Significant Court of Tax Appeals Decisions
March 2018

A taxpayer is allowed to pay an assessed deficiency tax and to subsequently file a claim for refund.
(CTA Case No. 9337)

The taxpayer was assessed DST for its intercompany transactions, based on the Filinvest Case and RMC 48-2011. Maybe, to avoid accumulation of deficiency and delinquency interest in case of an adverse decision, the taxpayer opted to pay the amount assessed in the PAN and subsequently file a claim for refund. The court ruled that this is a remedy that may be availed of by a taxpayer.

Note: **But what if a case has already been filed in court and a taxpayer decides to pay, instead, just to arrest the accumulation of interest in the event of an adverse decision? Can he amend his petition for cancellation of an assessment to a claim for refund? The court in another case, ruled that the taxpayer can amend his petition from cancellation of an assessment to a claim for refund. A substantial amendment to a pleading is allowed provided that leave of court is obtained and intent to delay is absent on the part of the movant. If the original Petition for Review prayed for the cancellation of the disputed assessment, that relief according to the court is inextricably interwoven with a prayer for refund in an Amended Petition for Review.** ***(CTA EB 1515)***

Also, the court ruled that the Supreme Court's (SC) interpretation of a statute constitutes part of the law as of the date it was originally passed. *(CTA Case 9337)*

The Decision of the SC in the Filinvest case, which was issued in 2011, may be applied to advances made to the taxpayer in 2010 without violating the principle of non-retroactivity of laws and rulings. The SC's interpretation of a statute constitutes part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law it is only when a prior ruling of the SC finds itself later overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.

Dissent of Justice Manahan: **Since the SC decision is prejudicial to the taxpayer, it should not have been given retroactive effect. She applied the general interpretative rule doctrine laid down in the San Roque case.**

An assessment based on third-party matching without validation from third parties is void.
(*CTA EB 1572)*

The taxpayer was assessed with deficiency income tax and VAT from undeclared purchases. The BIR arrived at the assessment using third-party matching. The court ruled that the third-party matching was not verified in accordance with RMO No. 46-04.

Further, the court ruled that since what was undeclared were purchases, the BIR has the burden to prove that the same undeclared purchases resulted in deficiency taxes.

What does "verification" mean? Proper verification requires the execution and presentation of sworn statements from third-party informants to attest to the veracity of the schedules and data on which the assessment is based. If there is no verification, the reliability of such information is questionable. Any assessment derived from the same is void for having no factual basis.

Concurring Opinion of PJ Del Rosario: The LOA is invalid for being received by the taxpayer beyond its 30-day validity, and that the FAN has no date of demand.

The computation for interests and penalties under the TRAIN Law takes effect as of January 1, 2018. *(CTA Case 9077)*

The taxpayer was found liable for deficiency taxes by the CTA. The decision was promulgated on January 3, 2018. The taxpayer filed for reconsideration of the decision, arguing that the amendments brought about by the TRAIN Law prohibits the simultaneous application of deficiency and delinquency interest. The court ruled that given the effectivity period of the TRAIN Law, the computation of interests from January 1, 2018 onwards should follow the said law. In other words, the computation of interests using the Tax Code prior to the amendments of the TRAIN Law should apply, but only up to December 31, 2017. From January 1, 2018 onwards, the interests as imposed by the TRAIN Law, which is a flat rate of 12% per annum, should apply.

Note : This is a novel decision on the application of interest as prescribed under the TRAIN Law.

FAN must indicate not only the legal and factual bases for the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period. *(CTA Case 9406)*

The taxpayer was assessed for deficiency tax. The BIR erroneously left the spaces for due dates in the enclosed FAN blank. The assessment was cancelled because there is no definite demand for payment. This doctrine has already been affirmed by the Supreme Court in the Medicard case.

Note: Interestingly, prior to the Medicard case, the CTA was in a position that the due dates for payment may be derived from the tax due in the FAN since it indicates until when the interest is computed. ***(CTA Case 8227)***

The CTA has no jurisdiction when the issue involved is the issuance of a local government business permit because it is not a local tax case. *(CTA EB Case 1465)*

The City Treasurer of Makati made an assessment for deficiency local taxes against the taxpayer. Meanwhile, the taxpayer tried to apply for the renewal of its business permit, but the City of Makati refused to issue the same due to an alleged business tax deficiency of the taxpayer for a prior year. The RTC issued a Writ of Preliminary Injunction in favor of the taxpayer. The City Treasurer assailed the said order before the CTA. The CTA ruled that it does not have jurisdiction over a Petition for Certiorari assailing the interlocutory order issued by RTC when the case filed in the RTC does not involve a local tax case nor an appeal pursuant to the Local Government Code.

Note: When a local government refuses to issue a business permit, what is the remedy of the taxpayer considering that it is not a local tax case?

Tax Verification Notice (TVN) is not the valid LOA contemplated under the law. The subsequent issuance of the Revalidation Notice to substitute Revenue Officers directing them to continue the audit did not cure said infirmity. *(CTA Case 8555)*

A TVN was issued authorizing a Revenue Officer (RO) to examine the taxpayer's records. Due to the transfer of the first RO, a Revalidation Notice was issued authorizing a new RO to continue the examination. Thereafter, the taxpayer received the Final Assessment Notice (FAN), finding it liable for deficiency taxes.

The court ruled that mere "Tax Verification Notice" is not the valid LOA contemplated under the law. Thus, considering that the RO who conducted the examination was not validly authorized to do so, the assessment is void.

A Preliminary Collection Letter (PCL) from the BIR is among the "other matters" arising under the NIRC" from which a taxpayer may file an appeal with the CTA. *(CTA Case 8199)*

A PCL was received by the taxpayer after it filed its Motion for Reconsideration on the FDDA. According to the court, a PCL can be treated as the decision on the MR, which can be elevated to the CTA.

Note: Generally, when a collection notice, like the PCL, is elevated to the CTA, what the taxpayer will question is not the validity of the assessment but the validity of the collection. In this case, since the court treated the PCL as the decision on the FDDA, can the taxpayer still question the validity of the assessment and not just the validity of the collection?

A final Resolution of the Court of Tax Appeals decision requires the presence at the deliberation and the affirmative vote of at least two justices. *(CTA EB 1450)*

The court ruled that the taxpayer's motion for reconsideration was a mere scrap of paper. But the required quorum was not met in the issuance of said Decision order, requiring at least the presence and affirmation of at least two justices. The CTA in division is mandated to act as collegiate body in the deliberation of final resolution. Thus, the Division order, ruling on the taxpayer's Motion for Reconsideration was improperly issued.

Note: The MR was considered as a mere scrap of paper because it does not state the date and time when the said MR will be heard. Thus, in any motion, a specific date and time of hearing must be stated and the other parties must be notified of the same.

Microfinancing activities are subject to VAT. *(CTA Case 9003)*

The taxpayer, a non-stock, non-profit corporation, is engaged in microfinancing activities. It was assessed by the BIR with deficiency VAT. The taxpayer argues that VAT does not cover microfinancing, as it is not an activity aimed at turning a profit. In other words, the taxpayer argues that microfinancing is not in "the course of trade or business". However, the CTA upheld the assessment. In quoting previous SC decisions, the CTA held that pursuit of profit is not necessary for an activity to be subject to VAT. The sole requirement

is that the good or service exchanged is for remuneration. Thus, in charging interest from its borrowers, the transaction is already subject to VAT.

Royalty payments made to the seller in connection with the purchase of products abroad are part of the valuation of imported items subject to customs duties. *(CTA EB 1471)*

The taxpayer was assessed with deficiency customs duties and VAT, in connection with its importation of products to be sold.

The deficiency stemmed from the under-valuation of the imported products, as the taxpayer did not include the royalties paid to the seller as part of the value of the imported goods. The taxpayer argues that the royalty payments are not necessary for its purchase of the imported goods, and that the same were incurred for purposes of being able to use the seller's brand here in the Philippines. However, the court ruled that the purpose for which the royalties are paid are substantially related to the purchase of the products. Further, the court noted that the purchase agreement between the taxpayer and the seller require the payment of royalties, and failure to do so would result to the termination of the contract. Thus, the payment of royalties should be included in the computation of the value of the imported goods.

Bad Debts written-off in previous year should not be added back to the accounts receivable in the succeeding year. *(CTA Case 9108)*

The taxpayer was assessed with deficiency income tax due to undeclared receipts. In its protest, the taxpayer contends that the alleged undeclared receipts are actually receivables from the previous taxable year that were written off. The BIR argues that its computation of taxpayer's cash flow is similar to that of the taxpayer, thus the finding that there were undeclared receipts is correct. The court ruled that unless the BIR found that the previous year's bad debts were actually collected on the current taxable year, then the same cannot be added back to the taxpayer's receivables for the year.

Subsequent issuance of Final Decision on Disputed Assessment (FDDA) does not validate a Protest to the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) filed beyond the 30-day period. *(CTA Case 8476)*

The taxpayer was assessed with various deficiency taxes. The said findings of deficiency were questioned before the CTA. The BIR argued that the CTA had no jurisdiction over the case, as the FAN has already attained finality due to the taxpayer's failure to protest the same within 30 days from receipt of the FAN. The taxpayer argues that since the BIR subsequently issued an FDDA, then the proper period to compute the filing period would be from receipt of the FDDA. The court, however, ruled that the FAN has indeed attained finality since the taxpayer failed to protest the same within 30 days from receipt. The subsequent issuance of the FDDA does not cure the lapse of the opportunity to file a protest.

In a claim for VAT refund, taxpayer must submit additional documents when he receives "verbal" or "written" requests from the BIR. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period. ***(CTA 9032)***

The taxpayer filed a claim for refund after the expiration of the 120-day waiting period. But, on April 27, 2012, it received a Letter of Authority (LOA) with a Checklist of Requirements. The said checklist enumerated the additional documents requested by the BIR from the taxpayer for the complete determination of its claim for refund. However, there is no evidence on record which shows that it complied with the request. The court ruled that the 120-day period should be counted 30 days from April 27, 2012 when the taxpayer received the LOA with the Checklist of Requirements, or from May 27, 2012, pursuant to the ruling laid down in the Pilipinas Total case in relation to RMC No. 49-2003. The reason for this is that records do not show that the taxpayer submitted any documents within the 30-day period from April 27, 2012 (the date it received the Checklist of Requirements), hence the 120-day period should be counted from the lapse of the 30-day period or on May 27, 2012. Thus, the taxpayer's judicial claim was filed out of time.

Note: Does this ruling still apply today with the issuance of RMC 17-2018? What if after filing a claim for refund together with the complete documents (with a sworn statement that the complete documents have been submitted), the BIR still issue an LOA with a checklist of requirements, should the taxpayer comply? The reckoning of the 120-day period and the 30-day period to appeal to the CTA will be affected whether the taxpayer chooses to submit or not.

1. A Letter of Authority (LOA) has a 120-day validity period. *(CTA 8837)*

The Revenue Officer according to the court is allowed only 120 days from the date of the receipt of the LOA by the taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit the final report of investigation within the 120-day period, the Revenue Officer must then submit a Progress Report to the head office and surrender the LOA for revalidation. If the Revenue Officer submits a final report of investigation without a revalidated LOA, he will be considered to have acted beyond his authority, making the assessment void.

Note: This is a deviation from the previous decisions of the court where it has consistently ruled that failure to revalidate an LOA does not make an assessment void. It will only subject erring revenue officers to administrative sanctions.

The court is now adapting the January 2018 En Banc decision in CTA EB 1535.