Significant Court of Tax Appeals Decisions
January 2019

Resident citizens employed by foreign governments and/ or international organizations, such as ADB, are subject to the graduated income tax rates under Section 24(A) of the NIRC of 1997, as amended.

The CIR issued on April 12, 2013 RMC No. 31-2013 which provides, among others, that officers and staff of ADB who are not Philippine nationals shall be exempt from Philippine income tax. Following RMC 31-2013, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax. In compliance with the RMC, a taxpayer, Filipino officer at ADB, accordingly paid his income tax due for his compensation income for the period January to December 2012. Thereafter, he sought to refund the income tax allegedly erroneously and illegally collected from him for calendar year 2012.

The Court upheld its earlier decision to grant the claim. The Court recognized the rule that resident citizens employed by ADB are subject to graduated income tax rates pursuant to the reservation by the Republic of the Philippines of its power to tax its nationals that are employed by ADB. However, the Court pointed out that compensation income of Filipino personnel employed by ADB were not subjected to income tax in the past. It was only by the issuance of RMC No. 31-2013 in 2013 that their compensation was subjected to tax. Hence, Filipino employees of ADB should not be prejudiced by the actuations of the BIR prior to the said RMC.

As such, RMC No. 31-2013 should be applied prospectively. By 2013, Filipino personnel employed by ADB had already taken cognizance of the said RMC and are mindful of their obligation to pay their tax liabilities. *(Erwin Casaclang vs. Commissioner of Internal Revenue, CTA Case No. 9091, December 4, 2018).*

Note: *Compare with the case of Edzen Jogie B. Garcia vs. Commissioner of Internal Revenue, CTA EB No. 1674 (CTA Case No. 9075), December 6, 2018. The factual antecedents of both cases are almost identical but the ruling of the Court En Banc in the Garcia case was adverse to the taxpayer seeking the refund.*

In a criminal action for evasion of taxes, civil liability cannot be imposed if there is no formal assessment.

An accused was charged with the crime of attempt to evade or defeat the payment of tax. For his defense, the accused alleged, among others, that the BIR failed to follow the guidelines in the proper audit since no formal investigation was conducted.

The Court acquitted the accused without civil liability. The Court found that even though there was a valid LOA issued and served, the revenue examiners were not able to examine the books of account of the accused and the complaint was based merely on the Integrated Tax System (ITS), the centralized database of the BIR. As such, no proper audit was conducted to support the crime charged.

Anent the civil aspect, the Court ruled that Section 205 of the NIRC, as amended, provides that "the judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner." Thus, it is required that in order to be included in the judgment of said civil liability, it must be the final decision of the CIR. Such final decision refers to the formal assessment. Since there is no formal assessment, civil liability cannot be imposed. *(People of the Philippines vs. Arnel Cortez Manaloto, CTA Crim. Case No. O-454, O-455, O-456, and O-457, December 5, 2018).*

When an administrative agency renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law.

The CIR issued on April 12, 2013 RMC No. 31-2013 which provides, among others, that officers and staff of ADB who are not Philippine nationals shall be exempt from Philippine income tax. The taxpayer, a Filipino officer at ADB, filed his income tax return for 2012 and paid income tax. He thereafter filed a refund for the income tax paid in 2012 but it was not acted upon by the BIR. The refund was elevated by the taxpayer to the CTA alleging, among others, that RMC No. 31-2013 violated Section 246 of the NIRC on the non-retroactivity of issuances since the RMC was applied on his 2012 income.

The Court En Banc denied the claim. The Court En Banc ruled that when an administrative agency renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law. RMC No. 32-2013, therefore, was issued merely to construe the existing provisions of the 1997 NIRC in relation to the various existing treaty obligations of the Philippines. The circular was not issued or intended to impose additional tax burdens not otherwise found in the law. *(Edzen Jogie B. Garcia vs. Commissioner of Internal Revenue, CTA EB No. 1674 (CTA Case No. 9075), December 6, 2018).*

Note: *Compare with the case of Erwin Casaclang vs. Commissioner of Internal Revenue, CTA Case No. 9091, December 4, 2018. The factual antecedents of both cases are almost identical but the ruling of the Court in Division in the Casaclang case was in favor of the taxpayer seeking the refund.*

The "income of whatever kind and character" of a charitable institution "from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax".

The taxpayer was assessed by the BIR for alleged deficiency tax liabilities. The BIR subjected to income tax at preferential rate (Section 27(B) of the NIRC) the revenues from services to paying patients instead of exempting the taxpayer from income tax as provided under Section 30(E) of the NIRC.

The Court ruled that while it is true that the taxpayer does not lose its tax exemption if it earns income from for-profit activities, it failed to controvert by evidence the finding of the BIR that the taxpayer is not operated exclusively for charitable purpose. Even if the charitable institution must be "organized and operated exclusively" for charitable purpose, it is nevertheless allowed to engage in "activities conducted for profit" without losing its tax-exempt status for its not-for-profit activities. However, the "income of whatever kind and character" of a charitable institution "from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax". *(Perpetual Succour Hospital of Cebu, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9166, December 11, 2018).*

Prior filing of a motion for reconsideration/new trial of the Amended Decision is compulsory.

The taxpayer filed a claim for refund of unutilized creditable input tax with the CTA. The Court in Division rendered its Original Decision on August 25, 2015. Both parties moved to reconsider the Original Decision which led the Court in Division to promulgate an Amended Decision dated August 23, 2016. Again, both parties appealed the Amended Decision to the Court En Banc by filing their respective Petitions for Review. The Court En Banc denied both Petitions which prompted both parties to file their respective Motions for Reconsideration.

The Court En Banc denied both motions. The Court En Banc ruled that the proper legal recourse for both parties is to seek reconsideration of the Amended Decision. In order for the CTA En Banc to take cognizance of an appeal via a Petition for Review, a timely motion for reconsideration or new trial must first be filed with the CTA Division. When the Court renders and Amended Decision, it is technically a decision distinct from the original one. Prior filing of a motion for reconsideration/new trial of the Amended Decision is compulsory, lest the Amended Decision shall become final and executory. *(Commissioner of Internal Revenue vs Coral Bay Nickel Corporation, CTA EB No. 1418 (CTA Case No. 8641), December 12, 2018).*

It is incumbent upon the BIR to prove that the mailed assessment notices were indeed received by the taxpayer, or at the very least, by its authorized representative.

The taxpayer was assessed by the BIR for alleged deficiency taxes. For its part, the taxpayer denied having received the corresponding assessment notices. According to the BIR, the assessment notices in question were sent through registered mail.

The Court En Banc denied the motion for reconsideration. The Court En Banc ruled that receipts of registered letters and return receipts do not prove themselves; the presentation of Registry Return Receipts is not sufficient to prove that the taxpayer actually received the PAN and FAN. It must be signed by the addressee or the recipient and must be authenticated to establish that the person who signed the Registry Return Receipt was the duly authorized representative of the taxpayer. It was therefore incumbent upon the BIR to prove that the mailed assessment notices were indeed received by the taxpayer, or at the very least, by its authorized representative. However, the BIR failed to do so. *(Commissioner of Internal Revenue vs G&W Architects, Engineers and Project Consultants Co., CTA EB No. 1606 (CTA Case No. 8617), December 14, 2018).*

Absence of competent proof that the revenue examiners were duly authorized pursuant to a valid LOA, the deficiency tax assessment is void ab initio.

The taxpayer was assessed by the BIR by virtue of a Letter Notice alleging discrepancies as a result of computerized matching conducted by the BIR. The assessment was elevated to the Court wherein the crux of the issue is whether or not the Letter Notice is sufficient to support an assessment.

The Court granted the petition and cancelled the assessment. The Court ruled that in the absence of competent proof that the revenue examiners who conducted the audit and investigation were duly authorized pursuant to a valid LOA, the deficiency tax assessment arising from such audit and investigation is void ab initio. *(MSEI Corporation vs Commissioner of Internal Revenue, CTA Case No. 9167, December 17, 2018).*

A Mission Order is not tantamount to a LOA.

The BIR issued Mission Orders directing revenue officers to conduct an immediate inventory and require the taxpayer to submit accounting records. The taxpayer was thereafter assessed for deficiency taxes. The assessment was elevated to the CTA.

The Court granted the petition and cancelled and set aside the assessment. The Court ruled that a revenue officer must be clothed with authority before he or she may proceed with the examination of the subject taxpayer and subsequently issue and assessment. The said authority must be embodied in a Letter of Authority and not in any other form. Since the examination and assessment against the taxpayer was made on the basis of Mission Orders and not a validly issued LOA, the ROs who conducted the examination were not validly authorized to do so. The subsequent assessment is void. *(Builders Steel Corporation vs Hon. Kim S. Jacinto Henares, in her capacity as CIR, Alfredo V. Misajon and Nestor S. Valeroso, in their capacity as OIC-Assistant Commissioner LTS-BIR, CTA Case No. 9050, December 17, 2018).*

Compliance with the 120-day plus 30-day periods is mandatory for claims for refund.

The taxpayer filed an administrative claim for refund of unutilized input tax on March 25, 2013. On October 15, 2015, the taxpayer received from the BIR a letter dated September 29, 2015 denying its claim for refund. On November 16, 2015, Petitioner filed the Petition for Review before the Court.

The Court denied the petition for lack of jurisdiction. The Court ruled that in order for It to acquire jurisdiction over an appeal on claims for refund, compliance with the 120-day plus 30-day periods is mandatory. The counting of the 120-day period should have started from March 25, 2013. The BIR had until July 23, 2013 to act on the taxpayer's claim. Thus, the taxpayer should have filed its judicial claim within 30 days from the lapse of the 120-day period or until August 22, 2013. However, the Petition for Review was belatedly filed on November 16, 2015. *(Northwind Power Development Corporation vs Commissioner of Internal Revenue, CTA Case No. 9202, December 18, 2018).*

In waivers, both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

In relation to a tax assessment, the taxpayer executed nine (9) Waivers of the Defense of Prescription under the Statute of Limitations to extend the period to assess and collect deficiency taxes for taxable year 2006. The assessment was eventually elevated to the CTA by the Petitioner alleging that the first waiver was null and void for being belatedly accepted by the BIR on April 21, 2010. Further, the taxpayer alleged that due to a null and void waiver, the FAN subsequently received by it was issued beyond the statutory three year period under Section 203 of the NIRC. On the other hand, the BIR contended that his right to assess did not prescribe since the taxpayer executed nine (9) waivers.

The Court ruled to cancel and set aside the assessments. It found that the acceptance of the waiver was made after the expiration of the period to assess. Thus, the first waiver is void and the period to assess was not validly extended. Considering that the first waiver is void, the eight subsequent waivers are also void because there was no period to extend at the time these were all executed. Both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed. *(RCBC Savings Bank, Inc., vs Commissioner of Internal Revenue, CTA Case No. 9001, December 18, 2018).*

To be considered a non-bank financial intermediary, it is required that a person or entity: 1) is authorized by the BSP to perform quasi-banking activities; 2) has as its principal function "lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others"; and 3) performs such functions on a regular and recurring and not on an isolated basis.

The taxpayer owns preferred shares of stock in San Miguel Corporation from which it earned dividends and interest. Pursuant to the Revenue Code of Davao City, the local government unit (LGU) collected local business tax based on the gross receipts from dividends and interest from the taxpayer on the assumption that it is a Non-Bank Financial Intermediary. Under Section 143(f) of the LGC, an LGU may impose taxes on the gross receipts of banks and other financial institutions. The taxpayer sought to refund the local business tax but it was not acted upon by the LGU.

The Court En Banc affirmed the Division's decision granting the refund. The Court En Banc ruled that to be considered a non-bank financial intermediary, it is required that a person or entity: 1) is authorized by the BSP to perform quasi-banking activities; 2) has as its principal function "lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others"; and 3) performs such functions on a regular and recurring and not on an isolated basis. There is no evidence that the taxpayer is a non-bank financial intermediary. Nor is there evidence that it is an investment company under Section 4 RA No. 2629. (*City of Davao and Bella Linda N. Tanjili in her official capacity as City Treasurer of Davao City vs. Rock Steel Resources, Inc., CTA EB No. 1703 (CTA AC No. 158), December 19, 2018).*

A mere holding company cannot be deemed as included in "banks and other financial institutions" for the purpose of imposing local business taxes under Section 143(f) of the LGC.

The taxpayer owns preferred shares of stock in San Miguel Corporation from which it earned dividends and interest. Pursuant to the Revenue Code of Davao City, the local government unit (LGU) collected local business tax based on the gross receipts from dividends and interest from the taxpayer on the assumption that it is a Non-Bank Financial Intermediary. Under Section 143(f) of the LGC, an LGU may impose taxes on the gross receipts of banks and other financial institutions. The taxpayer sought to refund the local business tax but it was not acted upon by the LGU.

The Court En Banc affirmed the Division's decision granting the refund. The Court En Banc ruled that the taxpayer is a holding company which is equivalent to a parent corporation. Thus, its essential feature is that it holds stock. Being a holding company, it is clear that the taxpayer cannot be deemed as included in "banks and other financial institutions" for the purpose of imposing the local business taxes under Section 143(f) of the LGC. *(City of Davao and Bella Linda N. Tanjili in her official capacity as City Treasurer of Davao City vs. Roxas Shares, Inc., CTA EB No. 1663 (CTA AC No. 163), December 19, 2018).*

Non-bank financial intermediaries are persons or entities regularly engaged in "lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others."

The taxpayer owns preferred shares of stock in San Miguel Corporation from which it earned dividends and interest. Pursuant to the Revenue Code of Davao City, the local government unit (LGU) collected local business tax based on the gross receipts from dividends and interest from the taxpayer on the assumption that it is a Non-Bank Financial Intermediary. Under Section 143(f) of the LGC, an LGU may impose taxes on the gross receipts of banks and other financial institutions. The taxpayer sought to refund the local business tax but it was not acted upon by the LGU.

The Court En Banc affirmed the Division's decision granting the refund. The Court En Banc ruled that non-bank financial intermediaries are persons or entities regularly engaged in "lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others." The taxpayer is not a non-bank financial intermediary since it is not engaged in the activities of a non-bank financial intermediary. Further, the transaction is isolated since the taxpayer acquired the shares only once after its incorporation and has not bought any shares other than in SMC. *(City of Davao and Bella Linda N. Tanjili in her official capacity as City Treasurer of Davao City vs. San Miguel Officers Corps, Inc., CTA EB No. 1628 (CTA AC No. 161), December 19, 2018).*

Mere reliance on the taxpayer's amended Articles of Incorporation is insufficient to categorize it as a non-bank financial intermediary.

The taxpayer owns preferred shares of stock in San Miguel Corporation from which it earned dividends and interest. Pursuant to the Revenue Code of Davao City, the local government unit (LGU) collected local business tax based on the gross receipts from dividends and interest from the taxpayer on the assumption that it is a Non-Bank Financial Intermediary. Under Section 143(f) of the LGC, an LGU may impose taxes on the gross receipts of banks and other financial institutions. The taxpayer sought to refund the local business tax but it was not acted upon by the LGU.

The Court En Banc affirmed the Division's decision granting the refund. The Court En Banc ruled that apart from the BIR's reliance on the taxpayer's amended Articles of Incorporation, they have nothing to show that the taxpayer has been categorized as a financial intermediary by competent authority, or that is has habitually and principally held itself in the business of a financial institution/intermediary. *(City of Davao and Bella Linda N. Tanjili in her official capacity as City Treasurer of Davao City vs. ARC Investors, Inc., CTA EB No. 1705 (CTA AC No. 153), December 21, 2018).*