

SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS January 2013

Tax Refund

1. The premature filing of taxpayer's claim for refund/credit of input VAT before the CTA warrants a dismissal.

On September 07, 2010, taxpayer filed its administrative claim for refund of unutilized input VAT for the third and fourth quarters of the taxable year 2010. On September 30, 2010, it filed its judicial claim for refund with the CTA. Citing the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823, October 6, 2010), the Court emphasized that the 120-day period mentioned in Section 112(C) of the NIRC of 1997 is crucial in filing a judicial claim for the refund/credit of input VAT. Hence, counting from September 7, 2010, the BIR had until January 5, 2011 to act upon the said administrative claim. The filing of the judicial claim on September 30, 2010 without waiting for the expiration of the 120-day period is fatal. The premature filing of the judicial claim warrants its dismissal. (*Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 8165, January 08, 2013*¹)

Refund of DST

2. DST on sale or transfer of shares of stock in any corporation is computed based on the par value of each share of stock.

Taxpayer bought through a Deed of Absolute Sale, 93,727 common shares of stock for a consideration of P911,545,000.00. The said shares of stock have a par value of P1,000.00 each or a total of P93,727,000.00. It paid DST as computed by the BIR's One Time Transaction Section, based on the total consideration it paid, and not based on the aggregate value of the shares of stock it bought. It then filed for the refund or tax credit of its erroneously overpaid DST on its purchase of the 93,727 common shares of stock.

Applying the provision of Section 175 of the NIRC of 1997, as amended, the DST to be paid by petitioner on its purchase of common shares should only be computed based on the total par value of the shares of stock purchased. Hence, it is entitled to its claim for refund or issuance of TCC. (*Eco Leisure and Hospitality Holding Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8347, January 4, 2103*)

¹ The same decision was made in the case of Casecan Water and Company, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 836, January 28, 2013

Criminal Case

3. Failure to supply correct and accurate information in the income tax return must be willful to warrant conviction.

Accused was charged for violation of Section 255 of the National Internal Revenue Code - for filing a false and fraudulent Income Tax Return ("ITR") for taxable year 2002. The offense being attributed to the accused is willful failure to supply correct and accurate information, which resulted to income tax deficiency.

According to the Court, the essential elements of the said offense are as follows:

- 1) That a person is required to supply correct and accurate information;
- 2) That there is failure to supply correct and accurate information at the time or times required by law or rules and regulations; and
- 3) That such failure to supply correct and accurate information is done willfully.

The element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind. It cannot be presumed nor attributed to mere inadvertent or negligent acts. The prosecution was able to prove that the accused failed to supply correct and accurate information in her ITR for the year 2002. However, it is well-settled that mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion. Based on the records of the case, the accused denied the signature appearing on top of the name "Judy Anne Santos" in the ITR for taxable year 2002 presented by the prosecution, and that the Certified Public Accountant, who's participation is limited to the preparation of the Financial Statements attached to the return, likewise, denied signing the return on behalf of the accused. Further, the working papers, *i.e.*, the Balance Sheet and Income Statement, as well as the value-added tax returns, Income Tax Return for year 2002, quarterly tax return, schedule of input taxes and creditable tax certificates, were all provided by the Manager of the accused. The Court, therefore, finds the records bereft of any evidence to establish the key element of willfulness on the part of the accused to supply the correct and accurate information on her subject return. The burden of proof is on the prosecution to prove beyond reasonable doubt that accused willfully failed to supply correct and accurate information. Stated differently, the prosecution must prove that the accused, a Filipino citizen residing in the Philippines, is required not only to file an income tax return on income from all sources, on or before the fifteenth (15th) day of April of each year, covering the income for the preceding taxable year, but also to supply correct and accurate information thereof, and that any failure thereof is done willfully. The Court, however, only finds the accused negligent; and such is not enough to convict her in the case at bench. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. Fraud must amount to intentional wrongdoing with the sole object of avoiding the tax. In all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused. In sum, the Court finds the failure of the prosecution to establish the guilt of the accused beyond the required reasonable doubt. (*People of the Philippines vs. Judy Anne Santos y Lumagui, CTA Crim. Case NO. O-012, January 16, 2012*)

Local Taxes

4. The thirty-day period to appeal an adverse decision of the Regional Trial Court to the Court of Tax Appeals may be extended for a period of 15 days, subject to filing of motion for extension before the CTA and payment of appropriate fees.

A decision of the Regional Trial Court may be appealed to the Court of Tax Appeals within thirty from the receipt of the adverse decision, pursuant to Section 11 of RA No. 1125, as amended by RA 9282, and implemented by Section 3(a) of Rule 8 of the RRCTA. The provision is silent as to whether such 30-day period can be extended or not. However, following by analogy Section 1, Rule 42 of the Revised Rules of Civil Procedure, the 30-day original period for filing a Petition for Review with the CTA under Section 11 of RA 9282, as implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of 15 days.

In this case, there was no motion for extension of time and payment of the docket and other lawful fees was made with the CTA before the expiration of the original reglementary period. This is tantamount to non-filing of an appeal. The petition for review was also dismissed for failure to attach the duplicate originals or certified true copies of the assailed decision and assailed order. (*Municipality of Cainta, Rizal vs. Brillante Realty Corporation, CTA AC No. 88, January 02, 2013*)

Real Estate Taxation

- 5. In real estate taxation, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.**

National Grid Corporation of the Philippines ("NGCP") is a franchise holder under Republic Act No. 9511, which allows it to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting , electricity through high voltage backbone system of interconnected transmission lines, substations and related facilities. NGCP invokes that the 10% assessment level should be applied to it. Being the beneficial user of the properties and a private entity, NGCP cannot invoke the tax exemption of TRANSCO or NPC nor avail of the 10% assessment level. (*National Grid Corporation of the Philippines vs. Central Board of Assessment Appeals CTA EB No. 801, January 29, 2013*)

Jurisdiction of the Court

- 6. The issue on the constitutionality or validity of RMO Nos. 72-2010 and 1-2000 or its relevant provisions is beyond the jurisdiction of the CTA, but of the regular Courts.**

Taxpayer filed a Tax Treaty Relief Applications (TTRA) with the BIR to request confirmation that the dividends received by the taxpayer from a Philippine corporation are subject to the preferential tax rate of 10% under the RP-France Tax Treaty. The BIR issued the assailed BIR Ruling ITAD No. 203-11 denying the tax treaty relief application of the taxpayer on the basis of RMO No. 72-2010. Said Ruling was appealed to the Secretary of Finance, who in turn, issued the assailed DOF Ruling. Hence, a petition was filed with the CTA where the taxpayer argued that RMO No 72-2010 is unconstitutional for being issued beyond the rule making power of the BIR. Taxpayer likewise questioned the validity of RMO 1-2000 based on the same ground. Accordingly, taxpayer prayed for the Court to render judgment (a) reversing BIR Ruling No. ITAD 203-11 and the DOF Ruling that affirmed the same; (b) revoking and nullifying RM Nos. 72-2010 and 1-2000 or its relevant provisions for being unconstitutional since the same was issued beyond respondent CIR's rule-making powers; and (c) declare taxpayer to be entitled to the 10% preferential tax rate under the RP-France double tax treaty on dividends, regardless of the time when it filed the application for tax treaty relief.

According to the CTA, the subject matter of the instant petition is the validity and/or constitutionality of the assailed RMOs. While other issues had been raised, nonetheless, they appear to be mere ancillary to the "constitutionality issue". The CTA's jurisdiction to resolve tax disputes in general does not include cases where the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function is challenged. It follows that the primordial issue on the constitutionality or validity of RMO Nos. 72-2010 and 1-2000 or its relevant provisions is indeed beyond the jurisdiction of the CTA. (***Egis Projects S.A. vs. The Secretary of Finance and Commissioner of Internal Revenue, CTA Case No. 8413, January 29, 2013***)