

## **SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS March 2013**

### **Assessment**

#### **1. Payment in full of the docket fees within the prescribed period is mandatory.**

The taxpayer paid docket fees at the time it filed its petition for review on April 28, 2008, albeit insufficient. It paid the full amount on May 5, 2008, after the petition for review was received.

The Court may allow the payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period, and the exercise of such discretion is in accordance with the tenets of justice and fair play. But in the case at bar, the taxpayer whose office is located inly in Pasay City and could pay the required docket fees through postal money order, did not even bother to explain its delay and non-compliance with the rules. For its failure to show any satisfactory reason to justify relaxation of what otherwise should be a stringent application of the rule on the payment of appellate and other lawful fees, the Court has no recourse but to dismiss the case. **(DNATA, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 842, March 18, 2013)**

#### **2. Failure to present documentary evidence to refute the alleged undeclared receipts in the VAT returns makes the returns filed false, due to understatement in the VAT returns.**

Taxpayer was assessed deficiency VAT for the year 2005. Since the Formal Letter of Demand with Assessment Notices was issued only on January 14, 2009, the taxpayer alleged that the right of the BIR to assess VAT for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2005 had already prescribed. The BIR argued that the VAT returns filed were false, thus, the applicable prescriptive period is 10 years.

The Court agreed with the BIR. According to the Court, there are three exceptions to the period of limitation of assessment, namely: (1) filing of false return, (2) filing of fraudulent return with intent to evade tax, and (3) failure to file return. In any of these cases, the tax may be assessed or a collection of such tax may be begun without assessment at any time within 10 years from the discovery of the falsity, fraud or omission. Since the taxpayer was not able to explain the BIR's findings that portion of its sales were allegedly not subjected to VAT, there was a deviation from the truth which makes the VAT returns filed false. Thus, the applicable prescriptive period is 10 years. **(Next Mobile, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7970, March 25, 2013)**

## Criminal Cases

### **3. Before one is prosecuted for willful attempt to evade or defeat any tax under Sections 253 and 255 of the Tax Code, the fact that a tax is due must first be proved.**

Accused was assessed VAT and income tax based on the alleged difference between the purchases declared in the summary list of purchases of one of her customers and the amount of sales declared in her tax returns. For this noted difference, she was issued a Letter Notice informing her of the difference and requiring her to reconcile the discrepancy. And for her alleged failure to reconcile the difference and to pay the assessment despite the alleged issuance of Final Demand, she was charged for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), for her alleged failure to pay income tax and value-added tax.

The Court acquitted the accused. According to the Court, to be successfully prosecuted under Section 255 of the NIRC, the prosecution must prove the following: (1) that the accused is required under the law, rules and regulations to pay the assessed VAT and income tax, (2) that she willfully failed to pay them; and (3) at the time required by law, rules and regulations. The Court found that the accused did not willfully fail to pay the assessed tax liabilities at the time she was legally required. The prosecution failed to establish that the assessment was valid and correct and that notices were duly served upon accused. Thus, there is no valid assessment for which accused is obligated to pay. In the absence of evidence that accused was assessed in accordance with law and that she had been duly notified and was aware of the subject assessment, the accusation that she willfully failed to pay the deficiency tax must fail. (***People of the Philippines vs. Gina Rohra y Amarnani CTA Crim. Case No. 0-142, March 13, 2013***)

## Tax Refund

### **4. A judicial claim for refund of input taxes related to zero-rated sales filed beyond 150 days from the filing of the administrative claim is filed out-of-time.**

On June 28, 2007, the taxpayer filed its administrative claim with the BIR for the refund of its input taxes related to zero-rated sales for the period covering April 1, 2006 to June 30, 2006. On July 25, 2008, it filed its judicial claim with the CTA, alleging inaction on the part of the BIR.

Citing the provisions of Section 112 of the 1997 Tax Code, the Court ruled that the administrative claim for refund of input taxes must be filed within two years after the close of the taxable quarter. For the judicial claim, it must be filed before the CTA within 30 days reckoned from the receipt of Commissioner of Internal Revenue's decision denying the claim or within 30 days after the lapse of the 120-day period under Section 112(C) of the Tax Code. On these bases, the Court ruled that the administrative claim for the 2<sup>nd</sup> quarter of 2006 was timely filed. However, the taxpayer belatedly filed its petition for review before the CTA on July 25, 2008 or beyond the 30-day period to appeal reckoned from the lapse of the 120-day period fixed by law for the BIR to act on the claim for refund. Thus, the petition for review warrants a dismissal on the ground of absence of jurisdiction. (***Diageo Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 818, March 05, 2013***)

**5. The difference between the redemption price and the cost of the shares redeemed is not considered dividend, and therefore not subject to tax on dividends.**

Goodyear Tire and Rubber Company (“GTRC”), a US based company, is a holder of 13,318,630 shares (with P100 par value per share) in Goodyear Philippines, Inc. (“GPI”). On May 30, 2008, the Board of Directors of GPI approved the redemption of 3,729,216 preferred shares at the redemption price equivalent to the par value plus the dividends accrued and unpaid at the date of redemption. The redeemed shares were classified as treasury shares. The total redemption price was P470,653,914, consisting of the P372,921,600 par value and the accrued and unpaid dividends of P97,732,314. GPI withheld and remitted to the BIR an amount (P14,659,847.10) representing 15% of P97,732,314, which is the difference between the redemption price of P470,653,914 and the cost of the redeemed shares, which is also its par value or P372,921,600. The 15% final withholding tax was based on Section 28(B)(5)(b) of the Tax Code or the tax sparing provision on the payment of dividends to non-resident foreign corporations. Believing that this was erroneously paid, GPI filed an application for refund.

The Court ruled that pursuant to Revenue Regulations No. 006-08, when preferred shares are redeemed and classified as treasury shares, the net capital gain is generally subject to the 5%/10% capital gains tax. Thus, the gain of P97,732,314 which is the difference between the redemption price of P470,653,914 and the cost of P372,921,600 should generally be subject to the 5%/10% capital gains tax. However, since GTRC is a resident of the US, the gain from the redemption shall be exempt from capital gains tax based on the Philippines – US tax treaty, and considering that an application for tax treaty relief was previously filed. But shouldn't the P97,732,314 part of the redemption price representing accrued and unpaid dividend be subject to the 15% final withholding tax under Section 28(B)(5)(b) of the Tax Code? The Court ruled that this does not fall under the definition of dividends. And so it is not subject to tax under Section 28(B)(5)(b) of the Tax Code. Taxpayer is entitled to refund. **(Goodyear Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8188, March 25, 2013)**

