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DU-BALADAD AND ASSOCIATES

Significant Court of Tax Appeals Decisions
June 2018

Letter issued by the Bureau of Internal Revenue (BIR) categorically declaring that the taxpayer's failure to submit supporting documents in connection with its request for reinvestigation constitutes the final decision of the Commissioner of Internal Revenue (CIR) that is appealable to the CTA.

The taxpayer received a Formal Letter of Demand (FLD) from the BIR which it timely protested. After filing the protest letter, it then received a letter dated January 11, 2012 from the BIR stating that since it failed to submit supporting documents, the assessment has become final and executory. Thereafter, the BIR issued a Warrant of Distraint and/or Levy and later, a Demand Letter dated September 17, 2012, stating that the taxpayer's internal revenue tax liabilities remains unpaid and must be paid immediately. Thus, on October 18, 2012, the taxpayer filed a Petition for Review before the CTA.

The CTA dismissed the case for lack of jurisdiction ruling that the July 11 letter constitutes the final decision of the CIR that is appealable to the CTA. Considering that the taxpayer failed to appeal the January 11 letter to the CTA within thirty (30) days from its receipt, the Petition was belatedly filed, and the CTA did not acquire jurisdiction over the case. *(Solid-One Mills, Phils. Inc. v. Commissioner of Internal Revenue, CTA EB No. 1562 (CTA Case No. 8559), 01 June 2018)*.

Dissent of Justice Manahan: **The Demand Letter dated September 17, 2012 should be the one considered final decision appealable to the CTA. In determining a final decision appealable to the CTA, the unifying rule is that there must be finality in the tenor of the language which should be communicated unequivocally to the taxpayer. The September 17 letter states in part "otherwise, we shall be constrained to enforce collection through administrative remedies without further notice". In contrast, pertinent part of the January 11 letter states "In view of the foregoing, your case will be forwarded to the Collection Division, for the enforcement of collection in accordance with law." The January 11 letter is not a final decision as it did not contain any definitive call for payment but rather a general threat to refer the case to the Collection Division for enforcement of collection.**

Note: **The differing opinion of the justices creates confusion to taxpayers. When should a taxpayer elevate a case to the CTA? In this case, the wordings of the January 11 and the September 7 letters are the same. They call for a demand to pay. Whether the January 11 letter is just a threat is a matter of interpretation. But it is clear that there is a demand to pay and collection proceedings will proceed "without further notice".**

Letter of Authority (LOA) cannot be dispensed with just because none of the financial books or records kept by the taxpayer were examined.

Applying the Supreme Court ruling in the Medicard case (G.R. No. 222743), the CTA reiterated that after an LN has been served to a taxpayer, an LOA is still required for further assessment and examination. Without such an LOA, the resulting assessment or examination is a nullity. *(Phjlippine International Air Terminals Co. Inc. v. Commissioner of Internal Revenue, CTA Case No. 9181, 06 June 2018).*

The presumption of falsity of returns cannot arise by mere assertion that the BIR imposed surcharge against a taxpayer.

The CTA ruled that the presumption of falsity of returns cannot arise by mere assertion that the BIR imposed surcharge against a taxpayer. There is a prima facie evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% of that declared in the returns constitute substantial underdeclaration. In this case, there is no showing that the taxpayer has substantially underdeclared its sales, receipt or income. Hence, in the absence of proof of substantially underdeclared sales, receipt or income, the presumption of falsity of returns cannot be applied. *(Commissioner of Internal Revenue v. Ludo & Luym Corporation, CTA EB NO. 1559 (CTA Case No. 8613), 08 June 2018).*

Note: **There are some CTA decisions that distinguishes between a false and fraudulent return when it comes to the intent of the taxpayer. In those decisions, the court ruled that there is no need to prove intent to defraud for a return to be considered false.**

In an assessment, it is required that the BIR not only issue the Preliminary Assessment Notice (PAN), and the Formal Assessment Notice (FAN) /Formal Letter of Demand (FLD) in writing to taxpayers, but also that the same be received by the latter.

The BIR argued that due process requirements were observed as the PAN and the FAN were served to taxpayer through registered mail. However, while it appears that the BIR did indeed send the notices to taxpayer via registered mail, there is no proof that the taxpayer actually received them. As borne out by the record of the case, the taxpayer did not receive the PAN and the FAN as the notices that the BIR sent were returned to sender. Thus, the assessment is null and void for lack of due process. *(Commissioner of Internal Revenue v. AA Commercial, CTA EB NO. 1476 (CTA CASE NO. 8290), 11 June 2018).*

In cases where both taxpayer and the BIR caused the infirmities in the waivers, the validity of the waivers must be upheld.

Citing the ruling in the Next Mobile, Inc. case (G.R. No. 212825), the court upheld the validity of the waivers despite the defects, due to the fact that both the taxpayer and the BIR caused the infirmities in the two waivers, RMO No. 20-09 requires that the fact of receipt by the taxpayer of his/her file copy should be indicated in the original copy. However, BIR delivered the waivers to a wrong address and to another taxpayer. On the other hand, it was the taxpayer who prepared the two waivers wherein the phrase "All Internal Tax Liabilities for the calendar year ending 2011" was indicated, instead of specifying the kind and amount of tax due as required by RMO No. 20-09. Clearly, this infirmity is attributable to taxpayer. *(Trinity Franchising and Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 9177, June 13, 2018).*

Note: **In the Next Mobile, Inc. case, the Supreme 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 the peculiar circumstances in that case, where both BIR and the taxpayer apparently contributed to the defects in the waivers, the Supreme Court took the case as an exception to the general rule and declared the Waivers valid.**

In the subsequent case of Commissioner of Internal Revenue v. Philippine Daily Inquirer (G.R. No. 213943), the Supreme 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 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 CIR's power to interpret tax laws falls under the exclusive appellate jurisdiction of the CTA under "other matters".

The propriety or correctness of the CIR's interpretation of tax laws, subject to review by the Secretary of Finance being the head of the department which oversees the BIR, falls under the exclusive appellate jurisdiction of the CTA under "other matters" arising under the Tax Code or other laws or portions thereof administered by the BIR. *(Petron Corporation v. Commissioner of Internal Revenue, et. al., CTA EB NO. 1499 (CTA Case No. 8544), June 4, 2018).*

Warrant of Distraint and Levy (WDL) constitutes an act of the CIR on "other matters" arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue which may be the subject of an appropriate appeal before the CTA.

The BIR issued FAN which the taxpayer timely protested. Thereafter, on October 23, 2012, the BIR issued a WDL on which the taxpayer likewise timely protested. Upon receipt of the WDL, the taxpayer once again appealed for reinvestigation but the BIR issued a letter on November 25, 2013 denying the request for reinvestigation with a statement that the same constitutes a final decision on the matter. Thus, the taxpayer filed an appeal to the CTA on December 10, 2013.

The BIR argued that the appeal was belatedly filed since the 30-day period should have commenced on the date of receipt of the WDL, and not on the receipt of the November 25 BIR letter.

The CTA Third Division ruled that the appeal was timely filed where the court considered the letter denying the request for reinvestigation as the reckoning point to file an appeal with the CTA. The CTA En Banc however reversed the Decision of the CTA Third Division and ruled that the receipt of the WDL must be the reckoning period to file the Petition for Review. The CTA En Banc ruled that if one would consider the subsequent replies of the BIR as the reckoning point of the jurisdictional period to file an appeal, then it would be in effect a never ending question as to which of the subsequent replies would be the reckoning period. It would also be a means for the taxpayer to extend a decision that is, in the eyes of the law, already considered to have attained finality, which in this case, is the WDL. *(Commissioner of Internal Revenue v. Mannasoft Technology Corporation, CTA EB Case No. 1637 (CTA Case No. 8745), June 19, 2018).*

Note: **This is one of the rare cases where the CTA En Banc reverses a decision of the CTA Division. In gist, when a WDL is received, the remedy is an appeal to the CTA. You cannot file a request for reinvestigation from a WDL.**

There is no logical relationship between a negative cash balance and treating the same as sales subject to tax.

The BIR issued an assessment against the taxpayer alleging, among others, that it had undeclared sales based on a negative cash balance found during the tax audit. The taxpayer appealed the case to the CTA where the court ruled that there is no logical relationship between a negative cash balance and treating the same as sales subject to tax. When a cash account shows a negative balance, it only means that there had been more cash disbursements as compared to cash receipts for a certain period. Cash

disbursements are made to pay off purchases and other expenditures, while cash is received when sales, among others, have been made. *(Parity Packaging Corporation v. Commissioner of Internal Revenue, CTA Case No. 9318; June 20, 2018).*

If pleadings or other documents are filed via registered mail, the date of mailing shall be considered as the date of filing.

If pleadings or other documents are filed via registered mail, then the date of mailing shall be considered as the date of filing. Since Petitioner received the FAN on April 18, 2013, it had until May 20, 2013 to file a protest (May 18, 2013 fell on a Saturday). Petitioner's Protest, which was filed via registered mail on May 17, 2013, was timely filed. It is inconsequential that the same was actually received by the BIR on July 4, 2013.

Further, the court found that the FAN did not contain an unequivocal demand for payment at a certain date. An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. In this case, there is no indicia of any definite period or a date certain within which Petitioner must pay the alleged deficiency assessment. The due dates on the enclosed assessment notices were left blank or unaccomplished. The subject FAN cannot be deemed a valid formal assessment notice absent a specific date or period within which the alleged tax liabilities must be settled or paid. *(Lorenzo Shipping Corporation v. Commissioner of Internal Revenue, CTA Case No. 8694; June 28, 2018).*

While a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption.

Taxpayer received PAN and FLD which it timely protested. It then received a Preliminary Collection Letter (PCL), despite not having received a Final Decision on Disputed Assessment (FDDA) from the BIR. Upon personal inquiry with the BIR, the taxpayer discovered that an FDDA was issued but the same was served through registered mail at the taxpayer's old address. Thus, to avoid further delay, the taxpayer personally claimed the FDDA. It also received the Final Notice Before Seizure (FNBS) on the same day. The taxpayer then filed its Petition for Review with the CTA within thirty (30) days from its actual receipt of the FDDA.

The CTA ruled that the Petition was timely filed having been filed within thirty (30) days from taxpayer's actual receipt of the FDDA. While a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption. The facts to be proven to raise this presumption are: 1) the letter was properly addressed with postage prepaid; and 2) that it was mailed. Here, the letter was not properly addressed to the

taxpayer's correct and registered principal office. As such, there can be no presumption that the taxpayer duly received the FDDA. Consequently, the taxpayer had 30 days from the actual receipt of the FDDA to file appeal to the CTA. *(One World Connections, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8820; June 21, 2018).*

Note: **Taxpayers must be careful when to personally receive a copy of a document that was mailed by the BIR as it can trigger the counting of the 30 day period of appeal to the CTA.**

As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.

Taxpayer argued that the FAN issued by the BIR is invalid since it was issued on the same day it filed its protest to the PAN. Further, it maintained that its right to due process was violated when the BIR blatantly disregarded the merits of its reply to the PAN which is further highlighted by the fact that the allegations contained in the PAN and the FAN were not only similar but identical, only differing in interest and surcharges; thus, effectively depriving it of the opportunity to be heard.

The CTA ruled that so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with. In this case, the taxpayer was afforded the opportunity to respond to the PAN and eventually protest the FAN. The difference in the BIR's appreciation of the taxpayer's reply which led to the assessment of the taxpayer's deficiency taxes is not violative of due process. *(One World Connections, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8820; June 21, 2018).*

Note: **Under RMO No. 26-2016, protest against a PAN is optional, not mandatory. FLD/FAN shall be issued fifteen (15) days from date of receipt by the taxpayer of the PAN, whether the same was protested or not. Note further that under RR 18-2013, if the taxpayer responds within fifteen (15) days from date of receipt of the PAN, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response.**