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Remedy against unconstitutional revenue issuances

WE hear many complaints, from individual entrepreneurs to big corporations, about the various issuances of the Bureau of Internal Revenue (BIR), which they think are unfair, invalid and oppressive.

Among the recent ones are the value-added tax on the association dues of homeowner associations and condominium corporations, the required filing of a request for a BIR ruling before any tax treaty benefits can be availed of, and the change of invoices and official receipts by June 30 or else steep penalties will be imposed. Do taxpayers have no choice but to accept all these revenue regulations and circulars without question? Are there remedies available to them?

Many cases that tried to question BIR issuances have been dismissed mainly because the taxpayer filed the case in the wrong court. It must be emphasized that the Court of Tax Appeals (CTA) does not have jurisdiction on all issues relating to tax.

No less than the Supreme Court (SC) ruled that the CTA does not have jurisdiction to resolve issues involving the constitutionality of a law or rule. In GR 163583, the SC held that while the CTA has jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is 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, the regular courts have jurisdiction to pass upon the same. Thus, the filing of a petition for injunction with the regular courts that directly questions Section 145 of the Tax Code and the revenue regulations, circular and order in relation thereto is a correct remedy.

On the other hand, in GR 179579 the taxpayer filed a petition for declaratory relief with the regional trial court (RTC). It filed the case before the implementation of the regulation—Customs Memorandum Order (CMO) 27-2003—issued by the Customs commissioner on its imported and perishable Chinese milling wheat. The SC declared that a petition for declaratory relief on the constitutionality of a CMO filed before the RTC is the right remedy.

Based on these SC decisions, the rule is that when the primary action is the question of the validity or constitutionality of a law or administrative ruling, the CTA does not have jurisdiction to rule on such matters. In other words, the CTA has no jurisdiction to rule on the validity of administrative issuances such as BIR rulings where a petition for review was directly filed before the CTA seeking reversal of the same.

However, in other cases, using the principle that an administrative issuance must not override, supplant or modify the law that is superior to the former, the SC did not question the CTA's jurisdiction over refund or assessment cases where the issue of the validity of the administrative ruling or regulation was among those raised.

In GR 180006, the High Court declared RR 17-99 as an unauthorized administrative legislation and granted the petitioner's refund claim.

In CTA Case EB 734, the CTA denied a claim for refund on the ground that the BIR ruling that granted the preferential rate to the taxpayer is wrong.

Clearly, in all these instances, there is a claim for refund or an assessment case filed with the CTA. Thus, the tax court's authority to determine the validity of revenue issuances and rulings is recognized if this is among the issues raised relative to refund or assessment cases.

The BIR may issue revenue regulations and circulars to implement the law and generate collection for the government. Taxpayers, on the other hand, may seek redress if it feels that their rights are being violated by these revenue issuances. In order to effectively exercise these rights, taxpayers must know the proper remedy and what is the proper court that should hear their sentiments.

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