SUMMARY OF SIGNIFICANT CTA DECISIONS (JUNE 2017)

Hon. Commissioner Kim Jacinto-Henares v. IP Contact Center Outsourcing Inc.
CTA EB No. 1415 June 05, 2017

Facts:

Respondent IPCCO as assessed with deficiency taxes. It executed waivers of the defense of prescription with the BIR. However, the assessment was eventually brought before the CTA. The CTA Third Division cancelled the assessment due to the defects in the execution of the waivers.

Issue:

Whether or not the waivers executed between Respondent and BIR are valid.

Ruling:

Yes. Petitioner is estopped from questioning the validity of the waivers. Given that it was able to benefit from the waivers, that is, it was given the chance to submit documents and further contest the assessment in the administrative level, Petitioner is now estopped from challenging the validity of the waivers. The doctrine in the *Next Mobile* case applies.

Toledo Power Company v. Commissioner of Internal Revenue
CTA Case No. 8792, June 06, 2017

Facts:

Petitioner is claiming for a refund of its unutilized input VAT in relation to its zero-rated sales. The sales were made to three main entities, the first, Carmen Copper Corporation (CCC) is a BOI-registered entity with 100% export sales. The second is BEC, a PEZA-registered entity. Last is CEBECO III, an electric cooperative which eventually sells the electricity purchased from Petitioner to CCC and BEC.

Issue:

Whether or not Petitioner is entitled to a VAT refund.

Ruling:

Yes. Petitioner is still entitled to a refund. However, the Court disallowed the claim in connection to sales to CEBECO III. The Court ruled that since CEBECO III is neither a PEZA-registered company, nor a BOI-registered 100% export company, it should not be subject to zero-rating, despite sales CEBECO III being merely pass-through sales to entities actually entitled to VAT zero-rating.

Commissioner of Internal Revenue v. Philex Mining Corporation
CTA EB No. 1493, June 01, 2017

Facts:
Philex filed its Quarterly VAT returns for the 2nd and 3rd Quarters of 2012. On 2013, Philex filed an administrative claim for refund or for tax credit with the One-Stop Shop InterAgency Tax Credit and Duty Drawback Center of the Department of Finance ("DOF-OSS") for its alleged excess and unutilized input VAT for the 2nd and 3rd quarters of 2012. Due to the inaction of the petitioner, Philex filed for a petition for review. The court partially grants the petition and ordered the petitioner BIR to refund or to issue a tax credit certificate in favor of Philex for its unutilized excess input VAT for the 2nd and 3rd quarters of 2012 attributable to its zero-rated receipts.

Issue:
Whether or not Philex is entitled to a VAT refund.

Ruling:

The court said that there is nothing in the law and jurisprudence, which compels the taxpayer to submit it subsidiary sales journal and the subsidiary purchase journal in a claim for credit or refund of excess input. Accordingly the court said, that the nature of the tax exemption is strictly construed against the tax payer, the rule is not absolute, especially if the taxpayer who seeks for refund can justify the claim by words too plain to be mistaken and too categorical to be misinterpreted. Here, Philex has sufficiently provide sales invoices based on its transactions. Accordingly, the court said that sales invoice is necessary to substantiate the actual amount or quantity of good sold and their selling price, and taken collectively are the best means to prove the input VAT payments. VAT invoice is the seller's best proof of the sale of goods or services to the buyer.

Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.
CTA EB No. 1397 June 07, 2017

Facts:
Petitioner BIR appeals the decision of the CTA Division in allowing a partial VAT refund of Respondent CE Luzon. The BIR alleges that CE Luzon failed to submit complete documents, and that the Court has no jurisdiction as CE Luzon allegedly violated the 120+30 day requirement under the tax code.

Issue:
Whether or not CE Luzon is entitled to VAT refund.

Ruling:
Yes. The Court En Banc clarified the rules for VAT refund. It ruled that upon filing its administrative claim for VAT refund, the taxpayer has thirty (30) days to submit complete documents. The 120 days commences from the submission of further documents or the expiration of the 30 day period. The exceptions to this are when the taxpayer manifests that it will no longer submit any further documents upon filing of the claim, or when the BIR, during the course of the examination, requires the taxpayer to submit further evidence. In the former case, the 120 days commences from the filing of the claim. As to the latter, the 120 days commences from the submission of the documents.

CBK Power Company Limited v. Commissioner of Internal Revenue
CTA Case No. 7887, June 07, 2017

Facts:

Petitioner claims for a refund of its unitilized input VAT in relation to its zero-rated sales. Petitioner is in the business of generating and selling power derived from renewable sources.

Issue:

Whether or not Petitioner is entitled to a refund of its unutilized input VAT in relation to its zero-rated sales.

Ruling:

No. Although Petitioner is, indeed, entitled to VAT zero rating in its sales, its purchases are also subject to VAT zero rating. The Court held that petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, as well as the whole process of exploring and developing renewable energy sources up to its conversion into power, are also zero-rated pursuant to Section 15 of Renewable Energy Act. Thus, applying the *Coral Bay* Supreme Court decision, the recourse of Petitioner should be with its suppliers and not with the government.

Island Quarry and Aggregates Corporation v. Commissioner of Internal Revenue
CTA Case No. 8710 June 21, 2017

Facts:

On January 18,2000, Island received a FAN and FLD finding it liable for deficiency taxes, including surcharges, interests and penalties. Island Quarry protested the assessment and it later on received a letter informing that a reinvestigation of its tax liabilities had already been assigned to designated Revenue Officers. On November 6, 2001, Island Quarry received a collection letter demanding payment within 10 days from notice. On September 16, 2002, BIR issued a Warrant of Distraint and/or Levy for the satisfaction of Island Quarry's deficiency withholding taxes. On September 10, 2013, Island Quarry received a Final Notice Before Seizure for the payment of the deficiency tax assessments. Island Quarry then brought the matter before the Court, alleging, among others, that the right to collect the taxes have already prescribed.

Issue:

Whether or not the right to collect has prescribed.

Ruling:

Yes. The Court found that after requesting for a reinvestigation in the protest to the FLD, the BIR issued a collection notice a year after. This, effectively, is the conclusion of the request for reinvestigation of the Petitioner. Thus, from the issuance of such, the BIR had three (3) years (under the old tax code) to collect the deficiency taxes. However, it did not do so, thus the right to collect has prescribed.

GIC Private Limited v. Commissioner of Internal Revenue
CTA Case No. 8965 June 22, 2017

Facts:

GIC Private Limited is a non-resident foreign corporation, wholly owned by the Government of Singapore. GIC filed with the BIR an administrative claim for refund in the amount of around P127.7 M representing the FWT withheld on the interest income on its investment in T-Bonds. Due to the inaction of BIR to resolve its administrative claim for refund, GIC flied the instant Petition for Review well within the two-year prescriptive period to file a judicial claim for refund.

Issue:

Whether or not Petitioner is entitled to a refund of the FWT.

Ruling:

Yes. GIC filed with the BIR an administrative claim for refund in the amount of around P127.7 M representing the FWT withheld on the interest income on its investment in T-Bonds. Due to the inaction of BIR to resolve its administrative claim for refund, GIC flied the instant Petition for Review well within the two-year prescriptive period to file a judicial claim for refund.

Salcedo Ristorante Italiano v. Commissioner of Internal Revenue
CTA Case No. 8880 June 22, 2017

Facts:

Petitioner is being assessed for various deficiency taxes, among which are deficiency WTC, EWT, VAT, and Income tax for the taxable year 2008. The FLD/FAN was issued on May 8, 2013. During the period of assessment, Petitioner changed its address without notifying the BIR. The BIR was only able to verify the change on February 2012. Petitoner eventually questioned the propriety of the assessment before the CTA, raising, among others, the issue of prescription.

Issue:

Whether or not the right to assess has already prescribed.

Ruling:

Yes, except regarding income tax. The CTA ruled that, under Sec. 223 of the NIRC, the prescriptive period of the right to assess Petitioner for deficiency taxes was tolled on February 2012, the time when the BIR realized petitioner changed its address without notification. Thus, the right to assess petitioner for deficiency VAT, EWT, and WTC has already prescribed. However, with regard to income tax, the filing of the return was done on April 2009. The right to assess prescribes on April 2012. Thus, the income tax component of the assessment has yet to prescribe.

San Miguel Brewery v. Commissioner of Internal Revenue
CTA Case No. 8748, June 09, 2017

Facts:

San Miguel Brewery, Inc. is seeking the refund or issuance of tax credit certificate in the amount of P761,067,629.80, representing its erroneously, excessively and/or illegally collected and overpaid excise taxes on "San Mig Light" during the period from January 1, 2012 up to December 31, 2012. One of the beer products being manufactured by petitioner San Miguel Brewery, Inc., and previously by its parent company, San Miguel Corporation, is "San Mig Light". The excise taxes for the product was paid under the assessment that the same is a variant of an existing brand. However, San Miguel contends that “San Mig Light” is a new brand.

Issues:

Whether or not the brand “San Mig Light” is a New brand.

Ruling:

No. The Court pointed out the the CTA En Banc has already settled the issue that the brand “San Mig Light” is a new brand and not a variant, and is thus entitled to a lower tax rate.

(Note: the ponente of the decision is Justice Casanova. Beyond invoking the CTA En Banc, there is no further elaboration.)

AGM Packaging Systems v. Commissioner of Internal Revenue
CTA Case No. 8947, June 09, 2017

Facts:

Petitioner is a PEZA-registered entity, with the business of manufacturing wooden pallets as its primary business activity as stated in its registration agreement with the PEZA. It was assessed with deficiency taxes in connection with its sales of wooden pallets, the manufacturing of which were subcontracted to its affiliate. CIR alleges that investigation revealed that petitioner, is actually engaged in the trading of wooden pallets manufactured and supplied by AGP Ventures Enterprises, Inc., an affiliate company in Sta. Rosa, Laguna, contrary to its registration as an ECOZONE export enterprise engaged in the manufacturing of wooden pallets, and therefore AMC is not qualified to the ITH or to the 5% preferential tax on gross income therefrom, and subsequently assessed under the normal income tax rate of 30% pursuant to Section 28 of the Tax Code.

Issue:

Whether or not subcontracting the manufacture of wooden pallets is covered by the PEZA registration agreement.

Ruling:

No. Petitioner, as approved by PEZA, sub-contracted the services of AGM Ventures Enterprises, Inc. for the manufacture of wooden pallets. However, examination of the Letters of Authority discloses that the sub-contracting was approved only on July 13, 2010, which was valid for a period of 6 months and subject to renewal for another 6 months. Apparently, the subcontracting in 2009 is not in accord with its registration agreement with PEZA. Therefore, the assessments based on this ground is valid. AMA's activity is outside the registered activity with the PEZA. Accordingly, it is not entitled to the fiscal incentives provided for under RA No. 7916. More so, it is not exempt from any national internal revenue taxes .

People of the Philippines v. Talaue, et al.
CTA Case No. 9072, May 19, 2017

Facts:

Talaue, et al were charged of violating Section 3601 in relation to Section 101(k) of the Tariff and Customs Code (TCCP) for importing a total of 28,05 bags of wheat flour (subject shipments) consigned to Rubills International for the account of Fil House Enterprises (Fil Haus) from China. Deputy Collector for Operations, Atty. Langcay said that alert orders were issued against the subject shipments and were spot-checked by the officers-on-case who found that the shipments yielded absolutely unmarked sacks of flour, entries not properly endorsed by the PCCI, and undervalued and underweight. However, Prosecutor offered merely photocopies of documentary exhibits except for the Complaint-Affidavit (Exhibit A) with the Approval of the BOC Commissioner Morales (Exhibit B).

Issue:

Whether or not Talaue, et al. are guilty of violating Section 3601 of the Tariff and Customs Code.

Ruling:

No. The Court did not consider photocopies of bills of ladings, alert orders, and discrepancy report forms because under the rules, when the subject of inquiry is the contents of a document, the original document itself is the only one admissible(ROC, Sec.3, Rule 130). Only Exhibit A and B were admitted. From the totality of the evidence presented, the prosecution was not able to prove conspiracy in this case. The Court cannot consider the bills of lading as evidence of participation of all the accused in committing the crime charged, and there was no proof either in the testimonial or in the documentary evidence presented by the plaintiff showing the accused, as conspirators, had performed some overt act, direct or indirect contribution to the execution of the crime charged.

<u>Siemens First Balfour Joint Venture v. Commissioner of Internal Revenue</u>
<u>CTA Case No. 8884, June 23, 2017</u>

Facts:

Petitioner Siemens-First Balfour entered into a Joint Venture (JV) agreement with Consortium Agreement dated June 17, 2008 entered in to and between Siemens and First Balfour to undertake the design and construction of QC-Road 5 Sewage Treatment Plant and Facilities. A Letter of Authority (LOA) dated April 26, 2012 was issued. Thereafter, a Formal Letter of Demand dated January 27, 2014 was received, assessing petitioner JV for deficiency income tax and VAT for calendar year 2010, in the total amount of Php41,891,167.64. Petitioners argue that the FAN is void since no Preliminary Assessment Notice (PAN) was received; and that the situation of petitioner JV is not one of the exceptions wherein a PAN is not required. They also state that they were not furnished an original copy of the Final Decision dated May 9, 20 14. They were only able to secure a photocopy of such Final Decision on August 1, 2014.

Issue:

Whether or not the assessment was valid.

Ruling:

The assessments are void for failure to comply with due process; and have not become final, executory, and demandable. The due process requirements in the issuance of a deficiency tax assessment are specifically enumerated. Thus, Section 228 of the NIRC which states that "The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." In the instant case, petitioners' witness testified that they did not receive any PAN prior to the FLD. Considering the testimony that petitioner JV did not receive any PAN prior to its receipt of the FLD, respondent should have proved that said PAN was duly mailed and actually received by petitioner JV.

Galang, et al. v. Commissioner of Internal Revenue
CTA Case No. 9081, June 08, 2017

Facts:

Petitioners are employees of Asia Development Bank. They are challenging the validity of RMC 31-2013 before the RTC. The said RMC explicitly imposes income tax liability on ADB employees. Petitioners contend that under the ADB charter, their compensation income is not subject to income tax. The BIR, on the other hand, contends that the concurrence to the charter came with a reservation from both then President Ferdinand Marcos and the Philippine Senate, preserving the right to tax the employees of ADB. The RTC ruled in favor of the Petitioners. Petitioners are now claiming a refund of their income taxes.

Issue:

Whether or not Petitioners are entitled to a refund.

Ruling:

Yes. Although the Court ruled that the power to tax Petitioners was reserved by the Philippine Government, Petitioners should not be prejudiced by a retroactive application of the RMC. Under the tax code, rulings and issuances of the Commissioner have no retroactive application if prejudicial to taxpayers. Since the RMC was issued on 2013, the previous taxes paid by Petitioners should not be covered, and were thus erroneously paid.

(Note: In the dissenting opinion of Justice Castañeda, he characterized RMCs as general interpretative rules, which merely implement the provisions of the tax code. It is nota new rule that implements new taxes. Thus, the refund should be denied.)

Commissioner of Internal Revenue v. Manulife Data Services
CTA EB No. 1437, June 07, 2017

Facts:

MDSI accumulated input VAT for 2011 from its domestic purchases of supplies and services as well as from purchase of capital goods which remained unutilized and is now the subject of the instant claim. It filed an administrative application for refund or the issuance of a TCC for its excess/unutilized input for 1st-4th Quarters of 2011. CIR denied the claim for refund. The CTA in Division granted the claim for refund of 4 out of 9 companies, and only in a reduced amount. CIR argues that CTA in Division erred in granting such claim.

Issue:

Whether or not Petitioners are entitled to a refund.

Ruling:

No. MDSI accumulated input VAT for 2011 from its domestic purchases of supplies and services as well as from purchase of capital goods which remained unutilized and is now the subject of the instant claim. It filed an administrative application for refund or the issuance of a TCC for its excess/unutilized input for 1st-4th Quarters of 2011. CIR denied the claim for refund. The CTA in Division granted the claim for refund of 4 out of 9 companies, and only in a reduced amount. CIR argues that CTA in Division erred in granting such claim.

Commissioner of Internal Revenue v. LBC Express, Inc.
CTA EB No. 1365, June 22, 2017

Facts:

LBC was assessed for several deficiency taxes. Among its alleged liabilities per assessment were compromise penalties. LBC filed for an abatement of compromise penalties and made a partial payment thereof. It was eventually able to avail of a tax amnesty. However, its application for abatement of penalties was eventually denied, and the balance thereof was being collected by the BIR. LBC brought the matter before the CTA. The Court in Division ruled for LBC.

Issue:

Whether or not LBC is liable for the balance of the compromise penalties.

Ruling:

No. The Court En Banc sustained the findings of the Division, that the liability being assessed are actually compromise penalties. As a rule, compromise penalties are agreed upon by the taxpayer and BIR, and thus may not be imposed against the will of the taxpayer. Thus, the alleged deficiency should be cancelled.

Commissioner of Internal Revenue v. Derek Arthur P. Ramsay
CTA EB No. 1413, June 22, 2017

Facts:

Respondent Ramsay was assessed with deficiency income and value added taxes. Ramsay, however, claims that he was not served any assessment notices with the FLD, and that the FLD did not state a definite date of demand. Upon bringing the matter to the CTA, the Court in Division voided the assessment for failure to afford the taxpayer his right to due process. The BIR appealed the same to the Court En Banc.

Issue:

Whether or not he assessment is valid.

Ruling:

No. The Court En Banc sustained the findings of the Division. The failure to serve the taxpayer the assessment notices with the FLD is a violation of a taxpayer's right to due process. Under the law and the rules, a taxpayer must be informed of the facts and the law on which the assessment is based. The service of an assessment notice is part of keeping that mandate. Further, the failure to indicate the due date of the demand for payment is also fatal to the assessment. Thus, the findings of the Court in Division must be sustained.

Acer Philippines Inc. v. Commissioner of Internal Revenue
CTA Case No. 8372, June 23, 2017

Facts:

Acer sought for reconsideration the previous decision of the CTA En Banc, sustaining portions of its deficiency VAT liabilities. Acer raised the issue of prescription of the right to assess, since the assessment covers the taxable year 2005, and the FLD was issued on January 2009. Further, the right to collect the same has also prescribed.

Issue:

Whether or not the right to assess and collect has prescribed.

Ruling:

As to the first three quarters of 2005, the right to assess the same has prescribed. However, the right to assess the 4^{th} quarter deficiency VAT has not. The records show that the FLD was served to Acer prior to the expiration of the 3-year prescriptive period. As to the right to collect, the Court considered the Answer of the BIR to the Petition for Review, where a prayer that Acer be made to pay for the deficiency VAT is included, was considered by the Court as a means to collect. Having filed the Answer prior to the expiration of the right to collect, the said right is deemed not to have prescribed.

Lifebank Foundation Inc. v. Commissioner of Internal Revenue
CTA Case No. 8836, June 23, 2017

Facts:

Lifebank was assessed for deficiency taxes. It first received a PAN, then a FLD/FAN. Subsequently, a Memorandum of Assignment was issued changing the assigned revenue officers. Thereafter, a final notice was issued against Lifebank. Lifebank then filed a Petition for Review thirty days from the Final Notice.

Issue:

Whether or not the Court has jurisdiction over the Petition for Review.

Ruling:

No. Since Lifebank was able to receive a FLD/FAN, it should have filed a protest against the same. The eventual issuance of a Memorandum of Assignment did not have an effect of cancelling the previously issued FLD/FAN. Thus, the Court is without jurisdiction to hear the Petitioner.

Further, an argument was made that the FLD was void for being issued before the Reply to PAN was filed. The Court ruled, however, that it is the date of receipt that should be considered. Since the FLD/FAN was received after the Reply was filed, there was no violation of due process. (Note: the Reply to PAN was filed beyond the 15 day period rom receipt. Further, the date of issuance of the FLD/FAN was on a date beyond fifteen days from the receipt of the taxpayer of the PAN.)

Commissioner of Internal Revenue v. Q-Clean Living Phils. Corp.
CTA EB No. 1435, June 23, 2017

Facts:

The BIR appeals the findings of the CTA in Division, specifically the ruling that the protest to the FLD/FAN was filed on time. Since the FLD/FAN was served by registered mail, there is a presumption that the same was received within a reasonable amount of time. Thus, when the taxpayer filed its protest 3 months after the same was mailed, it should be considered as being filed out of time. Further, the BIR contends that the Petition for Review was filed out of time, being received by the Court beyond the 30 day period from receipt of the FDDA.

Issue:

Whether or not the Court has jurisdiction over the Petition for Review.

Ruling:

Yes. AS to the protest, it is incumbent upon the BIR to prove that the taxpayer received the FLD/FAN within thirty days from mailing the same. The BIR failed to do so. On the other hand, the taxpayer was able to prove that it received the FLD/FAN subsequently, and filed its protest 30 days thereafter.

As to the Petition for Review, although the Court received the Petition beyond 30 days from the taxpayer's receipt of the FDDA, it was proved that the Petition was actually filed by registered mail within the said period. The Court thus acquired jurisdiction.

People of the Philippines v. Neil S. Bautista et al.
CTA Crim Case No. O-394 June 28, 2017

Facts:

Accused are 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 they were not given a chance to refute the assessment as they were not adequately informed of the existence of the assessment.

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, FLD and FAN. 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. Although there was a registry receipt that was offered in evidence, the same does not indicate if the mail matter corresponded to a PAN, FLD, or FAN. Further, the receipent in the registry receipt was not duly proven to be connected to the accused. Thus, having failed to serve a PAN and FLD/FAN, there is no tax liability, and therefore, there can be no violation of Sec. 255 of the tax code.

Ritegroup Inc. v. Commissioner of Internal Revenue
CTA Case No. 8651 June 29, 2017

Facts:

Both taxpayer and BIR moved for reconsideration of the CTA Division's decision partially granting the Petition for Review of an assessment for deficiency taxes. Among the issues raised are the undeclared expenses of the taxpayer, and the documentary proof submitted by the taxpayer to support its position

Issue:

Whether or not the assessment should be sustained.

Ruling:

No. The Court properly ruled on the issues. As to the undeclared expenses, it was shown that the taxpayer did not claim the said undeclared expenses as deductions from its taxable income, thus, it is not required to substantiate the same. Further, unless the BIR can prove that the non-declaration of expenses resulted to income, there can be no finding of undeclared income therefrom.

AS to the secondary evidence submitted by the taxpayer, the Court found that a portion of the same were substantiated by other documents, thus it was proper to take the other pieces of evidence into consideration.

As to the 50% rule under RMC 23-00, it applies to the entirety of the claimed expenses, and not only to the amount which is not substantiated.

The Court also allowed the submission of further evidence, which actually are merely more readable copies of pieces of evidence previously offered.