SUMMARY OF SIGNIFICANT CTA DECISIONS (FEBRUARY 2017)

Edzen Jogie B. Garcia v. CIR CTA Case No. 9075
February 9, 2017

Facts:
Petitioner Garcia seeks the refund of his income tax amounting to P426,245.27 covering the year 2012 which is allegedly assessed and collected from his tax-exempt income from the Asian Development Bank (ADB).

Garcia is the Senior Integrity Officer of ADB. On April 12, 2013, CIR issued RMC 31-2013 which provides that officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax. On July 15, 2013, Garcia filed it Annual ITR for 2012 and paid the income tax due of P426,245.27.

February 14, 2014, other Filipino employees of ADB filed a petition to nullify the RMC. On April 15, 2014, Garcia filed his ITR for year 2013 reflecting therein an therein an overpayment of income tax in the amount of P426,245.27, saying that such overpayment is premised on the illegality of the assessment and collection of income tax on July 15, 2013.

On September 2014, RTC ruled in a civil case that such RMC is void for being without legal basis. The CIR's MR was denied.

On January 14, 2015, Garcia filed his formal request for tax refund. Alleging CIR's inaction on his claim, Garcia filed the instant Petition for Review.

CIR's argument was: petitioner, being a Filipino citizen and resident of the Philippines, is subject to the Philippine Income Tax; that in signing the ADS Headquarters Agreement in 1956, the Philippine government accorded tax exemption privileges to ADS and its staff but held on to the State's inherent power to tax its nationals; and that in ratifying the agreement with ADS, the Philippines, by making a "reservation", simply intimated that only the income of ADS is exempt from tax but not the income derived by Filipinos from ADS.

Issues:

1. Whether or Not Garcia is entitled to tax refund of his income tax paid on his 2012 compensation from ADB, considering that RMC 31-2013 was declared void by a court of general jurisdiction. **No.**

2. Whether or Not RMC 31-2013 dated April 12, 2013, assuming it is valid, can be applied retroactively. **No.**

Held:
The Court held that the RTC's decision declaring the RMC void is not a binding precedent. It even cited a case, which says that " Unlike rulings of the lower courts, which bind the parties to specific cases alone, our (Supreme Court's) judgments are universal in their scope and application, and equally mandatory in character. Further, the Supreme Court has already held before that it is the CTA which is vested with jurisdiction to rule on the validity of revenue regulations or revenue memorandum circulars. Thus, it may not be deprived of its power to review the validity of a claim for tax refund simply on the basis of a decision of the RTC.

Also, it is to be noted that a resident citizen is taxable on all income derived from all sources within and without the Philippines, except in a situation where the resident citizen is exempt under the provisions of a treaty, which is binding upon the Philippine government.

The Court further held that resident citizens who are officers and employees of ADB are subject to income tax on salaries and emoluments they receive from ADB. Its Charter provides a tax exemption provision with respect to the salaries and emoluments paid by ADB to its officers and employees, but the same also contains a proviso wherein a member-country may opt to retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of such member-country which declaration must be made in the instrument of ratification or acceptance. Similarly, the ADB Headquarters Agreement recognizes the tax exemption privilege of ADB officers and employees but said Agreement also declares in no uncertain terms that the same is subject to the power of the Government to tax its nationals. Pursuant to Article 56 (2) of the ADB Charter, the Philippine government made a specific declaration, when it ratified and confirmed the ADB Charter, through Senate Resolution No.6, that it is retaining its right to tax the salaries and emoluments paid by ADB to its citizens and nationals.

On petitioner's argument that such reservation needs an enabling law to take effect, the Court used statutory construction and said that the Philippine government, at the time of the ratification of the ADB Charter, already opted to reserve and retain its right to tax the salaries that will be paid by ADS to its citizens and nationals. The entire provision means that despite the tax exemption granted to ADS officers and employees, the Philippine government chose to maintain and preserve its right to tax its own citizens or nationals.

The Court further held that the taxation of salaries and emoluments paid by ADB to its officers and employees who are resident citizens is not anchored on the retroactive application of the RMC. The taxability of the income they received from ADS is not dependent on the validity or invalidity of RMC 31-2013 as the same is based on existing provisions of the NIRC of 1997, as amended, in relation to the treaty and/or agreement between the Philippine government and ADB. Irrespective of the existence of RMC 31-2013, the obligation of resident citizens or nationals to pay income tax on salaries and emoluments paid to them by ADB commenced on the taxable year that they were employed by ADB.

<u>Hedcor Sibulan Inc. vs. CIR</u>

<u>CTA CASE NO. 9009</u>

FACTS:

In 2008, a Certificate of Endorsement was issued by the Department of Energy (DOE) stating that the 42-Megawatt (MW) Sibulan Hydro Electric Power Plant, owned and operated by petitioner Sur is consistent with the Power Development Plan (PDP) of the government, pursuant to the Implementing Rules and Regulations of RA9136. Petitioner is duly authorized by the ERC to operate facilities used in the generation of electricity. Furthermore, petitioner is registered with the BIR as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997, as amended. Petitioner filed with the BIR its Original and Amended Quarterly VAT Returns for the period covering the 1st quarter to the 4th quarter of calendar year 2011. On December 12, 2012, petitioner filed with BIR Revenue District Office (ROO) No. 115, an administrative claim for the refund of its alleged excess and unutilized input VAT for CY 2011 in the amount of P11,616,706. 74. A closing agreement was signed by petitioner’s AVP for Finance and respondent’s Revenue district officer. The agreement concluded the audit of CY 2011 triggered by the filing of petitioner's administrative claim. Both parties agreed that, after a complete and thorough investigation the petitioner's total deficiency tax amounted to P445, 894.21 and that the determination of the tax liabilities shall be "final and exclusive."

However, more than three months after the Closing Agreement and despite the December 13, 2013 letter concluding the audit, petitioner submitted additional sets of documents to RDO No. 115 in support of its claim. The submission was allegedly prompted by request for additional documents through a telephone call by the revenue officer. Through a letter, Commissioner Kim S. Jacinto-Henares notified petitioner that effective January 1, 2015, it will be classified as a large taxpayer pursuant to Revenue Regulations (RR) No. 17-2010.

Consequently, petitioner received a letter from Regional Director Glen A. Geraldino, denying its input VAT refund or credit claim allegedly due to its failure to submit supporting Documents within the period provided by law.

ISSUE:

Whether petitioner is entitled to a refund in the aggregate amount of P11, 616,706.74, allegedly representing unutilized input VAT for calendar year 2011.

HELD:

No. The Judicial Claim is barred by Prescription. In order for the judicial claim to be considered timely filed, the taxpayer should strictly follow the 120+30 rule under Section 112(C). Thus, upon relying on the representation of the petitioner and count the "120+30"-day period from the complete submission of documents on December 12, 2012, petitioner had only until May 14, 2013, a Tuesday, to file its judicial claim. Petitioner filed on March 13, 201 hence it was filed out of time.

From the December 13, 2013 denial, therefore, petitioner only had thirty days or until January 13, 2014 within which to file an appeal with the CTA. Nevertheless, even if We were to accommodate the view that the later submissions on March 24, 2014 and April 3, 2014, subsequent to the Closing Agreement, allegedly prompted by a telephone request from the examiner, were justified and well-founded, the judicial claim is still barred by prescription. If we count the "120+30" day mandatory period from the last submission on April 3, 2014, petitioner should have filed its judicial claim on September 1, 2014, at the latest, petitioner's prudent measure and response should have been to elevate its claim to the Court within 30 days from the lapse of 120-days, on or before September 1, 2014. Furthermore, the Supreme Court, in the case of Lascona, interpreted Section 228 of the 1997 NIRC, held that the taxpayer may await the final decision [to the protest] of the CIR and appeal the same within thirty (30) days after receipt of the copy of the decision, despite the expiration of the one hundred and eighty (180)-day period. In this instance Lascona refers to the judicial appeal of a disputed assessment pursuant to Section 228 of the 1997 NIRC and is different from Section 112 (C) of the NIRC. After its submission on April 3, 2014, petitioner should have waited only until the expiry of 120 days. From the end of this mandated 120-day period, it should have appealed the inaction on the administrative claim within thirty days, or on or before September 1, 2014. Evidently, by March 13, 2015, when the judicial claim was filed, it was already barred by prescription.

BJ Well Services Company (Philippines), Inc. vs CIR CTA Case No. 8859 February 2017

Facts:

Petitioner BJ Well Services is a corporation duly organized and existing under the laws of the Philippines. It is primarily engaged in the business of rendering services and supplying equipment, chemicals, tools, products and process to geothermal and oil exploration. It is also a registered VAT taxpayer. Petitioner filed an administrative claim for refund for its alleged unutilized input VAT for the period covering May 1, 2012 to December 31, 2012. Respondent failed to rule on the application of the petitioner, hence the Petitioner filed a petition for review before the CTA. Respondent answered that Petitioner failed to substantiate its claim for refund of its alleged excess and unutilized input taxes for the 2^{nd} to 4^{th} quarters for taxable year 2012.

Issue:

Whether or not the petitioner is entitled to claim the unutilized input VAT attributable to its zero-rated sales to Energy Development Corporation (EDC) and the Maibarara Geothermal Inc.?

Ruling:

No, because petitioner failed to substantiate the claim pursuant to Section 110(A) and 113 (A) and (B) of the NIRC.

The petitioner proves based on the evidences that it has an excess and unutilized input tax on the 2^{nd}, 3^{rd} and 4^{th} quarters of taxable year 2012, however, based on the scrutiny of the court, there are several disallowances made by the CTA. Finally, the court computed that the Petitioner's input tax is lower than the computed output tax it has presented. Under the tax code, input tax maybe subject for refund if it exceeds the output tax, which the petitioner fails to prove. Hence the denial of its petition for review.

Phil. Gold Processing & Refining Corp v. CIR CTA Case No. 8763 February 15, 2017

Facts:
PGPRC is a domestic corporation and a VAT-registered entity. On Feb. 2008, it was issued a BOI Certificate of Registration.

On September 18, 2013, PGPRC filed its Applications for Tax Credits asking specifically for TCCs covering the periods January 1 to March 31, 2012 and April 1 to June 30, 2012 in the amounts of P35,340,374.12 and P23,432,701, respectively based on Section 112 of the NIRC and Section 4.112 of RR 16-05.

Thereafter, PGPRC filed the instant Petition for Review on Feb. 11, 2014.

Issue:
WON PGPRC is entitled to a refund in the amount of P58,773,075.12 representing unutilized creditable input VAT.

Held:
With regard to this Court's jurisdiction, the Court said that PGPRC has 2 years from the close of the taxable quarter when the sales were made to file its administrative claim with the CIR. The latter is given 120 days from submission of complete supporting documents to decide on the claim and in case of inaction, it is granted 30 days from the lapse of the 120 days to file its judicial claim with the CTA. In the instant case, PGPRC had until March 31 and June 30, 2014 within which to file its administrative claims for the 3rd and 4th quarters of FY ending June 30, 2012. PGPRC filed its administrative claim for refund for both quarters on September 18, 2013 thus complying with the 2-year prescriptive period. There is no merit in CIR's assertion that PGPRC's failure to file a written request for administrative refund is fatal to its cause.
The Court finds it important to clarify that while petitioner filed only its Applications for Tax Credits, there is no need to submit complete documents required under RMO No. 53-98 in relation to Section 112(C) of the 1997 NIRC.

In claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to the taxpayer's judicial claim. The CTA is not barred from receiving, evaluating and appreciating evidence submitted before it. Considering that both the administrative and judicial claims for refund were filed on time, the Court has jurisdiction over the case at bar.

With regard to the entitlement of PGPRC to the issuance of a TCC, the Court reiterates that tax refunds are in the nature of tax exemptions and so should be strictly construed. Thus, PGPRC must prove compliance with the requisites of the Section 112 (a) of the 1997 NIRC.

The Court also noted that PGPRC has conflicting and unclear bases for its claim that the subject sales are VAT zero-rated. In its Petition for Review, PGPRC cites Section 109(b)(1) of the 1997 NIRC as basis for its claim that its revenues derived from export sales are subject to VAT at zero percent rate. However, testimonies of its witnesses show that the basis of its claim is Section 106(A)(2)(1)(1) of the 1997 NIRC.

Thus, given its failure to prove that it has complied with the requirements of the law, its claim for refund shall be denied.

ORGANIZATIONAL CHANGE v. CIR: CTA Case No. 8625

FACTS:

Organization Change is a domestic corporation primarily engaged to establish and operate a center for learning which shall provide courses of study in vocational-technical curriculum and similar short-term activities such as but not limited to technical training and language skills for call center agents and the public in general.

CIR assessed Organizational Change (Petitioner) and alleged in its Answer that that it the Petitioner:

- failed to properly support with valid documentary evidence certain expenses, hence disallowed as deductions from gross income pursuant to the provisions of Section 34(1)(B) of the Tax Code.
- the representations claimed by the petitioner per ITR/FS exceeds the statutory ceiling set forth under Revenue Regulations No. 10-2002. Hence disallowed as deduction from gross income.
- portions of income payments of petitioner to prime subcontractor were not reported in the financial statement. The discrepancy was considered as unaccounted source of cash which led to the inference that part of the income of the petitioner has not been declared as enunciated in the case of Perez vs. CTA LI0507 dated 30 May 1958. Therefore the amount is added to reported taxable income pursuant to Section 31 of the NIRC.
- Certain creditable withholding tax has not been supported with appropriate documentary evidence, hence disallowed and assessed pursuant to Revenue Regulation No. 4-2002
- failed to subject gross receipts to value added tax as determined during investigation, hence assessed pursuant to Section 106 and108 of the NIRC, as amended.
- failed to subject portion of income payments to expanded withholding tax as required under Revenue Regulations No. 2-98.
- failed to pay documentary stamp tax on transaction as listed in the Formal Demand Letter.
- 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC.
- The 25% surcharge must be imposed pursuant to the provisions of Section 248 (A) of the NIRC.

Petitioner alleged that CIR gravely erred in failing to provide some factual basis for the disallowances, thus rendering the preliminary collection notice void.

Petitioner contends that after it filed a request for reconsideration on FLD, CIR issued the Preliminary Collection Notice within the one hundred eighty days (180) on which he was supposed to act on the said request for reconsideration. In view of the foregoing, the alleged Preliminary Collection Notice is in effect a final demand letter reiterating the immediate payment of the tax deficiency; thus, the said notice is tantamount to a final decision on disputed assessment. Petitioner, likewise, claims that the Preliminary Collection Notice contained statement in a way denying its request for reconsideration.

CIR, on the other hand, alleges that the assessment became final, executory and demandable by reason of the failure of the petitioner to timely file the instant petition, pursuant to Section 228 of the Tax Code, as amended. Respondent points out that this petition is directed against the Preliminary Collection Letter issued by the BIR.

ISSUE:

1. Whether the Court has jurisdiction over the case considering the fact that the instant petition filed by petitioner pertains to preliminary collection letter, and not to a final decision on disputed assessment;
2. Whether the FAN and FLD provide factual basis for the disallowances, rendering the preliminary collection notice void; and
3. Whether respondent gravely erred in assessing petitioner for deficiency income tax, VAT, expanded withholding tax, documentary stamp tax, and compromise penalty;"

DECISION:

For the 1st issue :

Based on Section 228 of the Tax Code, in relation to Sections 3.1.4 and 3.1.5 of RR 12-99, petitioner has thirty days from receipt of respondent's final decision within which to appeal such final decision.

In the instant case, petitioner received a Preliminary Collection Notice on February 27, 2013, instead of a final decision. As such, petitioner filed this Petition for Review on April 1, 2013.

A final demand letter from the Bureau of Internal Revenue, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals (CTA).

The Court found that the Preliminary Collection Notice reiterated the petitioner's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges. It is also indicated in the notice that if petitioner failed to pay the same, respondent would be constrained to serve and execute the Administrative Summary Remedies to enforce the collection of petitioner's tax liabilities.

Therefore, the Preliminary Collection Notice is deemed the final decision of CIR.

For the 2nd Issue:

After a thorough evaluation of the FAN and the FLD with details and discrepancies, the Court finds that they contained factual basis for petitioner's tax liabilities. Thus, they are compliant with the requirements laid down under Section 228 of the Tax Code and Section 3.1.4 of Revenue Regulations No. 12-99.

An examination of petitioner's protest to the FLD shows that it was able to explain each and every item appearing in the assessment. The fact that petitioner was able to intelligently protest the assessment implies that it had substantial understanding of the factual and legal bases of the assessments.

The requirement of the law to inform the taxpayer of the basis of the assessment should not be construed as limiting to the assessment notice itself. Assessment notices doesn’t need to be a full narration of the facts and laws on which the assessment is based. The law mandates that the notice to acquaint the taxpayer the basis of his assessment must be in writing but it does not categorically state that the assessment itself must contain such information. It is enough that petitioner be substantially informed of the law and the facts on which the assessment for a tax liability is made in any other written document presented to the taxpayer. Thus, so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.

For the 3rd Issue:

A. Disallowed Expenses

The Courtcannot ascertain whether the disallowed expenses actually pertain to the fees received by the facilitators by virtue of the said service agreements.

Moreover, even if the Court considers the Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307), issued by petitioner to its facilitators, the income payments reflected therein do not tally with the disallowed expenses, as shown below.

Absent any reconciliation of the difference, the Court cannot ascertain whether the payments per Certificates form part of the disallowed expenses as to merit partial allowance.

The same can be said for the Annual Income Tax Returns of the above named facilitators do not substantiate petitioner's claimed expenses as the income received by the former may come not only from the petitioner but from other sources as well.

B. Non-deductible Representation Expenses

Respondent's verification disclosed that the representation expenses claimed per Income Tax Return/Financial Statements (ITR/FS) exceeded the statutory ceiling set forth under Revenue Regulations (RR) No. 10-2002; hence, it was disallowed as deduction from gross income

C. Rental Expense

Upon verification of respondent, it was disclosed that petitioner failed to subject portion of its rental expenses to EWT, as required under RRNo. 2-98, thus, disallowed as deduction from its gross income.

D. Salaries and Wages

Petitioner failed to present clear and convincing evidence, therefore, disallowed.

E. Undeclared Sales

Miscellaneous income is subject to income tax under Section 32 of the Tax Code.

F. Unaccounted source of cash

The Court held that CIR's assessment was anchored on his inference that the discrepancy in income payments to prime/sub-contractor was not declared as part of its income. Considering that the income payments to prime/sub-contractor per return amounting to P1,601,935.50 has, in fact, been declared in the FS as part of the Venue Rental Account of P3,318,923.00, respondent's assessment, therefore, is without basis. The assessment was cancelled.

G. Unsupported creditable withholding tax

The Court partially sustained this and denied some for failure of Organizational Change to submit the originals for comparison.

H. Disallowed Excess Tax Credits Carried Over to Succeeding Period

However, the Court finds it improper for respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2010. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

I. Deficiency Documentary Stamp Tax

In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, the Supreme Court ruled that deposits on future subscription of shares of stock are not subject to DST for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

Moreover, in BIR Ruling No. 015-2003 quoting this Court's ruling in the case of First Southern v. CIR, ruled that deposit on stock subscription is not subject to the payment of documentary stamp tax.

Clearly, petitioner is not liable for the payment of DST on its deposits for future subscription. Thus, respondent's assessment shall be cancelled.

J. Compromise Penalty

In Revenue Memorandum Order No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.

The Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly, belongs to the taxpayer." Absent a showing that Organizational Change consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized."

THUNDER BIRD PILIPINAS HOTELS AND RESORTS, INC v. CIR

CTA CASE NO. 8612

FACTS:

CIR assessment for Thunderbird reported a deficiency for taxable year 2008. Thunderbird filed a protest.

Thunderbird argued that respondent's assessment notices were void as the right of the government to assess deficiency taxes had already prescribed. Thunderbird claims that it received the assessments for alleged deficiency SPRT, FT, EWT, FWT and DST for taxable year 2008 only on August 17, 2012, which is beyond the three (3)-year period prescribed by law for the assessment and collection of taxes; and that the payments made by BDO do not necessarily constitute revenues of petitioner as these are not yet considered pay-outs made to players.

Also, Thunderbird argues that, as an enterprise duly licensed with PAGCOR to operate a casino, its revenues from gaming operations are not subject to the SPRT of 5%, on the ground that the same is already subjected to franchise tax of 5% which petitioner remits to the PAGCOR together with the license fees of 20%. It is PAGCOR that remits to the BIR the 5% franchise tax for and on behalf of petitioner.

Petitioner also submits that, for the taxable year 2008, the direct costs, in the aggregate amount of P101,017,262.00 being claimed by petitioner consist of salaries, wages and benefits, operating supplies/materials, depreciation, outside services and other expenses, which are directly related to its registered activities on hotel and allied operations and are duly recognized by RR No. 13-05 as allowable deductions in determining the gross income subject to 5% SPRT. These expenses are duly substantiated and deductible from revenues derived from petitioner's registered activities with PPMC.

Assuming that the rental income earned by TPHRI from the sub- lease rental is subject to SPRT, petitioner claims that it should also be entitled to a proportionate share of the 25-year lease payments to PPMC as an expense deduction in 2008, in the amount of P35.5 million which is reported under "general and administrative expenses" in the 2008 AFS. Consequently, since the amount of rental expense is higher than the rental income, no operating income should be subject to any SPRT.

It further argues that the waivers executed are not valid for failure to comply with the requisites and formalities of a valid waiver. Hence, the waivers did not have the effect of extending the three (3)- year prescriptive period.

ISSUES:

1. Whether the assessment against Thunderbird for deficiency taxes for taxable year 2008 had prescribed already.
2. Whether Thunderbird is liable to pay the alleged deficiency Special Preferential Rate Tax, Franchise Tax, Expanded Withholding Tax, Final Withholding Tax, Documentary Stamp Tax, with interest, surcharges and penalty for the taxable year 2008; and that the payments made by BDO do not necessarily constitute revenues of petitioner as these are not yet considered pay-outs made to players.

DECISION:

1st ISSUE:

No.

Section 203 of the Tax Code provides that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later.

However, in case of false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed and/or collected at any time within ten (10) years after the discovery of the falsity, fraud or omission according to Section 222(a). Section 222(b) of the NIRC of 1997, as amended, provides that the period to assess and collect deficiency taxes may be extended upon a written agreement between the CIR and the taxpayer prior to the expiration of the three (3)-year prescriptive period.

In relation to the above-quoted provision, Revenue Memorandum Order (RMO) No. 20-9061, as amended by Revenue Delegation Authority Order (RDAO) No. 05-0162, was issued which provides the procedures that should be followed for the proper execution of the Waiver of the Statute of Limitations.

It must also be noted that Thunderbird did not question the validity of the waiver in its protest to the PANfiled on August 14, 2012 and in its protest and supplemental protest to the FAN filed on September 14, 2012 and November 13, 2012, respectively. It was only on February 19, 2013, when Thunderbird filed the present Petition for Review that it initially questioned the validity of the waivers which were already executed as early as October, 10, 2011 (First Waiver) and August 30, 2012 (Second Waiver). The BIR failed to exact from Thunderbird compliance with its own rules as regards the procedures in the execution of a valid waiver. In effect, respondent consented to the mistakes in the waivers. Hence, both parties are considered in pari delicto or 'in equal fault'.

The Court noted that, while the requirements of RMO No 20-90 and RDAONo. 05-01 must be strictly complied, the act of Thunderbird, in voluntarily executing waivers, without raising any objection as to their validity, means that it is already estopped from questioning their validity after the assessment had already been issued.

Considering that the waivers are valid, respondent's right to assess is validly extended from October 11, 2011 to March 31, 2013 except for deficiency EWT for the months of January to August 2008 and deficiency FWT for the months of February, April to August 2008, which had already prescribed.

2nd Issue

Regarding the BDO payments

No, the payments made by BDO constitutes of revenues.

Conversely, based on the the testimony of Thunderbird’s Financial Controller, "drops" are any sum received, actually or constructively, for the issue of a chip or slot machine token for gaming; while "pay-outs" are any sum paid out as winnings. Consequently, the "drops", regardless of whether or not deposited into the gaming machines, less "pay-outs" is already considered as gaming revenue.

In this case, the payments made by BDO to petitioner are considered as "drops". However, without showing how much was the "pay-outs", the same shall be considered as the gaming revenues already earned by petitioner in this period of assessment.

Regarding whether or not the gross revenues is subject to 5% SPRT.

The issue on whether PAGCORis still exempt from payment of income tax is not novel. The Supreme Court has already ruled in the case of Abakada Guro Party List vs. Honourable Secretary Ermita, et al., GR No. 168056, September 1, 2005, that the Philippine Amusement and Gaming Corporation is not exempt from income taxes anymore. It is very clear from the foregoing that petitioner, as the licensee or contractee of PAGCOR cannot rely on the exemption of PAGCOR to avoid its obligation to pay the proper income tax.

Tax assessments by tax examiners are presumed correct and made in good faith with the taxpayer having the burden of proving otherwise. Therefore, finding the arguments of the petitioner to be unmeritorious, the Court affirmed the assessment.

Regarding the Allowed Deductions

Unmeritorious.

Section 5(a)(2)(iii) of DOF Order No. 3-08, Rules and Regulations to Implement RA No. 9400, an Act Amending RA No. 7227 and creating the Poro Point Freeport Zone, issued in February 13, 2008, which is the applicable ruling being of a later date, expressly provides that only the following costs of sales/direct costs shall be allowed as deductions for purposes of calculating the GIE earned by the following Ecozone or Freeport enterprises/industries.

Thunderbird’s Financial Controller explained that the difference between direct costs for non-gaming operations per 2008 AFS and per ITR pertains to the [Food & Beverage] F&B Sales in restaurants/bars physically located inside the casino premises. For clarification, it should be noted that, while the Direct Costs as reported in petitioner's 2008 AFS were classified into gaming and non-gaming costs, the basis of classification used therein was the physical location of its income-generating operations as follows:

a. Direct costs incurred within the casino premises/structure, which include the direct costs attributable to casino/gaming operations and F&B sales in restaurants/bars physically located inside the casino premises; and
b. Direct costs incurred within the hotel premises/structure, which include the direct costs attributable to hotel operations and F&B sales in restaurants/bars physically located in the hotel premises

Thus, "direct costs incurred within the casino premises/structure" were reported under Direct Costs - Gaming, which included direct costs attributable to F&B sales in restaurants/bars located within the casino premises. As such F&B sales are considered non-gaming revenues, which should be properly included as part of Direct Costs - Non-gaming for income tax purposes.

Therefore, for tax purposes, it is just proper to include the "direct costs attributable to F&B sales in restaurants/bars physically located inside the casino premises" as part of Direct Costs-Non-Gaming,which was reported as part of Direct Costs-Gaming in the AFS.

Regarding the Other Income

Based on the definition of “gross income earned” by Section 5 of DOF Order NO. 3-08 and RR No. 13-05, the income from petitioner's sublease contract was derived within the Freeport zone, hence shall be considered as gross income which must be subject to SPRT.

Petitioner was, however, correct in invoking that the corresponding rent expense incurred in providing said sublease must be deducted from the rental income earned. This is provided in the previously mentioned DOF Order No. 3-08 which allows deduction for rent and utility charges for buildings and capital equipment used in the rendition of its registered services.

Clark Water Corporation v. CIR CTA Case No. 8572
February 16, 2017

Facts:

Clark Water Corporation is a domestic corporation registered as a Clark Special Economic Zone enterprise. On August 12, 2009, Clark received a Letter of Authority authorizing Revenue Officer and Revenue Supervisor to examine Clark's books of accounts and other accounting records for all internal revenue taxes. On May 9, 2011, Clark received a Notice of Informal Conference stating that it is liable for deficiency IT, VAT, EWT, FBT, WTC and miscellaneous tax, in the total amount of P8,457,396.63 for CY 2008. Thereafter, it received a Preliminary Collection Letter demanding payment. On May 24, 2012, Clark objected and protested said assessments with BIR RDO No. 21-A on the ground that it did not receive any PAN and FAN, in violation of its right to due process.

On October 15, 2012, Clark received a letter from Revenue Region No. 4 Pampanga alleging therein that Clark received the PAN and FAN on October 5, 2011 and December 8, 2011, respectively. Thus, there is no factual basis for claiming denial of due process.

Clark filed the instant Petition for Review before this Court. A Warrant of Distraint and/or Levy was served to Clark. Thereafter, it filed an Urgent Motion to Quash Warrant of Distraint or Levy, assailing the validity of the deficiency tax assessments and praying for the suspension of the collection of Clark's alleged tax deficiencies.

In a Resolution, the Court held in abeyance the resolution of Clark's Motion pending determination of the main issue as the resolution of the same would determine the necessity of addressing the other legal and factual issues raises by both parties.

The CIR raised several special and affirmative defenses.

Issue:

WON Clark is liable for deficiency IT, VAT, EWT and FBT assessments for CY 2008, in the total amount of P7,132,540.56, inclusive of interests and penalties. **No.**

Held:

With regard to the issue of jurisdiction of the CTA, the Court emphasized that the taxpayer must be informed in writing of the facts and the law on which the assessment is made through the issuance and receipt of the PAN. In the case at bar, Clark denied receiving the PAN and FAN. It follows that it is incumbent upon the CIR to prove the receipt of said notices by contrary evidence. In this case, to prove that Clark indeed received the required PAN on October 5, 2011, the CIR presented several documents such as the copy of the PAN, the transmittal sheet forwarded by the BIR-Assessment Division to the BIR-Administrative Division showing the endorsement of PAN for mailing, and the registry receipt showing that the PAN was served to Clark via registered mail. However, Clark was able to substantiate its non-receipt of PAN through its document logbook which shows that no letters or correspondences from respondent were received by Clark. Such leads to the conclusion that no PAN was really served to Clark.

In the absence of a valid PAN, Clark's right to due process was violated thus rendering the assessment null and void. And so there is no factual and legal basis for the CIR to formally demand the payment or to collect the deficiency taxes which are not covered by a valid PAN. Lastly, we also reject the allegation of the CIR that a certain "Jayson Torres" received the FAN on behalf of Clark. Clark was able to substantiate and rebut such fact through pieces of evidence.

In sum, the CIR's failure to strictly comply with the notice requirements as laid down in Section 228 of the NIRC of 1997 as amended and RR 12-99 amounts to the denial of Clark's right to due process effectively voiding the assessments issued. Having reached the foregoing conclusion, the Court need not delve into the other issues which are premised upon the validity of the assessment.

COMMISSIONER OF INTERNAL REVENUE vs. SARA LEE KIWI HOLDINGS, LLC
CTA EB No. 1396 (CTA Case No. 8741)

FACTS:

Sara Lee Kiwi Holdings sold its entire holdings and interest, consisting of 1,460,736 common shares and subscription rights in Sara Lee Household Care Philippines Inc., (SLHCPI) to S.C. Johnson & Son, Inc. (SC Johnson) for the price of €3,807,000.00 or P235,291,254.30. Sara Lee filed a Capital gains tax return on the said sale, showing a net capital loss of P192,765,334.75. Thereafter, Sara Lee filed a Donor's tax return with the SIR and paid the Donor's tax due in the amount of P57,829,600.50. Respondent and SC Johnson executed an Amendment Agreement whereby both parties agreed to an upward adjustment in the purchase price, in the amount of €935,399.00 as additional purchase price. because of the increase in the purchase price and a consequent decrease of capital loss, respondent amended its Donor's Tax Return, showing an overpayment of P15,167,663.23. thereafter Sara Lee filed a claim for refund of the purported overpaid donor's tax amounting to P15, 167,663.21, citing Section 204(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. Sara Lee amended its application for tax refund, requesting the refund of the entire donor's tax paid on December 5, 2011 in the amount of P57,829,600.50, allegedly representing capital loss arising from the sale of shares of stock of SLHCPI to SC Johnson.

CIR is seeking the reversal of the decision promulgated by the second division of CTA where the Court ordered CIR to refund in favor of Sara Lee Kiwi Holdings Inc. the amount of P57,829,600.59 representing the erroneously paid donor's tax, since the fair market value did not exceed the value of the consideration.

ISSUE:

1. Whether the second division erred in finding that Sara Lee was entitled to the refund of erroneously paid donor's tax.

2. Whether The Audited Financial Statements of SLHCPI for fiscal year ended June 30, 2011, being the nearest to the date of sale, must be used to determine the fair market value of its shares of stock.

HELD:

1. No. there is no reversible error committed by the Court in Division. the net capital gains realized by the seller/vendor/transferor from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation (except shares sold or disposed through the stock exchange) are subject to a final tax at the rate of 5% for the first P100,000.00, and at the rate of 10% on the amount of said net capital gains in excess of the said P100,000.00. The said net capital gains are the excess of the amount of consideration contracted to be paid by the buyer/vendee/transferee over the vendor/transferor's basis for the property sold or disposed plus expenses of sale/disposition, if any.

However, in addition to the said final tax, should the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the said fair market value of the shares of stock sold, bartered, or exchanged over the amount of money and/or fair market value of the property received as a consideration, if any, shall be deemed a gift and therefore subject to the donor's tax in accordance with Section 100 of the NIRC of 1997

2. No. still on the basis of Illustration No. (i) of Section 7(c.2.2) of RR No. 6-2008, to the effect that since SLHCPI's Audited Financial Statement for the fiscal year ended June 30, 2011 is non-existent as of the date of sale, the same cannot be used as reference to determine the fair market value of SLHPCI's shares of stock. This is so because the unavailability or the non-existence of the audited financial statements nearest to the date of sale, under RR No. 6-2008, does not necessarily warrant reference to the audited financial statements for the preceding fiscal year or calendar year for the fair market value of the subject shares of stock. This is clearly supported by Illustration No. "(ii)" of the same Section 7(c.2.2), wherein resort to tentative financial statements nearest to the date of sale can be had, subject to the later adjustment to the book value of the shares of stock indicated in the audited financial statements for any difference.

Correspondingly, the Court in Division is correct when it used or referred to the Audited Financial Statements of SLHCPI for fiscal year ended June 30, 2011 to determine the fair market value of the latter's shares of stock; and when it found that the sale by respondent of the SLHCPI shares is not subject to donor's tax.

Marietta A. Bondad vs. Lepanto Consolidated Mining Company (LCMC)
CTA EB No. 1316 (February 2017)

Facts:

LCMC received a Final Assessment from the Petitioners, who are the Municipal Treasurer and Assessor of Mankayan, Benguet, for their Business Tax for the taxable year 2011. Likewise for the taxable year 2012, LCMC received another Final Assessment from the petitioner, which was disputed again by LCMC. Not having received a reply from the Petitioners on its letter contesting the said Final Assessment, LCMC instituted an appeal before the RTC. Respondent argued that the assessment is erroneous as it does not consider the 50% reduction of tax accorded to exporters pursuant to Section 143 of the LGC. While Petitioners argued that LCMC is not an exporter of essential commodities therefore cannot be subject to a preferential tax rate.

Issue:
Whether or not LCMC is entitled to the 50% preferential tax rate? Whether or not the word "exporter" under Section 143 is limited only to phrase "essential commodities"?

Ruling:
The court partially grants the petition. CTA affirmed the basis of the respondent that it is entitled to the 50% preferential tax rate for exporters pursuant to Section 143 of the LGC. Moreover, the CTA said that the word "exporter" is not limited to the phrase "essential commodities", but provides no distinction, whether an exporter of essential commodities or not. According to the court, if the intention of the legislative is to limit the coverage of the preferential tax rate, it should have omitted "and on" in the sentence to read as, "On exporters, manufacturers, millers, producers, wholesalers, distributors, dealers, or retailers of essential commodities" instead of, "On exporters, **and on** manufacturers, millers, producers, wholesalers, distributors, dealers, or retailers of essential commodities".

The case was remanded to the RTC for further investigation, whether LCMC has really made an exportation of gold, copper etc.

Te Deum Resources, Inc. vs City of Davao and Hon. Rodrigo Riola, City Treasurer
CTA AC No. 150 (February 2017)

Facts:
Petitioner Te Deum Resources Inc. (TDRI) is a domestic corporation, by which the primary purpose is to purchase, subscribe, for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real and personal property of every kind and description, including shares of stocks, voting trust certificates for shares of capital stock, bonds, debentures, notes, evidences of indebtedness and other securities etc, which was specifically enumerated in their Articles of Incorporation.

Since October 2009, petitioner has been the registered owner of 58,487,823 SMC preferred shares of stock after the Supreme Court En Banc approved the conversion of TDRI's 58,487,823 SMC common shares of stocks into SMC preferred shares. The dividends received by TDRI were deposited in a trust account which earned interest from money market placements.

For the first half of 2011, respondents collected from petitioner 0.55% local business tax for the first and second quarters of 2011 based on the gross receipts derived by petitioner from dividends and interests for taxable year 2010. This is pursuant to Section 143 of the LGC and the Davao City Ordinance. The RTC dismiss the petition for refund, because TDRI's income, categorized as non-bank financial intermediary is subject to the local business tax.

Issue:
Whether or not TDRI is entitled to a refund or credit?

Ruling:
No, TDRI cannot claim for refund because it is a non-bank financial intermediary, which can be subject to local business tax pursuant to Section 143 of the LGC.

The court said, in accordance with the LGC, the imposition of income taxes by local government units is prohibited except when levied on banks and other financial institutions. Moreover, the court explains that financial intermediaries are 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. Moreover, "non-banking financial intermediaries" include a person or entity performing any of the functions of a financial intermediary, including, holding assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers and by reading TDRI's Article of Incorporation it shows that the scope of its primary purpose is extensive enough to cover most of the principal functions of a financial intermediary.

Here, the court said that the fact that petitioner has a continuing huge investment in shares of stocks of SMC to which it regularly receives millions of pesos in dividends which it reinvests in money placement to attain maximum profit negates petitioner's argument that it does not perform the principal functions of a financial intermediary on a regular and recurring basis. Likewise, the fact that petitioner has no other business, except its investment in SMC, shows its real intent to engage solely and primarily in the business of stock investment and money market placements in the said company; thus, any profit it received is a direct consequence of its business engagements and not just mere incidental thereto.

Toda Holdings, Inc. v. City of Davao CTA Case No. 138
February 09, 2017

Facts:

Petitioner Toda Holdings, Inc. filed a Petition for Review against the City of Davao to cancel the assessment of .55% local business tax for the 3rd and 4th quarters of 2011 in the amount of P3,105,739 inclusive of surcharge and legal interest.

Issue:

Davao City issued a Business Tax Order of Payment assessing Toda for allegedly deficiency LBT. Toda sent a protest letter to dispute said assessment. But instead of resolving the protest, Davao City informed Toda that no protest will be entertained unless Toda pays first the imposed tax pursuant to Section 423 of the 2005 Revenue Code of Davao City.
Same arguments on both sides were reiterated. Toda then filed a Petition for Review before RTC Davao City. The same was dismissed. The MR was also denied.

Consequently, Toda filed the instant Petition for Review before this Court.

Toda's arguments:

1. The .55% LBT is erroneous as it is not a bank or a financial institution.
2. Toda is not subject to LBT under Section 143 of RA 7160
3. Toda's income partake the nature of public funds and so business tax cannot be imposed on the same.
4. Section 423 of the 2005 Revenue Code of Davao City requiring prior payment before a protest on LBT assessments may be acted upon is null and void and has no basis in fact and law.

City of Davao's counter-arguments:

1. Toda is deemed a "bank other financial institution" specifically as a "non-bank financial intermediary or an investment company" by virtue of its investment and money placements in SMC. Its business purpose in its Amended Articles of Incorporation is broad enough to catch all the descriptive function of a non-bank financial intermediary.
2. Being a stock corporation, Toda is presumed to have been organized for business with the end view of having profits and so subject to LBT.
3. The definition of gross sales/receipts under the LGC wherein dividends and interest income as component of sales or receipts are not included, is a general definition of such term but it cannot defeat a specific and clear provision of taxability of dividends and interest income as provided for in the same Code.
4. The opinion of the Bureau of Local Government Finance that Toda is exempt from LBT for not being a bank and other financial institution is not allegedly biding upon the issue involved in this case as it is not an administrative agency whose findings on questions of fact and law are given weight and respect in the courts.
5. Even assuming that Toda's income is in the nature of public funds, it does not allegedly exempt Toda from paying LBTs on its dividends and interest income pursuant to Section 143(f) of RA 7160.
6. The tax assessment subject of this case has already become conclusive and unappealable for failure of Toda to pay first the tax as assessed before filing the protest.

Issue:
WON the City of Davao may require Toda to pay .55% LBT for the 3rd and 4th quarters of 2011 on the dividends for its SMC shares of stock and interest income on its money market placements for the year 2010.
WON Davao City's requirement that Toda should first pay under protest the alleged deficiency LBT before its protest is acted upon is valid.

Held:
There is jurisdiction over this case as Toda may not be required under the law to first pay deficiency LBT before its protest may be acted upon.

Even if the 2005 Revenue Code of Davao is clear that protests shall not be entertained unless the taxpayer pays first, such is inconsistent with Section 195 of the LGC of 1991 which provides that the local treasurer is mandated to decide the protest within 60 days without any qualification of condition and in case of failure to do so, the same shall be considered inaction on the part of the local treasurer which is appealable to the court of competent jurisdiction.

A municipal ordinance to be valid must not contravene the Constitution. In this case, given that Toda was able to appeal within the 30 day reglementary period, the Court a quo validly acquired jurisdiction to entertain said appeal.

The taxing power of City of Davao is subject to limitations as provided under the LGC.

The City of Davao is empowered to impose income tax on banks and other financial institutions on its gross receipts of the preceding calendar year from interest and dividends at the rate of .55% subject to limitation that the exercise of the taxing powers of cities shall not extend to the levy of taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and LGUs, among others.

There is no showing that Toda is a non-bank financial intermediary. Thus, City of Davao may not impose business tax on the dividends and interest income received by Toda.

The basic requirements for a person or entity to be considered as a "non-bank financial intermediary" are:

1. The person or entity is "authorized by the BSP to perform quasi-banking activities"
2. Its principal functions "include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, wither for their own account or for the account of others.
3. The person or entity must perform certain functions on a regular and recurring, not on an isolated, basis.

In this case, Toda did no fulfill the first requirement as there is no evidence showing that it was authorized by BSP to perform quasi-banking activities. The second requirement was not met as well as it was not shown that the functions as required were done in its principal nature. Further, it was not even shown that Toda ever performed the said functions as required in the 3rd requisite.

Toda belongs to the CIIF block of SMC shares, which were declared to be owned the Government and so any tax imposed upon Toda is in effect a tax on the government.

In the Cocofed case, it was already held that said SMC shares of stock are owned by the government. Thus, since Toda is considered as government property, any tax imposed upon Toda is considered in effect a tax on the government.

DAVAO AGRICULTURAL v. CITY OF DAVAO; CTA AC No. 135

FACTS:

The Sangguniang Panlungsod of respondent Davao City enacted Ordinance No. 0310-07, otherwise known as Watershed Code of Davao City. Section 17 of the said Ordinance No. 0310-07 and Section 42 of its Implementing Rules and Regulations (IRR), provide that an annual Environmental Tax shall be imposed upon all agricultural and other economic undertakings, including corporate entities and persons covered by growership contracts and other agreement in the Agro- Forestry/Non- Tilage Areas and Prime Agricultural Areas of not less than 50 hectares at the rate of Twenty-Five Centavos (Php0.25) per square meter.

No collection or even attempt to collect the said Environmental Tax was made by respondents until October 16, 2014, when petitioner received a Tax Order of Payment in the amount of Php2,630,525.00 to respondent City Treasurer. Davao Agricultural protested on 4 grounds:

1. The Environmental Tax under Section 17 of City Ordinance 0310-07 and 42 section (sic) of the Implementing Rules is (sic) not sanctioned by the Local Government Code, thus the Sangguniang Panlungsod concerned exceeded its authority in enacting and imposing the same;
2. Section 17 of the Environmental Tax and Section 42 of its Implementing Rules clearly violates the rule on uniformity of taxation in scope and application;
3. The rate of Php 0.25 for every square meter or Php. 2,500.00/hectare as basis for the computation of tax is excessive, confiscatory, bias and without basis;
4. The imposition of Environmental Tax was made without consultation with the entities and persons directly affected in violation of the constitutional guarantee of due process.

The local treasurer denied the protest so Petitioner filed a Petition for Review over the CTA.

ISSUES:

DECISION:

Section 7(a)(3) of R.A. 1125, as amended by R.A. 9282, relevantly provides that the Court shall have exclusive appellate jurisdiction to review by appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction. The Court only has appellate jurisdiction to review by appeal the decisions, orders or resolutions of the RTCs involving local tax cases rendered in the exercise of their original jurisdiction.

Regarding the constitutionality or legality of the ordinace, according to Section 17 of the LGC, any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within 30 days from the effectivity thereof to the Secretary of Justice, who has 60 days from date of receipt of appeal to act on it.

Therefore, the CTA has no jurisdiction to hear the case.