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FIRST DIVISION

[G.R. Nos. 193383-84. January 14, 2015]

CBK POWER COMPANY LIMITED, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. Nos. 193407-08. January 14, 2015]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CBK POWER COMPANY LIMITED,** *respondent.*

SYLLABUS

1. TAXATION; TAX REFUND BASED ON A TREATY; WHERE THE BASIS OF THE CLAIM FOR TAX REFUND IS ERRONEOUS OR EXCESSIVE PAYMENT OF TAX LIABILITY DUE TO NON-AVAILMENT OF A TAX TREATY RELIEF, PRIOR APPLICATION FOR TAX TREATY RELIEF WITH THE INTERNATIONAL TAX AFFAIRS DIVISION (ITAD) OF THE BIR IS NOT NECESSARY.— The issue of whether the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty was squarely addressed in the recent case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue* (*Deutsche Bank*), where the Court emphasized that **the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000** x x x The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/ credit for overpayment of taxes, or deficiency tax liabilities for underpayment. However, as pointed out in *Deutsche Bank*, the underlying principle of prior application with the BIR becomes **moot in refund cases** – as in the present case – where the very basis of the claim is **erroneous or there is excessive payment** arising from the non-availment of a tax treaty relief at the first instance. Just as Deutsche Bank was not faulted by

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the Court for not complying with RMO No. 1-2000 prior to the transaction, so should CBK Power. In parallel, CBK Power could not have applied for a tax treaty relief 15 days prior to its payment of the final withholding tax on the interest paid to its lenders **precisely because it erroneously paid said tax** on the basis of the regular rate as prescribed by the NIRC, and not on the preferential tax rate provided under the different treaties. As stressed by the Court, the prior application requirement under RMO No. 1-2000 then becomes **illogical**. Not only is the requirement illogical, but it is also an imposition that is **not found at all in the applicable tax treaties**. In *Deutsche Bank*, the Court categorically held that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements.

2. ID.; ID.; ID.; PRIOR REQUEST FOR CONFIRMATION FROM THE ITAD BEFORE FILING ADMINISTRATIVE CLAIM FOR REFUND SHOULD BE DEEMED SUBSTANTIAL COMPLIANCE.— It bears reiterating that the application for a tax treaty relief from the BIR should **merely operate to confirm** the entitlement of the taxpayer to the relief. Since CBK Power had requested for confirmation from the ITAD on June 8, 2001 and October 28, 2002 before it filed on April 14, 2003 its administrative claim for refund of its excess final withholding taxes, the same should be **deemed substantial compliance** with RMO No. 1-2000, as in *Deutsche Bank*. To rule otherwise would defeat the purpose of Section 229 of the NIRC in providing the taxpayer a remedy for erroneously paid tax solely on the ground of failure to make prior application for tax treaty relief. As the Court exhorted in *Republic v. GST Philippines, Inc.*, while the taxpayer has an obligation to honestly pay the right taxes, the government has a corollary duty to implement tax laws in good faith; to discharge its duty to collect what is due to it; and to **justly return what has been erroneously and excessively given to it**.

3. ID.; ID.; TAXPAYER NEED NOT WAIT FOR THE COMMISSIONER TO ACT ON ITS ADMINISTRATIVE CLAIM BEFORE FILING JUDICIAL CLAIM FOR REFUND WHERE THE TWO YEARS PRESCRIPTIVE

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PERIOD WAS ABOUT TO LAPSE.— Sections 204 and 229 of the NIRC pertain to the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. x x x, [T]he Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage. Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.

APPEARANCES OF COUNSEL

The Solicitor General for Commissioner of Internal Revenue.

Sycip Salazar Hernandez & Gatmaitan for CBK Power Co. Ltd.

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in these consolidated petitions for review on *certiorari*[1] are the Decision[2] dated March 29, 2010 and the Resolution[3] dated August 16, 2010 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. Nos. 469 and 494, which affirmed the Decision[4] dated August 28, 2008, the Amended Decision[5] dated February 12, 2009, and the Resolution[6] dated May 7, 2009 of the CTA First Division in CTA Case Nos. 6699, 6884, and 7166 granting CBK Power Company Limited (CBK Power) a refund of its excess final withholding tax for the taxable years 2001 to 2003.

The Facts

CBK Power is a limited partnership duly organized and existing under the laws of the Philippines, and primarily engaged in the development and operation of the Caliraya, Botocan, and Kalayaan hydroelectric power generating plants in Laguna (CBK

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[1] *Rollo* (G.R. Nos. 193383-84), pp. 53-84; *rollo* (G.R. Nos. 193407-08), pp. 8-37.

[2] *Rollo* (G.R. Nso. 193383-84), pp. 96-119; *rollo* (G.R. Nos. 193407-08), pp. 43-66. Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta was on leave.

[3] *Rollo* (G.R. Nos. 193383-84), pp. 122-135; *rollo* (G.R. Nos. 193407-08), pp. 69-82. Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Associate Justice Juanito C. Castañeda, Jr. was on leave.

[4] *Rollo* (G.R. Nos. 193383-84), pp. 274-292; *rollo* (G.R. Nos. 193407-08), pp. 295-313. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.

[5] *Rollo* (G.R. Nos. 193383-84), pp. 309-313; *rollo* (G.R. Nos. 193407-08), pp. 315-319.

[6] *Rollo* (G.R. Nos. 193383-84), pp. 346-350; *rollo* (G.R. Nos. 193407-08), pp. 324-328.

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Project). It is registered with the Board of Investments (BOI) as engaged in a preferred pioneer area of investment under the Omnibus Investment Code of 1987.[7]

To finance the CBK Project, CBK Power obtained in August 2000 a syndicated loan from several foreign banks,[8] *i.e.*, BNP Paribas, Dai-ichi Kangyo Bank, Limited, Industrial Bank of Japan, Limited, and Societe General (original lenders), acting through an Inter-Creditor Agent, Dai-ichi Kangyo Bank, a Japanese bank that subsequently merged with the Industrial Bank of Japan, Limited (Industrial Bank of Japan) and the Fuji Bank, Limited (Fuji Bank), with the merged entity being named as Mizuho Corporate Bank (Mizuho Bank). One of the merged banks, Fuji Bank, had a branch in the Philippines, which became a branch of Mizuho Bank as a result of the merger. The Industrial Bank of Japan and Mizuho Bank are residents of Japan for purposes of income taxation, and recognized as such under the relevant provisions of the income tax treaties between the Philippines and Japan.[9]

Certain portions of the loan were subsequently assigned by the original lenders to various other banks, including Fortis Bank (Nederland) N.V. (Fortis-Netherlands) and Raiffesen Zentral Bank Osterreich AG (Raiffesen Bank). Fortis-Netherlands, in turn, assigned its portion of the loan to Fortis Bank S.A./N.V. (Fortis-Belgium), a resident of Belgium. Fortis-Netherlands and Raiffesen Bank, on the other hand, are residents of Netherlands and Austria, respectively.[10]

In February 2001, CBK Power borrowed money from Industrial Bank of Japan, Fortis-Netherlands, Raiffesen Bank, Fortis-Belgium, and Mizuho Bank for which it remitted interest payments from May 2001 to May 2003.[11] It allegedly withheld final taxes

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[7] *Rollo* (G.R. Nos. 193383-84), p. 98.

[8] *Id*. at 99.

[9] See *id*. at 99-100.

[10] *Id*.

[11] See *id*. See also *id.* at 274 and 276-277.

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from said payments based on the following rates, and paid the same to the Revenue District Office No. 55 of the Bureau of Internal Revenue (BIR): (*a*) fifteen percent (15%) for Fortis-Belgium, Fortis-Netherlands, and Raiffesen Bank; and (*b*) twenty percent (20%) for Industrial Bank of Japan and Mizuho Bank.[12]

However, according to CBK Power, **under the relevant tax treaties** between the Philippines and the respective countries in which each of the banks is a resident, the interest income derived by the aforementioned banks are subject only to a **preferential tax rate of 10%**, *viz.*:[13]

BANK	COUNTRY OF RESIDENCE	PREFERENTIAL RATE UNDER THE RELEVANT TAX TREATY
Fortis Bank S.A./N.V.	Belgium	10% (Article 11[1], RP-Belgium Tax Treaty)
Industrial Bank of Japan	Japan	10% (Article 11[3], RP-Japan Tax Treaty)
Raiffesen Zentral Bank Osterreich AG	Austria	10% (Article 11[3], RP-Austria Tax Treaty)
Mizuho Corporate Bank	Japan	10% (Article 11[3], RP-Japan Tax Treaty)

Accordingly, on April 14, 2003, CBK Power filed a claim for refund of its excess final withholding taxes allegedly erroneously withheld and collected for the years 2001 and 2002 with the BIR Revenue Region No. 9. The claim for refund of excess final withholding taxes in 2003 was subsequently filed on March 4, 2005.[14]

The Commissioner of Internal Revenue's (Commissioner) inaction on said claims prompted CBK Power to file petitions for review before the CTA, *viz.*:[15]

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[12] *Id.* at 100-101.

[13] *Id.* at 101.

[14] *Id.*

[15] *Id.* at 101-102.

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(1) **CTA Case No. 6699** was filed by CBK Power on June 6, 2003 seeking the refund of excess final withholding tax in the total amount of **₱6,393,267.20** covering the year 2001 with respect to interest income derived by [Fortis-Belgium], Industrial Bank of Japan, and [Raiffesen Bank]. An Answer was filed by the Commissioner on July 25, 2003.

(2) **CTA Case No. 6884** was filed by CBK Power on March 5, 2004 seeking for the refund of the amount of **₱8,136,174.31** covering [the] year 2002 with respect to interest income derived by [Fortis-Belgium], Industrial Bank of Japan, [Mizuho Bank], and [Raiffesen Bank]. The Commissioner filed his Answer on May 7, 2004.

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(3) **CTA Case No. 7166** was filed by CBK [Power] on March 9, 2005 seeking for the refund of [the amount of] **₱1,143,517.21** covering [the] year 2003 with respect to interest income derived by [Fortis-Belgium], and [Raiffesen Bank]. The Commissioner filed his Answer on May 9, 2005. (Emphases supplied)

CTA Case Nos. 6699 and 6884 were consolidated first on June 18, 2004. Subsequently, however, all three cases – CTA Case Nos. 6699, 6884, and 7166 – were consolidated in a Resolution dated August 3, 2005.[16]

The CTA First Division Rulings

In a Decision[17] dated August 28, 2008, the CTA First Division **granted** the petitions and ordered the refund of the amount of **₱15,672,958.42** upon a finding that the relevant tax treaties were applicable to the case.[18] It cited DA-ITAD Ruling No. 099-03[19] dated July 16, 2003, issued by the BIR, confirming CBK Power's claim that the interest payments it made to Industrial Bank of Japan and Raiffesen Bank were subject to a final withholding tax rate of **only 10%** of the gross amount of interest, pursuant

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[16] *Id.*

[17] *Id*. at 122-135; *rollo* (G.R. Nos. 193407-08), pp. 69-82.

[18] *Rollo* (G.R. Nos. 193383-84), pp. 290-292.

[19] *Id*. at 136-141. Signed by Assistant Commissioner Milagros V. Regalado.

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to Article 11 of the Republic of the Philippines (RP)-Austria and RP-Japan tax treaties. However, in DA-ITAD Ruling No. 126-03[20] dated August 18, 2003, also issued by the BIR, interest payments to Fortis-Belgium were likewise subjected to the same rate pursuant to the Protocol Amending the RP-Belgium Tax Treaty, the provisions of which apply on income derived or which accrued beginning January 1, 2000. With respect to interest payments made to Fortis-Netherlands before it assigned its portion of the loan to Fortis-Belgium, the CTA First Division likewise granted the preferential rate.[21]

The CTA First Division categorically declared in the August 28, 2008 Decision that the required International Tax Affairs Division (ITAD) ruling was not a condition *sine qua non* for the entitlement of the tax relief sought by CBK Power,[22] however, upon motion for reconsideration[23] filed by the Commissioner, the CTA First Division **amended** its earlier decision by reducing the amount of the refund from **₱**15,672,958.42 to **₱14,835,720.39** on the ground that CBK Power failed to obtain an ITAD ruling with respect to its transactions with Fortis-Netherlands.[24] In its Amended Decision[25] dated February 12, 2009, the CTA First Division adopted[26] the ruling in the case of *Mirant (Philippines) Operations Corporation (formerly: Southern Energy Asia-Pacific Operations [Phils.], Inc.) v. Commissioner of Internal Revenue* (*Mirant*),[27] cited by the Commissioner in his motion for

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[20] *Id*. at 142-143.

[21] *Id*. at 289-290.

[22] *Id*. at 290.

[23] *Id*. at 293-300.

[24] *Id*. at 312-313.

[25] *Rollo* (G.R. Nos. 193383-84), pp. 309-313; *rollo* (G.R. Nos. 193407-08), pp. 315-319.

[26] *Rollo* (G.R. Nos. 193383-84), p. 312.

[27] CTA-E.B. No. 40, June 7, 2005. The pertinent portions of *Mirant* read:

> However, it must be remembered that a foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that indeed the provisions of the tax treaty

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reconsideration, where the Court categorically pronounced in its Resolution dated February 18, 2008 that an ITAD ruling must be obtained prior to availing a preferential tax rate.

CBK Power moved for the reconsideration[28] of the Amended Decision dated February 12, 2009, arguing in the main that the *Mirant* case, which was resolved in a minute resolution, did not establish a legal precedent. The motion was denied, however, in a Resolution[29] dated May 7, 2009 for lack of merit.

Undaunted, CBK Power elevated the matter to the CTA *En Banc* on petition for review,[30] docketed as C.T.A E.B. No. 494. The Commissioner likewise filed his own petition for review,[31] which was docketed as C.T.A. E.B. No. 469. Said petitions were subsequently consolidated.[32]

CBK Power raised the lone issue of whether or not an ITAD ruling is required before it can avail of the preferential tax rate.

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applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provisions of the National Internal Revenue Code, unless it is shown that the treaty provisions apply to the said corporation, and that, in cases the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked.

Under Revenue Memorandum Order 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with its International Tax Affairs Division (ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory to. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same.

(See footnote no. 9 of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, G.R. No. 188550, August 19, 2013, 704 SCRA 216, 221.)

[28] *Rollo* (G.R. Nos. 193383-84), pp. 314-330.

[29] *Id*. at 346-350; *rollo* (G.R. Nos. 193407-08), pp. 324-328.

[30] *Rollo* (G.R. Nos. 193383-84), pp. 364-396.

[31] *Id*. at 351-363.

[32] See *id*. at 104.

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On the other hand, the Commissioner claimed that CBK Power failed to exhaust administrative remedies when it filed its petitions before the CTA First Division, and that said petitions were not filed within the two-year prescriptive period for initiating judicial claims for refund.[33]

The CTA *En Banc* Ruling

In a Decision[34] dated March 29, 2010, the CTA *En Banc* **affirmed** the ruling of the CTA First Division that a prior application with the ITAD is indeed required by Revenue Memorandum Order (RMO) 1-2000,[35] which administrative issuance has the force and effect of law and is just as binding as a tax treaty. The CTA *En Banc* declared the *Mirant* case as without any binding effect on CBK Power, having been resolved by this Court merely through minute resolutions, and relied instead on the mandatory wording of RMO 1-2000, as follows:[36]

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[33] *Id*. at 104-105.

[34] *Id*. at 96-119; *rollo* (G.R. Nos. 193407-08), pp. 43-66.

[35] Revenue Memorandum Order No. 1-2000 issued January 4, 2000 prescribes the procedures for processing tax treaty relief applications, amending RMO No. 10-92 dated February 1, 1992. The Order covers exclusively applications for tax treaty relief, including claims or requests for tax exemption, preferential tax treaty rate and refund or credit of taxes on income derived or to be derived by the taxpayer under existing tax treaties. The processing for tax treaty relief shall be transferred from Law Division to the International Tax Affairs Division (ITAD). Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction (*i.e.* payment of dividends, royalties, *etc.*), accompanied by supporting documents justifying the relief. Consequently, BIR Form Nos. TC 001 and TC 002 prescribed under RMO No. 10-92 are declared obsolete. Claims for tax credit/refund pertinent to the tax treaty relief requested shall be filed with ITAD within the two year period prescribed by Section 229 of the NIRC, as amended under RA 8424. The Tax Credit Certificate (TCC) for this purpose shall be issued for the account of the "non-resident taxpayer/recipient of the income". Issuance of the TCC shall be done by the Appellate Division upon receipt of endorsement memo from ITAD recommending the issuance of such. The release of the signed TCC to the taxpayer/applicant, however, shall be done by ITAD. (<ftp://ftp.bir.gov.ph/webadmin1/others/18649RMO%201.htm> [visited December 19, 2014].)

[36] *Rollo* (G.R. Nos. 193383-84), pp. 91-92.

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III. Policies:

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2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction *i.e.* payment of dividends, royalties, *etc.*, accompanied by supporting documents justifying the relief. x x x.

The CTA *En Banc* further held that CBK Power's petitions for review were filed within the two-year prescriptive period provided under Section 229[37] of the National Internal Revenue Code of 1997[38] (NIRC), and that it was proper for CBK Power to have filed said petitions without awaiting the final resolution of its administrative claims for refund before the BIR; otherwise, it would have completely lost its right to seek judicial recourse if the two-year prescriptive period lapsed with no judicial claim filed.

CBK Power's motion for partial reconsideration and the Commissioner's motion for reconsideration of the foregoing Decision were both **denied** in a Resolution[39] dated August

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[37] 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.

[38] Republic Act No. 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (January 1, 1998).

[39] *Rollo* (G.R. Nos. 193383-84), pp. 122-135; *rollo* (G.R. Nos. 193407-08), pp. 69-82.

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16, 2010 for lack of merit; hence, the present consolidated petitions.

The Issues Before the Court

In **G.R. Nos. 193383-84**, CBK Power submits the sole legal issue of whether the BIR may add a requirement – prior application for an ITAD ruling – that is not found in the income tax treaties signed by the Philippines before a taxpayer can avail of preferential tax rates under said treaties.[40]

On the other hand, in **G.R. Nos. 193407-08**, the Commissioner maintains that CBK Power is not entitled to a refund in the amount of 1,143,517.21 for the period covering taxable year 2003 as it allegedly failed to exhaust administrative remedies before seeking judicial redress.[41]

The Court's Ruling

The Court resolves the foregoing *in seriatim*.

A. G.R. Nos. 193383-84

The Philippine Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. In this jurisdiction, treaties have the force and effect of law.[42]

The issue of whether the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty was squarely addressed in the recent case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*[43] (*Deutsche Bank*), where the Court emphasized that **the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000**, *viz.*:

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[40] *Rollo* (G.R. Nos. 193383-84), p. 53.

[41] *Rollo* (G.R. Nos. 193407-08), p. 23.

[42] *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, *supra* note 27, at 227.

[43] *Id*.

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We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is **not in harmony** with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 **should not operate to divest entitlement to the relief** as it would constitute a **violation of the duty** required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would **impair the value** of the tax treaty. At most, the application for a tax treaty relief from the BIR should **merely operate to confirm** the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief**.[44] (Emphases and underscoring supplied)

The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment.[45] However, as pointed out in *Deutsche Bank*, the underlying principle of prior application with the BIR becomes **moot in refund cases**

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[44] *Id*. at 228-229.

[45] *Rollo* (G.R. Nos. 193383-84), p. 91.

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— as in the present case — where the very basis of the claim is **erroneous or there is excessive payment** arising from the non-availment of a tax treaty relief at the first instance. Just as Deutsche Bank was not faulted by the Court for not complying with RMO No. 1-2000 prior to the transaction,[46] so should CBK Power. In parallel, CBK Power could not have applied for a tax treaty relief 15 days prior to its payment of the final withholding tax on the interest paid to its lenders **precisely because it erroneously paid said tax** on the basis of the regular rate as prescribed by the NIRC, and not on the preferential tax rate provided under the different treaties. As stressed by the Court, the prior application requirement under RMO No. 1-2000 then becomes **illogical**.[47]

Not only is the requirement illogical, but it is also an imposition that is **not found at all in the applicable tax treaties.** In *Deutsche Bank*, the Court categorically held that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements.[48]

It bears reiterating that the application for a tax treaty relief from the BIR should **merely operate to confirm** the entitlement of the taxpayer to the relief.[49] Since CBK Power had requested for confirmation from the ITAD on June 8, 2001 and October 28, 2002[50] before it filed on April 14, 2003 its administrative claim for refund of its excess final withholding taxes, the same should be **deemed substantial compliance** with RMO No. 1-2000, as in *Deutsche Bank*. To rule otherwise would defeat the purpose of Section 229 of the NIRC in providing the taxpayer a remedy for erroneously paid tax solely on the ground of failure to make

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[46] *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, *supra* note 27, at 229.

[47] See *id*. at 229-230.

[48] *Id*. at 228.

[49] *Id*. at 229.

[50] See *rollo* (G.R. Nos. 193389-84), p. 136.

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prior application for tax treaty relief.[51] As the Court exhorted in *Republic v. GST Philippines, Inc.*,[52] while the taxpayer has an obligation to honestly pay the right taxes, the government has a corollary duty to implement tax laws in good faith; to discharge its duty to collect what is due to it; and to **justly return what has been erroneously and excessively given to it**.[53]

In view of the foregoing, the Court holds that the CTA *En Banc* committed reversible error in affirming the reduction of the amount of refund to CBK Power from ₱15,672,958.42 to ₱14,835,720.39 to exclude its transactions with Fortis-Netherlands for which no ITAD ruling was obtained.[54] CBK Power's petition in G.R. Nos. 193383-84 is therefore **granted**.

The opposite conclusion is, however, reached with respect to the Commissioner's petition in G.R. Nos. 193407-08.

B. G.R. Nos. 193407-08

The Commissioner laments[55] that he was deprived of the opportunity to act on the administrative claim for refund of excess final withholding taxes covering taxable year 2003 which CBK Power filed on March 4, 2005, a Friday, then the following Wednesday, March 9, 2005, the latter hastily elevated the case on petition for review before the CTA. He argues[56] that the failure on the part of CBK Power to give him a **reasonable time** to act on said claim is violative of the doctrines of exhaustion of administrative remedies and of primary jurisdiction.

For its part, CBK Power maintains[57] that it would be prejudicial to wait for the Commissioner's ruling before it files its judicial

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[51] See *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, *supra* note 27, at 230.

[52] G.R. No. 190872, October 17, 2013, 707 SCRA 695.

[53] *Id*. at 696.

[54] *Rollo* (G.R. Nos. 193383-84), p. 312.

[55] *Rollo* (G.R. Nos. 193407-08), p. 29.

[56] See *id*. at 26-32.

[57] *Id*. at 344.

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claim since it only has 2 years from the payment of the tax within which to file both its administrative and judicial claims.

The Court rules for CBK Power.

Sections 204 and 229 of the NIRC pertain to the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. These provisions respectively read:

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

x x x x x x x x x

(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.

x x x x x x x x x

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, of any sum alleged to have 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**;

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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)

Indubitably, CBK Power's administrative and judicial claims for refund of its excess final withholding taxes covering taxable year 2003 were **filed within the two-year prescriptive period**, as shown by the table below:[58]

WHEN FINAL INCOME TAXES WERE WITHHELD	WHEN REMITTANCE RETURN FILED	LAST DAY OF THE 2-YEAR PRESCRIPTIVE PERIOD	WHEN ADMINISTRATIVE CLAIM WAS FILED	WHEN PETITION FOR REVIEW WAS FILED
February 2003	03/10/03	03/10/05	March 4, 2005	03/09/05
May 2003	06/10/03	06/10/05	March 4, 2005	03/09/05

With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.[59]

Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on

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[58] *Rollo* (G.R. Nos. 193383-84), p. 285.

[59] *Id.* at 110.

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that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.

In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David*[60] (*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, *viz.*:

> The controversy centers on the construction of the aforementioned section of the Tax Code which reads:
>
> > SEC. 306. *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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; 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 begun after the expiration of two years from the date of payment of the tax or penalty.
>
> The preceding provisions seem at first blush conflicting. It will be noticed that, whereas the first sentence requires a claim to be filed with the Collector of Internal Revenue before any suit is commenced, the last makes imperative the bringing of such suit within two years from the date of collection. But the conflict is only

[60] 92 Phil. 945 (1953).

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apparent and the two provisions easily yield to reconciliation, which it is the office of statutory construction to effectuate, where possible, to give effect to the entire enactment.

To this end, and bearing in mind that the Legislature is presumed to have understood the language it used and to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say without doing violence to the context or either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued, but not, as the appellant contends that pending consideration of the claim, the period of two years provided in the last clause shall be deemed interrupted. **Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action**. x x x. **We understand the filing of the claim with the Collector of Internal Revenue to be 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.[61] (Emphases supplied)

That being said, the foregoing refund claims of CBK Power should all be granted, and, the petition of the Commissioner in G.R. Nos. 193407-08 be **denied** for lack of merit.

WHEREFORE, the petition in G.R. Nos. 193383-84 is **GRANTED.** The Decision dated March 29, 2010 and the Resolution dated August 16, 2010 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. Nos. 469 and 494 are hereby **REVERSED** and **SET ASIDE** and a new one entered **REINSTATING** the Decision of the CTA First Division dated August 28, 2008 ordering the refund in favor of CBK Power Company Limited the amount of ₱15,672,958.42 representing its excess final withholding taxes for the taxable years 2001 to 2003. On the other hand, the petition in G.R. Nos. 193407-08 is **DENIED** for lack of merit.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perez, JJ.*, concur.

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[61] *Id.* at 946-947.