SUMMARY OF SIGNIFICANT CTA DECISIONS (March 2017)

Valhalla Properties v. City of Davao

CTA AC No. 154, March 02, 2017

Facts:

Petitioner was assessed with Local Business Tax on the dividends it received from SMC shares it holds. Petitioner paid the same, but eventually filed for a refund. The Davao RTC ruled against Petitioner. It held that since Petitioner is a financial intermediary, its income from dividends received are subject to local business taxes under the local revenue code. Petitioner appealed the ruling before the CTA.

Issue:

Whether or not Petitioner is subject to LBT on its dividend income.

Ruling:

Yes. The Court ruled that Petitioner is a non-bank financial intermediary, and may therefore be taxed by local government units on dividend income. The Court observed that the primary purpose of the petitioner is broad enough to cover activities of non-bank financial intermediaries as defined by law and BSP regulations. In addition, it found that the activities of Petitioner match the definition as well. Thus, its dividend income is a proper subject of local business tax.

(Note: Both the 1st and 3rd Divisions of the CTA have stricter standards in this matter. The said divisions require actual proof that the taxpayer is consistently conducting activities as a non-bank financial intermediary. Absent such proof, the broadness of the primary purpose is insufficient basis to rule that a holding company is a non-bank financial intermediary.)

Contex Corporation v. Commissioner of Internal Revenue

CTA EB No. 1332, March 03, 2017

Facts:

Petitioner was found by the CTA Division to be liable for deficiency Income Tax, EWT, WTC, FBT, and FWT. The Court, however, cancelled the VAT liability in the assessment subject for review. Both Petitioner and Respondent appealed. Petitioner, among others, contended that the assessment is void due to prescription. In addition, it contends that the Revenue Officer who conducted the examination had no authority to do so.

Issues:

1) Whether or not Respondent's right to assess has prescribed.
2) Whether or not the assessment is void for lack of authority.

Ruling:

1) No. Although the Court en Banc held that the issue of prescription may be raised even for the first time on appeal, it ruled that it could not make a determination of the matter. The Court ruled that the requisites for raising prescription for the first time on appeal is that the same may be established clearly from the pleadings or the records of the case. However, since Petitioner failed to offer its tax returns as evidence, there is no proof of the reckoning point of prescription.
2) No. Similar to the findings above, the Court En Banc also ruled that since Petitioner failed to formally offer the LoA as evidence, ther Court has no way of determining if the RO who conducted the investigation is not named therein.

Trans-Asia Generation Corporation v. Judge Crisostomo Danguilan,

CTA AC No. 149, March 03, 2017

Facts:

Petitioner paid its local business taxes under the rate for retailers. It paid the same under protest, contending that it should be taxed using the rate for manufacturers, which is lower. It eventually filed for a refund of the excess amount. During the proceedings, the LGU, represented by private counsel, filed its answer through courier. Petitioner then moved to have private counsel disqualified, and have the LGU declared in default for belatedly filing its answer through a courier. The RTC, however, dismissed the said motions. Petitioner then filed a Petition for Certiorari under Rule 65 to question the orders of the lower court.

Issues:

1) Whether or not the LGU may be represented by a private counsel.
2) Whether or not the LGU should be declared in default.

Ruling:

1) No. The CTA held that there are only specific circumstances where an LGU may be represented by private counsel. However, none of those circumstances obtain. It is of no moment that the LGU is capable of procuring a private counsel financially, or that the city council has approved of hiring a private counsel. As long as the city or provincial counsel is not disqualified to appear for the LGU, the LGU may not utilize the services of a private counsel.
2) Yes. Given that the counsel that represented the LGU is disqualified, the LGU has yet to actually file an answer. It should, therefore, be declared in default.

Zuellig Pharma Asia Pacific LTD. Phils., ROHQ v. Commissioner of Internal Revenue

CTA Case No. 8899, March 09, 2017

Facts:

Petitioner is claiming for unutilized input VAT in connection with zero-rated sales of service. Petitioner filed its claim with the BIR on February 17, 2011. On June 29, 2011, the BIR requested Petitioner to submit additional documents. Petitioner complied, albeit on the following dates: May 8, 2012, July 25, 2012, December 6, 2012, September 11, 2013, December 5, 2013, and April 29, 2014. Due to the inaction of the BIR, Petitioner filed a Petition for Review before the CTA on September 25, 2014.

Issue:

Whether or not the Petition for Review was filed on time.

Ruling:

No. The Court applied the ruling in the *Total Gas* case, where the Supreme Court determined when the counting of the 120 days + 30 days shall be reckoned. The CTA held that, according to the *Total Gas* case, the taxpayer has 30 days from filing its claim for refund to submit all of its supporting documents. The period when the taxpayer is deemed to have submitted all of its supporting documents cannot be left to the sole discretion of the taxpayer. Thus, the 120 days to decide will run from the lapse of the 30 days to submit all documents from the date of filing the refund with the BIR. Applying the same to the case at bar, the 120 days for the BIR to decide on the claim began to run on July 11, 2011.

Soriano Shares, Inc. v. City of Davao

CTA AC No. 151, March 13, 2017

Facts:

Petitioner SSI owns SMC shares, and received dividends therefrom. It was assessed by the City of Davao for LBT on the dividend income. SSI paid the same, but eventually sought the refund of the payment. It was denied by the City Treasurer. SSI then filed for a refund with the RTC, which also denied the claim.

Issue:

Whether or not petitioner is liable for LBT on dividend income.

Ruling:

No. The CTA Ruled that the SMC shares are government property as per the COCOFED ruling. Also, even assuming that the dividends are private property, SSI is not a financial intermediary. There is no declaration from the Monetary Board of such fact, and no proof offered that would show SSI conducting such activity. The broadness of its Primary Purpose is insufficient.

Note: Ruling is the same in the cases of Toda Holdings, Inc. v. City of Davao, CTA AC No. 152, March 14, 2017 and Rock Steel Resources, Inc. v. City of Davao, CTA AC No. 158, March 16, 2017

Premium Leisure Corp. v. Commissioner of Internal Revenue

CTA Case No. 8940, March 14, 2017

Facts:

Petitioner owned shares of BBCC, a corporation under liquidation. BBCC received a BIR Ruling stating that it is not liable for income tax for its transfer of property to Petitioner, but Petitioner will be liable for income tax for the said transfer. Petitioner reported the liquidating dividends as income in their ITR. However, Petitioner was also required to pay CGT on the transfer, in behalf of BBCC. Petitioner paid under protest and sought the refund of the same eventually.

Issue:

1) Whether or not Petitioner is the proper party to claim the refund.

2) Whether or not liquidating dividends are subject to CGT.

Ruling:

1) Yes. The CTA applied the ruling in *Smart Communications* where the Supreme Court allowed a refund be claimed by the withholding agent.

2) No. Capital Gains Tax on real property is imposed on the sale or disposition of real property. On the other hand, in disposition of real property as liquidating dividends, there is no income generated on the part of the dissolved corporation. Thus, there is no basis in imposing capital gains tax.

Commissioner of Internal Revenue v. Leo Mario Celdran

CTA EB No. 1527, March 14, 2017

Facts:

Respondent Celdran filed for a refund of his erroneously paid creditable withholding tax in connection with his purchase of real property from SAMRI, a special purpose vehicle used to acquire and resell ROPOA from banks. SAMRI, having obtained a ruling declaring it as being engaged in the business of real property, applied 3% as the rate of the CWT applicable to its sale of real property to Celdran. However, Celdran was assessed with deficiency tax on the basis of SAMRI being a bank, thus the proper CWT rate is 6%. Celdran paid under protest, and filed for a refund of the same. Upon reaching the CTA Division, the Court ruled in favor of Celdran. The BIR appealed the decision before the CTA en banc.

Issue:

Whether or not Celdran is entitled to a refund of the excess CWT paid.

Ruling:

Yes. SAMRI, being engaged in the real estate business and at the same time is not a bank, is not subject to the CWT rate of 6% for sale of real property. The CTA en banc sustained the ruling of the division, which found that only banks and entities not engaged in real estate businesses are subject to the 6% CWT rate. Further, under the Special Purpose Vehicle Act, the Court en banc noted that the sale of Non-Performing Assets (NPA) through SPVs are exempt from DST and CWT. Thus, Celdran is actually exempt from payment of CWT altogether. However, since the issue raised is only the refund of the CWT paid in excess of the 3% initially paid, only the same shall be granted.

San Paolo Development Corporation v. Commissioner of Internal Revenue

CTA EB No. 1388, March 15, 2017

Facts:

Petitioner was assessed with deficiency VAT arising from its sale of real property. Petitioner contends that, despite being engaged in the real estate business, the properties sold are capital assets since the same were idle and vacant. It was also assessed with deficiency income tax from disallowed deductions of donations. The CTA in division upheld the assessment of the BIR. Petitioner appealed the decision with the CTA en banc.

Issues:

Whether or not the assessment of Respondent is correct.

Ruling:

Yes. The CTA En Banc sustained the findings of the CTA Division. First, as to the issue of VAT, the Court applied RR No. 07-03, which states that idle property acquired by a taxpayer engaged in real estate business is not converted into a capital asset. The real properties sold by Petitioner, therefore, should have been subjected to VAT. As to its donation, Petitioner failed to prove that donations to the recipient are properly deductible under the law. As to the other items of assessment, Petitioner also failed to submit proof to support its contention.

<u>Commissioner of Internal Revenue v. Global Quickservice Restaurant, Inc.</u>

<u>CTA EB No. 1393, March 15, 2017</u>

Facts:

GQRI was assessed for deficiency income tax and VAT. The deficiencies stemmed from its failure to substantiate the distribution of service charges, its failure to prove that it only made replenishments to its other branches, and that part of its expenses on employee benefits are not subject to EWT. The CTA sustained the assessment, but cancelled a portion of the compromise penalty assessed. The BIR is challenging the cancelled portion as GQRI paid a portion of the compromise penalty and is therefore estopped from challenging the rest. GQRI, on the other hand, insists on the impropriety of the assessment.

Issue:

1) Whether or not the assessment is proper.

2) Whether or not the compromise penalty should be cancelled.

Ruling:

1) Yes, the assessment was proper. GQRI failed to prove its assertions. As to the distribution of the service charge, it failed to provide the proper periods of distribution covering the taxable year. As to the other items, GQRI failed to present evidence to back up its position.

2) Yes. The Court En Banc upheld the decision of the CTA Division in cancelling the remaining compromise penalty. The Court En Banc ruled that payment of the same belonged to the discretion of the taxpayer. It cannot be imposed without conformity of the taxpayer. Thus, the balance of the unpaid compromise penalty may not be enforced upon GQRI.

Commissioner of Internal Revenue v. Chevron Holdings, Inc.

CTA EB No. 1143 & 1349, March 15, 2017

Facts:

Chevron Holdings (CHI) filed for a refund of unutilized input VAT in connection with zero-rated sales of services. The CTA Division partially granted the same. The Court denied a portion of the claim due to the fact that CHI merely submitted scanned copies of the Articles of Incorporation of the foreign companies it provided service to. CHI contends that the scanned documents are admissible as electronic evidence. On the other hand, the CIR is of the position that the CTA Division did not acquire jurisdiction since CHI did not submit the complete documents for its claim for refund, thus the 120 day period has yet to commence.

Issue:

1) Whether or not the CTA acquired jurisdiction.

2) Whether or not the scanned copies of articles of incorporation are admissible as electronic evidence.

Ruling:

1) Yes. The records show that the 120 day and 30 day periods were properly observed by CHI. There is no basis for the position that the judicial claim was not properly filed.

2) No. Under prevailing jurisprudence, the scanned copies are not admissible under the electronic evidence rule. Under the said rules, for an electronic document to be admissible, it must be the actual source document. In the case of scanned copies, there are actual paper documents from where the scanned copies are made. The scanned copies are mere reproductions of the original. The CTA also applied the SC ruling which found fax messages as inadmissible under the electronic evidence rule.

BUREAU OF INTERNAL REVENUE v. HON. LEILA M. DE LIMA, in her capacity as SECRETARY OF JUSTICE,

CTA Case No.9171

Facts:

The Petitioner BIR investigated respondent Garcia after learning that Garcia admitted to purchasing a condominium unit worth P53,000,000.00 in a civil case then pending with the Makati City RTC in 2010. Petitioner made a preliminary finding that Garcia substantially underdeclared his income for taxable year 2010 by P51 ,967 ,530.00. Petitioner flied a Joint Complaint-Affidavit claiming that Garcia deliberately failed to file his value-added tax return for the same year, in violation of Sections 254, 255, and 275 of the NIRC of 1997.

After the preliminary investigation, the Investigating Prosecutor dismissed the criminal complaint for lack of probable cause. On March 15,2012, petitioner filed a Motion for Reconsideration, which was denied, then Petitioner flied a Petition for Review with the Office of the Secretary of Justice. The Secretary of Justice upheld the findings of the Investigating Prosecutor, and dismissed outright the Petition for Review in accordance with the 2000 NPS Rules on Appeal. Petitioner contends that the Honorable Secretary of Justice committed grave abuse of discretion by way of dismissing the criminal complaint.

Issue:

Whether or not the Court of Tax Appeal has jurisdiction to look into whether the Department of Justice committed grave abuse of discretion in affirming the Prosecutor's resolution on appeal

Ruling:

Yes. The Court has jurisdiction over the present petition for *certiorari* assailing the resolution of the Secretary of Justice which dismissed the BIR's Joint Complaint-Affidavit against private respondent for violation of the NIRC.

In *Bureau of Customs v. Devanadera,* the Supreme Court held that since the Court ruled in *City of Manila v. Hon. Grecia-Cuerdo* that the CTA has jurisdiction over a special civil action for *certiorari* questioning an interlocutory order of the RTC in a local tax case *via* express constitutional mandate and for being inherent in the exercise of its appellate jurisdiction, it can also be reasonably concluded based on the same premise that the CTA has original jurisdiction over a petition for *certiorari* assailing the DOJ resolution in a preliminary investigation involving tax and tariff offenses.

There is no clear statement under R.A. No. 1125, the amendatory R.A. No. 9282, let alone in the Constitution, that the CT A has original jurisdiction over a petition for *certiorari.*

By virtue of Section 1, Article VIII of the 1987 Constitution, vesting judicial power in the Supreme Court and such lower courts as may be established by law, to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government, in relation to Section 5(5), Article VIII thereof, vesting upon it the power to promulgate rules concerning practice and procedure in all courts, the Court thus declares that the CA's original jurisdiction over a petition for *certiorari* assailing the DOJ resolution in a preliminary investigation involving tax and tariff offenses was necessarily transferred to the CTA pursuant to Section 7 of R.A. No. 9282, and that such petition shall be governed by Rule 65 of the Rules of Court, as amended.

Commissioner of Internal Revenue v. Central Azucarera Don Pedro Inc.

CTA EB NO. 1427 (CTA Case No. 8459)

Facts:

Respondent executed three Waivers in favor of petitioner. At the time the first waiver was signed by the CIR representative on June 21, 2010, it did not include the duly notarized and written authority of Ms. Darlene A. Binay to sign the same on behalf of respondent. The same goes for the two (2) other waivers. On the third Waiver, the notary public is clearly unauthorized to notarize the same. It was notarized on February 31, 2011 but the notary public's authorization is only until December 31, 2010. Respondent violated the requirement that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and the required presentation of a written and notarized authority to the BIR.

Likewise, petitioner violated the mandate of RDAO 05-01 that it is Petitioner's duty to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. It also instructs that in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. Furthermore, it mandates that the waiver should not be accepted by the concerned BIR office and official unless duly notarized.

On November 23, 2015, the Court's third Division ruled that the assessment on various deficiency taxes had prescribed due to the execution of invalid waivers of defense of prescription under the statute of limitations of the NIRC. Petitioner CIR filed a Motion for Reconsideration contending that respondent cannot impugn the validity of the waiver which it validly executed, claiming that respondent Corporation benefited from the execution of the waivers . Said motion was denied for lack of merit

Issue:

Whether or not the waivers of defense of prescription under the statute of limitations of the NIRC executed by respondent corporation are valid.

Held:

Yes. While the defects of the waiver for non-compliance with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05 will generally render the waiver invalid and not effectively extend the period to assess, the Supreme Court in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc.,* elaborates the exceptions.

In the above-cited case the Court ruled that the general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

First, the parties in this case are in pari delicto or "in equal fault.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing.

Third, respondent is estopped from questioning the validity of its Waivers.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR 's negligence in the performance of its duties was so gross that it amounted to malice and bad faith.

In this case, we find defects on the waiver and both parties in this case are at fault.

COMMISSIONER OF INTERNAL REVENUE v. FILMINERA RESOURCES CORPORATION

CTA EB No. 1362 (CTA CASE Nos. 8528 & 8576)

Facts:

The Court in Division previously held in the Decision dated September 25, 2014, that respondent failed to prove that its buyer, Philippine Gold Processing and Refining Corporation (PGPRC), had exported100°/o of its products and that BOI Certification merely established that the latter's products were geared for export but not all of its products were actually exported. Aggrieved, respondent filed a Motion for Reconsideration of the Decision attaching thereto as supplemental evidence the Certified True Copies of the BOI Certification and the Certified Reproduced Copy of the Tax Credit Certificate.

Petitioner CIR insists that the Court in Division erred in amending its decision and partially granting respondent's claim for refund of its unutilized input VAT during the 3rd and 4th quarters of the fiscal year ended June 30, 2010 because the transactions between petitioner and PGPRC were allegedly zero-rated.

Issue:

Whether or not the respondent is entitled to the refund

Held:

No. A perusal of respondent's Quarterly VAT Returns reveal that it had no output tax liability against which the claimed input VAT may be applied to or credited from. The Court En Banc agrees that respondent may no longer avail of the carry-over or application of input taxes for the next taxable quarter/s because its reported unutilized input taxes for the third and fourth quarters of FY 2010 were already deducted as "VAT Refund/TCC Claimed" in the Quarterly VAT Returns for the same taxable quarter. The Court in Division found out that the unsupported input taxes shall be disallowed due to respondent's failure to substantiate with VAT invoices or official receipts Without the corresponding VAT invoices or official receipts, the said input taxes cannot be applied against any output liability of the respondent.

Commissioner of Internal Revenue v. Artdepot Inc.

CTA EB NO. 1447   (CTA Case No. 8548)

Facts:

Petitioner argued that the 2008 Notice for Informal Conference, Preliminary Assessment Notice and Final Assessment Notice were validly issued to respondent and that respondent was afforded its right to due process.

Petitioner wants this Court to consider the Certification of the Philippine Postal Service Corporation to prove the fact of service and receipt of the Final Assessment Notice and Demand Letter, however, said evidence was not admitted for being not marked, identified and formally offered in evidence.

Issue:

Whether or not there is necessity for the CIR to prove by competent evidence that FAN was indeed received by the taxpayer

Held:

Yes. In the case of *CIR vs. GJM Philippines Manufacturing, Inc.*, the Supreme Court explained the necessity for the CIR to prove by competent evidence that FAN was indeed received by the taxpayer: If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the onus probandi has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail.

It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.

Furthermore, even if the Certification of the Philippine Postal Service Corporation is formally offered and admitted, the fact remains that petitioner failed to prove that respondent received the FAN. Certifications may have proven the fact of mailing via registered mail no. 1835, but, petitioner has no evidence to prove that Security Guard H. Pacelo, who received the registered mail No. 1835, was duly authorized by respondent to receive the same in its behalf.

Pacific Bayview Properties, Inc v. Commissioner of Internal Revenue

CTA Case 9070

Facts:

Petitioner argues that the deficiency income tax and VAT assessments against petitioner for CY 2007 are null and void for having been issued in violation of the due process requirement under the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99. Petitioner maintains that a taxpayer shall have a period of 15 days from receipt of the PAN within which to respond. However, respondent issued the FAN and FLD without giving the petitioner an opportunity to respond to the PAN.

Records show that petitioner received the PAN on January 10, 2011and submitted its position paper against the PAN on January 25, 2011. However, unknown to petitioner, respondent has already issued the FAN and FLD on January 24, 2011, one day before the lapse of the 15-day period for the filing of petitioner's reply to the PAN. Based on the foregoing, petitioner contends that it was not yet in default at the time respondent issued the subject FAN/FLD. Furthermore, it argues that respondent did not consider the merits of petitioner's arguments and already pre-determined petitioner's liability at the time of the issuance of the PAN.

Issue:

Whether or not respondent's deficiency income tax and VAT assessments against petitioner for CY 2007 are valid.

Held:

No. The taxpayer is given 15 days from receipt of the PAN to respond thereto, and only after it fails to do so will it be considered in default and an assessment notice wiII be issued. In this case, petitioner received the PAN on January 10, 2011. Counting 15 days from January 10, 2011, petitioner had until January 25, 2011 within which to respond to the PAN. Hence, petitioner timely filed its Position Paper/Reply to the PAN on January 25, 2011. However, without waiting for the reply of petitioner, respondent issued the FAN and FLD on January 24, 2011.

It is clear that respondent failed to observe due process when he issued the FAN and FLD even before the lapse of the 15-day period given to petitioner to file its protest to the PAN. Consequently, in view of the violation of petitioner's right to due process provided under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, the FLD and FAN and the FDDA are all considered void.

VENTIS MARITIME CORPORATION v. Commissioner of Internal Revenue

CTA Case 8783

Facts:

The PAN dated January 5, 2011, as well as the FAN/FLD dated January 14, 2011,were all sent through registered mail, at petitioner's former address at 1631 K Line Building, San Marcelino Street, Malate, Manila. It was also established through a Certification from the Records Unit of the Office of the Postmaster, Central Post Office that the said PAN, FAN and FLD were returned to sender on January 28, 2011, with indication that the "addressee moved out". Nevertheless, petitioner admitted that after receiving the Preliminary Collection letter dated June 6, 2011, it sent respondent a request for copies of the alleged FAN allegedly sent through mail, as well as proof thereof. Acting on the said letter request, respondent sent and petitioner received on July 28, 2016 a Letter dated July 26, 2011 together with the photocopies of the PAN, FAN and FLD.

Respondent questions the Court's jurisdiction over the present action saying that the subject assessments were mailed within the three (3)-year prescriptive period provided by law. Despite receipt however, petitioner failed to timely protest the said assessments rendering them final, executory and demandable, thereby depriving the Court the competence to petition.

Issue:

Whether or not the Petitioner was afforded procedural due process.

Held:

No. The taxpayers must be informed in writing of the facts and the law upon which the assessment is made; otherwise, the assessment shall be void. The notices of such assessment, specifically the PAN and the FLD/FAN issued by respondent must be received by the taxpayer as decreed in Section 3 of RR No. 12-99, as amended.

It must however be noted that petitioner received the photocopies of the PAN, FAN and FLD only upon request on the same day, July 28, 2011, a clear violation of Section 228 of the NIRC of 1997 and RR No. 12-99, as amended by Section 2 of RR No. 18-2013, which gives the taxpayer a period of fifteen (15) days from receipt of the PAN, within which to respond. Unarguably, the right of the taxpayer to respond to the PAN is also an important part of the due process requirement in the issuance of a deficiency tax assessment which respondent wantonly disregarded.

Procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer, such as petitioner in the present case, an opportunity to respond thereto.

Province of Batangas v. NATIONAL TRANSMISSION COMMISSION

CTA AC NO. 145

Facts:

Petitioner argues that the phrase "based on incoming receipt, or realized, within its territorial jurisdiction" contained in Section 137 of the Local Government Code (LGC), which is the basis for the imposition of franchise tax by an LGU, should not be equated to strictly mean "the place where payments are actually received". Moreover, petitioner contends that while it may be true that under the corporation law the principal residence of a corporation is the place where its principal office is located, still for purposes of assessment/collection of franchise tax, it should not be limited to the place where such principal office is located, but should include all places where the privilege is exercised and where income is realized. Respondent TRANSCO counter-argues that the one authorized to impose the franchise tax on its gross receipts from BATELEC II is Lipa City pursuant to Article 226(a) and (b) of the IRR of R.A. No. 7160. It contends that petitioner cannot impose franchise tax on its gross receipts from BATELEC II. According to respondent TRANSCO, it derives its gross receipts in transmitting electricity directly from BATELEC II and not from the latter's individual customers. It avers that since its gross sale transactions from its electricity transmission activities occur and are realized in BATELEC II's principal office in Lipa City, the latter, and not petitioner has jurisdiction to impose franchise tax. RTC of Batangas City ruled the nullity of petitioner's assessment of franchise tax on respondent's gross receipts from BATELEC II

Issue:

Whether or not the RTC of Batangas City erred in declaring the nullity of petitioner's assessment of franchise tax on respondent's gross receipts from BATELEC II

Held:

No. Petitioner, as a province, is authorized to impose a tax on "businesses enjoying a franchise" based on the incoming receipt, or realized, within its territorial jurisdiction. However, by way of a limitation respondent TRANSCO is engaged in a business enjoying a franchise

It must be emphasized that the subject local franchise tax is being imposed on the gross receipts of respondent TRANSCO, which is enjoying the nationwide franchise for the operation of the transmission system and the grid; and **not** on the gross receipts of BATELEC II, which is enjoying a separate franchise granted by the National Electrification Commission. The franchise granted to BATELEC II is distinct and different from that of respondent TRANSCO. To be clear, BATELEC II is granted the authority to operate electric service in the City of Lipa and in certain municipalities in the province of Batangas, pursuant to Presidential Decree No. 269, as amended, which was given as early as May 28, 1980; respondent TRANSCO, as already stated, was granted the nationwide electrical transmission franchise, pursuant to the earlier quoted Section 8 of the EPI RA.

Hence, the RTC of Batangas City did not err in declaring the nullity of petitioner's assessment of franchise tax on respondent's gross receipts from BATELEC II.

COMMISSIONER OF INTERNAL REVENUE v. FILMINERA RESOURCES CORPORATION CTA EB NO. 1394 (CTA Case No. 8666)

Facts:

Petitioner argues that it was able to sufficiently prove that it is engaged in zero-rated sales, being a VAT registered supplier to PGPRC, a BOI registered purchaser whose products are 100% exported and thus, entitled to its claim for refund and/ or issuance of tax credit certificate for the third quarter of fiscal year 2011; that while it is the observation of the Court that there was no amount indicated in the portion "VAT refund/TCC claimed" of the BIR Form 2550Q for the first quarter of 2012, there still appeared overpayments as indicated in item no. 29 of the BIR Form in the total amount of P310,416,997.85 which, indeed, covered the amount being claimed for refund/TCC of the instant petition in the amount of P51,966,544.20

Issue :

Whether the Court in Division erred in denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P51,966,544.20, representing alleged unutilized creditable input tax for the period of January 1, 2011 to March 31, 2011 for fiscal year ending June 30, 2011.

Held:

No. Before petitioner can validly claim a refund/ tax credit, it must prove that the claimed input taxes were not applied against any output liability during and in the succeeding period of claim.

It is petitioner's submission that the BIR Form 2550Q it presented proves that petitioner had properly deducted therein the input VAT being claimed from the allowable input tax and was classified as "VAT refund/TCC claimed". However, contrary to its contention, the Court finds no iota of evidence that the subject claim was, indeed, deducted from the total allowable input VAT, as no amount was indicated in that portion "VAT refund/TCC claimed" of the said BIR Form 2550Q for the first quarter of 2012. This creates an impression that petitioner still had the input VAT in its books of accounts and is available as a credit against its future output VAT liability.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven. The burden in claiming tax refund rests upon the taxpayer. In this case, petitioner failed to discharge the necessary burden of proof.

Commissioner of Internal Revenue v. PEA Tollway Corporation

CTA EB No 1372 CTA Case No 8364

Facts:

Petitioner contends that respondent PEATC received revenue from motorists in the form of toll fees arising from rendering services to its customers specifically in managing, operating, maintaining, constructing and repairing the MCTE Project. Moreover, petitioner claims that there was a flow of income to respondent PEATC and expenses were incurred from its operations. Allegedly, PEATC never acted as a mere conduit or trustee for the collection of toll fees; and that PEATC did not amend any provision in its Article of Incorporation that it will merely act as a mere conduit or trustee for the collection of toll fees for its purpose. According to petitioner, since there was a flow of income and that PEATC is a subsidiary corporation, the toll fees it collected and earned is subject to income tax as provided in Section 27 of the NIRC of 1997, as amended. Allegedly, toll fees are not one of those exclusions from gross income or revenue under Section 32(B) of the NIRC of 1997.

Furthermore, petitioner contends that cost and expenses were recognized as incurred, but the income arising from toll fees were not recorded as revenue, when in fact these expenses are directly related to the generation of the income arising from the collection of toll fees.

According to respondent PEATC, it has no share in the collections as it only acts as a toll collector of the JVA partners and the daily toll fees collected by it are deposited to individual accounts of PEA/PRA and UMPC/CIC Respondent PEATC maintains that in 2007, it remitted its toll revenue collections to PEAIPRA which treated the same as other business income amounting to P44,666,424.00 particularly classified as Income from Joint Venture in which the corresponding income tax was paid to the BIR.

Issue:

Whether or not the toll collections pertain to respondent PEATC as its revenues

Held:

No. *Respondent PEATC is a mere collecting agent of PEAIPRA and UMPCICIC.* Court in Division found that while respondent undertakes the toll collection from the MCTE Project, it could not consider these toll collections as its revenue. Respondent merely collects the toll revenues belonging to the PEA/PRA and UMPC/CIC.

Section 7.01 of the TOA explicitly provides that these toll collections are property of both the PEA/PRA and UMPC/CIC, Thus, in collecting the toll revenues, respondent PEATC merely holds the collected revenues in trust for PEA/PRA and UMPC/CIC. It remits the same to the joint venture parties pursuant to Section 7. 02 of the TOA, which provides that these toll collections by respondent PEATC shall be deposited directly to a bank account held for the benefit of the project joint venture partners based on their sharing agreement under Clause 3.2 of the JVA.

Simply put, for income tax to be imposed, what must be established is that there was a flow of wealth on the part of respondent PEATC, or a return in money from respondent PEATC's business, labor, or capital invested. In the case before the Court in Division, petitioner failed to show that the toll fees collected, to which the subject deficiency income tax was imposed, pertains to respondent PEATC.

MODERN IMAGING SOLUTIONS, INC., v. Commissioner of Internal Revenue

CTA Case No. 8987

Facts:

On January 19, 2011, respondent issued a Letter of Authority No. , which petitioner received on January 25, 2011. Thereafter, respondent sent a Preliminary Assessment Notice (PAN) dated May 5, 2014, which was received by petitioner on May 20, 2014. It was stated in the said PAN that the period of prescription was extended up to June 30, 2014 due to several waivers of defense of prescription executed by petitioner on September 28, 2012, April 30, 2013 and September 13, 2013, respectively.

On June 24, 2014, respondent issued a Formal Assessment Notice (FAN), which was received by petitioner on June 25, 201410, finding petitioner liable for deficiency Income Tax, EWT, and DST for taxable year 2009 in the total amount of P3,104,954.00, inclusive of surcharge, interests and compromise penalty. Petitioner received the FAN on June 25, 2014 then Petitioner filed its Protest Letter11 to the FAN on July 23, 2014 with a Request for Reinvestigation with no attached supporting documents. Respondent argues that petitioner failed to submit the required documents within sixty (60) days in support of its protest against the FAN. Consequently, the assessment became final, executory and demandable. As such, the Court has no jurisdiction to act on the instant petition.

Issue:

Whether or not petitioner's decision not to submit any supporting documents within sixty (60) days from the date of filing of the protest, render the assessment final and executory

Held:

No . As explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.33,* it is the taxpayer who determines what documents are relevant and necessary to support its protest, **"The term 'relevant supporting documents 'should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer.** The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

From the foregoing, should petitioner decide not to submit any supporting documents within sixty (60) days from the date of filing of the protest, the same does not render the assessment final and executory. Further, there is no showing that respondent required petitioner to submit additional documents in order for him to decide on the protest.

Pursuant to Section 228 of the NIRC of 1997, as amended, if the protest is not acted upon within 180 days from submission of supporting documents, the taxpayer may appeal the inaction to this Court within thirty (30) days from the lapse of the 180-day period.

Considering that petitioner did not submit any supporting documents within the 60-day period provided by law, the 180-day period shall be counted from the date of filing of the protest. Counting 180 days from

July 23, 2014, respondent had until January 19, 2015 to decide on the protest. Due to the inaction of respondent within such period, petitioner had thirty (30) days from January 19, 2015 or until February 18, 2015 within which to file an appeal before this Court. Hence, petitioner timely filed the instant Petition for Review with this Court on February 18, 2015.

Commissioner of Internal Revenue v. Lingkod Bayan Pawnshop

CTA EB No. 1386 (CTA CASE No. 8554)

Facts:

CIR argues in her Petition for Review that the Division erred as to the basis of the amount of salaries and wages to be disallowed and that the non-taxable amount as ruled by the Division should also be included therein. CIR also asserts that the disallowance of excess tax credit and MCIT over NIT is proper as Lingkod Bayan failed to prove that it suffered legitimate business reverses. CIR also contends that the full amount for deficiency DST must be included and not just the amount of advances for the taxable year 2008. CIR contends that the assessment of compromise penalty is proper even if Lingkod Bayan did not agree to it.

Issue:

Whether or not the imposition of the compromise penalty without the conformity of the taxpayer is legal and authorized

Held:

No. The Court ruled that the CIR actually raised no new arguments in his Petition for Review but mere assertions void of explanations.

As to the compromise penalty, the CIR merely quoted the Court Division's ruling thereon, as well as sub-paragraph 5 of paragraph III of Revenue Memorandum Order (RMO) No. 19-2007/ without arguing on why a compromise penalty should be imposed on Lingkod Bayan when such is prohibited for by law when not agreed upon by the parties.Pursuant to RMO No. 01-1990, as amended by RMO No. 19- 2007, compromise penalties are only 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 imposition of the same without the conformity of the taxpayer is illegal and unauthorized.

Absent any showing that Lingkod Sayan consented to the compromise penalties, the same should not be imposed. Accordingly, this Court holds that the CIR's imposition of compromise penalties, without the consent of Lingkod Bayan, cannot be sustained.

Held:

No. The Court ruled that the CIR actually raised no new arguments in his Petition for Review but mere assertions void of explanations.

As to the compromise penalty, the CIR merely quoted the Court Division's ruling thereon, as well as sub-paragraph 5 of paragraph III of Revenue Memorandum Order (RMO) No. 19-2007/ without arguing on why a compromise penalty should be imposed on Lingkod Bayan when such is prohibited for by law when not agreed upon by the parties.Pursuant to RMO No. 01-1990, as amended by RMO No. 19- 2007, compromise penalties are only

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 imposition of the same without the conformity of the taxpayer is illegal and unauthorized.

Absent any showing that Lingkod Sayan consented to the compromise penalties, the same should not be imposed. Accordingly, this Court holds that the CIR's imposition of compromise penalties, without the consent of Lingkod Bayan, cannot be sustained.

Facts:

Petitioner is engaged in general construction business, manufacturing, acquiring, and furnishing all building and other tools and equipment connected therewith or required therefore, as well as manufacturing things incidental to or used in connection with any of such activities as shown in its Securities and Exchange Commission Certificate of Registration numbered AS 095-09484. Petitioner filed with the BIR its monthly and quarterly VAT returns for the period covering January 2008 to December 2008.

Petitioner filed with the SIR-Revenue District Office ("RDO") No. 47 its Application for Refund/Tax Credit for excess input VAT for the four quarters of taxable year 2008 on 5 March 2010. In the instant Petition for Review, SMCC maintains that the Court in Division erred in ruling that it failed to substantiate with documentary evidence its claim for refund on its alleged unutilized input tax attributable to its zero rated sales for the four quarters of taxable year 2008.

Petitioner alleges that it is entitled to a refund of input taxes related to VAT zero-rated sales, regardless of the amount of total input taxes and output taxes, pursuant to Section 112 (A) of the 1997 NIRC

Issue:

Whether or not the Petitioner is entitled to the refund

Held:

Although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements under the VAT law must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claim.

Therefore, out of petitioner's declared VAT input tax of P16,981,349.73, only the amount of P12,801,707.74, represents petitioner's valid input VAT. Petitioner's claimed input VAT remained unutilized because the input VAT carried over from the previous year and the input VAT for the year 2008 from its non-PEZA transactions were more than sufficient to cover its output VAT liability. While it is true that, after offsetting the 2008 output VAT from the total available tax credits, a remaining input VAT in the amount of P27,993,278.19 credits can be applied to the succeeding taxable period, the Court in Division correctly found that since petitioner failed to present VAT invoices or receipts to prove the existence of such amount, said input taxes cannot be applied against petitioner's 2008 output VAT liability.

Considering that the substantiated input VAT attributable to petitioner's zero-rated sales only amount to P12,801,707.14, there is clearly no excess input VAT which may be the subject of a claim for refund/tax credit certificate under Section 112 (A) of the NIRC of 1997, as amended.

Commissioner of Internal Revenue v. Starsmash Badminton Center

CTA EB No. 1379 (CTA Case No. 8523)

Facts:

Petitioner asserts that the court in division erred in holding that he failed to properly comply with a constructive mode of service under Revenue Regulations (RR) No. 12-9914. He insists that since respondent already had admitted the receipt of the *PAN,* it therefore can be deemed to have also received the Final Assessment Notice (FAN) since both documents were served to and received in the same address.

As to the issue of Waiver, petitioner claims that by voluntarily signing the waiver and not questioning it during investigation in the administrative level, a valid agreement was therefore made and respondent is already stopped from questioning its validity under Article 130515 of the New Civil Code.

Lastly, petitioner avers that the date of notarization of the Waiver may be reasonably deemed as the date of acceptance since it can be presumed that the parties appeared, signed and swore before the presence of the notary public. Since no evidence was presented to destroy the regularity of the performance of the duty of the Notary Public, the waiver is valid and should bind respondent.

Issues:

1.Whether or not the date of notarization can be regarded as the date of acceptance

2. Whether or not the Petitioner properly effected a constructive service

3. Whether or not respondent is estopped from impugning the validity of the waiver which respondent itself has voluntarily executed.

Held:

1. No . The case of *Commissioner of Internal Revenue vs. East Asia Power Resources Corporation* "The date of notarization cannot be regarded as the date of acceptance for the same refers to different aspects, as the notary public is distinct from the Commissioner of BIR who is authorized by law to accept Waivers of the Statute of Limitations. Moreover, there is no indication that the Revenue District Officer was present during the notarization of the waivers

2. No. Apparently, petitioner served the FAN *via* constructive mode of service constructive service under RR No. 12-99 shall be considered effected by (1) leaving the same in the premises of the taxpayer; (2) the fact of constructive service should be attested to, witnessed and signed by at least two revenue officers other than the revenue officer who constructively served the same; and (3) the revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of the case.

Unfortunately, petitioner only complied with the first requisite in effecting constructive service, that petitioner *via* Revenue Officer Grajo, left the FAN with FLD-DD in the premises of the taxpayer. As to the second and third requisites, petitioner failed to sufficiently prove, through testimonial and documentary evidence, that the fact of constructive service was attested to, witnessed and signed by at least two revenue officers; and, that a written report of the constructive service was filed with the BIR Records. More so, it is worth noting that petitioner, likewise, failed to prove that Yasser Masola and a certain Vanessa have been vested with the authority to receive parcels on behalf of respondent, or at the very least, that they were connected with Starsmash Badminton Center Corporation.

3. No. The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed." Likewise, "a waiver of the statute of limitations under the NIRC, is not an ordinary agreement, according to the Supreme Court, it is to a certain extent, a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. It is governed not by the general provisions of the New Civil Code but by the National Internal Revenue Code following the basic principle in statutory construction that a special law prevails over a general law.