SUMMARY OF SIGNIFICANT CTA DECISIONS (January 2017)

Commission on Elections v. Commissioner of Internal Revenue
CTA Case No. 8929, January 3, 2017

Facts:

Comelec was assessed for deficiency EWT on its payment to suppliers. It argued that though it is indeed a withholding agent, it is not liable for the tax as the liability remains with the taxpayer who realized and received the gain on the transactions. It contends that since the transactions COMELEC entered into relative to the automated elections are tax exempt, as provided in Republic Act (R.A.) No. 8436, as amended by R.A. No. 9369, no tax whatsoever may be charged on the payments made by COMELEC. Likewise, it was argued that it is not liable for deficiency and/or delinquency interests.

Ruling:

COMELEC is a withholding agent for EWT. As a withholding agent, it is considered a taxpayer under the NIRC as it is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. The tax exemption granted to it under RA No. 9369 does not include an exemption from its duty to withhold taxes from its income payments to its suppliers, COMELEC is now liable to pay the amount of tax that it should have withheld as the withholding agent. However, it is only liable for the basic tax due. It is its employee who was responsible for the withholding and remittance of the tax who is the one personally liable for the accrued interest, deficiency interest and/ or delinquency interest on the deficiency tax imposed on petitioner and not petitioner itself. This is due to Section 247 of the NIRC, which states that if the withholding agent is the government, then the employee responsible for withholding and remittance who is to be held personally liable for the additions to withholding taxes.

Benguet Electric Cooperative (BENECO) v. Municipality of Law Trinidad Benguet
CTA EB No. 1091, January 4, 2017

Facts:

BENECO was assessed by the Municipality for local business tax for 2006, 2007, and 2008. the same was protested, but the protest was denied, with the municipality reiterating its demand for payment. BENECO then sent another letter reiterating its protest. But, it received a notice of seizure or confiscation of its personal properties covering the assessed amount. BENECO then filed a Petition for Prohibition with prayer for TRO with the RTC of La Trinidad. The RTC ruled that the remedy resorted to was not the appropriate remedy.

Issue:

What is the proper remedy?

Ruling:

BENECO should have resorted to the remedy provided under Section 195 of the LGC. Section 195 of the LGC specifically grants the taxpayer a remedy. A taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or the lapse of the sixty (60) day period within which the local treasurer is required to decide the protest, from the moment of its filing. The issues raised by petitioner is the proper subject of an appeal that should have been filed within the thirty (30) day period after receipt of the decision denying its protest.

- Likewise, the respondent treasurer was not performing a quasi judicial function when she issued the notice of assessment, so as to call bring about the application for prohibition. Quasi-judicial function refers to the action and discretion of public administrative officers or bodies, which are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.

<u>Mt. Blanc Motors, Inc. v. Commissioner of Internal Revenue</u>
<u>CTA Case No. 8588, January 4, 2017</u>

Facts:

Mt. Blanc was assessed by the BIR for deficiency income tax, VAT, and WTC. The income tax arose from alleged additional taxable sales resulting from a comparison of purchases of petitioner from FGPI per summary list of purchases vis-a-vis third-party information, and from alleged unaccounted source of cash resulting from a comparison of figures in petitioner's financial statements vis-a-vis its alphalists and returns. On the other hand, VAT was imposed on the alleged additional taxable sales, allegd unaccounted source of cash, and miscellaneous income allegedly not subjected to VAT. The WTC was imposed due to non-withholding on compensation income of employees, which Petitioner alleged was imposed on salaries of minimum wage earners.

Issue:

Whether or not Mt. Blanc is liable for deficiency income tax, VAT, and WTC.

Ruling:

Mt. Blanc is not liable for the deficiency income taxes. A finding of under-declaration of purchase does not by itself result in the imposition of income tax and VAT. It is not when there is an under-declared purchase, but only when there is an income, and such income was received or realized by the taxpayer, that an imposition or assessment of income tax is proper. In this case, said elements are not present. Respondent merely presumed that the alleged discrepancy /under-declared purchase constitutes an undeclared income. Hence, respondent's assessment was not based on undeclared income actually received by petitioner. Moreover, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. Hence, even granting that there is an undeclared purchase, the same is not prohibited by law. Likewise, petitioner cannot be held liable for income tax on unaccounted source of cash merely based on a conclusion reached by comparison of the alphalist with the ITR and FS.

As for VAT, petitioner is not liable for VAT on alleged undeclared sales. Since there was found to be no undeclared sales no VAT should be imposed thereon. It likewise cannot be held liable for VAT on unaccounted source of cash since such was based merely on inference that the difference between the expenses reflected per petitioner's alphalist vis-a-vis the amounts reported in its ITR and FS represents petitioner's alleged undeclared income. Even if these alleged unaccounted expenses/ costs are to be treated as unaccounted sources of income, which are subject to output VAT, the same will be offset by recording the equivalent payments as expenses or purchases from which input tax credits may be claimed. Hence, no additional VAT will result from the said transactions. But, Petitioner failed to prove that it had already included the alleged miscellaneous income as part of its gross sales/receipts which were subjected to VAT. As for WTC, it is true that an MWE is exempt from WTC, it must be remembered that an employee who receives/earns additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of P30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay, and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax and, consequently, from withholding tax. Hence, since the petitioner failed to show the details of the "Salaries and Other Forms of Compensation" earned by its employees, the Court could not ascertain whether the same includes other forms of compensation which may affect the enjoyment of the privilege of being a MWE as far as the exemption from withholding tax is concerned. Thus, it is still liable for WTC.

Heavenly Urban Chef, Inc. v. Commissioner of Internal Revenue
CTA Case No. 8556, January 5, 2017

Facts:

Petitioner was assessed for deficiency income tax, VAT, and IAET. The income tax was imposed due to unsupported expenses, undeclared sales, overclaimed expenses, and unsupported CWT. VAT was imposed due to certain sales not having been subjected to VAT and for unsupported input taxes. IAET was imposed on petitioner's retained earnings allegedly earmarked for transfer of its facilities to another compound.

Issue:

Whether or not Petitioner may be held liable for the said deficiency taxes.

Ruling:

Yes. Petitioner was not able to show evidence which would show that it is not liable for the said taxes. Specifically for VAT, it failed to prove that its sales were made to PEZA registered activities, since the PEZA certificates it presented in court were denied admission. In addition, it is liable for IAET it failed to provide specific details of its planned expansion or transfer. The Board resolution it presented di not provide any such details as to where the amount for expansion is to be sourced. It must be emphasized that Section 7 of RR No. 02-01 explicitly provides that a speculative and indefinite purpose will not suffice. Definiteness of plans coupled with actions taken towards its consummation are essential.

City of Makati v. Cemco Holdings, Inc.
CTA AC No. 166, January 6, 2017

Facts:

Cemco was assessed local business tax on its dividend income received for taxable period 2008-2012, as reported in its annual audited financial statements. It filed its protest before the local treasurer, but no payment was made. The local treasurer denied the protest prompting Cemco to file a complaint before the RTC of Makati seeking to cancel the assessment, which was granted.

Issue:

Whether or not Petitioner may be held liable for local business tax.

Ruling:

No. A local government unit cannot impose income tax except on banks and other financial institutions. Cemco, being a holding company, is not a bank nor a financial institution. It is not engaged in lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others. But was established to receive, collect and dispose of the interest dividends and income arising from such property. Likewise, dividend income is not subject to local business tax except when levied on banks and other financial institutions.

Office of the Municipal Treasurer v. Manila Electric Company and National Transmission Commission
CTA OC No. 019, January 6, 2017

Facts:

Petitioner sought to collect from Transco local business tax, and sought to seize its receivables from Meralco for the years 2002, 2003, 2004 and 2005. It claimed that for failure of Transco to appeal the notice of assessment for the said period, the same had become final and executory. It served on Meralco a Warrant of Distraint of even date, ordering seized or confiscated the money or credit due to Transco from Meralco to the extent of the amount of P159,635,669.15, representing unpaid local business tax for the years 2002, 2003, 2004 and 2005. Meralco filed a complaint in interpleader before the RTC, but was treated by the Court as a petition for mandamus.

Issue:

Whether or not the case should be dismissed.

Ruling:

Mandamus should not lie since Petitioner has no clear right and respondents have no clear legal duty to perform the act required for the case to prosper as mandamus. Mandamus lies to compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent to perform the act required that the law specifically enjoins as a duty resulting from office, trust or station.

This should also be dismissed on the ground of litis pendentia. There are several cases between petitioner and Transco. Of particular interest in this case is CTA AC No. 112 because it is the case cited by petitioner in its Complaint, and, more importantly, it covers the same Notice of Assessment dated March 13,2006 for taxable years 2002,2003,2004 and 2005 that is covered by the present collection case.

Also, the case should be dismissed due to prescription. The Notice of Assessment subject of this case was issued on March 13, 2006. The Complaint was filed out of time on August 25, 2015, or after more than nine years. Section 194 of the LGC provides for only five years within which to collect by administrative or judicial action.

Phil. Gold Processing & Refining Corp. v. Commissioner of Internal Revenue CTA Case No. 8856, January 6, 2017

Facts:

Petitioner is engaged in the export of processed gold and silver ore. During the period covering April 1, 2008 to June 30, 2008, it exported its processed gold and silver dare which were paid in acceptable foreign currency, duly accounted for based on the rules and regulations of the Bangko Sentral ng Pilipinas. During the same quarter, petitioner purchased various goods and services locally and abroad in the total amount of P885,149,825.79, which resulted in total input VAT payments of P106,217,979.09. Thus, on June 22, 2010, it filed its administrative claim for refund of its unutilized input VAT. On July 4, 2014, it received the BIR's denial of its claim. On August 4, 2014, it filed its appeal with the CTA.

Issue:

Whether or not Petitioner is entitled to its claim for refund.

Ruling:

No. The case should be dismissed for lack of jurisdiction. The present claim covers the fourth quarter of fiscal year ending June 30, 2008. Counting two years from the said date, petitioner had until June 30, 2010, within which to file its administrative claim for tax credit or refund. Thus, petitioner's administrative claim was seasonably filed with BIR-RDO No. 47-Makati City on June 22, 2010, in accordance with Section 112 (A) of the NIRC of 1997, as amended. It is however not true with regard to petitioner's judicial claim for tax refund/credit.

As for its judicial claim, respondent had 120 days from the time petitioner filed its administrative claim for refund together with its supporting documents on June 22, 2010, to grant or deny petitioner's administrative claim. Since the 120-day period lapsed on October 20, 2010, without any action on the part of respondent, petitioner had 30 days or until November 19, 2010 to seek judicial remedy through a Petition for Review with the CTA. However, petitioner waited until July 4, 2014 when it received the denial of its claim before it filed the instant Petition for Review on August 4, 2014. Unarguably, the belated filing of petitioner's judicial claim on August 4, 2014, or way beyond the 30-day period to appeal, is fatal to its claim for tax refund/credit for failure to observe the mandatory and jurisdictional 120+30 day periods and rendered the Court devoid of jurisdiction over the instant Petition for Review.

<u>Philippine Airlines v. Commissioner of Internal Revenue and Commissioner of Customs</u>
<u>CTA Case No. 7632, January 9, 2017</u>

Facts:

The CIR sought reconsideration of the decision of the CTA granted the refund/issuance of TCC in favor of the petitioner representing the specific taxes ·paid for the importation of Jet A-1 aviation fuel for its domestic flight operations for the period of April to June 2005. the CIR contended that the ATRIGs submitted are not sufficient to prove that the imported fuel was used for petitioner's transport and non-transport operations. Also, it was argued that the Certifications from the Air Transportation Office (ATO) are not sufficient proof to show that the imported jet aviation fuel are not locally available in reasonable quantity, quality or price. Respondent CIR posits that it is the Department of Energy (DOE) which is in the best position to determine whether the total supply is enough for total demand.

Issue:

Whether or not Petitioner is entitled to its claim for refund.

Ruling:

Yes. ATRIGs are records of the Bureau of Internal Revenue, which were issued and certified by the Commissioner of Internal Revenue, a public officer, in the performance of her official functions; thus, it is clear that the ATRIGS are public documents pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Further, as public documents issued in the performance of a duty by a public officer, the subject A[S]TRIGs are prima facie evidence of the facts stated therein. Likewise, the Petitioner was able to present sufficient proof that at the time of the importations subject of this case, there was lack of locally available Jet A-1 fuel in reasonable quantity, quality or price.

National Power Corporation v. Municipality of Laguindingan
CTA EB No. 1293
(CTA AC No. 106), January 10, 2017

Facts:

Napocor was assessed for local business taxes by the respondent municipality. It filed with the local treasurer a protest questioning the imposition of “franchise tax.” Thereafter, before the lapse of the 60-day period provided for the local treasurer to decide on the protest, it abandoned the protest and filed an appeal with the RTC. The RTC ruled in its favor, but on appeal to the CTA, the case was dismissed for having been prematurely filed as the petitioner did not follow the procedure laid down in Section 195 of the LGC.

Issue:

Whether or not it was proper for the CTA to dismiss the case.

Ruling:

Yes. The periods provided in Section 195 of the 1991 LGC are mandatory in nature, which petitioner failed to follow. Before a local assessment case is elevated to a court of competent jurisdiction, it is mandatory for the taxpayer to first file a protest against the deficiency assessment, in accordance with Section 195 of the 1991 Local Government Code ('LGC"); that the RTC failed to pass upon the issue of jurisdiction and did not consider the prescriptive periods provided under Section 195 of the 1991 LGC; and that, as explained by the Court in Division, the periods are mandatory and failure to comply with the sixty (60)-day waiting period violates the doctrine of exhaustion of administrative remedies, rendering the petition premature and without a cause of action, with the effect that the RTC will not acquire jurisdiction over petitioner's petition.

Commissioner of Internal Revenue v. Chevron Holdings, Inc.
CTA EB No. 1303
(CTA Case No. 8483), January 10, 2017

Facts:

Chevron's claim for unutilized input value-added tax (VAT) for calendar year 2010 was granted by the CTA. The CIR sought to have the said grant reversed contending that Chevron failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the National Internal Revenue Code (NIRC) of 1997 and Revenue Regulations No. 16-2005; and that Chevron was not able to prove that it has strictly complied with the submission of all supporting documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations. .

Issue:

Whether or not it was proper for the CTA grant the claim.

Ruling:

Yes. The submission of complete documents cannot be at the mercy of the CIR. It is the Supreme Court itself which ruled that a taxpayer's failure to adequately submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized VAT. The said RMO is for the internal revenue officers and employees to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. 6 It was not intended for the submission of documents to support a claim for tax credit or refund of excess unutilized VAT.

The BIR can only inform the taxpayer to submit additional documents; it cannot dictate what type of supporting documents should be submitted. Likewise, it had already been ruled that input taxes on purchases of capital goods, goods and services were duly substantiated by valid VAT invoices or official receipts.

Spouses Magaan v. Commissioner of Internal Revenue
CTA EB No. 1338
(CTA Case No. 7866), January 11, 2017

Facts:

Petitioners were assessed with deficiency income taxes based on information received from an informant. Allegedly, the spouses received four checks that they did not declare in their ITR. The spouses argued that the checks were not even payable to them, and that the taxable year under investigation has already prescribed. The CTA Division sustained the BIR findings, ruling that there was fraud based on the allegations of the BIR. The Division also found the allegations of the BIR meritorious and decided against the spouses.

Issue:

Whether or not the spouses are liable for deficiency taxes

Ruling:

No. First, the CTA En Banc found that the BIR failed to establish fraud. The mere presence of the checks, without duly proving that the same were paid to the spouses is not sufficient to establish fraud. In fact, during cross, the Court En Banc was able to establish that the witness could not definitely establish that the payee corporation as stated in the checks were mere dummies in behalf of the spouses. Such finding was also the basis of the Court En Banc for nullifying the assessment. The FLD and FDDA both state that the figures found in the details of discrepancy is based on “information” without giving further details. And as proven in trial, the alleged “information” could not connect the checks involved to the spouses. Thus, the ruling of the CTA Division is reversed.

Filminera Resources v. Commissioner of Internal Revenue
CTA Case Nos. 8802 & 8842, January 11, 2017

Facts:

The petitioner entered into an ore and purchase agreement with Philippine Gold Processing and Refining Corp., exclusively to sell ores to the latter mined from its facilities. It issued to PGPRC VAT Zero-Rated ORs for the "settlement of ore sales" for the period October 2011 to March 2012. On November 14, 2013, it filed with the BIR its administrative claim for issuance of TCC for input VAT for the period October 1, 2011 to December 31, 2011. Thereafter, on January 30, 2014, the BIR received a Letter from petitioner applying for a refund, along with supporting documents including its Application for Tax Credits/Refunds or BIR Form No. 1914, asking specifically for a TCC, covering the period January 1,2012 to March 31, 2012. Due to the inaction of respondent on its claims for refund, petitioner filed two (2) separate Petitions for Review with the CTA. The petition for the first claim was filed on April 14, 2014, while the petition for the second claim was filed on June 26, 2014.

Issue:

Whether or not Petitioner is entitled to its claim.

Ruling:

Yes, but for a reduced amount. First, petitioner is a VAT-registered entity who sells ore to Philippine Gold Processing and Refining Corp., a BOI-registered entity, who exports one 100% of its processed gold and silver ores. Its exports are paid for in foreign currency duly accounted for based on the rules and regulations of the BSP. But, the total zero-rated sales indicated in its VAT returns was not all considered as zero-rated since a portion of it involves sales involving lease of properties. Likewise, it was not able to prove all of its input taxes since they were not properly substantiated by VAT invoices or ORs, in accordance with Sections 110(A) and 113(A)(B) of the 1997 NIRC, as implemented by Sections 4.110-8 and 4.113-1 of RR No. 16-2005.

Roxas Shares Inc. v. City of Davao
CTA AC No. 163, January 11, 2017

Facts:

Roxas Shares was assessed with Local Business Taxes (LBT) on its dividends received from San Miguel Corporation (SMC) by the City Government of Davao. The City insists that Roxas Shares is a non-bank financial intermediary, and as such, is subject to LBT on its dividend income. Roxas Shares paid the same, and eventually filed a claim for refund under Sec. 196 of the Local Government Code. The RTC decided in favor of the City, hence the appeal to the CTA.

Issue:

Whether or not the dividends earned by Roxas Shares are subject to LBT.

Ruling:

No. It was found by the CTA that Roxas Shares is one of 14 companies that were sequestered by the Philippine Government in connection with the ill-gotten wealth from Coco-Levy funds. As such, the SMC funds held by the company, as well as the corresponding dividends it received, are all funds of the National Government which is not subject to LBT.

Jowelles Auto Parts v. Bureau of Internal Revenue
CTA Case No. 9333, January 11, 2017

Issue:

Whether or not an action to declare a Warrant of Distraint and/or Levy as void is imprescriptible.

Ruling:

No. The WDL was considered by the court as the BIR’s final decision on the disputed assessment. Questioning the WDL should have been done by filing the petition within 30 days from receipt thereof.

Lepanto Consolidated Mining v. Commissioner of Internal Revenue
CTA Case No. 8855, January 12, 2017

Facts:

The CTA partially granted petitioner's Petition for Review filed on July 31, 2014 and ordered respondent to issue a tax credit certificate in favor of petitioner in the reduced amount of P12,611,698.60, representing its unutilized input VAT in the first and second quarters of taxable year 2012. The respondent questioned the said decision contending that petitioner failed to present competent documents to substantiate its claim at the administrative level.

Issue:

Whether or not the claim should be granted

Ruling

Yes. It is not within the province of the BIR to determine what documents must be submitted by the taxpayer to support its claim. A taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT.

National Food Authority v. Tabosares
CTA AC No. 169, January 13, 2017

Facts:

NFA was assessed realty taxes by the Cty Government of Kidapawan. To prevent collection, it filed a Petition for Prohibition with the RTC. The RTC denied the petition for prohibition, and upheld the same in its order denying the motion for reconsideration filed by the petitioner. Petitioner then elevated the case to the CTA, the latter treating the same as a petition for certiorari under rule 65. The petition was dismissed by the CTA since there was another plain speedy, and adequate remedy available to it, i.e. file an appeal. The petitioner filed a motion for reconsideration questioning the decision of the CTA.

Issue:

Whether or not the petition should be granted.

Ruling:

No. The CTA had already ruled that a special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file a petition for review. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal. Pursuant to Rule 56, Section S(f) of the Revised Rules of Court, the instant Petition for Certiorari merits an outright dismissal for being wrong or inappropriate mode of appeal. The issues raised by petitioner have already been sufficiently addressed by the CTA in the assailed Resolution of November 3, 2016 and no persuasive or new argument has been raised by petitioner that would compel the CTA to modify, much less reverse its ruling. To repeat the observations and the rulings of the CTA in the assailed Resolution is a waste of time and dwindling resources of the Court.

Mannasoft Technology Corporation v. Commissioner of Internal Revenue
CTA Case No. 8745, January 13, 2017

Facts:

Petitioner was assessed with deficiency taxes pursuant to a duly issued LOA. Petitioner learned of the assessment only after receipt of a FAN. Petitioner contested the same, and requested for reinvestigation but was denied and was issued a WDL instead. Petitioner reiterated its request for reinvestigation, but was denied with finality. Petitioner then filed a Petition for Review of the denial. Petitioner argues that the assessment was void for lack of due process. Respondent, on the other hand, argues that the assessment was valid, and that the Court has no jurisdiction over the same since Petitioner should have appealed the WDL.

Issues:

Whether or not the Court has Jurisdiction.

Whether or not the assessment is valid.

Ruling:

Yes. The Court is empowered to hear both disputed assessments as well as other tax matters. The Court found that the assessment is void for failure to observe due process of the tax payer, hence, there is no disputed assessment since the assessment is actually void. The matter before the Court is therefore a challenge on the validity of the assessment, which falls under other matters. Given that the assessment is void, the same has not attained finality, and thus may be challenged even beyond the 30 day period from receipt of the WDL.

It was proven in Court that the PAN and FAN were not served to duly authorized personnel. The PAN was served to the company receptionist, who is not authorized to receive communications from the BIR. Further, the FAN was served to a substitute security guard who is also not duly authorized. The cross examination of the Revenue Officer further revealed that the usual procedure observed is to serve the assessments to the company accountant. However, the said procedure was not observed in this case. Given that the assessment was not properly served, the same is therefore void.

Tesco Services, Inc. v. Commissioner of Internal Revenue
CTA Case No. 8705, January 17, 2017

Facts:

On February 28, 2000, Petitioner, through its accountant, filed with respondent a letter informing him that it had previously filed with the Collection Services of the BIR Head Office a request for a compromise settlement of its unpaid taxes due to its financial reverses. Petitioner offered to pay the basic tax of P6,377,267.77 as full payment of its tax liabilities payable on installment basis over a period of two years based on the amortization schedule attached to the said letter. Thereafter, nothing was heard from respondent until petitioner received a letter dated April 3, 2012 stating that per BIR records, petitioner had unpaid tax deficiencies in the total amount of P6,377,267.77 covering the period January 1997 to December 1998 which should be paid within fifteen (15) days from notice lest collection shall be enforced through summary remedy under the Tax Code. Hence, Petitioner filed a case with the CTA contending that Respondent's right to collect the alleged WTC, EWT and VAT deficiencies has already prescribed.

Issue:

Whether or not the the right of respondent to collect the taxes from petitioner has already prescribed.

Ruling:

The CTA could not rule on the main issues of the case since the petition for review was filed out of time. The CTA has jurisdiction to pass upon the validity of a WDL, on condition that the corresponding petition for review impugning such WDL be filed within the period provided under Section 11 of the Republic Act No. 1125, as amended, which states that a party aggrieved by the acts of the CIR may appeal to the CTA within a period of 30 days from receipt of the decision or ruling. The 30-day period to appeal before the CTA is reckoned from petitioner's receipt of the challenged WDL on July 19, 2013. Thus, counting 30 days from July 19, 2013, petitioner had until August 19, 2013 to file the instant Petition for Review. Clearly, the instant Petition for Review was filed beyond the 30-day reglementary period on August 22, 2013 thereby depriving the CTA of jurisdiction to determine the same.

Center for Training and Development, Inc. v. Commissioner of Internal Revenue
CTA Case No. 8742, January 17, 2017

Facts:

Petitioner was assessed for deficiency income tax, VAT, and EWT for the year 2009. After filing its protest, the BIR issued an amended notice and FDDA, which assessed petitioner for deficiency income tax and VAT. Petitioner then filed its appeal with the CTA. The CTA partially granted its appeal, and cancelled the assessment for Income Tax, and only the VAT assessment for the 4th quarter of 2006 was upheld since the 1st, 2nd and 3rd quarter assessments had already prescribed. On motion for reconsideration, the BIR alleged that the VAT assessment has not yet prescribed since the case falls under the exception of the three-year prescriptive period for assessment, and that the 10- year prescriptive period should apply on the ground of filing a false return.

Issue:

Whether or not the the right of respondent to collect the VAT for the 1st to 3rd quarters of 2006 from petitioner has already prescribed.

Ruling:

Yes. A re-examination of the Preliminary Assessment Notice (PAN), Formal Assessment Notice (FAN)/and Final Decision on Disputed Assessment (FDDA) reveals that the issue of falsity was neither mentioned during the examination of petitioner's records nor considered by respondent in his computation of civil penalties. The contents of said documents contradict respondent's allegation of falsity. In fact, not a tinge of any consideration of falsity can be deduced from the PAN, FAN and FDDA. Thus, respondent's issue of falsity is merely an afterthought in order to justify the application of the 10-year prescriptive period to assess. Moreover, respondent failed to substantiate the belated claim of falsity. The basic rule is that bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed. Thus, the Court will not disturb its previous findings absent any compelling evidence to the contrary.

Municipality of Labrador Pangasinan v. National Transmission Corporation CTA EB No. 1455 (CTA AC No. 120), January 18, 2017

Facts:

On September 8, 2016, the Court En Bane issued a Resolution ordering petitioners to submit to the Court En Bane the following: (1) documents showing that they received the Resolution dated April 8, 2016 on April 22, 2016; and (2) original or certified true copy of Office of the Sangguniang Bay an, Municipality of Labrador, Pangasinan's Resolution No. 023-2011, within a period of five (5) days from notice. However, Petitioner failed to submit the said documents.

Issue:

Whether or not the Petition for Review should be dismissed.

Ruling:

Yes. Pursuant to Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, an appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court En Bane by petition for review as provided in Rule 43 of the Rules of Court. Section 6, Rule 43 of the Rules of Court provides that the petition shall state the specific material dates showing that it was filed within the period fixed. Likewise, the petitioner being a juridical entity, the person signing the verification and certification of no forum shopping should be properly equipped with authority. Failure to comply with the requirements shall be sufficient ground for the dismissal of the petition.

Stateland, Inc. v. Commissioner of Internal Revenue
CTA EB No. 1148 (CTA Case No. 8457), January 18, 2017

Facts:

Petitioner filed a claim for refund for its excess CWT with the CTA. The CTA Division denied the claim, and the petitioner filed an appeal before the CTA En Banc, seeking to modify only the dispositive portion of the assailed Decision to the effect that it is entitled to carry-over the amount of CWT denied for refund.

Issue:

Whether or not Petitioner should be allowed to carry-over the amount of CWT denied for refund.

Ruling:

No. It is elementary that a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. This is especially true for cases before the Court En Bane, wherein no trial for the determination of facts is conducted. The only issue raised is petitioner's entitlement to a refund of unutilized CWT. Thus, the new issue of its entitlement to carry-over the same CWT cannot be raised at this point simply because respondent was not given its day in court on the matter. It has been ruled that substantial justice does not allow new issues raised for the first time on appeal, because if the new issue had been raised and threshed out in the first opportunity before the lower court, either party would have fully presented its evidence and legal arguments in support of its position and to contravene or rebut those of the opposing party. 9 By veering away from the original position at this stage of the case, petitioner is effectively depriving respondent of the opportunity to present evidence to contravene this new relief. Precisely the Court merely hinted the possibility on the part of petitioner to carry over its alleged unutilized CWT until fully utilized, an option and relief available under the rules, but under certain conditions. Significantly, to carryover the subject CWT is not among the relief prayed for by petitioner in its initiatory pleading. While petitioner was able to establish the fact of withholding, nonetheless, it does not automatically follow that exactly the same amount can be carried over to the succeeding periods until fully utilized. The CWT which petitioner now seeks to carry-over, depends on its income for 2009 from which taxes were withheld. Thus, the amount to be carried-over depends on whether the correct amount of tax was withheld from petitioner's income. If the tax withheld was incorrect, the amount of excess CWT to be carried-over will likewise change. In fine, before any carry-over can be made, petitioner must present proof to reconcile this discrepancy before the proper forum but certainly not before the Court En Banc.

Gallileo Asia, LLC v. Commissioner of Internal Revenue
CTA Case No. 8868, January 18, 2017

Facts:

Petitioner, a branch office of a US Corporation, entered into a marketing services agreement with Travelport global, a foreign corporation doing business outside the Philippines. It filed its VAT returns for the year 2012, and on March 19, 2014, it filed its administrative claim for refund of its unutilized input VAT for its domestic purchases of goods and services attributable to its zero-rated sales of services for the period covering February 1, 2012 to December 31, 2012 with respondent. However, respondent failed to act on petitioner's administrative claim, prompting petitioner to file the present Petition for Review before the CTA on August 14, 2014.

Issue:

Whether the Petitioner is entitled to its claim for refund.

Ruling:

Yes, but only for a smaller amount. Petitioner was able to establish that it is a VAT registered taxpayer, rendering services for a non-resident foreign corporation doing business outside the Philippines, and its claim for refund was filed on time. Travelport is a corporation established in Amstelveen, Netherlands as evidenced by its Amended Articles of Association with the corresponding Informal Translation in English, and is not registered in the Philippines as a corporation or partnership as certified by the SEC. its foreign currency remittances are duly supported by VAT zero-rated receipts, which can be traced to petitioner’s bank account, certified by the Bank of America. However, certain input VAT were disallowed due to improper substantiation. It also failed to submit VAT invoices/official receipts in support of its claimed amortization of input tax on purchases prior to 2012. As to the claimed amortization of input VAT on May 2012 purchases, the ICPA found that petitioner's TIN was not reflected in the supporting invoices. As such, the entire claimed amortization of input VAT on domestic purchases of capital goods exceeding P1 Million was disallowed.

Prime Steel Mill v. Commissioner of Internal Revenue
CTA Case No. 8818, January 23, 2017

Facts:

On January 7, 2009, petitioner received a PAN dated December 19, 2008, assessing it for alleged deficiency income tax, VAT, and EWT for taxable year 2005. Thereafter, on January 22, 2009, it filed a letter to protest the PAN. On February 12, 2009, received the Formal Letter of Demand (FLD) with Details of Discrepancies and FAN dated January 14, 2009 from respondent, assessing it for alleged deficiency income tax, VAT, and EWT covering taxable year 2005. Consequently, it sent a letter dated March 5, 2009 to respondent on March 6, 2009 to dispute the FLD and the FAN. On April 14, 2014, it received a Final Decision on Disputed Assessment8 (FDDA) dated April 14, 2014, signed by Jonas DP. Amora, Regional Director of Revenue Region No. 7, maintaining the finding against it for income tax and VAT deficiencies. Thus, on May 14, 2014, it filed a Petition for Review with the CTA.

Issue:

Whether the Petitioner is liable for deficiency income tax and VAT for the year 2005.

Ruling:

Petitioner is only liable for income tax and VAT for the 4th quarter of 2005. Petitioner flied its 2005 final adjustment return for income tax on April 12, 2006, which was later amended on June 22, 2006. Applying Sections 77 (B) and 203 of the NIRC of 1997, as amended, the BIR had until June 22, 2009 within which to issue the FLD and the FAN assessing petitioner for deficiency income tax for taxable year 2005. Considering that the FLD was received by petitioner on February 12, 2009, the deficiency income tax assessment was validly issued within the three-year prescriptive period provided by law. However, since the FLD was only received by petitioner on February 12, 2009, respondent's right to assess petitioner for deficiency VAT for the 1st to 3rd quarters of taxable year 2005 had already prescribed and only the deficiency VAT assessment for the 4th quarter is valid.

Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue
CTA AC No. 8818, January 23, 2017

Facts:

In this case, petitioner seeks the cancellation of the FAN/FLD issued by the CIR, assessing it for income tax and VAT deficiencies for taxable year 2005. Petitioner protested and asserted that the assessments are already barred by prescription. Respondent disputes this contention and claims that the assessments were issued within the 3-year period mandated by Section 203 of the NIRC.

Issue:

Whether the CIR's right to assess and collect the alleged deficiency taxes had already prescribed pursuant to Section 203 and 222 of the NIRC.

Ruling:

For income taxes: The deficiency income tax assessment was validly issued within the 3-year prescriptive period. The 3-year period is reckoned from the 15th day of April or the 15th day of the 4th month following the close of the fiscal year, as the case may be; or the date of actual filing of the final adjustment return, whichever is later.

2005 final adjustment return for income tax: April 12, 2006

Amended return: June 22, 2006

End of 3-year period to assess: June 22, 2009

Date of receipt of FLD by petitioner: February 12, 2009

For VAT: Right to assess deficiency VAT for the 1st to 3rd quarters of taxable year 2005 had already prescribed. Only the assessment for the 4th quarter is valid. The 3-year period within which the BIR can make an assessment is reckoned from the filing of the quarterly VAT returns. VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. Hence, each quarterly return has its own prescriptive period.

Date of receipt of FLD by petitioner: February 12, 2009

VAT Returns[38]	Actual Date of Filing	Due Date per Sec. 114(A)	Date to Count 3-Year Prescriptive Period	3-Year Prescriptive Period per Sec. 203
1st Quarter	4/23/2005	4/25/2005	4/25/2005	4/25/2008
2nd Quarter	7/25/2005	7/25/2005	7/25/2005	7/25/2008
3rd Quarter	10/24/2005	10/25/2005	10/25/2005	10/27/2008[39]
4th Quarter	4/7/2006 (amended)	1/25/2006	4/7/2006	4/7/2009

Viricson Corporation v. Commissioner of Internal Revenue
CTA Case No. 8709, January 24, 2017

Facts:

Petitioner was assessed for deficiency income tax, deficiency VAT, and deficiency EWT for taxable year 2009. it filed its protest with the regional director of Revenue Region 8 disputing the tax assessment. Petitioner was required to submit necessary documents within 60 days from the date of filing of the said Protest to the latter office. Thus, it filed another letter with the BIR with certain documents attached to support its protest. The BIR then required it to submit original receipts and documents. Petitioner replied saying that it was not submitting the originals but is willing to present the same when required. The BIR then issued the FDDA sustaining the subject tax assessments issued against petitioner for taxable year 2009, for its failure to submit original documents as requested.

Issue:

Whether the assessment has become final due to petitioner's failure to submit all supporting documents.

Ruling:

No. Failure of petitioner to submit original receipts and documents in support of its protest did not render the assessments final, executory, and demandable. Records further indicate that petitioner was not inclined to submit the original receipts and documents, but was willing to present them for purposes of comparison only. Thus, the assessment against petitioner has not become final, executory, and demandable, on the ground of failure to submit original documents in support of its protest within 60 days from the filing of said protest.

Ritegroup Incorporated v. Commissioner of Internal Revenue
CTA AC No. 8651, January 25, 2017

Facts:

In this Petition for Review, petitioner seeks the invalidation and cancellation of the FAN/FLD issued by the CIR, assessing it for income tax, VAT, EWT, and FBT deficiencies. Respondent, relying upon Sec. 228 of the NIRC, asserts that since petitioner failed to submit all relevant supporting documents to its protest, the assessment had become final and demandable. Petitioner, on the other hand, contends that it is the taxpayer's prerogative to submit documents and to determine what documents should be submitted. Further, if the taxpayer chose to submit the protest without supporting documents, it does not invalidate the properly filed protest.

Issue:

Whether the assessment has become final due to petitioner's failure to submit all supporting documents.

Ruling:

The FAN has not become final. The records show that petitioner attached a Summary of Comparative Computations to its protest. Respondent, thereafter, did not require petitioner to submit any additional supporting document. The Court emphasizes that the CIR cannot demand what type of supporting documents should be submitted. It can only inform the taxpayer to submit additional documents. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

City of Manila v. Rizal Commercial Banking Corporation
CTA AC No. 148, January 27, 2017

Facts:

RCBC, through its branches or business centers, paid its local business taxes imposed pursuant to the Revenue Code of the City of Manila. Furthermore, under Section 21 of the Revenue Code of the City of Manila, it paid additional tax in order to secure the respective Business Permits of its branches or business centers from the City of Manila which would allow them to continue their business operations within the said City. On December 19, 2008, RCBC filed with the City Treasurer a consolidated administrative claim for the refund of the additional business taxes it paid, pursuant to Section 196 of the Local Government Code (LGC) of 1991 and Section 286 of Rules and Regulations Implementing the LGC of 1991, arguing that the Supreme Court had already declared the revenue Code of the City of Manila as void. Since the administrative claim was not acted upon and since the two-year period under Section 196 of the LCG of 1991 is about to expire, RCBC filed a complaint with the RTC, which granted the refund.

Issue:

Whether Petitioner is entitled to its claim for refund.

Ruling:

Yes. The law is silent as to the instances when a taxpayer is entitled either to a tax refund or a tax credit. In fact, Section 196 of the LGC of 1991, the provision which governs the claiming of refund or tax credit of local taxes, does not specify when the grant of tax refund or a tax credit is warranted. RCBC is free to choose which remedy to enforce. The only matter that ought to be inquired into is whether RCBC observed the procedures laid down by law for the availment of the said chosen remedy, which in fact it did. Under Section 196, an action for the recovery of any local tax erroneously or illegally collected will prosper in court, provided the following requisites are present: (1) a written claim for refund must have been filed with the local treasurer, and (2) the case for the said recovery of the local tax, i.e., both at the administrative and judicial levels, must have been filed within two (2) years from the date of payment thereof, or from the date the taxpayer is entitled to a refund or credit. While it may be true that the remedy under Section 195 of the LGC of 1991 was available to RCBC in questioning the subject local tax assessment, the law does not prohibit it from availing of the remedy provided under Section 196 of the same Code. This is especially true since the subject local tax has already been "erroneously or illegally collected" by petitioners.

AP Holdings, Inc. v. City of Davao, CTA AC No. 156, January 30, 2017

Facts:

Petitioner received P263,102,369.37 as dividends from its San Miguel Corp (SMC) Preferred Shares from its money market placements. Respondent assessed Petitioner a 0.55% local business tax for the first and second quarters of 2011 on the dividends derived from its SMC shares of stock and interests on its money market placements for 2010 in the amount of P723,531.50. Petitioner paid the assessment, under protest. Petitioner filed an administrative claim for refund or credit.

Issue:

Whether or not Petitioner is entitled to a refund or credit.

Ruling:

No, it is not entitled to a refund/credit. Generally, local government units are prohibited from levying taxes on income tax, except when levied on banks and other financial institutions. Sec. 131(e) of RA 7160 or the Local Government Code defines banks and other financial institutions by giving examples of such, rather than providing a concrete description of its definition. Sec. 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Institutions defines financial intermediaries as those whose principal functions include, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.

In the case at bar, the scope of Petitioner's primary purpose is extensive enough to cover most of the principal functions of a financial intermediary. Bearing in mind that the nature of Petitioner's business, which consists solely in owning a substantial number of shares of stock and equity in SMC, from which it regularly receives dividends in millions of pesos and, thereafter, reinvests it in money market placements in the same company to maximize its profit, Petitioner is clearly deemed to be engaged in the business of investing or placement of funds or evidences of indebtedness which is well within the purview of a financial institution.

Filminera Resources Corporation v. Commissioner of Internal Revenue and Commissioner of Customs
CTA Case No. 8938, January 31, 2017

Facts:

Philippine Gold Processing and Refining Corporation (PGPRC) is a duly organized domestic corporation is engaged in the mining business. It is registered with the Board of Investments (BOI) with a non-pioneer status as a New Producer of Gold and Silver Dore. It entered into an Ore Sales and Purchase Agreement with Petitioner (Filminera), whereby Petitioner will exclusively sell to PGPRC pre-production ore and ROM ores mined from PGPRC's facilities. Assistant Commissioner Roldan informed PGPRC that the input VAT on PGPRC's purchases of goods and services, including input VAT on importation of capital equipment, attributable to zero-rated sales are available as tax credit or refund. For the period starting April to June 2012, petitioner issued to PGPRC VAT Zero-rated Official Receipts for the settlement of Ore Sales.

Petitioner filed its Amended Quarterly VAT Return for the above-stated period on July 25, 2012. And on June 30, 2014, it filed its Application for Tax Credits/Refunds for the same period, claiming a TCC for P76,333,107.78, representing unutilized or unapplied creditable input VAT. Since there was no action from the CIR, it filed the instant Petition for Review on November 27, 2014. Petitioner argues that it has sufficiently proven its entitlement to a refund or issuance of a TCC. It contends that PGPRC is a bona fide BOI-registered enterprise on a non-pioneer status with incentive, and that its sales to PGPRC are subject to VAT at zero percent (0%) rate. On the other hand, respondent counter-argues that Petitioner failed to prove that its sales are VAT zero-rated.

Issue:

Whether or not Petitioner is entitled to a tax credit/refund.

Ruling:

Yes, Petitioner is entitled to a tax credit/refund.

The requisites for tax credit/refund highlighted in the instant case, among others, were:

- The taxpayer seller must be VAT-Registered;
- The buyer must be a BOI-Registered manufacturer/producer; and
- The buyer's products must be one hundred percent (100%) exported, as shown by a certification issued by the BOI.

In the instant case, Petitioner was able to satisfy all the requisites for a valid claim of tax credit/refund. In particular, Petitioner was able to submit a BOI Certification, which stated that PGPRC exported one hundred percent (100%) of its total sales volume for the period July 1, 2011 to June 30, 2012, and the same was issued pursuant to the Guidelines on the issuance of BOI Certification per RMO No. 9-2000, entitled "*Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-Registered Manufacturers-Exporters with 100% Export Sales*".

Phil. Gold Processing & Refining Corp. v. Commissioner of Internal Revenue and Commissioner of Customs
CTA Case No. 8697, January 31, 2017

Facts:

Petitioner filed its claim for refund or issuance of tax credit certificate of its unutilized/ excess input VAT for the 1st and 2nd quarters of FY 2012. the CTA division denied the claim. On appeal to the CTA en banc, petitioner contends that in dismissing the instant petition the Court failed to lend any evidentiary credence to the Export Schedules and BOI Certification that petitioner exported 100% of its gold and silver dore, resulting in petitioner's undue prejudice.

Issue:

Whether or not Petitioner is entitled to a tax credit/refund.

Ruling:

No. Schedules of Export Sales are not sufficient to prove the actual shipment of goods from the Philippines to a foreign country. It is a mere schedule and does not prove the fact of actual shipment of goods. Though the schedule contains a column described as "A WB of Buyer" and "Lading Date", petitioner should have attached the source document from which the entries were based, i.e., the airway bill itself, so that the Court can verify the accuracy of these entries. Likewise, the BOI Certification it submitted is not sufficient evidence to prove that petitioner's sales are export sales and that there was actual shipment of goods from the Philippines to a foreign country. It states that petitioner exported 100% of its total sales for the year 2010, and not for the year 2012.