MEMBER FIRM OF

Significant Court of Tax Appeals Decisions
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Requests for reconsideration elevated to the Commissioner of Internal Revenue, of FDDA issued by his duly authorized representative should be filed with the Office of the Commissioner

In this case, the taxpayer was assessed for deficiency taxes that led to the eventual issuance of Final Decision on Disputed Assessment (FDDA) by the Regional Director. The taxpayer appealed the FDDA to the CIR. However, the CIR implied in its reply that the request for reconsideration should have been filed with the concerned Regional Director and not the Office of the Commissioner.

The Court held that requests for reconsideration elevated to the Commissioner arising from inactions or adverse decisions of his duly authorized representatives shall be filed with the Office of the Commissioner. *(Lancaster Colors International, Inc. vs. CIR, CTA Case No. 8933, October 1, 2018)*.

For a government entity to be exempt from RPT, two conditions must concur: 1) the claimant should be a government instrumentality; and 2) the claimant must retain possession of the real property at the time of imposition of the RPT.

BSP and several of its debtors entered into a Compromise Agreement. Upon refusal of the debtors to pay their obligations, BSP foreclosed the real properties mortgaged as collateral. In order to have the properties transferred in its name, BSP paid under protest the corresponding RPT liabilities. It then sought to refund the RPT paid on the ground that government instrumentalities, such as the BSP, are exempt from the imposition of RPT.

The Court held that for such exemption to arise, two conditions must concur: 1) the claimant should be a government instrumentality; and 2) the claimant must retain possession of the real property at the time of imposition of the RPT.

Although BSP satisfied the first condition, the second is wanting. The right of possession of the real properties remained with the owners at the precise moment the properties were subjected to RPT. Such real properties therefore are not excused from the imposition of RPT. As successor-in-interest of the latter's legal rights and obligations, BSP must ultimately bear the unaccounted RPT incurred by its predecessor. *(BSP vs. CBAA, LBAA, Province of Batangas, and Fortuna Lat, CTA Case No. 1438 (CBAA Case No. L-116)(LBAA Case No. 2011-1), October 1, 2018)*.

Disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices and agencies arising from the interpretation and application of statutes, contracts or agreements are within the jurisdiction of the Solicitor General or the Secretary of Justice, as the case may be

PSALM was assessed by the BIR for deficiency value-added taxes in relation to the sale of assets by NPC, its predecessor-in-interest. The assessment was challenged before the CTA and was eventually elevated to the Court *En Banc*.

The Court *En Banc* held that it has no jurisdiction to take cognizance of the case. The Court applied the ruling of the Supreme Court in the case of *PSALM vs CIR* wherein it was held that disputes and claims solely between government agencies and offices, including GOCCs, must be adjudicated following the administrative procedure laid down in Sections 2 and 3 of P.D. No. 242. *(CIR vs. PSALM, CTA EB Case Nos. 1618 and 1619 (CTA Case No. 8587), October 1, 2018).*

The OIC-Chief of LTS-RLTAD II is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because only the CIR or his duly authorized representatives are granted such power.

The BIR issued Letter of Authority (LOA) for the examination of the books of accounts and other accounting records of the taxpayer. Subsequently, a Memorandum of Assignment was issued by the OIC-Chief of the LTS-RLTAD II which assigned the examination to other revenue officers. An assessment was then issued which was challenged by the taxpayer.

The Court ruled that the assessments issued by the BIR are intrinsically void and thus, shall be cancelled and set aside. The invalidity of such assessment springs from the absence of authority on the part of the revenue officer to conduct the examination. Only the CIR or his duly authorized representatives can authorize the examination of taxpayers. Further, any reassignment or transfer of cases to another revenue officer shall require the issuance of a new LOA. *(Trinity Franchising and Management Corporation vs. CIR, CTA Case No. 9190, October 2, 2018).*

The cancellation of the sale of real property gives rise to a right to claim for refund of the CGT paid on such sale

The taxpayer mortgaged a parcel of land to PNB. Upon default by the taxpayer, the mortgage was foreclosed and PNB was declared the winning bidder. PNB withheld CGT and paid the same to the BIR. A compromise agreement was subsequently entered into between the taxpayer and PNB. Upon a petition by the taxpayer, the sale of the parcel of land to PNB was cancelled. The taxpayer then filed a claim for refund of CGT corresponding to the cancelled sale.

In deciding, the Court held that upon rescission of a sale previously subject to CGT, the CGT must be refunded. Here, the compromise agreement is analogous to that of rescission. As such, a refund is proper. However, the Court denied the refund since the claim was filed out of time. *(Technogas Philippines Manufacturing Corporation vs. CIR, CTA Case No. 9509, October 4, 2018).*

The FAN must be served and actually received by the taxpayer, otherwise, further notices become null and void.

The taxpayer received a PAN, PCL, and FNBS from the BIR but denied receiving a FAN. It then filed a petition seeking the cancellation of the assessment, PCL, and FNBS.

The Court ruled that the issuance of the PCL and FNBS was null and void as no collection can stem from an invalid tax assessment. Based from the BIR records, the Court noted that there was no indication on the face of the FAN that it was received by any official representative of the petitioner. To be valid, assessments

must be served and actually received by the taxpayer itself or its duly authorized representative as evidenced by the latter's receipt thereof in the duplicate copy of said assessment. *(Top Draw Animation, Inc. vs. CIR, CTA Case No. 8863, October 4, 2018).*

The gross income, which is the basis of the 5% special rate, refers to gross sales or gross revenue derived from business activities within the ecozone

The BIR assessed the taxpayer, an ecozone registered enterprise, for regular income tax and VAT on its sales to enterprises within the Customs Territory. The taxpayer argues that since only 7.65% of its sales was derived on its sales of services to enterprises within the Customs Territory, which do not exceed the 30% threshold, such sale of service outside is not subject to regular income tax and VAT.

The Court *En Banc* ruled that in order to avail of the incentives under the 5% special tax regime, pertinent is Section 5 of DOF Department Order No. 03-05. Under the Department Order, for purposes of implementing the special 5% tax on Gross Income Earned, the term "Gross Income Earned" shall refer to gross sales or revenue derived from business activities within the subject ecozone. Here, considering that the sale of services were derived in the Customs Territory, these sales should not be included in the computation of the special 5% tax. Thus, the CIR is correct in imposing the relevant internal revenue taxes under the NIRC. *(Clark Water Corporation vs. CIR, CTA EB No. 1608 (CTA Case No. 8865), October 5, 2018).*

If the revenue officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the LOA for revalidation

A Letter of Authority (LOA) was received by petitioner authorizing a revenue officer to examine the records of Petitioner. However, the revenue officer submitted a Memorandum Report beyond the 120-day validity of the LOA.

The Court ruled that the revenue officer should have submitted a Progress Report and surrendered the LOA for revalidation for the issuance of a new LOA instead of continuing with the audit beyond the prescribed 120-day period. Therefore, the LOA has ceased to be valid and the resulting assessment or examination is a nullity. *(GS MTE Gains Corporation vs. CIR, CTA Case No. 8837, October 8, 2018).*

The CTA is devoid of any jurisdiction to rule upon an action questioning the validity and constitutionality of an ordinance.

The taxpayer was assessed by the Municipal Treasurer of Jones, Isabela pursuant to a newly enacted ordinance imposing an annual regulatory fee for the operation of telecommunications tower. A petition for certiorari was filed by the taxpayer with the RTC but the same was dismissed. The taxpayer filed an appeal with the CTA.

The Court *En Banc* ruled that the matter raised by the taxpayer is not a local tax case but a petition for certiorari and prohibition on the implementation of an ordinance. Hence, the Court has no jurisdiction. *(Smart Communications, Inc. vs. Municipality of Jones, Isabela, CTA EB Case No. 1671 (CTA AC No. 176), October 8, 2018).*

The CIR or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from taxpayer's date of receipt of the PAN before issuing the FLD and FAN.

The taxpayer received the PAN from the BIR. One day before the expiration of the 15-day period within which to file a Reply to the PAN, the taxpayer received the FAN and the FLD.

The Court *En Banc* ruled that the CIR or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and FAN. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment. In this case, the BIR, by prematurely issuing the FLD or FAN, wantonly disregarded the mandatory due process. *(CIR vs. Pacific Bayview Properties, CTA EB Case No. 1677 (CTA Case No. 9070), October 8, 2018).*

A reversal of the BIR regulation or ruling cannot adversely prejudice a taxpayer who, in good faith, relied on the BIR regulation or ruling prior to its reversal

The BIR issued a BIR Ruling declaring that the taxpayer's transfer of real properties by way of liquidating dividend to its stockholders is not considered a sale for tax purposes. As such, it will not give rise to any liability for payment of income tax. However, the taxpayer remitted CGT which was paid under protest. A claim for refund for the CGT was subsequently filed.

The Court *En Banc* ruled that based on the BIR Ruling, the transfer of the real properties as liquidating dividends is not subject to, *inter alia*, income tax, which perforce includes capital gains tax. The taxpayer relied in good faith on the BIR Ruling. Thus, the BIR cannot now revoke such ruling and say that the transaction is an exchange subject to the capital gains tax and apply such revocation retroactively. *(CIR vs. Belle Corporation, CTA EB Case No. 1684 (CTA Case No. 8939), October 10, 2018).*

An amended decision is a new decision which requires the filing of a motion for reconsideration prior to the filing of a Petition for Review in the Court *En Banc.*

The taxpayer obtained an Amended Decision from the Court in Division. Still unsatisfied with the amended decision, the taxpayer directly elevated the matter to the Court *En Banc*. The taxpayer argued that its non-filing of the MR on the Court in Division's Amended Decision is not fatal considering the use of the word "may" under Section 11 of RA No. 1125.

The Court *En Banc* ruled that an amended decision is issued when there is any action modifying or reversing a decision. Essentially, it was therefore a different decision and, hence, the proper subject of an MR. *(EHS Lens Philippines, Inc. vs. CIR, CTA EB Case No. 1712 (CTA Case No. 9014), October 11, 2018).*

In another case, the taxpayer likewise did not seek reconsideration of the Amended Decision of the CTA Division. Instead, it counted a period of fifteen (15) days, within which to file an appeal with the CTA En Banc.

The CTA *En banc*, citing the Supreme Court case of *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1], held that the taxpayer made the fatal flaw of not seeking reconsideration of the Amended Decision. Thus, the taxpayer's Petition for Review must be dismissed as the Court's jurisdiction has been incorrectly invoked. The Amended Decision has attained finality. *(CIR vs. Jardine Lloyd Thompson Insurance Brokers, Inc., CTA EB NO. 1177 (CTA Case No. 8273), October 17, 2018).*

Note: In his Dissenting Opinion, Presiding Justice Del Rosario opined that the fact that an amended decision is eventually issued does not necessarily deviate from its nature, which may in certain instances, be strictly a mere resolution of a motion for reconsideration. If the amended decision results from a re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious (in whole or in part), a second motion for reconsideration of the amended decision is unwarranted. To allow a second motion for reconsideration raising the same ground which the amended decision already considered would render the proscription against a second Motion for Reconsideration meaningless even as it would result to unnecessary delay in the disposition of cases.

Any tax refund anchored on the tax exemption under a special law or statute should be strictly construed against the claimant

The CIR asserts that in order to be exempted from tax, duties, charges, royalties or fees on the importation of its commissary and catering supplies under P.D. No. 1590, the claimant must prove, among others, that the imported articles are not locally available in reasonable quantity, quality or price. On the other hand, the taxpayer maintains that the Court in Division correctly granted the claim for tax refund of excise taxes as it was based on evidence presented and admitted during trial as well as prevailing jurisprudence on the matter.

The CTA *En Banc* ruled that any tax refund anchored on the tax exemption under a special law or statute should be strictly construed against the claimant, such that an interpretation thereof

[1] G.R. Nos. 201530 and 201680-81, April19, 2017.

should pass the crucible test of judicial scrutiny. In this case, the taxpayer, having passed the strict test of legal entitlement to the tax exemption under P.D. 1590, had only to prove, by preponderance of evidence, the fulfillment of the conditions for said entitlement, which it was able to do by the documents submitted and the testimony of its witnesses during the trial in the Division level. The CIR failed to rebut the evidence presented by the taxpayer in proving its right to the claim for refund, hence the refund should prosper. *(CIR vs. Philippine Airlines, Inc., CTA EB No. 1648 (CTA Case Nos. 8708 & 8770), October 18, 2018).*

Since the subject San Miguel shares of respondent, and respondent itself, are owned by the government, it follows that the dividends and any income therefrom are also owned by the government, and is beyond the taxing power of the City of Davao

Arguing that taxpayer THI is a "bank and other financial institution", Petitioner City of Davao imposed local business tax (LBT) against respondent THI's receipt of dividends and interest income on money placements from San Miguel Corporation.

The CTA *En Banc* ruled that respondent, being a holding company, cannot be deemed included in "banks and other financial institutions" for the purpose of imposing the local business taxes. Further, in Philippine

Coconut Producers Federation, Inc. v. Republic of the Philippines[2] (COCOFED case), the Supreme Court already declared that respondent THI, among others, and the San Miguel shares it held, are owned by the government. Thus, respondent's dividend and interest income from its SMC shares belong to the government, and is beyond the taxing power of the petitioner City of Davao. Any local tax imposed on respondent is imposed on the national government. To insist taxing the respondent would clearly be in contravention of Section 133(o) of the LGC. *(CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. TODA HOLDINGS, INC.,CTA EB NO. 1683 (CTA AC No. 138), October 19, 2018).*

As provided in Revenue Memorandum Circular No. 23-0023, in the absence of accounting records or other documents necessary for the proper determination of the taxpayer's internal revenue tax liability, Section 6(B) of the NIRC of 1997 requires that the assessment of the tax be determined based on the "Best Evidence Obtainable"

In this case, the CIR assessed deficiency VAT and EWT, among others, for the CY 2005. In its defense, the taxpayer asserts that the deficiency EWT assessment be cancelled for being null and void as it is based on mere presumptions and not based on actual facts.

The CTA Third Division ruled that assessments based on estimates or approximates are valid under the Best Evidence Obtainable Rule. As held by the Supreme Court in the case of *Sy Po vs. Hon. Court of Tax Appeals, et al*[3]., the rule on the "best evidence obtainable" applies when a tax

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[2] G.R. Nos. 177857-58 & 178193, January 24, 2012

[3] G.R. No. 81446, August 18, 1988.

report required by law for the purpose of assessment is not available or when the tax report is incomplete or fraudulent. Hence, the questioned documents may be used as basis for the assessment of any internal revenue tax. Assessments made as such are deemed prima facie correct and sufficient for all legal purposes. The burden of proving the illegality of the assessment lies upon the petitioner alleging it to be so. *(Ups-Delbros Transport, Inc., vs. CIR, CTA Case No. 9063, October 19, 2018).*

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged.

For failure of a company to pay its deficiency taxes for taxable year 2007, the company's President and Treasurer were accused for violation of Section 255 of the National Internal Revenue Code of 1997, as amended. The prosecution claims that the notices were properly sent and received by the accused, and the latter failed to interpose objections on the issued assessments. Accused on the other hand argued that there was no valid assessment because there was no proper service of assessment notices.

In this case, considering that the prosecution failed to prove the fact of mailing of the PAN, FAN and Formal Letters of Demand, and no evidence was presented to prove that accused actually received the assessments, the PAN and Assessment Notices, which were the basis of the criminal complaint for willful failure to pay tax under Section 255, cannot be considered valid assessments. *(The People of the Philippines vs. David de Leon and Ann Marie de Leon, CTA Crim. Case No. 0-594, October 24, 2018).*

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. The requirement to indicate a fixed and definite period within which a taxpayer must pay the tax deficiencies is vital to the validity of the assessment.

In this case, a taxpayer questions the validity of the tax assessment, contending that the absence of a due date for payment in the Formal Letter of Demand and the relevant Assessment Notices violates its right to due process. It alleges that the only date that appears to be a due date is "January 00, 1900", which is clearly erroneous and inexistent.

The CTA Second Division agreed with the taxpayer and ruled that the subject FLD and Assessment Notices are not valid assessment for failure to indicate a definite due date for payment by the taxpayer. Citing *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[4], it was held that an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer." *(Grand Plaza Corporation vs. CIR, CTA CASE NO. 8992, October 29, 2018).*

[4] G.R. No. 128315, June 29, 1999