Significant Court of Tax Appeals
August 2018

The taxpayer can elevate a WDL to the CTA when it questions the validity of the BIR's right to collect.

In this case, Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), Preliminary Collection Letter (PCL), Final Notice Before Seizure (FNBS) and WDL were issued against a taxpayer. The taxpayer elevated the case to the CTA questioning the validity of the WDL. The CIR argues that the Court has no jurisdiction since the assessment has already become final and executory and contended that the Petition assailing the validity of the WDL was filed out of time.

In ruling for the taxpayer, the Court held that what is being questioned in this case is the validity of the WDL based on the allegation that it stems from a void assessment (prescription) and not the decision of respondent on a disputed assessment. Hence the period to appeal is reckoned from the time the taxpayer receives the WDL (*MIFFI Logistics Co, Inc. v. CIR, CTA Case No. 9122, August 1, 2018).*

Note: **A taxpayer may elevate to the CTA not only a Final Decision on Disputed Assessment (FDDA) but also any of the following collection letters: Preliminary Collection Letter, Final Notice Before Seizure, Warrant of Distraint and Levy, Writ of Garnishment. The proper time to elevate a particular collection letter, as enumerated above, depends on the circumstances of every case. Thus, taxpayers must seek professional help once it receives any of these collection letters.**

The CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

A taxpayer received a Letter of Authority (LOA) authorizing Revenue Officers to examine its books of account and other accounting records. Thereafter, the OIC-Chief of BIR Large Taxpayers Service issued a Memorandum of Assignment referring the continuation of the audit/investigation to another group of examiners.

The Court found the deficiency tax assessments to be intrinsically void. The invalidity of the deficiency tax assessments springs from the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts. While the lack of authority of the revenue officers to conduct the audit was not specifically raised as an issue, the Court said that it is not precluded from considering the same given that a void assessment bears no fruit. In this case, the revenue officers named under the issued LOA were different from those who actually examined the taxpayer's books of accounts and other accounting records. This renders the LOA and the assessment null and void. *(Orient Overseas Container Line v. CIR, CTA Case No. 9179, August 2, 2018).*

Failure to identify, mark and formally offer in evidence the administrative claim for refund is fatal.

The Court denied a claim for refund for failure of the taxpayer to observe procedural due process. Here, the administrative claims that were allegedly filed were not identified, marked and formally offered. Thus, the Court ruled that the taxpayers failed to prove that their administrative claims were filed with the BIR within the two-year period. According to the Court, taxpayers must prove not only their entitlement to a refund, but also their compliance with the procedural due process as nonobservance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of their claims. *(Shenilyn Abalos et. al v. CIR, CTA Case No. 9089, August 10, 2018).*

Note: **In Justice Manahan's dissenting opinion, it was discussed that the rule that no evidence shall be considered if the same has not been formally offered in evidence admits of certain exceptions such as when the evidence has been duly identified in the Judicial Affidavit of the witness and the evidence was duly included as part of the records of the case. This exception is availing in the present case since the fact of the filing of administrative claims for refund was duly identified by a witness in his Judicial Affidavit which was formally offered in evidence.**

The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.

In connection with a taxpayer's on-going tax investigation, several Waivers of Defense of Prescription under the Statute of Limitations of the NIRC were executed. The CTA found the 3rd Waiver defective and did not validly extend the prescriptive period to assess the deficiency taxes. The said waiver does not indicate the fact of receipt by the taxpayer in violation of the provisions of RMO No. 20-90 which requires that "the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement." (*Megabucks Merchandising Corp. v. CIR, CTA Case No. 9345; August 17, 2018).*

Note: **RMO 20-90 issued on April 4, 1990 and RDAO 5-01 issued on August 2, 2001 lay down the procedure for the execution of the waiver. In several cases[1]decided by the Supreme Court, it has been held that strict compliance with the procedures laid down under RMO 20-90 is necessary. However, in the subsequent case of Next Mobile, Inc., the Supreme Court took the case as an exception to the general rule and declared the Waivers valid even with some departures on compliance procedures under RMO 20-90, due to the peculiar circumstances in that case, where both BIR and the taxpayer apparently contributed to the defects in the waivers.**
The more recent case of Commissioner of Internal Revenue v. Philippine Daily Inquirer (G.R. No. 213943) seems to have overruled the doctrine laid down in the Next Mobile case, where the High Court held that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by

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[1]See GR 178087, May 5 2010, GR. No. 162852, December 4, 2004, and GR. No. 170257, September 7, 2011, respectively.

the BIR itself. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.

The imposition of the 12% VAT twice on the same transaction as a consequence of issuing both VAT invoice and official receipt to cover the same transaction is without basis.

A taxpayer primarily engaged in the sale of goods, was assessed by the BIR for deficiency VAT. The taxpayer issues both sales invoices and official receipts on its sale of goods. In its defense, the taxpayer argues that its sales have been previously declared as sales in VAT returns and that it cannot be compelled to declare the very same transactions and pay the VAT on the same transactions twice: first in the VAT sales invoice and then in the VAT official receipts.

The Court stressed that under Section 113(A) of the NIRC, as amended, a VAT invoice is issued for every sale, barter or exchange of goods or properties. Hence, the BIR's basis for the assessment should properly be the VAT invoices issued by the taxpayer and not VAT Official Receipts. Nowhere in Section 113(D) of the Tax Code does the law allow the imposition of the 12% VAT twice on the same transaction as a consequence to the taxpayer who issued both VAT invoice and official receipt to cover the same transaction. To allow this item of assessment to prosper would be to sanction collecting anew VAT on transactions for which the taxes were proven to have already been declared and paid. That would be tantamount to unjust enrichment which is not permitted by law. *(Process Machinery Co. v. CIR, CTA Case No. 9217, August 17, 2018).*

All disputes and claims solely between government agencies and offices, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

Here, the CIR argues that the Court has no jurisdiction over the case since petitioner is a government-owned and controlled corporation; hence, it should have appealed the FDDA to the Department of Justice.
The Court ruled that all disputes and claims solely between government agencies and offices, including government-owned or controlled· corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved. As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction.

In this case, petitioner PSALM is a GOCC, while respondent represents the Bureau of Internal Revenue, which is a government agency. Clearly, this involves a dispute solely between a government corporation and another government agency, as such this CTA is bereft of jurisdiction to take cognizance of the present case. *(PSALM v. CIR, CTA Case No. 9235, August 28, 2018).*

Postal office certifications are considered prima facie proof that the FLD/FANs were delivered to the addressees.

The Court ruled that there is no disputed assessment appealable to the Court because the FLD/ FANs have already attained finality long before the FDDA was issued.

The documents to prove completeness of service of the FAN will vary depending upon the method used, thus:

a. If made by personal service, proof of service shall consist of a written admission of the party served OR official return of the server OR the affidavit of the party serving, containing a full statement of the date, place and manner of service;

b. If made by ordinary mail, proof of service shall consist of the affidavit of the person mailing of the facts showing compliance with Section 7 of Rule 131 of the Rules of Court;

c. If made by registered mail, proof shall be made by such affidavit and the registry receipt.

Here, the evidence presented by the BIR specifically the Registry Receipt No. 922821, the Judicial Affidavit of a witness and the Certification issued by the Head of the Records Unit of the Postmaster, Central Office, Manila are more than sufficient to prove the taxpayer's receipt of the FAN. Postal office certifications are considered prima facie proof that the FAN was delivered to the addressees. *(UPSI Property Holdings, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8860, August 22, 2018).*