines of exhaustion of administrative remedies and primary jurisdiction; and the Court cannot, and should not, allegedly deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC.<sup>6</sup>

Citing *P.J. Kiener Co., Ltd. V. David*,<sup>7</sup> the Court decreed that nothing in the law implies that the CIR must first act upon the taxpayer's claim, and that the taxpayer ought not to file a judicial claim unless he or she is first notified of the CIR's action. On the contrary, the claim filed with the CIR was intended primarily as a notice or warning that, unless the tax or penalty alleged

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<sup>2</sup> Decision, pp. 7-8.

<sup>3</sup> Reflections, p. 1.

<sup>4</sup> Decision, pp. 10-12.

<sup>5</sup> 750 Phil. 748, 762 (2015).

<sup>6</sup> *Id.*

<sup>7</sup> 92 Phil. 945, 947 (1953).

to have been collected erroneously or illegally is refunded, court action will inevitably follow.

The Court cannot abandon the doctrine in *CBK Power Company* as regards the interpretation of Section 229 of the NIRC on the period for filing administrative and judicial claims for refund for erroneously or illegally collected taxes.

*It is a basic principle in statutory construction that when the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.* A cardinal rule in statutory construction is that when the **words and phrases of the statute are clear and unequivocal**, their **meaning** must be determined from the **very language employed**. In other words, **the statute must be taken to mean exactly what it says, and there is no room for construction or interpretation, there is only room for application. *Verba legis non est recendendum*.**<sup>8</sup>

**The wording of Section 229 of the NIRC is plain, clear, and unequivocal.** Following the *verba legis doctrine*, the law must be applied exactly as worded, specifically that Section 229 only requires that an administrative claim be filed prior to a judicial claim for refund. Thus, so long as the administrative claim is filed prior to the judicial claim both within the two (2)-year prescriptive period, the required exhaustion of administrative remedies is therefore deemed complied with. Notably, **Section 229 does not bear any requirement that the CIR must be given *reasonable period* after the filing of the administrative claim for refund within which to resolve it, before the taxpayer can resort to judicial action. The two-year period stands alone for this purpose. The law however does not dictate upon the taxpayer when exactly, within the two-year window, he or she should file the twin cases, nor does it demand that there ought to be a reasonable time gap in between.**

As lucidly discussed by Senior Associate Justice Perlas-Bernabe, **the Legislature is presumed to have understood the language it used, the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute.**<sup>9</sup> In *Guy v. Guy*,<sup>10</sup> petitioner filed a complaint to nullify the special stockholders' meeting on the ground that he did not receive the notice calling for the same. The Court, however, declined petitioner's view that the notice must actually be received, and not just sent, prior to the date of the meeting. Clearly, Section 50 of the Corporation Code only requires the sending/ mailing of the notice of a stockholders' meeting to the stockholders. Had the lawmakers intended to include the stockholder's receipt of the notice, it would have clearly said so in the law itself. **As applied here, the Legislature did not contemplate any**

<sup>8</sup> *Amores v. House Electoral Tribunal*, 636 Phil. 600, 610 (2010).

<sup>9</sup> *Review Center Association of the Philippines v. Executive Secretary*, 602 Phil. 342, 362-363 (2009).

<sup>10</sup> *Guy v. Guy*, 785 Phil. 99, 111 (2016).

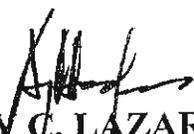
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mandatory reasonable period from the filing of the administrative claim for refund of erroneously or illegally collected taxes before a judicial action can prosper. Had it been otherwise, it would have so provided in Section 229 of the NIRC. Indeed, the solemn power and duty of the Court to interpret and apply the law does not include the power to correct by reading into the law what is not written there.<sup>11</sup>

Verily, the law is clear and unambiguous and the Court is not in a position to modify the same without violating the proscription against judicial legislation. The primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms. Hence, until such time that the law on the matter is amended, the Court must faithfully apply the same, exactly as worded.<sup>12</sup>

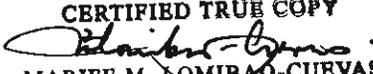
ACCORDINGLY, I vote to DENY the petition. I join Senior Associate Justice Perlas-Bernabe's suggestion that a copy of this Decision be furnished to the Senate and the House of Representatives for their information and for possible enactment of remedial legislation.

For the Banc's consideration.

  
AMY C. LAZARO-JAVIER  
Associate Justice

<sup>11</sup> *Intestate Estate of Manolita Gonzales v. People*, 626 Phil. 177, 194 (2010).

<sup>12</sup> *Corpuz v. People*, 734 Phil. 352, 416 (2014).

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Clerk of Court  
Supreme Court