Significant Court of Tax Appeals Decisions
December 2018

Freight forwarders are not subject to local business tax on reimbursable expenses, representing arrastre, documentation, trucking handling charges, storage fees, duties and taxes, among others.

A taxpayer was assessed for local business tax. The taxpayer argued that its reimbursable expenses, representing arrastre, documentation, trucking handling charges, storage fees, duties and taxes, among others, do not form part of its gross receipts, thus should not be subject to local business tax.

In ruling for the cancellation of the assessment, the Court ruled that Section 133 (j) of the Local Government Code of 1991 clearly and unambiguously proscribes LGUs from imposing any tax on the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land or water. In view of the express limitation in Section 133(j), Section 143 (h) cannot be used as basis for the imposition of business taxes on freight forwarders.

Even for the sake of argument that the taxpayer should be held liable for LBT, the Court noted that the tax base may still differ depending on the documentation employed, especially with regard to reimbursable expenses or advance payments made on behalf of the principals/customers. Determination must still be made if the amount actually or constructively received should be considered "income" for purposes of computing the tax base. *(Kuehne + Nagel, Inc. vs. City of Paranaque, CTA Case No. 189).*

Note: Section 133(j) prohibits local government units from the imposition of local taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water. Note that the prohibition is on the imposition of tax on the gross receipts. It would seem therefore that business tax may still be imposed provided that the tax base should not be gross receipts. Further, business tax cannot be imposed on reimbursable expenses.

The situs in local franchise tax is where the privilege is exercised.

TRANSCO, a government instrumentality created pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, maintains a principal office in Quezon City. On the other hand, DANECO, one of TransCo's power customer, has an office located within the territorial jurisdiction of the City of Tagum. With this, the City of Tagum assessed TRANSCO of local franchise tax, arguing that TRANSCO is liable for local franchise tax on gross receipts from DANECO. The LGU argues that since DANECO, which is a power customer of TRANSCO, has an operation in its territorial jurisdiction, then TRANSCO is liable for the local franchise tax.

The Court ruled that since the local franchise tax partakes of the nature of an excise tax, the situs of taxation is the place where the privilege is exercised, i.e, where the franchisee has its principal office and from where it operates, regardless of the place where its services or products are delivered. In this case, Tagum City cannot justify the imposition of the subject local franchise tax on taxpayer TRANSCO, there being no showing that TRANSCO's principal office is in Tagum City; neither does it appear that it is from the said City where TRANSCO operates. Correspondingly, Tagum City cannot impose a local franchise tax on TRANSCO's gross receipts or any part thereof.

The fact that TRANCO's power customer, namely DANECO, has an office in Tagum City, does not justify the imposition of franchise tax. This is simply because there is no indication that DANECO and TRANSCO are one and the same entity; nor is one, a part or an extension of the other. Thus, the operation of an office by DANECO in Tagum City cannot be considered as an operation of an office by TRANSCO. Correspondingly, Tagum City cannot be treated as the situs of the subject local franchise tax or where the privilege of TRANSCO is being exercised. *(The City Government of Tagum vs. National Transmission Corporation, CTA AC No. 190 (UDK-SP 015) November 14, 2018).*

There is no law or regulation requiring a VAT-registered supplier to prove that the PEZA/BOI VAT zero-rating certifications issued to its buyers are not yet revoked for VAT zero-rating purposes.

In a Motion for Partial Reconsideration, the CIR argues that the taxpayer failed to prove its entitlement to VAT zero-rating. While the taxpayer presented its BOI and PEZA Certifications to prove its entitlement for VAT zero-rating, the CIR however argues that the taxpayer did not provide evidence that these certifications are not yet revoked.

The Court ruled that the taxpayer need not provide evidence that the PEZA and BOI certifications are not yet revoked. There is no law or regulation requiring a VAT-registered supplier to prove that the PEZA/BOI VAT zero-rating certifications issued to its buyers are not yet revoked for VAT zero-rating purposes. *(Toledo Power Company vs. Commissioner of Internal Revenue, CTA Case No. 8792 November 5, 2018).*

Issuance of WDL is tantamount to denial of protests.

The CIR questions the jurisdiction of the Court over the case and argues that the WDL is not the adverse decision that is appealable to the CTA but the Final Decision on Disputed Assessment (FDDA).

The Court ruled that it has jurisdiction over the case holding that the basis for the taxpayer's filing of the petition is the issuance of the WDL. The purpose of the issuance of said WDL is for the enforcement of collection on the alleged assessment by the CIR which is within the provision of NIRC. The issuance of the WDL is the proof of finality of the assessment and such is tantamount to an outright denial of taxpayer's protest.

The WDL as issued by the CIR is tantamount to his decision as to the final denial of the taxpayer's protest on the alleged assessment. It is only upon the receipt of said WDL that the period of appeal shall commence. It is not only CIR's decision on disputed assessments that is appealable before the Court but also other matters arising under the NIRC or other laws administered by the BIR. *(Manila Medical Services, Inc. (Manila Doctors Hospital) vs. Commissioner of Internal Revenue, CTA Case No. 8907 November 6, 2018).*

MOA is not equivalent to an LOA.

Here, the taxpayer argues that the assessments are void for lack of a valid LOA authorizing the Revenue Officer (RO) to conduct tax examination against it and for lack of electronic LOA as required by the rules.
The Court cancelled the assessment for lack of authority of the examining Revenue Officer. Again in this case, the Court ruled that an LOA is valid only for a period of 120 days, and will be invalidated thereafter unless revalidated after submission of a Progress Report. Further, a revalidation shall be covered by the issuance of a new LOA under the name(s) of the same investigating officer(s), and the superseded LOA(s) shall be attached to the new LOA issued.

In this case, the authority of the Revenue Officer for the continuance of the audit was simply embodied in a MOA, which, according to the Court, is not sufficient basis for the RO's authority to examine the taxpayer for it cannot in any way be deemed equivalent to a LOA. Absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation, there is no authority to conduct the investigation/audit. *(Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8952 November 14, 2018).*

Instructional letters, journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements subject to DST.

In this case, the CTA resolved that instructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates qualify as loan agreements upon which DST may be imposed. In the same vein, DST may be imposed on the advances made to related parties, which constitute as loan agreements. *(San Miguel Paper Packaging Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9288 November 14, 2018).*

The authority granted under Revalidation Notice is not the same as that of an LOA.

Resolved by the CTA En Banc in this case is the issue of whether or not the revenue officer(s) who examined a taxpayer in a tax assessment case was duly authorized by the CIR or his duly authorized representative.

Here, the revenue officer who recommended the issuance of a PAN was not named in the issued LOA. Her supposed authority emanated only through a Memorandum Referral and Revalidation Notice. There was no new LOA issued specifically designating her to examine and audit the books of accounts and other accounting records of the taxpayer. Thus, the Court said that the revenue officer cannot be considered as validly authorized to conduct an examination and audit.

All audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA shall be issued with the corresponding notation thereto. Accordingly, since the RO, in the instant case, was not duly authorized by a new LOA, the subject tax assessments, which came about as a result of her examination of Herbalife's books of accounts and accounting records, are void.

Note: Associate Justice Ringpis-Liban made a dissenting opinion on this, holding that the Revalidation Notice is equivalent to an LOA. She equated the issuance of LOA as a contract of agency. Amongst others, the revalidation contains all the elements necessary to establish a contract of agency between the CIR and the newly RO assigned. The primary consideration in determining the true nature of a contract is the intention of the parties. *(Commissioner of Internal Revenue vs. Herbalife International Philippines, Inc. CTA EB No. 1612 November 15, 2018).*

A generation company, to be entitled to VAT zero-rating, should be authorized by the Energy Regulatory Commission (ERC) to operate the generation facilities.

In this case, the Court reiterated that for an entity to be entitled to VAT zero-rating as a generation company, it should be authorized by the Energy Regulatory Commission (ERC) to operate the generation facility.

Generation companies are required to secure a Certificate of Compliance (COC) from the ERC before they can operate the facilities used for generation of electricity, as provided under Rule 5, Section 4 (a) of the Implementing Rules and Regulations of Republic Act (RA) No. 9136. *(Hedcor Sabangan Inc. vs. CIR, CTA Case no. 9276, November 20, 2018)*.

A taxpayer who availed and fully complied with the provisions of the Tax Amnesty Law under RA 9480 is now immune from the payment of taxes covered in the amnesty.

Here, the taxpayer was assessed for deficiency taxes for taxable years 1999, 2000, 2001, and 2004. It argues, among others, that the assessment is erroneous considering that it is supposed to be immune from assessment for the years 1999, 2000, 2001 and 2004, due to its availment of the government's Tax Amnesty Program under RA 9480. The taxpayer accomplished the requirements to avail tax amnesty including the submission of SALN. However, the BIR alleged that the taxpayer's SALN did not contain complete declaration of the Company's assets and liabilities, arguing that the understatement of the same is a valid basis for disallowing the benefits and immunities under the government's Tax Amnesty Program.

The CTA noted that Sec. 4 of RA 9480 provides that the SALN shall be considered true and correct, unless the amount of declared net worth is understated to the extent of 30% or more, as may be established by parties other than the BIR or its agents. Aside from its bare allegation, the BIR did not prove the same during the proceedings. Considering that the taxpayer fully complied with the provisions of the Tax Amnesty Law, it should be immune from the payment of taxes, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended. *(Gardens by Sanders, Inc. vs. CIR, CTA Case No. 9342, November 27, 2018).*

Donation made for the purpose of complying with the legal requirements of the dissolution of marriage does not negate the presence of donative intent.

This is a claim for refund for alleged erroneous payment of donor's tax. In this case, a Regional Trial Court declared the marriage of spouses Manlapaz as null and void ab initio. The Decision likewise dissolved the property relations between the former spouses. In the Decision, the RTC also approved an "Agreement on Custody and Support and Liquidation, Dissolution, and Separation of the Property Regime" entered into by and between the former spouses. Section IV of the Agreement provides that a condominium unit shall be donated to the former spouses' common child. In accordance with the Agreement, the former spouses executed a Deed of Donation in favor of their common child, paying therein donor's tax.
A claim for the refund of the paid donor's tax was subsequently filed with the BIR. Here, the claimant alleged that there was no donative intent when they gave the property to their common daughter, as they only did it to comply with the requirements of the annulment of the former spouses' marriage and the dissolution of their property relations.

The case reached the CTA. The Court ruled that there was a donation subject to donor's tax. Even granting that the subject donation was made by the former spouses for the purpose of complying with the legal requirements of the dissolution of the property relations between them, the same does not negate the presence of donative intent in the subject transaction considering that the former spouses gave portion of their patrimony to their common child without any material consideration. Considering that the former spouses

gave the subject property to their common child without any material consideration, there arises an implication of intent to do an act of liberality or animus donandi. *(Victor Manlapaz vs. CIR, CTA Case No. 9765, November 23, 2018).*

While business expenses can be substantiated by adequate records other than official receipts, vouchers alone are insufficient to support the alleged expenses.

In an assessment case for taxable year 2009, the Court sustained the BIR's disallowance of the taxpayer's business expenses as deductions from gross income due to the taxpayer's inadequate supporting documents. The taxpayer insists that it is entitled to a tax deduction, arguing that notwithstanding its failure to present official receipts as proof of expenses incurred, the taxpayer nonetheless presented vouchers showing that the subject expenses were indeed incurred.

The Court denied the taxpayer's argument. The Court ruled that while it is true that business expenses can be substantiated by other adequate records, and not just official receipts, vouchers alone are insufficient to support the alleged expenses. Further, the taxpayer failed to reconcile the discrepancies noted by the BIR. The taxpayer failed to present specific and convincing argument to reconcile the noted discrepancies. *(Organizational Change for Learning vs. CIR, CTA En Banc No. 1679, November 19, 2018).*

Before a case can be elevated to the CTA En Banc, the Court in Division must have finally disposed of the case. It cannot be taken from an interlocutory order.

The Second Division of the CTA issued a Resolution holding that the Commissioner of Internal Revenue (CIR)'s right to assess the taxpayer for 1) deficiency VAT for the 1st quarter of 2009; and 2) deficiency EWT for the months of January to May 2009 had prescribed. The Second Division thereafter set the case for hearing for the remaining tax deficiency assessments for taxable year 2009.

Aggrieved, the taxpayer filed a Petition for Review with the Court En Banc. The Court En Banc ruled that the Petition for Review was premature. Clearly, the resolution neither fully and finally terminate nor dispose of the case. In fact, the Court in Division in the assailed resolutions still set the case for hearing for the presentation of evidence on the other remaining deficiency tax assessments.

As provided under Section 1, Rule 41 of the Revised Rules of Court, governing appeals from the Regional Trial Courts (RTCs) to the Court of Appeals, an appeal may be taken only from a judgment or final order that completely disposes of the case or of a matter therein when declared by the Rules to be appealable. Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order**.** (*Securities Transfer Services vs. CIR, CTA En Banc No. 1633, November 19, 2018).*

Failure to strictly comply with the prerequisites in RMO 1-2000 or RMO 72-2010 is not fatal to a taxpayer's availment of a preferential rate under a tax treaty.

This case arose from a Tax Treaty Relief Application (TTRA) filed by a taxpayer, which the CIR denied due to late filing of the application. The CIR argued that the filing should always be made BEFORE the first taxable event – non-compliance of which would have the effect of disqualification.

The CTA ruled in favor of the taxpayer, reiterating its earlier decisions that the application for TTRA should merely operate to confirm the entitlement of the taxpayer to the relief. In other words, the basis of the entitlement to the preferential rate is not the confirmatory ruling from the BIR but the Tax Treaty itself. Nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. *(Secretary of Finance vs. CTA, CTA EB No. 1668, November 20, 2018).*

A City cannot impose income tax on the government as it is a limitation imposed by the Local Government Code.

The City of Davao taxed a taxpayer on dividends it received from the San Miguel Corporation (SMC) shares of stock and interest income on money market dividends, claiming that the taxpayer is a non-bank financial intermediary and is engaged in activities that would qualify the company to be subject to local business tax.
The Court rejected the City of Davao's contention, holding once again that the power of local government units to levy taxes, fees and charges emanates from Sec. 5, Article X of the 1987 Constitution, subject to the guidelines and limitations as Congress may provide. Some of these

limitations are provided in Sec. 133 of the LGC of 1991, such as the imposition of income tax (except when levied on banks and other financial institutions) and imposition of taxes, fees or charges of any kind on the National Government.

In this case, the Court notes that the taxpayer is not a non-bank financial intermediary, thus, the interests and dividends it received may not be the subject of local business tax. Further, it has been held that the taxpayer here is considered a Coconut Industry Investment Fund (CIIF) Company and therefore, the SMC shares of stock it owns are considered owned by the government. Thus, any tax thereon is a tax on the government. It is not allowed. *(City of Davao vs. Te Deum Resources, CTA En Banc No. 1636, November 20, 2018).*

In claims for refund of unutilized CWT, a taxpayer-claimant does not have to prove actual remittance of taxes withheld to the BIR.

In a taxpayer’s claim for refund of unutilized CWT, the BIR alleges that the taxpayer-claimant failed to present documents such as official receipts, sales invoices, detailed general ledgers, sales register, and reconciliation schedules to effectively show that the claimed CWT forms part of the taxable gross income as reflected in the taxpayer’s Annual Income Tax Returns (ITRs) covered by the claim. The BIR likewise argues that the taxpayer failed to show adequate proof of actual remittance of the withheld taxes to the BIR , arguing that the act of withholding is different from the act of remitting the said taxes and that the best evidence of remittance is a certification from the BIR's Revenue Accounting Division showing the fact of remittance of the taxes supposedly withheld. The BIR further argues that the certificates of creditable tax withheld do not constitute conclusive evidence of payment and remittance to the BIR. Finally, the BIR argues that the testimonies of the various payors and withholding agents are required to prove remittance of taxes to the BIR.

The CTA En Banc stressed that the taxpayer does not have to prove actual remittance of the taxes to the BIR. It is sufficient that the certificate of creditable tax withheld at source is presented in evidence to prove that taxes were indeed withheld. Citing CIR v. PNB, it was ruled that certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove authenticity of the certificates. It is the payor-withholding agent and not the payee-refund claimant such as the taxpayer in this case, who is vested with the responsibility of withholding and remitting income taxes." *(CTA En Banc 1666, CIR vs. PPI Prime Ventures Inc., November 23, 2018)*