SUMMARY OF SIGNIFICANT CTA DECISIONS (May 2017)

Commissioner of Internal Revenue v. Citadel Holdings, Inc.

CTA EB No. 1375, May 02, 2017

Facts:

Citadel was partially granted its refund for unutilized creditable withholding taxes for the year 2010 by the CTA Division. The CIR appealed the decision, arguing that Citadel did not present its ITR for 2012, hence it failed to prove that it did not carry over its tax credits earned during 2010. The CIR also contends that Citadel should have presented the entities that issued BIR Forms 2307 in its favor, in order to prove that the CWT withheld from it were properly remitted to the BIR.

Issue:

Whether or not Citadel is entitled to its refund of CWT.

Ruling:

Yes. It is sufficient for Citadel to have shown that the CWT carried over in the year 2011 remained intact. It is also of note that Citadel clearly selected the issuance of a TCC in its tax returns.

Also, the issuance of a BIR Form 2307 is prima facie evidence that the proper taxes have been withheld and remitted to the BIR. There is no need to present representatives from the issuing entities to testify on the fact of remittance.

General Motors Automobiles Philippines, Inc. v. Commissioner of Internal Revenue
CTA Case No. 8976, May 02, 2017

Facts:

Petitioner's claim for VAT refund was partially granted by the CTA Division. The CIR moved to reconsider the decision raising, among others, the issue on proof of sales to non-resident foreign corporations, as well as defects in the invoices submitted by Petitioner as proof. Petitioner counters that all of its sales are indeed to non-resident foreign corporations, and that the CIR failed to indicate which of its invoices have defects.

Issue:

Whether or not Petitioner is entitled to a VAT refund.

Ruling:

Yes. Petitioner is still entitled to a refund. The Court, however, decided to reduce the amount granted. It found that Petitioner was able to fully substantiate that its clients were indeed non-resident foreign corporation. Petitioner was also able to prove that Customer Care and Aftersales is a division of General Motors North America, and that the billings in the name of General Motors North America are addressed to Customer Care and Aftersales.

However, upon review of the invoices submitted by Petitioner, the Court determined that the nature of the services provided were not indicated therein, thus, a substantial amount of the claim was disallowed. The initial decision of over 3,000,000.00 was reduced to just over 200,000.00.

Maxicare Healthcare Corporation v. Commissioner of Internal Revenue

CTA EB No. 1312, May 08, 2017

Facts:

Petitioner contests, among others, its deficiency VAT assessment on its advance payments to medical service providers. The CTA Division, in its amended decision, cancelled the assessment on VAT. The BIR appealed the same before the CTA En Banc, contending that as per definition in BIR Issuances, the entirety of the membership fees received by Petitioner should be subjected to VAT without deduction. Petitioner contends that it relied in good faith on a BIR Ruling issued in its favor by an Assistant Commissioner.

Issue:

Whether or not Petitioner is entitled to a VAT refund.

Ruling:

No. The rules clearly define gross receipts of HMOs to be comprised of membership fees received, without any deduction. The deficiency VAT on membership fees received earmarked for advance payment of medical services provided to its members is also covered by the said definition. Petitioner cannot hide behind the BIR Ruling since the same was issued by an assistant commissioner while the issue involved is novel. The said function of the CIR may not be delegated, as per the tax code. Further, the said ruling was expressly revoked by the CIR only three months from issuance.

(Note: Several dissenting opinions. Of note is the dissent of Justice Manahan, who was of the same opinion with Justices Bautista and Fabon, that the fees received earmarked for advance payments made to medical service providers are actually excluded from the definition of gross receipts in general. Further, Justice Manahan is of the opinion that the 10 year prescription for false returns must be with intent to prejudice the government.)

Air Philippines Corporation v. Commissioner of Internal Revenue,

CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517,7521, & 7566 March 03, 2017

Facts:

Petitioner moved for the reconsideration of the CTA's earlier decision that denied its claim for refund of excise tax outright, for failure to prove its entitlement to the same. The Court allowed Petitioner to present evidence to prove its claim for refund.

Issue:

Whether or not Petitioner is entitled to refund of the excise taxes paid on importation of Jet-A1 fuel.

Ruling:

Yes. Petitioner was able to prove the following:

1) It paid either the basic corporate income tax or the 2% gross revenue tax, whichever is lower. The CTA allowed Petitioner to submit its income tax return for the said purpose. Since its suffered net loss, Petitioner has no income tax liability to speak of. Thus, it is entitled to exemption from all other taxes since it has settled its obligation to pay the basic corporate income tax, which is lower than the 2% gross revenue tax.

2) The imported articles are intended to be used in its transport and non-transport operations and other incidental activities. The CTA relied on the statements printed on the ATRIGs issued to Petitioner, indicating that the imported goods are to be used in the transport business activities of Petitioner. The Court held that the ATRIG is a public document and is prima facie evidence of the statements made therein.

3) The imported articles are not locally available in reasonable quantity, quality, or price. Petitioner was able to prove through testimonial evidence that the imported Jet A-1 fuel is not locally available in reasonable quantity, quality, or price. The CTA stressed that the requirement is alternative in using the word "or".

Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue

CTA Case No. 8889, May 08, 2017

Facts:

Petitioner, due to financial losses, failed to pay for its excise taxes on time. It thereafter settled the same, and applied for the abatement of the interests and surcharges. The BIR denied its application for abatement. Petitioner then paid for the same, but under protest, citing as reason the fact that it is trying to avoid the accumulation of interest. Petitioner then filed its Petition for Review before the CTA, challenging the denial of its abatement, and to claim a refund of the interests and surcharges that it paid on its excise tax liabilities.

Issues:

1) Whether or not the CTA has jurisdiction to decide on the denial of abatement; and
2) Whether or not Petitioner is entitled to a refund of its payment of interests and surcharges.

Ruling:

1) Yes, the Court has jurisdiction. Based on recent jurisprudence, the CTA has jurisdiction to rule on decisions of the CIR, including other matters arising from the NIRC of 1997, as amended. Thus, the denial of an application for abatement is covered by the Court's jurisdiction.
2) No. The ground that Petitioner is invoking is not proper for abatement. Under the law, the grounds for abatement are excessive or unjust collection of taxes and the cost of recovery is greater than what is to be collected. Financial inability to pay tax is a ground for compromise of tax liability, and not abatement. Thus, it was proper for the CIR to refuse the application of Petitioner for abatement.

Commissioner of Internal Revenue. v. Merial Philippines, Inc.

CTA EB No. 1398, May 09, 2017

Facts:

CIR is appealing the amended decision of the CTA First Division, which cancelled the assessment of the BIR for failure to follow due process requirements in assessments. Specifically, the BIR issued the FLD/FAN prior to the expiration of the fifteen (15) days from receipt of the PAN. The CTA Division invalidated the entire assessment based on this violation. The BIR appealed the amended decision to the CTA En Banc.

Issue:

Whether or not the assessment is invalid for failure to afford Petitioner with due process.

Ruling:

Yes. The CTA En Banc affirmed the findings of the CTA Division. The records will show that the FLD/FAN was issued within nine (9) days from the date of issuance of the PAN. As decided by the Supreme Court in the case of *Metro Star Superama*, failure to afford the taxpayer an opportunity to be heard is a violation of the taxpayer's right to due process. Since the FLD/FAN was issued prior to the expiration of the fifteen (15) days from Petitioner's receipt of the PAN, it is clear that Petitioner was denied its right to respond to the PAN. Although it was able to file a Reply, the same was not considered as the FLD/FAN was already prepared and issued before the Reply was filed.

People of the Philippines v. Bienvenido S. Dimson et al.

CTA Crim Case No. O-304, May 17, 2017

Facts:

Accused is charged for violation of Sec. 255 of the NIRC of 1997, as amended. Accused allegedly failed to settle his tax liabilities as per investigation conducted by the BIR. Accused claims that the assessment is invalid for failure to meet the requirements of due process. In particular, accused claims that he did not receive a copy of the PAN, FLD/FAN, and Preliminary Collection Notice. All of the above documents were sent to the accused's old address.

Issue:

Whether or not accused is guilty of violation of Sec. 255 of the NIRC of 1997, as amended.

Ruling:

No. Upon examination of the testimonies of prosecution's witnesses, none were able to corroborate the accused's receipt of the PAN. It is true that accused failed to notify the BIR of his change of address, and thus his old address remains the proper address to serve assessment notices to. However, the accused has also denied receipt of the documents sent to his old address. Due to this denial, the burden shifts to the BIR to prove that the same has been properly served to the accused. The prosecution failed to prove the same. As stated earlier, none of the witnesses had personal knowledge of the service of the PAN. Further, there was no registry receipt offered in evidence to prove that the same was duly mailed to the accused's old address. Thus, the failure to observe the requirements of due process invalidates the assessment made against the accused. Therefore, accused has no obligation to pay the alleged deficiency taxes, and thus cannot be in violation of Sec. 255 of the NIRC of 1997, as amended.

Commissioner of Internal Revenue v. Ong Beng Gui

CTA EB no. 1248, May 18, 2017

Facts:

The CIR seeks to reverse the ruling of the CTA Division, which granted the withholding tax refund claim of Ong Beng Gui. In the case before the Court in Division, Ong Beng Gui filed for a refund of taxes withheld from the separation pay of his employees. The separation pay was brought about by the closure of one of his branches. The CIR argues that Ong Beng Gui failed to substantiate his claim for refund.

Issue:

Whether or not On Beng Gui is entitled to a refund of withholding taxes on the separation pay given to terminated employees.

Ruling:

Yes. The CTA En Banc upheld the finding of the CTA Division. The Court En Banc adopted the findings of the Court Division, which found that Ong Beng Gui applied with the DOLE for the closure of one of his branches. He was also able to substantiate the amount withheld from his employees, to a certain extent. Thus it was proper to grant the refund in a reduced amount.

Commissioner of Internal Revenue v. Honda Cars Makati, Inc.

CTA EB No. 1432, May 18, 2017

Facts:

Honda Cars was partially granted its application for refund of unutilized creditable withholding taxes. The CTA Division ruled in its favor, albeit partially. The BIR appealed the ruling, contending that Honda is not entitled to a refund of the same in any amount, since in its ITR, Honda left the portion indicating “Creditable Tax Withheld” blank. Further, the BIR argues that Honda should have presented the entities that withheld the actual taxes, and remitted the same to the BIR to prove such fact.

Issues:

Whether or not Honda Cars Makati is entitled to a refund of its unutilized CWT.

Ruling:

Yes. The CTA En Banc sustained the findings of the CTA Division. The Court en banc noted that Honda Cars Makati was able to trace its income reported in its ITR from its general ledger, as well as several invoices and receipts. The fact of withholding was also proven from the same. Further, the BIR Forms 1743-A issued by the payors to Honda Cars are sufficient proof of the fact of withholding. The Court En Banc also reiterated that there is no need to present the individual payors or a BIR RAD certificate as to the remitted amounts. The certification issued by the payors are sufficient to prove that the amount paid to the payee was indeed subjected to CWT and that the same was remitted to the BIR.

<u>Commissioner of Internal Revenue v. Deutsche Knowledge Services PTE., LTD. CTA EB No. 1297, May 18, 2017</u>

Facts:

The CIR challenged the amended decision of the CTA Division, partially granting the VAT refund of Deutsche Knowledge. The original decision denied the claim outright for lack of jurisdiction, since the claim was filed prior to the expiration of the 120 days. However, since the claim was filed within the period of exception as stated in the *Aichi* case, then the CTA Division amended its previous decision. It also only partially granted the refund claim, stating that Deutsche failed to prove that its clients were non-resident foreign corporations. The CTA Division refused to acknowledge the AMInet Company Profile submitted by Deutsche to prove the foreign origin of its clients for being self serving.

Issue:

1) Whether or not the CTA has jurisdiction.
2) Whether or not Deutsche is entitled to a full VAT refund.

Ruling:

1) Yes, the CTA has jurisdiction. The exception as stated in the *Aichi* case was carved out by no less than the Supreme Court. The BIR cannot argue that the BIR Ruling stated therein is invalid. The same has been recognized by the Supreme Court. Further, Deutsche's date of filing falls under the exception provided by the high court. Thus, the CTA has jurisdiction to hear the claim.
2) No. The Court En Banc upheld the decision of the CTA Division. It mentioned that the minimum requirements to establish as entity as a non-resident corporation not doing business in the Philippines are the SEC Certificate of Non-registration <u>and</u> its foreign articles of incorporation or certificate of residence. The AMInet Company Profile are internally generated and thus self-serving. (Note: Dissent by PJ- the AMInet Profiles should have been considered. PJ also finds service agreements as acceptable proof.)

Trustmark Holdings Corporation v. Commissioner of Internal Revenue

CTA Case No. 9072, May 19, 2017

Facts:

Petitioner was issued a PAN, finding deficiency DST in the amount of over 171,000,000.00. The deficiencies covered various taxable years, despite the LoA only mentioning the year 2009. The PAN also imposed interest in the amount of over 190,000,000.00. Petitioner paid the basic tax deficiency, and sought the abatement of the interest and surcharge. Petitioner contends that the late payment is due to a difficult question of law, as evidenced by contradicting BIR Rulings, as well as various CTA and CA decisions. However, Petitioner was still issued a FLD/FAN imposing the interest and surcharge. Petitioner protested the same, but was still issued a FDDA imposing the interest and surcharge. Petitioner questions the propriety of the imposition of interest and surcharge,

Issue:

Whether or not Petitioner is liable for the surcharge and interest on its deficiency DST.

Ruling:

No. Petitioner was indeed confronted with a difficult question of law, when BIR Rulings contradict, as well as differing CTA and CA decisions. Further, the LoA covered only the taxable year of 2009, but the assessment included other taxable years. A majority of the assessment should have been void, but Petitioner paid for the basic tax all the same. This shows that Petitioner is in good faith in settling its tax obligations. Thus, the assessment imposing deficiency interest and surcharge is cancelled.

Monetary Authority of Singapore v. Commissioner of Internal Revenue

CTA Case No. 8973, May 23, 2017

Facts:

Petitioner is the duly constituted Central Bank of Singapore. It has made several investments in Bureau of Treasury (BTr) bonds through various entities. The interest payments made by the BTr on the said bonds were subjected to withholding tax. Petitioner seeks the refund of the final withholding tax deducted from the interest payments it received from the BTr.

Issue:

Whether or not Petitioner is entitled to a refund of the FWT on interest payments made by the BTr.

Ruling:

Yes. Petitioner was able to prove that it is the duly constituted Central Bank of Singapore. As such, its income is exempt from income tax as a foreign government owned and controlled financial institution. It was also able to fully establish the amount that it is claiming.

Commissioner of Internal Revenue v. Philippine Bank of Communications

CTA EB No. 1423, May 23, 2017

Facts:

The CTA Division partially granted PBComm's refund of unutilized CWT. It denied the portions that were not proven through BIR Forms 2307, or proven with defective BIR Forms 2307. The BIR seeks to reverse the grant as PBComm allegedly failed to submit complete documents.

Issue:

Whether or not Petitioner is entitled to a refund of its unutilized CWT.

Ruling:

Yes. Petitioner was able to prove that it is entitled to the refund. The list of documents under the BIR Rules are merely internal and is not for mandatory compliance of tax payers. Further, the SC has already ruled that Courts are not precluded from accepting further proof to support a claim for refund of erroneously paid taxes. As to PBComm, it was further granted additional amounts as the Court admitted the amounts proved through BIR Forms 1606. The Court held that the information contained in the said form is the same as those in BIR Forms 2307.

(Note: the dissenting and concurring opinion of PJ, joined by Justices Castaneda and Casanova, maintain that the lack of the taxpayer's TIN on the BIR Form 2307 should not be taken against it. Unlike VAT, there are no requisite information as mandated by the NIRC for BIR Form 2307 for purposes of refund. Further, the opinion states that the only requisites are a statement duly issued by the payor to the payee, showing the amount paid, and the amount of tax withheld.