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May a deficiency tax assessment be increased on appeal?

The term "assessment" refers to the determination of amounts due from a person obligated to make payments. In the context of national internal-revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code. (GR 175410, November 12, 2014)

The highest Court had declared that the Court of Tax Appeals (CTA) has no power to make an assessment at the first instance. On matters such as tax collection, tax refund and others related to the national internal-revenue taxes, the CTA's jurisdiction is appellate in nature. In simple words, a tax assessment should be initiated and originate from the Bureau of Internal Revenue (BIR), but may be reviewed by the CTA following the prescribed procedures.

There is no doubt that if the BIR makes an assessment against a taxpayer, the latter may dispute that assessment before the same agency. If the taxpayer is not satisfied with the decision of the BIR, he may invoke the review power of the CTA. The CTA then has to review the correctness of the BIR's assessment and decision.

There is also no doubt that in making its own determination of a taxpayer's tax liabilities, the Tax Court may uphold, reduce, or cancel the deficiency tax assessment. May the Tax Court also increase a taxpayer's deficiency tax assessment in case its own determination shows a higher tax or a higher (or additional) tax base than that included by the BIR in its assessment? This question is sometimes crucial for some taxpayers in considering whether to appeal an assessment case. To help answer this question, we refer to some of the decided cases, which, although the question may not have been initially raised as specific issue, would provide a glimpse on whether an assessment could possibly be increased.

In CTA Case 8291, July 13, 2015, the Court found that the premium collections, which should be the basis for the value-added tax, is higher than the amount used by the BIR in its assessment. Accordingly, the Court used that higher amount in computing the deficiency tax.
Naturally, the taxpayer questioned the increase, arguing that the jurisdiction of the Court does not include making assessments by increasing and making additional impositions. In justifying the validity of the increase, the Court held that its finding did not result in a "new" assessment, as it merely determined the true and correct amount of the tax to be collected. The Court also noted that the subject matter remains the same as that of the original. Thus, the increase of premium collections is valid.

In CTA Case 7696 and 7728, July 15, 2015, the Court found that the BIR committed an error in the amount of expenses disallowed as deduction for failure to subject the same to withholding tax. Instead of disallowing the related expense, which is the tax base of the withholding tax, the disallowance in the BIR assessment was the amount of the withholding tax. While there was an error in the disallowed amount, the Court noted that the error would result in the disallowable expenses being exponentially greater than what has been assessed. Considering that the power to assess is lodged in the BIR and is not within its province, the Court was constrained to limit its findings based on BIR's assessment, albeit the erroneous computation.

In a more recent case (CTA Case 8794, September 23, 2016), the Court sustained the BIR assessment disallowing a provision for bad debt as deductible expense. Apparently, the amount disallowed by the BIR in its assessment is the net of the provision made for the year and the reversal of an allowance. The Court found that it was an error on the part of the BIR to offset the reversal against the provision. Hence, in making its recomputation of the deficiency tax, the Court disallowed the full amount of the provision, not only the net amount as indicated in the BIR deficiency tax assessment. In this case, the Court effectively increased the amount of assessment by increasing the disallowed amount, which it found to be erroneous to what it considered as the correct amount. It is interesting to note, however, that the presiding justice made a concurring and dissenting opinion, holding that the disallowance cannot be increased because the Court has no assessment power.

It seems clear that in making its review of an assessment case brought before it, the Court cannot make assessment. But an increase in the deficiency tax assessment can still be made if the resulting increase does not arise from a "new assessment". And whether an increase is a result of a new assessment or not would depend on the facts of each case. We hope that subsequent cases will further clarify this issue.

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