BDB Law wts
DU-BALADAD AND ASSOCIATES

SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS
December 2013

Income Tax Refund

1. **In order to enjoy the incentives granted under the PEZA Law, a taxpayer must prove that its declared income was related to the conduct of its registered trade or business.**

Taxpayer is a non-pioneer Information Technology locator enterprise registered as an Ecozone IT Enterprise by virtue of tis Philippine Economic Zone Authority Amended Certificate of Registration. As a PEZA-registered enterprise, it is entitled to four years income tax holiday (ITH) incentive, and upon the expiration of the ITH incentive, it shall be entitled to the 5% gross income tax incentive. However, for the first four years from the start of its operations, it mistakenly paid the 5% gross income tax. Realizing that it paid the 5% gross income tax when it should have been exempt for the first four years by virtue of its ITH incentive, it filed a claim for refund. It presented its income tax return showing the payment of the 5% tax on gross income.

The claim for refund was denied. According to the Court, to enjoy the incentives granted under the PEZA Law, the relevant income must be effectively related to the conduct of the registered trade or business. An effectively related income is that income derived from the business activity in which the corporation is engaged in; for an income may also be received that may not be directly connected or related to the registered business activity. The taxpayer must establish, among others, that its income relating to the subject tax refund was actually gained or received in relation to its registered operations. Taxpayer failed to do so. The annual income tax return only constitutes *prima facie* evidence of the facts stated therein. It does not, however, distinguish whether the income declared was derived from taxpayer's registered activity or not. ***(Sutherland Global Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case EB No. 916, December 2, 2013.)***

2. **Taxpayer is entitled to a refund of the 2% tax erroneously remitted to the BIR.**

Taxpayer is a PEZA-registered entity. As such, it is liable to pay 5% tax on gross income. For the year 2009, the computed 5% tax on gross income were all remitted to the BIR. Realizing that the 2% of the 5% tax should have been paid to the city government, taxpayer applied for a refund of the 2%.

The Court ruled that under Republic Act No. 8478 *(Special Economic Zone Act of 1995),* the five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows: (a) Three percent (3%) to the National Government; and (b) Two percent (2%) shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located. Clearly, the law shows that there shall be at least two separate payments: one to the BIR for the 3% share of the National Government, and a separate payment covering 2% for the local government units. In this case, it is apparent from the returns and the payment forms that taxpayer remitted the full 5% tax to the BIR, including interest payments when petitioner amended the return. Thus, the court is convinced that with the circumstances in the present case, taxpayer is entitled to a refund or to be issued a Tax Credit Certificate. ***(Acquire Pacific Philippines Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8465, December 31, 2013)***

3. **Failure to fill up the entry in the "*Creditable Tax Withheld"* column in Schedule 1, page 2 of the Annual Income Tax Return is fatal to a claim for refund of creditable withholding tax.**

The fact that the "Creditable Tax Withheld" portion of the Annual Income Tax Return of the taxpayer which was left blank should not be taken lightly. It is well settled that much credence is imbued in the Annual Income Tax Return. The taxpayer asserts the truth and correctness in the declarations made therein, explicitly stating that the same are made under the penalties of perjury. Such declaration is made pursuant to the provisions of Section 267 of the NIRC.

Applying this provision to the instant case, taxpayer's failure to fill up the *"Creditable Tax Withheld"* portion, coupled by the inability of the pieces of evidence submitted to prove that the income subjected to the claimed unutilized creditable withholding tax was declared as part of its gross income, is fatal to a claim for issuance of TCC on the unutilized creditable withholding tax. ***(Orix Auto Leasing Corporation vs. Commissioner of Internal Revenue, CTA EB Case No. 1016, December 9, 2013)***

4. **There is neither law nor jurisprudence that states that the taxpayer's failure to fill up the entry in the *"Creditable Tax Withheld"* column in Schedule 1 of the Annual Income Tax Return would be fatal to a claim for refund.**

In this claim for refund of unutilized creditable withholding taxes, the BIR questioned, among others, the taxpayer's compliance of the requirement that he income upon which the taxes were withheld were included in the return of the recipient, on the ground that the creditable tax withheld column in schedule 1 of the annual ITR was not filled-up.

The CTA en banc ruled that there is neither law nor jurisprudence that states that the taxpayer's failure to fill up the entry in the *"Creditable Tax Withheld"* column in Schedule 1 of the Annual ITR would be fatal to a claim for refund. What Section 2.58.3 of RR No. 2-98 and the applicable jurisprudence require is that the taxpayer be able to declare as part of its gross income in the Annual Income Tax Return the

income payment from which the withholding was made. Further, failure on the part of a taxpayer to make an entry in the "*Creditable Tax Withheld"* column found in page 2 of the Annual Income Tax Return, specifically Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/Fess"* is not a sufficient basis to conclude that the taxpayer failed to comply with the requirement that *"income upon which the taxes were withheld were included in the return of the recipient"* when the taxpayer has offered other evidence to establish its compliance with this requirement. The claim for refund was granted. ***(Commissioner of Internal Revenue vs. Sonoma Services Inc., CTA EB No. 931, December 11, 2013)***

Excise Tax Refund

5. **Section 135(a) of the 1997 NIRC refers to the tax exemption granted to international air carriers and not to the seller or manufacturers of petroleum products.**

Taxpayer is engaged, among others, in the business of manufacturing, processing, treating and refining petroleum for the purpose of producing marketable products and by products and the subsequent sale thereof. Taxpayer also imports finished Jet A-1 fuel primarily for the purpose of sale and delivery to foreign and domestic air carriers and other customers. Consequently, taxpayer paid excise taxes for the importation of Jet A-1 fuel. Taxpayer posits that the excise taxes on imported Jet A-1 fuel sold to international carriers is exempt from tax pursuant to Section 135 of the NIRC. According to the taxpayer, this partakes the nature of erroneously or illegally collected tax. Thus, it filed a claim for refund.

According to the Court, one of the requisites in a claim for refund is that there must be an erroneous or illegal collection of tax or penalty collected without authority or sum excessively or wrongfully collected. The taxes paid on Jet A-1 fuel sold to international air carriers cannot be considered erroneously or illegally paid as taxpayer is statutorily liable to pay said excise tax. ***(Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA Case No. 7871, December 3, 2013)***

6. **Section 6 of RA 9334 cannot be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed.**

Philippine Airlines Inc. ("PAL") was granted a franchise to operate air transport services domestically and internationally by virtue of PD. No. 1590 on January 11, 1978. On January 1, 2005, RA No. 9334 otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending certain sections of the NIRC", was enacted. Pursuant to RA No. 9334, and despite the exemption granted to PAL by its franchise under PD. No. 1590, PAL was subjected to excise tax due on its importation of various commissary supplies used in its international flights. PAL paid under protest the said excise taxes.

The CTA en banc ruled that the phrase under section 6 of RA 9334 which states that "*the provisions of any special or general law to the contrary notwithstanding"* cannot

be considered as an express repeal of the exemptions granted under PAL's franchise because it fails to specifically identify PD 1590 as one of the acts intended to be repealed. Also, noteworthy is the fact that PD 1590 is a special law, which governs the franchise of PAL. Between the provisions under PD 1590 as against the provisions under the NIRC of 1997, as amended by RA 9334, which is a general law, the former necessarily prevails. This is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. In view on the foregoing and considering the CIR's failure to prove that the exemption granted to PAL under PD 1590 was already repealed by RA 9334, PAL's claim for refund must be granted. ***(Commissioner of Internal Revenue & Commissioner of Customs vs Philippine Airlines Inc (PAL), CTA EB No. 944, December 9, 2013)***

VAT Refund

7. **The 120-30 days period under Section 112 of the NIRC are mandatory and jurisdictional. Failure of the taxpayer to file its claim for refund within the said periods is fatal to his claim.**

This case involves a claim for refund of alleged excess and unutilized input VAT for the periods covering July 1, 2008 to September 30, 2008 and October 1, 2008 to December 31, 2008 in the amount of P115,242,046.55. On December 9, 2009, the taxpayer filed an application with the BIR for the refund of this alleged excess and unutilized input tax. Due to inaction of the BIR, it filed a petition for review with the CTA on December 29, 2010.

The petition was dismissed for lack of jurisdiction due to the failure of the taxpayer to observe the 120-30 day periods provided under Section 112 of the NIRC. Citing the cases of *CIR vs. Aichi Forging Company of Asia, Inc.*[1] and *CIR vs. San Roque*[2], the Supreme Court said that the 120-30 days period are mandatory and jurisdictional. Hence, the claim of the petitioner for refund should be disallowed. ***(Procter & Gamble Asia, PTE LTD vs. Commissioner of Internal Revenue, CTA EB No. 973, Promulgated December 9, 2013)***

Assessments

8. **An accused is not liable for the civil liability for unpaid taxes of the corporate taxpayer.**

The issue in this case is whether the accused, in his capacity as President of Pic N' Pac Mart Inc., should be held liable for the civil liability arising from the assessment of Pic N' Pac Mart Inc.

Here, the CTA En Banc ruled in the negative. According to the CTA, when a corporation is charged for violation of the provisions of the Tax Code, and, subsequently, found liable thereon, the penalty of imprisonment is lodged upon its

[1] G.R. No. 184823, October 06, 2010
[2] G.R. Nos. 187485, 196113 & 197156, February 12, 2013

responsible officers by virtue of section 253(d) of the Tax Code. However, such is not the case in the imposition of payment of deficiency tax in the form of a civil action instituted in the criminal action. The liability of the corporation is itself the very obligation covered by the assessment addressed to the very corporate taxpayer and not to the accused. Moreover, it must be stressed that the actual taxpayer in this case is Pic N' Pac Mart Inc., which is a corporate entity separate from the incorporators. The one required by the Tax Code to pay the tax is the corporation, and it merely acts through its officers. The assessment is against the corporate entity in connection with its tax liability to the government, and not the accused. Hence, the accused is exonerated. **(*People of the Philippines vs. Wong Yan Tak, CTA EB Crim. Case No. 024, December 18, 2013)***

9. **The government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.**

On January 21, 2009, taxpayer received a Formal Letter of Demand and Audit Result/Assessment Notice, both dated January 09, 2009, assessing it for deficiency expanded withholding tax the taxable year 2005 (covering the period June 2004 to May 2005). Taxpayer protested the assessment arguing, among others, that the period to assess had prescribed under Section 203 of the NIRC of 1997. Taxpayer received a Preliminary Collection Letter on March 23, 2010. Thus, it filed a petition for review with the CTA on April 22, 2010.

The CTA cancelled the assessment on the ground of prescription. According to the Court, there is nothing in the PAN, FLD, Assessment Notice, and the Preliminary Collection Letter that would hint the non-application of the three-year prescriptive period for purposes of assessment. There is no indication that taxpayer filed a false return, or a fraudulent return with intent to evade tax, or failed to file a return. The BIR therefore had three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess petitioner's internal revenue taxes. Based in the evidence presented, the last EWT Return for the taxable period June 2004 to May 2005 was filed by taxpayer on June 10, 2005. Counting three years from June 10, 2005, the BIR had until June 10, 2008, at the latest, to issue an assessment for deficiency EWT for the taxable period June 2004 to May 2005. However, record reveals that the FLD and the FAN were issued only on January 9, 2009 or seven (7) months late reckoned from June 10, 2008, the last day for issuing an assessment covering the May 2005 EWT.

Significantly, there were no attending circumstances that would prevent the BIR from issuing an assessment and collecting the tax due within the period prescribed by law. Petitioner did not request for a re-investigation nor did it execute a waiver of the Statue of Limitations. Evidently, the assessment issued on January 9, 2009 or after June 10, 2008 had prescribed effectively barring the collection of alleged tax deficiency. ***(Hermano San Miguel Febres Cordero Medical Education Foundation (De Lasalle Health Sciences Institute), Inc. vs. Commissioner of Internal Revenue Joel L. Tan-Torres, CTA Case No. 8095, December 18, 2013)***

10. **Revenues derived from PAGCOR are not exempt from local business taxes.**

Taxpayer leases a portion of its hotel premises to the Philippine Amusement and Gaming Corporation (PAGCOR). It also caters to the lodging, billeting, food and beverage requirements of PAGCOR's clients and employees. Taxpayer received a Demand Letter with Notice of Assessment from the city treasurer, demanding payment of accumulated business tax deficiency for its revenues derived from PAGCOR. Taxpayer insists that PD No. 1869 or PAGCOR's Charter provides for a comprehensive tax exemption, which extends to persons connected with its casino operations. In the same vein that PAGCOR as an instrumentality of the government and thus has a tax exempt status, with petitioner leasing a portion of its hotel premises to it, the local government has no power to impose tax on the revenues derived from such contractual relation.

The CTA En Banc ruled that the alleged tax exemption of PAGCOR from local taxes is no longer a novel issue. Jurisprudence is replete with cases holding that government instrumentalities, such as PAGCOR, are no longer exempt from the assessment and payment of local taxes, in particular business or franchise tax, under RA No. 7160 or the Local Government Code. Section 193 of the Local Government Code has effectively removed the blanket exemption of government instrumentalities from the coverage of local taxation. Thus, if PAGCOR is not exempt from the payment of local franchise or business tax under the law, with more reason with petitioner which merely claims derivative benefit from the previous blanket exemption granted unto PAGCOR. the right of the city treasurer to demand from taxpayer the payment of local tax should be upheld. **(*Acesite Philippines Hotel Corporation vs. Liberty Toledo in her capacity as City Treasurer of Manila and The City of Manila)***