

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 2814
(CTA Case No. 10146)

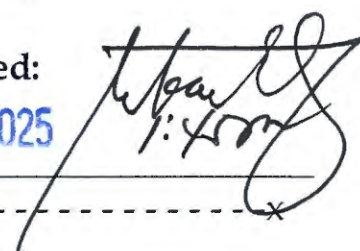
Present:

DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

- versus -

GRID SOLUTIONS (U.S.) LLC,
Respondent.

Promulgated:
JAN 09 2025



x-----x

DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* is a Petition for Review¹ filed by the Commissioner of Internal Revenue (CIR) assailing the Court of Tax Appeals (CTA) Second Division (Court in Division) Decision² and Resolution³ promulgated on February 28, 2023 and October 9, 2023, respectively. In the assailed issuances, the Court in Division granted herein respondent Grid Solutions (U.S.) LLC (Grid Solutions US)'s judicial claim for refund of allegedly erroneously paid capital gains tax (CGT) on the sale of shares of stock amounting to ₱8,683,100.00, by

¹ Rollo, pp. 4-8.

² Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Lane S. Cui-David concurring.

³ Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Lane S. Cui-David concurring.



virtue of its exemption under the tax treaty between the Republic of the Philippines and United States of America (RP-US Tax Treaty).⁴

FACTS

Grid Solutions US is a corporation organized and existing under and by virtue of the laws of the State of Delaware, United States of America, with registered office address at 4200 Wildwood Parkway Atlanta GA, USA.

Previously, Grid Solutions US owned 650,000⁵ common shares representing 65% of General Electric Philippines Meter & Instrument Company, Inc. (GE PH) outstanding capital stock.⁶ GE PH is a domestic corporation engaged in the manufacture, production, fabrication and assembly of electrical products, measuring instruments, and devices of all kinds and descriptions, as well as in the import, export, distribution, sale of all kinds of related and similar products.⁷

On June 29, 2017, through a Deed of Absolute Sale of Shares,⁸ Grid Solutions US sold all 650,000 GE PH common shares to Aclara Meters LLC (Aclara US), a corporation organized and existing under the laws of the State of Delaware, United States of America, at USD6.50 per share or an aggregate amount of USD4,250,000.00. The transaction resulted in a net capital gain of ₱86,881,000.00 (hereinafter referred to as the "sale of shares" transaction).

On August 25, 2017, Grid Solutions US filed the corresponding return (BIR Form No. 1707)⁹ and paid¹⁰ CGT thereon amounting to ₱ 8,683,100.¹¹ The Bureau of Internal Revenue (BIR) certified that the gain

⁴ Convention Between the Governments of the Republic of the Philippines and of the United States of America, RP - United States of America, October 1, 1976.

⁵ 649,993 shares by Grid Solutions US directly and one share each by the following Grid Solutions US's individual nominees: (1) Waldo Darwin, (2) Carlos Clement III, (3) Jose Victor Emmanuel De Dios, (4) Cris Vincent Del Mundo, (5) Chao Lin, (6) Jocelyn Karen Pacana, and (7) Renato Romero.

⁶ General Information Sheet for the Year 2016, Exhibit "P-5," Docket, p. 367. Also see General Information Sheet for the Year 2017, Exhibit "P-5," Docket, p. 485.

⁷ Note 1, Audited Financial Statements as of and for the years ended December 31, 2016 and 2015, Exhibit "P-7," Docket, p. 392.

⁸ Exhibit "P-6," Docket, pp. 374-375.

⁹ Exhibit "P-10," Docket, pp. 428-429.

¹⁰ Exhibit "P-11," Docket, 430.

¹¹ Lines 20 and 21, CGT Return, Exhibit "P-10," Docket, p. 428.

resulting from the sale was subject to CGT and that the corresponding taxes were paid.¹²

On June 24, 2019, Grid Solutions US filed an Application for Tax Credit/Refunds (BIR Form No. 1914), accompanied by a Letter-Request¹³ dated June 20, 2019 (hereinafter referred to collectively as "Administrative Claim"), relative to the refund the above-mentioned CGT, alleged to have paid in error. Grid Solutions US cited Articles 14 and 1 of the Reservation Clause of the RP-US Tax Treaty, in relation to Sections 204 and 229 of the National Internal Revenue Code of the Philippines (Tax Code) as legal bases for refund.

On July 31, 2019, Grid Solutions US filed a Petition for Review before the CTA (judicial claim). The case was raffled to the Court in Division, docketed as CTA Case No. 10146. Therein, Grid Solutions US manifested that the authenticated copies of the verification and certification of non-forum shopping and secretary's certificate have yet to arrive in the Philippines.¹⁴ Pursuant to its undertaking, it submitted the Apostilled Verification and Certification of Non-Forum Shopping and Director's Certificate on October 8, 2019.¹⁵

The case proceeded to trial. Grid Solutions US formally offered its evidence supporting the judicial claim. Respondent CIR did not file a comment/opposition thereto.¹⁶ Later on, the Court in Division resolved to admit all offered exhibits, except for Exhibit "P-4."

RULING OF THE COURT IN DIVISION

On February 28, 2023, the Court in Division promulgated the assailed decision, granting Grid Solutions US's judicial claim. It ruled follows:

First, the judicial claim was timely filed; the CTA had jurisdiction over the same. Grid Solutions US's administrative and judicial claims

¹² Through Arnulfo A. Galapia, Authorized Revenue Official, Certificate Authorizing Registration dated June 1, 2018 with No. eCP201300149259/eCAR No.: C-2018-039-037821-M, Docket, p. 442; Certification dated November 4, 2019, Exhibit "P-12," Docket, p. 432.

¹³ Exhibit "P-15," Docket, pp. 435-440.

¹⁴ Docket, p. 11.

¹⁵ Docket, pp. 141-148.

¹⁶ Per Records Verification dated October 14, 2020, issued by the CTA Judicial Records Division, Docket, p. 445.

were filed within the two-year reglementary period provided under Section 229 of the Tax Code.

Second, while it was done after the filing of the Petition for Review, Grid Solution US's subsequent submission of the Apostilled Verification and Certification of Non-Forum Shopping and Director's Certificate was substantial compliance with verification and non-forum shopping certification requirements.

Third, Grid Solutions US is entitled to the refund sought. It demonstrated that GE PH's assets did *not* principally consist of real property located in the Philippines, as shown in its Audited Financial Statements. Thus, by virtue of the Reservation Clause in the RP-US Tax Treaty, the gain from the sale of GE PH shall be taxable only in the United States, where Grid Solutions US is a resident; it is not subject to CGT in the Philippines.

The CIR moved for reconsideration, but the Court in Division denied its motion. The Court in Division affirmed the probative weight accorded to Grid Solutions US's Audited Financial Statements. The CIR did not object to the presentation of the Audited Financial Statements or refute the contents thereof.

Finally, while the deposit slip evidencing CGT payment indicated Aclara Meters LLC as the taxpayer, it was a minor error and did not affect Grid Solution US's entitlement.

Hence, the CIR filed the present petition.

ARGUMENTS

The CIR's Arguments

Here, the CIR raises the same arguments contained in its Motion for Reconsideration of the assailed decision; it insists that Grid Solutions US's judicial claim should have been dismissed for failure to comply with verification and non-forum shopping certification requirements.

Further, it imputes error upon the Court in Division in ruling that Grid Solutions US is entitled to the refund sought. It maintains its positions that GE PH's audited financial statements is self-serving and, thus, cannot be sufficient proof that its (GE PH) assets did not principally consist of real property; and that Grid Solutions US is not the proper party to claim the refund because it was not the indicated taxpayer in the deposit slip evidencing CGT payment.

Grid Solutions US's Arguments

In its Comment/Opposition,¹⁷ Respondent counters that the CIR's petition for review should be denied for lack of merit. It points out that the petition is a verbatim reproduction of the CIR's motion for reconsideration of the Assailed Decision. Further, the Court in Division did not err in ruling in favor of its entitlement to a refund; the CIR had all the opportunity to question the pieces of evidence presented in support of the judicial claim, but did not do so during trial.

ISSUES

Based on the CIR's assigned errors, We restate the issues as follows:

- I. Was Grid Solutions US's delayed submission of the Apostilled Verification and Certification of Non-Forum Shopping and Director's Certificate, which was made *after* its actual filing of the judicial claim, insufficient compliance with the applicable rules and, thus, fatal to its case?
- II. Did Grid Solutions US present sufficient proof to establish that GE PH's assets, at the time of the sale of shares, *do not* principally consist of real property located in the Philippines?
- III. Is Grid Solutions US the proper party to file a claim?

¹⁷ Rollo, pp. 49-54.

RULING

The Petition for Review is denied for lack of merit.

Grid Solutions US complied with verification and non-forum shopping certification requirements.

Foremost, defective compliance with the **verification requirement** is not a fatal defect; “The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.”¹⁸

On the other hand, a defect in the **certification against forum shopping** “is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of ‘substantial compliance’ or presence of ‘special circumstances or compelling reasons.’”¹⁹

We agree with the Court in Division that there has been substantial compliance with the verification and certification of non-forum shopping requirements. At the outset, Grid Solutions US expressly manifested that it was unable to submit the authenticated verification and certification of non-forum shopping at the time of filing their judicial claim, on account of distance and time constraints. It submitted to the Court the Apostilled Verification and Certification of Non-Forum Shopping and Director’s Certificate as soon as they were able to secure them.

The rules on verification and certification of non-forum shopping should not be read with such rigidity “as to subvert their own ultimate and legitimate objectives of promoting and facilitating the orderly administration of justice...the requirement of strict compliance with the provisions on certification against forum shopping merely underscores its mandatory nature to the effect that

¹⁸ *Altres v. Empleo*, G.R. No. 180986, December 10, 2008, 594 Phil 246-268; *Ingles v. Estrada*, G.R. Nos. 141809, 147186 & 173641, April 8, 2013, 708 Phil 271-313; *Fernandez v. Villegas*, G.R. No. 200191, August 20, 2014.

¹⁹ *Id.*



the certification cannot altogether be dispensed with or its requirements completely disregarded.”²⁰

Grid Solutions US established that GE PH’s assets did not principally consist of real property located in the Philippines.

Grid Solutions US’s claim is grounded on the alleged erroneous character of the CGT paid relative to the sale of shares transaction, pursuant to Section 229 of the Tax Code:

SECTION 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. (Emphasis supplied)

A claim founded upon this provision shall be granted only when the administrative and judicial claims have been **timely filed** *and* the claimant establishes its **right to a refund**. If it claims to be exempted from tax, the claimant must point the **specific legal** provision it relies upon for exemption²¹ and the **fact of payment**.²²

²⁰ *Heirs of Deloy v. Basa-Joaquin*, G.R. No. 241841, November 28, 2022.

²¹ *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016, 802 Phil 636-659.

²² *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.

The timeliness of the subject administrative and judicial claims is no longer disputed; what is in question is the claimant's entitlement to the refund.

Tax treaties regulate the overlapping taxing rights of two states; for the RP-US treaty, in particular, it allocates the rights of the Philippines and the United States to impose **income tax**²³ under their respective domestic laws, mainly to avoid double taxation and prevent fiscal evasion.²⁴

The subject transaction in this case is Grid Solution US's sale of GE PH shares. Under the Tax Code, the **general rule** is that capital gains from the sale of shares not traded in the stock exchange shall be subject to 5/10% CGT.²⁵ However, by **exception**, such gains shall be nonetheless excluded from gross income (thus, not subject to income tax) to the extent these are exempt under a treaty.²⁶

Article 14 of the RP-US Tax Treaty applies to the contracting states' taxing rights over **capital gains**:

ARTICLE 14
Capital Gains

(1) Gains from the alienation of tangible personal (movable) property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State or of tangible personal (movable) property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers operated by such resident in international traffic shall be taxable only in that State, and gains described in Article 13 (Royalties) shall be taxable only in accordance with the provisions of Article 13.

(2) Gains from the alienation of any property other than those mentioned in paragraph (1) or in Article 7 (Income From Real

²³ Article 1, RP-US Tax Treaty, *supra* note 4.

²⁴ Preamble, RP-US Tax Treaty, *supra* note 4.

²⁵ Section 28(B)(5)(c), Tax Code.

²⁶ Section 32(B)(5), Tax Code.

Property) shall be taxable only in the Contracting State of which the **alienator** is a resident. (Emphasis supplied)

Following Article 14(2) of the RP-US Tax Treaty, the right to tax the gain arising from the sale of intangible property such as shares of stock is allocated to the **seller's** country of **residence**. There being no question that Grid Solution US resides in the United States, the United States was allocated the exclusive right to tax the gain from the sale of shares transaction.

However, Article 1 of the Supplementing Protocol **qualifies** the exclusive taxing right given to the alienator's home country under Article 14; if the shares subject of the sale represent interest in a corporation whose assets principally consist of real property located in the Philippines, the Philippines (i.e., other contracting state) **shall share taxing rights** with the United States (i.e., home country) with respect to the gains from the sale:

ARTICLE 1

Notwithstanding the provisions of Article 14 of the Convention relating to capital gains, **both the Philippines and the United States may tax gains from the disposition of an interest in a corporation if its assets consist principally of a real property interest located in that country**. Likewise, both countries may tax gain from the disposition of an interest in a partnership, trust or estate to the extent the gain is attributable to a real property interest in one of the countries. The term "real property interest" is to have the meaning it has under the law of the country in which the underlying real property is located. (Emphasis supplied)

Thus, notwithstanding the **seller's** US residence, the Philippines *may* likewise impose CGT when the Philippine real property of the corporation whose shares of stock are being sold comprises **more than 50% of the book value²⁷ of its total assets** as appearing on its **financial statements as of the date of sale**, if available; otherwise, the **most recent financial statements, as adjusted**, may be used:

REVENUE REGULATIONS NO. 04-86

SUBJECT: Determination of Whether the Assets of a Corporation Consist Principally of Real Property Interest under the Philippine Tax Treaties

²⁷ Section 5, RR 4-86

SECTION 2. *Definitions.* — For purposes of these regulations, the following terms and phrases shall be understood to mean –

a) “Real property interest” — interests on properties enumerated in Section 3 which are not, however, exclusive of others that are similarly situated. As used in the treaties in these regulations, it shall be understood to include real properties as understood under Philippines laws;

b) “Principally”, “wholly or principally”, “directly principally” or “attributable” — **more than fifty percent of the entire assets in terms of value;** x x x

SECTION 4. *Basis.* — The value of all the assets of the subject corporation both real and personal **as appearing in its financial statement on the date of sale** of the share or interest in such corporation, as verified by the BIR, shall be used as the basis for determining the composition of its assets.

In case the financial statement as of the date of the sale is not available, the **most recent financial statement may be used, after the necessary adjustments** are made to reflect transactions made during the period from the date of such financial statement to the date of the sale.

SECTION 5. *Exception.* — When the **book value** of an asset is not reflected in the financial statement or when it is clearly manifest that the same is under or over stated, then the prevailing market value of such asset will be used as the basis.²⁸ (Emphasis supplied)

On the other hand, when the corporation whose shares are being sold *do not* principally consist of Philippine real property, the qualifying article is *not* engaged; the right to tax the capital gain arising for the sale of shares of stock shall remain exclusively with the United States (i.e., home country). To be sure, the Philippines has no similar taxing right over the capital gains when said asset composition falls below the 50% threshold; thus, the gain from the sale shall not be subject to CGT.

To show that GE PH’s asset composition did not meet the 50% threshold as of the date of sale, Grid Solutions US presented its Audited Financial Statements as of December 31, 2015 and 2016, and the Unaudited Interim Financial Statements as of July 31, 2017; these showed that the book value of its Philippine property and equipment

²⁸ SUBJECT: Determination of whether the assets of a corporation consist principally of real property interest under the Philippine tax treaties, Revenue Regulations No. 04-86, April 2, 1986.

had only been 2.23%, 0.79%, and 0.58% of the total assets, respectively, viz.:

	As of		
	December 31, 2015	December 31, 2016	July 31, 2017
Property and equipment	PHP 7,193,000	PHP 2,147,000	PHP 1,634,000
Divided by Total assets	322,938,000	306,915,000	280,574,000
Percentage	2.23%	0.79%	0.58%

The CIR's attempt to discredit this financial information is unavailing.

GE PH's **audited** financial statements were duly filed with the Securities and Exchange Commission, pursuant to Section 141 of the Corporation Code of the Philippines.²⁹ More importantly, these were also submitted to the BIR; as such these were made under the penalties of perjury.³⁰ On the other hand, RR 4-86 expressly allows the submission of **unaudited** financial statements for purposes of ascertaining whether the 50% threshold is met.

Thus, the Court in Division made no mistake in giving weight to the financial statements, which appear to be *prima facie* correct, especially in light of the CIR's failure to object to their admission³¹ and to present evidence casting doubt on the financial reports' reliability. Certainly, its bare assertion that these are "self-serving" shall not persuade the Court.

To clarify, at the time of the sale, the shares of stock subject of the transaction were that of **GE PH**. That GE PH changed its name eventually to Aclara Meters Philippines, Inc. (Aclara PH) did not impose a different or an additional evidentiary burden upon Grid Solutions US. Plainly, to successfully avail of tax treaty relief, it had the duty to establish that the assets of GE PH—not Aclara PH—*did not* principally consist of Philippine real property. And, as discussed above, the presentation of GE PH's financial statements meets said burden sufficiently.

²⁹ e (Corporation Code of the Philippines, Batas Pambansa Blg. 68, [May 1, 1980])

³⁰ SEC. 267. Declaration under Penalties of Perjury. - Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

³¹

Section 1 of the Supplementing Protocol does not apply; the exclusive right to tax the capital gain arising from the sale of shares shall remain with the United States, as provided under Article 14 of the RP-US Tax Treaty.

The Court in Division was correct in recognizing Grid Solutions US's standing to file the present claim.

It is settled that it is the statutory taxpayer who is the real party in interest to lodge a claim for refund:

A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made liable for tax" as *not* "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.³²

This is true, in particular, as regards CGT liability. Under Section 28(B)(5)(c) of the Tax Code, Grid Solutions US, as the **seller** of shares of stock in GE PH, is the **statutory taxpayer**, liable to pay the CGT upon the net capital gains realized from the sale of shares transaction. As the statutory taxpayer, Grid Solutions US filed the required CGT return and caused the payment of the tax due.

It is not unusual for the parties to the sale to agree on a different payment arrangement; however, the buyer's acceptance to shoulder the financial burden of CGT does not alter the seller's status as the statutory taxpayer.

The Supreme Court addressed this type of arrangement in *Republic v. Spouses Salvador*,³³ where in an expropriation proceeding, the Republic, as the buyer, paid the CGT on the seller's account:

³² (Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp., G.R. No. 66838 (Resolution), (02 December 1991), 281 Phil 425-476)

³³ G.R. No. 205428, (07 June 2017), 810 Phil 742-749.

It is settled that the transfer of property through expropriation proceedings is a sale or exchange within the meaning of Sections 24 (D) and 56 (A) (3) of the National Internal Revenue Code, and profit from the transaction constitutes capital gain. Since capital gains tax is a tax on passive income, it is the seller, or respondents in this case, who are liable to shoulder the tax.

In fact, the Bureau of Internal Revenue (BIR), in BIR Ruling No. 476-2013 dated December 18, 2013, has constituted the DPWH as a withholding agent tasked to withhold the 6% final withholding tax in the expropriation of real property for infrastructure projects. Thus, as far as the government is concerned, **the capital gains tax in expropriation proceedings remains a liability of the seller**, as it is a tax on the seller's gain from the sale of real property.

These told, the payment of the subject CGT, regardless of the person or juridical entity making the actual remittance to the BIR, was for Grid Solutions US's account as the statutory taxpayer. It is vested with the requisite legal standing to bring the instant suit for refund.

Significantly, while the CIR questioned Grid Solutions US's legal standing vis-à-vis the payor indicated on the deposit slip evidencing the CGT payment, it did not deny that the CGT due was in fact paid and remitted to the BIR. Thus, no further proof of the fact of payment is necessary.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Court of Tax Appeals Second Division Decision and Resolution promulgated on February 28, 2023 and October 9, 2023, respectively, in CTA Case No. 10146 are **AFFIRMED**.

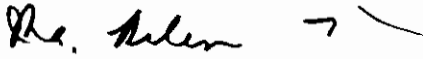
SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

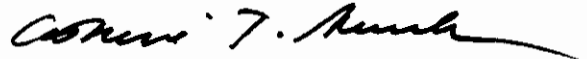
WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



LANEÉ S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice



HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO
Presiding Justice