Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION, Petitioner,	**G.R. No. 271261**
	Present: GESMUNDO, *C.J.*, *Chairperson* HERNANDO, ZALAMEDA, ROSARIO, and MARQUEZ, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 02 2025

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DECISION

HERNANDO, *J.*:

The present Petition for Review on *Certiorari*[1] challenges the July 11, 2023 Decision[2] and the January 8, 2024 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 2608, which affirmed the October 28,

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[1] *Rollo*, pp. 56–92.

[2] *Id.* at 10–39. The July 11, 2023 Decision in CTA EB No. 2608 was penned by Associate Justice Lanee S. Cui-David, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo, and Corazon G. Ferrer-Flores of the Court of Tax Appeals, *En Banc*, Quezon City. Presiding Justice Roman G. Del Rosario issued a Separate Opinion, and Associate Justice Marian Ivy F. Reyes-Fajardo separately issued a Concurring Opinion.

[3] *Id.* at 47–54. The January 8, 2024 Resolution in CTA EB No. 2608 was penned by Associate Justice Lanee S. Cui-David, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo, Corazon G. Ferrer-Flores, and Henry S. Angeles of the Court of Tax Appeals, *En Banc*, Quezon City. Presiding Justice Roman G. Del Rosario reiterated his Separate Opinion.

2021 Decision[4] and the April 6, 2022 Resolution[5] of the CTA First Division in CTA Case No. 9811.

The CTA denied the claim for refund or tax credit of Melco Resorts Leisure (PHP) Corporation (Melco) under Sections 112 and 229 of the National Internal Revenue Code of 1997, as amended (Tax Code).

Factual Antecedents

Melco is a domestic corporation organized and existing under the laws of the Philippines, and is engaged in developing and operating tourist facilities.[6] These tourist facilities include casino entertainment complexes with hotel, retail, and amusement areas, and themed development components, without being engaged in retail trade.[7] It is also engaged in casino gaming activities,[8] with a valid and existing gaming license issued by the Philippine Amusement and Gaming Corporation (PAGCOR).[9] Finally, Melco is a value-added tax (VAT)-registered taxpayer under Tax Identification Number/VAT Registration No. 008-362-871-00000.[10]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR).[11] The CIR is vested with the authority to act as such, including the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties in relation thereto, or other matters arising under the tax laws.[12] The CIR holds office at the BIR National Office Building, Diliman, Quezon City.[13]

The records show that on January 28, 2013, PAGCOR issued an Amended Certificate of Affiliation & Provisional License to Melco with other co-licensees, as a consortium, in accordance with its charter, as amended.[14] This document was applicable to casinos located in the Bagong Nayong Pilipino

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4 *Id.* at 143–166. The October 28, 2021 Decision in CTA Case No. 9811 was penned by Associate Justice Catherine T. Manahan, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo of the First Division, Court of Tax Appeals, Quezon City. Presiding Justice Roman G. Del Rosario issued a Concurring Opinion.

5 *Id.* at 204–212. The April 6, 2022 Resolution in CTA Case No. 9811 was penned by Associate Justice Catherine T. Manahan, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo of the First Division, Court of Tax Appeals, Quezon City. Presiding Justice Roman G. Del Rosario issued a Concurring Opinion.

6 *Id.* at 11.

7 *Id.*

8 *Id.*

9 *Id.* at 11–12.

10 *Id.* at 11.

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

Manila Bay Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City.[15]

On separate dates in 2015 and 2017, PAGCOR issued a gaming license in favor of Melco with other co-licensees, as a consortium, applicable to casinos located in the areas stated above, and specifically to the licensees' casinos located along Asean Avenue and Roxas Boulevard, Tambo, Parañaque City, with the brand name of City of Dreams Manila.[16]

Based on the records, Melco paid PHP 81,119,005.84, representing erroneously or illegally collected and passed-on input VAT on purchases attributable to gaming revenues for the material period.[17]

On April 25, 2016, Melco filed its quarterly VAT return (BIR Form No. 2550-Q) for the 1st quarter of taxable year 2016 through the BIR's Electronic Filing and Payment System.[18] Amendments to the VAT return were made on December 19, 2016, March 23, 2017, and June 22, 2017.[19]

Thereafter, or on December 19, 2017, Melco filed its administrative claim for refund with the Large Taxpayer Services of the BIR.[20]

However, through a letter from the BIR dated February 26, 2018, Melco was informed that its application for tax credit certificate/refund could not be given due course based on the provisions of Revenue Memorandum Circular (RMC) No. 33-2013 dated April 27, 2013.[21] The relevant RMC allegedly states that "income derived from operations related to gaming activities as well as other income are subject to VAT at 12% and therefore not entitled to refund of creditable input tax."[22]

Aggrieved, Melco filed a Petition for Review[23] before the CTA on April 12, 2018. The case was initially raffled to the CTA's Third Division, then eventually transferred to the CTA First Division. [24]

Ruling of the CTA First Division

On October 28, 2021, the CTA First Division ruled in favor of the CIR.[25] The dispositive portion of the Decision[26] dated October 28, 2021 reads:

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15 *Id.*
16 *Id.* at 12.
17 *Id.* at 70.
18 *Id.* at 12.
19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.*
23 *Id.* at 145.
24 *Id.* at 12.
25 *Id.* at 14.
26 *Id.* at 143–166.

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review filed by [Melco], is **DENIED** for lack of merit.
>
> **SO ORDERED**.[27] (Emphasis in the original)

The CTA First Division ruled that Melco timely filed its judicial claim for refund under Section 112 of the Tax Code.[28] However, the claim for refund of alleged excess/unutilized input tax incurred by Melco during the 1st quarter of taxable year 2016 cannot be refunded because Melco itself is not engaged in zero-rated activities.[29] Ultimately, the CTA First Division concluded that Melco failed to discharge the burden of proof to establish the factual and legal bases of its claim for tax refund.[30]

Melco sought reconsideration, but the same was denied by the CTA First Division in its Resolution[31] dated April 6, 2022. The dispositive portion thereof reads:

> **WHEREFORE**, in light of the foregoing considerations, the *Motion for Reconsideration [of Decision dated October 28, 2021]* filed by [Melco], is **DENIED** for lack of merit.
>
> **SO ORDERED**.[32] (Emphasis in the original)

Still aggrieved, Melco filed its Petition for Review[33] before the CTA *En Banc*.

Ruling of the CTA En Banc

On July 11, 2023, the CTA *En Banc* issued its assailed Decision[34] finding no merit in Melco's claim for refund or tax credit under Sections 112 and 229 of the Tax Code, as amended.[35] It found that Melco failed to strictly comply with the essential and necessary requisites of Section 112 of the Tax Code, in particular, that Melco was not engaged in zero-rated or effectively zero-rated sales.[36]

The CTA *En Banc*, however, affirmed the CTA First Division's ruling and agreed with Melco's assertion that the benefit granted under Presidential Decree No. 1869 which grants tax exemptions to PAGCOR for its gaming

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[27] *Id.* at 154.
[28] *Id.*
[29] *Id.* at 164.
[30] *Id.*
[31] *Id.* at 204–212.
[32] *Id.* at 14, 211–212.
[33] *Id.* at 261–299.
[34] *Id.* at 11–39.
[35] *Id.* at 37.
[36] *Id.* at 24–25.

operations, extended to Melco because it is a corporation with whom PAGCOR has a contractual relationship.[37]

Citing a plethora of jurisprudence on the matter, it held that Melco's reliance on Section 108 (B) (3) of the Tax Code regarding services rendered to persons or entities exempted by special law, was utterly misplaced.[38] The tax court emphasized that effectively zero-rated transactions refer to the sale of goods and services **to** persons exempted under special law.[39] Thus, the entity enjoying incentives under the special law, like Melco by virtue of PAGCOR's exemption, is not the seller but the buyer in the transaction.[40]

However, the inverse is contemplated in the present case, where the sales of services (gaming activities) is **by** Melco, not **to** it.[41] Consequently, Melco's sale of services is exempt from VAT, pursuant to Section 109 of the Tax Code, and **not zero-rated**.[42] This distinction was crucial, as it determined the extent of relief available such as the ability of a taxpayer to claim passed-on VAT as a tax credit or refund.[43]

Moreover, the CTA *En Banc* ruled that Melco was not entitled to claim for refund on the ground of erroneously or illegally paid taxes under Section 229 of the Tax Code.[44] Although the tax court found that taxes were indeed erroneously paid as Melco's suppliers should not have shifted VAT to it because Melco's sales were effectively zero-rated, the CTA *En Banc* ultimately ruled that "it cannot be determined whether [Melco] timely filed its claim for refund of tax credit."[45]

Under Section 229 of the Tax Code, both administrative and judicial claims for refund of erroneously paid taxes must be filed within two years after the alleged payment of the tax by the statutory taxpayer.[46] In this case, however, where Melco was not the statutory taxpayer but merely bore the economic burden thereof, the CTA *En Banc* reckoned the prescriptive period from the date of filing of the VAT return and payment of tax due by the supplier-statutory taxpayer, citing *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*.[47]

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37 *Id.* at 25–28.
38 *Id.* at 28–33.
39 *Id.* at 29.
40 *Id.*
41 *Id.* at 32.
42 *Id.*
43 *Id.*
44 *Id.* at 35.
45 *Id.*
46 *See* TAX CODE, sec. 204 (C), as amended.
47 *Rollo*, p. 36, *citing* 713 Phil. 134 (2013) [Per J. Perlas-Bernabe, Second Division].

The CTA *En Banc* concluded that it was erroneous for Melco to count the two-year period from the date of filing of *its own* 1st quarter VAT return on April 25, 2016.[48] Thus, where the records were likewise bereft of any proof of the date of filing of the VAT returns and the payment of VAT passed on to Melco by its suppliers, then the CTA *En Banc* could not determine whether Melco's claim for refund was timely or properly filed and the CTA is without authority to rule on said claim.[49]

Thus, the dispositive portion of the assailed Decision states:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **DENIED**. The *Decision* dated October 28, 2021, and the Resolution dated April 6, 2022, of the Court's First Division in CTA Case No. 9811 are **AFFIRMED**.
>
> **SO ORDERED.**[50] (Emphasis in the original)

Dissatisfied, Melco filed its motion for reconsideration, while the respondent filed its opposition thereto.[51]

On reconsideration and in its Resolution[52] dated January 8, 2024, the CTA *En Banc* found no merit in Melco's motion. The CTA *En Banc* reiterated its adherence to the case of *PAL* finding the same to be the closest jurisprudential anchor to the present case, since it similarly involved indirect business taxes, a VAT-subject transaction, a non-exempt seller, and a buyer exempt from direct and indirect taxes due to a special law.[53]

With regard to Melco's invocation of the principle of *solutio indebiti*, the CTA *En Banc* held that it was not applicable to tax refund cases since the Tax Code is a special law that explicitly provides for a mandatory period to file a refund claim for erroneously paid taxes.[54] Thus, the Tax Code as a special law prevails over the provisions on quasi-contract under the Civil Code, a general law.[55]

The dispositive portion of the assailed Resolution states:

> **WHEREFORE**, premises considered, [Melco's] *Motion for Reconsideration (of Decision dated July 11, 2023)* is . . . **DENIED** for lack of merit.

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48 *Id.* at 36.
49 *Id.* at 37.
50 *Id.*
51 *Id.* at 48.
52 *Id.* at 204–212.
53 *Id.* at 51–53.
54 *Id.* at 53.
55 *Id.*

SO ORDERED.[56] (Emphasis in the original)

Hence, this Petition.[57]

Melco argues that the CTA *En Banc*'s Decision effectively renders nugatory the tax exemption privilege extended to it under Presidential Decree No. 1869 because of the impractical, unreasonable, and burdensome procedure in claiming the refund of erroneously passed-on input VAT.[58]

Moreover, the two-year period should be reckoned from the filing of Melco's own quarterly VAT return because it is at that time that the amount of erroneously passed-on input VAT may be determined.[59]

Melco entreats the Court to revisit the assailed Decision and Resolution of the CTA *En Banc* and affirm that: (1) Melco is exempt from input VAT on its purchase attributable to gaming revenues; (2) as such, said input VAT should not be passed on by suppliers; (3) if VAT is passed on, Melco is entitled to a refund based on the supporting sales invoices and/or official receipts; and (4) the claim should be filed within the two-year period from the filing of the Quarterly VAT return of petitioner.[60]

On the other hand, the CIR in its Comment[61] argues that: (1) the input taxes erroneously passed on to Melco by its suppliers are not refundable as they form part of the cost of its purchases; and (2) Melco failed to prove by preponderance of evidence that the suppliers paid the VAT, that the refund was claimed within the prescribed period, and that its suppliers did not themselves claim refund or carried over any excess input VAT to the next taxable quarter.[62]

Issues

The issues before the Court are the following:

1. Whether the CTA *En Banc* erred in ruling that Melco is not entitled to the refund or the issuance of a tax credit certificate in the total amount of PHP 81,119,005.84, representing erroneously or illegally collected and passed-on input VAT on purchases attributable to gaming revenues for the 1st quarter of taxable year 2016; and

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56 *Id.*
57 *Id.* at 56–96.
58 *Id.* at 57.
59 *Id.*
60 *Id.* at 59.
61 *Id.* at 378–396.
62 *Id.* at 384–391.

2. Whether the CTA *En Banc* erred in ruling that Melco failed to timely file its administrative and judicial claims for refund as the two-year period is counted from the date of payment to the BIR of the VAT passed on to Melco by its suppliers.

Our Ruling

The Petition is partly meritorious.

The CTA did not err in ruling that Melco was not entitled to the refund or the issuance of tax credit certificate in the total amount of PHP 81,119,005.84. Applying the law and jurisprudence, Melco's payment of the said amount was not erroneous nor illegal; hence, not refundable. Instead, such payment represented and formed part of the purchase price it paid to its suppliers.

However, the CTA erred in ruling that Melco failed to timely file its administrative and judicial claims for refund and in reckoning the two-year period from the date of payment to the BIR of the VAT passed on to Melco by its suppliers.

Only questions of law may be raised in a Rule 45 petition before this Court

A judicious review of the records calls Us to delve into both issues with careful consideration.

This Court must reiterate the settled rule that only questions of law may be raised in a petition under Rule 45 of the Rules of Court. It is not this Court's function to analyze or weigh all over again the evidence already considered before the CTA, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.[63]

Dedicated exclusively to the study and consideration of tax problems, the CTA has necessarily developed an expertise in the subject of taxation that this Court has recognized time and again.[64] Thus, the findings of fact of the CTA division, especially when affirmed *en banc*, are generally conclusive on this Court absent grave abuse of discretion or palpable error.[65]

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[63] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, 920 Phil. 93, 102 (2022) [Per J. Hernando, Second Division].

[64] *Commissioner of Internal Revenue v. The Philippine American Accident Insurance Company, Inc.*, 493 Phil. 785, 803 (2005) [Per J. Carpio, First Division].

[65] *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue*, 612 Phil. 544, 558 (2009) [Per J. Chico-Nazario, Third Division].

Grave abuse of discretion is defined in jurisprudence as such capricious and arbitrary exercise of judgment as equivalent, in the eyes of the law, to lack of jurisdiction.[66] There is grave abuse of discretion where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.[67] Through time, the meaning of grave abuse of discretion has been expanded to include any action done contrary to the Constitution, the law, or jurisprudence.[68]

In the case at bar and as will be further discussed below, a reversible error was committed by the CTA in its application of Sections 204 and 229 of the Tax Code.

Section 229 of the Tax Code contemplates erroneously, illegally, or excessively collected tax, which is the applicable legal basis in the case at bar

In its pleadings before the CTA, Melco sought relief through both Sections 112 and 229 of the Tax Code.[69] Section 112 (A) pertains to the refund of unutilized input VAT attributable to zero-rated sales, while Section 229 refers to the recovery of erroneously or illegally collected tax payments.

For the guidance of the bench and the bar, We briefly discuss both Sections 112 and 229 of the Tax Code.

Manila Peninsula Hotel, Inc. v. Commissioner of Internal Revenue[70] cited the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[71] to clarify that Section 229 of the Tax Code contemplates "a wrongful payment because what is paid, or part of it, is not legally due."[72] It then went on to explain that even if a VAT-registered taxpayer incurs excess input tax does not mean that it was wrongfully or erroneously paid.[73]

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66 *Bacelonia v. Court of Appeals*, 445 Phil. 300, 307–308 (2003) [Per J. Corona, Third Division]; *Vda. De Bacaling v. Laguna*, 153 Phil. 524, 533–534 (1973) [Per J. Esguerra, First Division].

67 *Benito v. Commission on Elections*, 402 Phil. 764, 773 (2001) [Per J. De Leon, Jr., *En Banc*]; *Cuison v. Court of Appeals*, 351 Phil. 1089, 1102 (1998) [Per J. Panganiban, First Division].

68 *Republic v. COCOFED*, 423 Phil. 735, 774 (2001) [Per J. Panganiban, *En Banc*].

69 *Rollo*, p. 19.

70 G.R. No. 229338, April 17, 2024 [Per J. Caguioa, Third Division].

71 703 Phil. 310, 369 (2013) [Per J. Carpio, *En Banc*].

72 *Manila Peninsula Hotel, Inc. v. Commissioner of Internal Revenue*, G.R. No. 229338, April 17, 2024 [Per J. Caguioa, Third Division] at 14. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

73 *Id.*

The same case then summarized the distinctions between Sections 112 and 229 of the Tax Code, as follows:[74]

Point of Distinction	Section 112	Section 229
Nature of refund	Unutilized creditable input VAT attributable to zero-rated or effectively zero-rated sales	**Erroneously, illegally, excessively collected tax**
Prescriptive period and reckoning date	Only the administrative claim must be filed within two years from the close of the taxable quarter when the relevant sales were made. The 30-day period within which to appeal to the CTA need not necessarily fall within the two-year prescriptive period.	**Both the administrative and judicial claims must be filed within two years from the actual payment of tax or penalty sought to be refunded, regardless of the existence of any supervening cause after payment.**
Period for the CIR to decide the administrative claim	120 days from the date of submission of complete documents in support of the application. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period.	No specific period provided
Judicial claim	Taxpayer must file an appeal to the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.	Taxpayer must file an appeal to the CTA within 30 days but a "decision" or "inaction deemed denial" is not required to seek judicial recourse.

The distinctions between the kinds of refund under the Tax Code bear great significance on its nature, prescriptive period, and reckoning date.

In denying Melco's claim for refund of input VAT under Section 112, the CTA First Division ruled in its Resolution[75] dated April 6, 2022, as follows:

> There is no dispute that [Melco's] claim for refund involves alleged excess input VAT attributable to its purchases of capital goods, domestic purchases of goods (other than capital goods) and purchases of services rendered by non-residents which were passed on by its suppliers. **In the Petition for Review filed on April 12, 2018, [Melco] specifically prayed for the refund or tax credit of [PHP] 81,119,005.84 representing "excess and unutilized input VAT on its**

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[74] *Id.* at 14–15.
[75] *Rollo*, pp. 206–212.

> **purchases of capital goods, domestic purchases of goods (other than capital goods) and services, importations of goods (other than capital goods) and purchases of services rendered by non-residents which are attributable to zero-rated sales for the 1st quarter of taxable year 2016."**
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> **The report of the Independent Certified Public Accountant (ICPA) presented as Exhibit "P-248" was the result of the study made on the documents such as invoices and receipts to ascertain the amount of unutilized input VAT that may be the subject of a refund or tax credit.** By the very nature of the claim for refund of alleged excess input VAT filed by [Melco] as borne out by the records of this case, the Court approached and resolved the same in light of the relevant provisions of the 1997 NIRC, as amended, focusing particularly on zero-rated sales to determine whether [Melco] complied with the requisites on refunds of alleged excess input VAT. . .
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> . . . .
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> **[Melco] is engaged in the business of developing and operating tourist facilities, including hotel casino entertainment complexes with hotel, retail and amusement areas and themed development components, without being engaged in retail trade, and to engage in casino gaming activities. These activities are not considered zero-rated or effectively zero-rated sales under the relevant provisions of the 1997 NIRC, as amended, thus cannot be the source of the claimed input VAT.**
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> The alternative theory of indirect tax exemption proffered by [Melco] arising from its status as a PAGCOR licensee, cancels out the possibility of claiming the alleged excess input VAT because input VAT attributable to an exempt transaction is neither creditable nor refundable. . .
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> **Being exempted from VAT, the input taxes that may have been passed on to it by its suppliers cannot be the subject of a claim for refund.**[76] (Emphasis supplied)

We emphasize that Melco's claim for refund under Section 112 of the Tax Code failed before the CTA, in division and *en banc*. We agree with their factual findings and rulings, and adopt the same. Thus, while Melco is a VAT-exempt entity, its transactions with its suppliers are not considered zero-rated or effectively zero-rated sales under the Tax Code.

No further discussion of Melco's claim for refund under Section 112 of the Tax Code follows.

On the other hand, the CTA *En Banc* concluded that the petition before it was anchored solely on Section 229 of the Tax Code.[77] The same is true in the present Petition.[78]

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[76] *Id.* at 209–211.
[77] *Id.* at 21.
[78] *Id.*

We emphasize that Melco presently seeks its erroneous payment of passed-on input VAT on purchases attributable to gaming revenues for the 1st quarter of taxable year 2016.[79] It follows, therefore, that the applicable provision is Section 229 of the NIRC, as amended, considering that the issue involves the recovery of taxes erroneously paid.

The power of the CIR to refund or credit taxes is recognized under Section 204 (C) of the Tax Code. The provision of law states:

> SEC. 204. ***Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*** — The Commissioner may –
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> . . . .
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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[/her] 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)

On the other hand, Section 229 of the Tax Code provides:

> 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 unless there is a full or partial denial of the claim for refund or credit by the Commissioner or there is a failure on the part of the Commissioner to act on the claim within the one hundred eighty (180)-day period under Section 204 of this Code; 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.
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> In case of full or partial denial of the claim for tax refund, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred eighty (180)-day period, appeal the decision with the Court of Tax Appeals.

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[79] *Id.* at 57.

We have defined an "erroneous or illegal tax" as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal.[80] In jurisprudence, We also held that an erroneous payment of tax is when the taxpayer pays under a mistake of fact, as when the taxpayer is not aware of an existing exemption in his or her favor at the time the payment was made.[81] Thus, when payment is not voluntary, it can then be recovered or refunded.[82]

By way of example, We ruled in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[83] that Acesite paid by mistake VAT on its rental income and sale of food and beverages to PAGCOR, a tax-exempt entity.[84] Acesite, a contractee of PAGCOR and a non-VAT purchaser, was able to prove that it was not aware that the transactions it had with PAGCOR were zero-rated at the time it made its payments.[85] Thus, it was entitled to a tax refund from the BIR.

Applying the applicable law and jurisprudence, We affirm the ruling of the CTA that Melco was not entitled to the refund or the issuance of tax credit certificate in the total amount of PHP 81,119,005.84. Melco's payment of the said amount was not erroneous nor illegal; hence, not refundable. Instead, such payment represented and formed part of the purchase price it paid to its suppliers.

The phrase "payment of taxes" under Section 204 (C) in relation to Section 229 of the Tax Code has been interpreted in jurisprudence to mean: (1) the actual payment of tax or penalty sought to be refunded, regardless of the existence of any supervening cause after payment; as well as (2) the date of the filing of the adjusted final tax return

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80 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, 727 Phil. 506, 537 (2012) [Per J. Villarama, Jr., First Division].

81 *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, 545 Phil. 1, 11 (2007) [Per J. Velasco, Jr., Second Division]. (Citations omitted)

82 *Id.* (Citations omitted)

83 545 Phil. 1 (2007) [Per J. Velasco, Jr., Second Division]. (Citations omitted)

84 *Id.* at 6. (Citations omitted)

85 *Id.*

In the case at bar, Melco seeks this Court's clarification on the meaning of the phrase "payment of taxes" under Section 229 of the Tax Code.[86] To Melco, the phrase "payment of taxes" should be interpreted "as the time the passed-on taxes (i.e., input VAT) are determined to be erroneous, **which is the date of the filing of Melco's Quarterly VAT Return declaring the input VAT subject to the claim for refund.**"[87]

On the other hand, the CTA *En Banc* ruled that "the two-year period is counted from the date of payment to the BIR of the VAT passed on to [Melco] by its suppliers, i.e., the filing of its suppliers' VAT return and payment of that VAT due thereon."[88] Thus, to the CTA *En Banc*, the operative act is the actual remittance by the supplier.[89]

We emphasize that the two-year prescriptive period under Section 229 of the Tax Code is reckoned from the **actual payment of tax or penalty sought to be refunded,** regardless of the existence of any supervening cause after payment. Thus, the Court declared and emphasized in *Manila Peninsula Hotel, Inc.* that both administrative and judicial claims must be filed within the two-year period commencing on payment of the tax:

> Section 229, in turn, requires two conditions for filing judicial claims: (1) an administrative claim must be filed first; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded. **Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period counted from the payment of the tax.** Hence, when taxpayers amend their return and make an adjusted payment, the prescriptive period for the adjusted amount is reckoned from the later date.[90] (Emphasis supplied)

Manila Peninsula Hotel, Inc. also explained that when the return is amended and the taxpayer makes an adjusted payment, the prescriptive period for the adjusted amount is reckoned from the later date.

It is thus clear that the refund of erroneously, illegally, or excessively collected tax requires the filing of both the administrative and judicial claims within the two-year period counted from the payment of the tax or penalty sought to be refunded, regardless of the existence of any supervening cause after payment.

In addition to such interpretation, the Court has also ruled that the reckoning point of the two-year prescriptive period is the date of the filing of the adjusted final tax return.

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[86] *Rollo*, p. 15.
[87] *Id.* at 70. (Emphasis in the original)
[88] *Id.* at 36.
[89] *Id.* at 36, 71.
[90] *Id.* at 16. (Citations omitted)

In *Commissioner of Internal Revenue v. TMX Sales, Inc.*,[91] the Court resolved the issue on when the two-year prescriptive period to file a suit for a refund of a tax erroneously or illegally paid commenced. In *TMX Sales, Inc.*, the Court ruled that the same commenced from the date of filing of the Final Adjustment Return (final payment), and not when the quarterly income tax was paid.[92] The same Court then warned that the literal application of Section 229 to a case involving "quarterly income tax payments may lead to absurdity and inconvenience."[93]

Harmonizing the old provisions of the Tax Code and analyzing hypothetical data in the Final Adjustment Return, the Court ruled in the wise:

> Based on the above hypothetical data appearing in the Final Adjustment Return, the taxpayer is entitled under Section 87 (now Section 69) of the Tax Code to A refund of [PHP] 6,250.00. If Section 292 (now Section 230) is literally applied, what then is the reckoning date in computing the two-year prescriptive period? Will it be the 1st quarter when the taxpayer paid [PHP]12,500.00 or the 3rd quarter when the taxpayer also paid [PHP]12,500.00? **Obviously, the most reasonable and logical application of the law would be to compute the two-year prescriptive period at the time of filing the Final Adjustment Return or the Annual Income Tax Return, when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax.**
>
> . . . .
>
> Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the Final Adjustment Return, where the figures of the gross receipts and deductions have been audited and adjusted, that is truly reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.
>
> Therefore, the filing of a quarterly income tax returns required in Section 85 (now Section 68) and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. **These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year.** This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. Consequently, the two-year prescriptive period provided in Section 292 (now Section 230) of the Tax Code should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax.[94] (Citations omitted; Emphasis supplied)

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[91] 282 Phil. 199 (1992) [Per J. Gutierrez, Jr., *En Banc*].
[92] *Id.* at 200.
[93] *Id.* at 204.
[94] *Id.* at 206–208.

In the case of *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*,[95] this Court settled the proper interpretation of the phrase "payment of taxes" under Section 229 to mean the date of the filing of the adjusted final tax return. Thus, We ruled:

> Indeed, the two-year period in filing a claim for tax refund is crucial. While the law provides that the two-year period is counted from the date of payment of the tax, **jurisprudence, however, clarified that the two-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise.** Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[96] (Citations omitted; Emphasis supplied)

Thus, based on jurisprudence, the phrase "payment of taxes" under Section 204 (C) in relation to Section 229 of the Tax Code has been interpreted in two ways: (1) the actual payment of tax or penalty sought to be refunded, regardless of the existence of any supervening cause after payment; as well as (2) the date of the filing of the adjusted final tax return. In both interpretations, the Court did not require actual remittance by the suppliers.

We therefore find error and fault on the part of the CTA *En Banc* for failing to determine whether petitioner timely filed its claim for refund of tax credit.[97] More importantly, We ascribe error on the part of the CTA *En Banc* in ruling that "the two-year period is counted from the date of payment to the BIR of the VAT passed on to [Melco] by its suppliers, i.e., the filing of its suppliers' VAT return and payment of that VAT due thereon."[98]

Substantial justice, equity, and fair play outweigh the administrative infeasibility and impracticality espoused by the tax court

Substantial justice, equity, and fair play are on the side of Melco and outweigh the gross infeasibility and impracticality espoused by the tax court.

As Melco correctly argued in its Petition, requiring actual remittance by the suppliers would be "administratively not feasible or near impossible,

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[95] 851 Phil. 1078 (2019) [Per J. Reyes, J., Jr., Second Division].
[96] *Id.* at 1085–1086.
[97] *Rollo*, p. 35.
[98] *Id.* at 36.

impractical and oppressive for the petitioner to demand to be furnished the VAT returns of its hundreds of suppliers."[99] Thus, since Melco worked with 400 suppliers, the ruling of the CTA *En Banc* would have had Melco submit 1,600 Quarterly VAT returns.[100] This scenario would be absurd, inconvenient, unfair, and unreasonable.

In *Philippine Airlines, Inc. (PAL)* v. *Commissioner of Internal Revenue*,[101] the Court resolved the issue on whether PAL was required to prove the remittance to the BIR of the final withholding tax on its interest from currency bank deposits to be entitled to a tax refund.[102] The Court emphatically ruled that remittance does not need to be proven.[103] Thus, when PAL sufficiently proved that it was entitled to its claim for refund, the Court led with equity and reasoned with both the BIR and the CTA:

> Finally, **both the Commissioner and the Court of Tax Appeals should have appreciated the unreasonable difficulty that it would have put the taxpayer — in this case PAL — to claim a statutory exemption granted to it. In requiring that it prove actual remittance, the court *a quo* and the Commissioner effectively put the burden on the payee to prove that both government and the banks complied with their legal obligation. It would have been near impossible for the taxpayer to demand to see the records of the payor bank or the ledgers of the government. The legislative policy was to provide incentives to the taxpayer by unburdening it of taxes. By administrative and judicial interpretation, such policy would have been unreasonably reversed. This is not this Court's view of equity.** Clearly, the taxpayer in this case is entitled to relief.[104] (Emphasis supplied)

Similar to the *PAL* case cited by the CTA, We find that this more recent *PAL* case also applies by analogy to Melco. We apply the same wisdom to the present case, and urge both the BIR and the CTA to abide by the judicial tenets of substantial justice, equity, and fair play.

ACCORDINGLY, the Petition for Review on *Certiorari* is **PARTLY GRANTED.** The July 11, 2023 Decision and the January 8, 2024 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 2608 (CTA Case No. 9811) are **PARTIALLY REVERSED.**

Melco Resorts Leisure (PHP) Corporation timely filed its administrative and judicial claims for refund. However, it is not entitled to the refund or the issuance of tax credit certificate in the total amount of PHP 81,119,005.84. Payment of the said amount was not erroneous nor illegal; hence, not refundable.

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[99] *Id.* at 71.
[100] *Id.* at 75.
[101] 823 Phil. 1043 (2018) [Per J. Leonen, Third Division].
[102] *Id.* at 1069.
[103] *Id.*
[104] *Id.* at 1089.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice
Working Chairperson

WE CONCUR:

ALEXANDER G. GESMUNDO
Chairperson
Chief Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ALEXANDER G. GESMUNDO
Chief Justice